

# CRIMINAL DIGEST, 1924-1930.



THE  
CRIMINAL DIGEST  
(1924—1930)

BY  
R. N. IYER  
AND  
V. V. CHITALEY

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## ABBREVIATIONS EXPLAINED.

P.H.C.C.	..	..	..	Patna Supplement to C. W. Notes.
A.I.R. 1929 P. or 1929 Pat.	..		..	All India Reporter, 1929 Patna.
A.I.R. 1929 P.C. or 1929 P.C.	..		..	All India Reporter, Privy Council Section.
Pat. L.J.	..	..	..	Patna Law Journal.
Pat. L.R.	..	..	..	Patna Law Reporter.
Pat. L.T.	..	..	..	Patna Law Times.
R. or Rang.	..	..	..	Indian Law Reports, Rangoon Series.
A.I.R. 1929 R. or 1929 Rang.	..		..	All India Reporter, 1929 Rangoon.
S.L.R.	..	..	..	Sind Law Reporter.
A.I.R. 1929 S. or 1929 Sind	..		..	All India Reporter, 1929 Sind.
U.P.L.R.	..	..	..	United Provinces Law Reporter.
U.B.R.	..	..	..	Upper Burma Rulings.

## OTHER ABBREVIATIONS.

Appl.	..	..	Applied.	Expl.	..	..	Explained.
Appr.	..	..	Approved.	Foll.	..	..	Followed.
Comm.	..	..	Commented.	F.B.	..	..	Full Bench.
Cons.	..	..	Considered.	P.C.	..	..	Privy Council.
Cr.	..	..	Criminal.	Ref.	..	..	Referred.
Dist.	..	..	Distinguished.	Rel.	..	..	Relied.
Disc.	..	..	Discussed.	Rev.	..	..	Revenue.
Diss.	..	..	Dissented from.	S.B.	..	..	Special Bench.
Doubt.	..	..	Doubted.				

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- Of Children—See PENAL CODE, S. 317.
- Nuisance—See CR. P. CODE, CH. X.

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## ABKARI.

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**ABSCONDING OFFENDER**—See CR. P. CODE, SS. 87, 512, ETC.

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- See (1) ABUSE.
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**ACCEPTING INSTRUMENT NOT DULY STAMPED**—See STAMP ACT (II OF 1899), S. 62.

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- See (1) CR. P. CODE, S. 337.
- (2) EVIDENCE.
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11 OF 1878—ARMS ACT.

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9 OF 1894—PRISONS ACT.

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8 OF 1897—REFORMATORY SCHOOLS ACT.

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7 OF 1903—WORKS OF DEFENCE ACT.

**ACTS**—Local—See under BENGAL, BOMBAY, BURMA, CALCUTTA, CENTRAL PROVINCES, MADRAS, PUNJAB AND UNITED PROVINCES.

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## ADJOURNMENT.

See (1) CR. P. CODE, SS. 344 AND 526.

(2) CRIMINAL TRIAL.

(3) PRACTICE.

## ADMIRALTY—See also SHIPPING.

—*Prosecution under Act 12 of 1859 should be launched after thorough enquiry.*

Circumstances attending a collision should be thoroughly examined and great care should be exercised by authorities concerned before a prosecution in respect of it is launched against a pilot under Act 12 of 1859. (*Page, J. In re "RABENFELS."*)

56 Cal. 763 = 121 I. C. 312 = 31 Cr. L. J. 215 = A. I. R. 1930 Cal. 97.

## ADMISSIONS.

See (1) EVIDENCE ACT, SS. 17 TO 30.

(2) LEGAL PRACTITIONER.

**ADULTERATION**—See MUNICIPAL ACTS.

## ADULTERY.

See PENAL CODE, SS. 497 AND 498.

## —Criminal Trial.

—*Criminal Trial—Possession—Formal, possession in execution of decree is sufficient possession.*

A person in formal possession of a property in execution of a decree shall be deemed to be in possession of property. (*Neave, A. J. C.*) BALKU v. KING-EMPEROR. 81 I. C. 533 = 25 Cr. L. J. 917 = A. I. R. 1925 Oudh 183.

## ADVERSE POSSESSION.

### —Permissive.

—*Permissive—Contract Act, S. 201—Dismissed agent's possession is not permissive.*

Where a dismissed agent continues to be in possession of his principal's house, his possession cannot be said to be that of an agent and consequently is not of a permissive character. A. I. R. 1926 Nag. 286, Dist. (K. Phakar, A. J. C.) SETHURAM v. SAMIRMAL.

**AGRA TENANCY ACT (1901), S. 34.**

24 N. I. R. 148=111 I. C. 662=29 Cr. L. J. 902=  
11 A. I. Cr. R. 166=A. I. R. 1928 Nag. 284.

**AGRA TENANCY ACT (II OF 1901).**

—S. 34—*Landlord cannot eject tenant holding by adverse possession.*

A man who has been adversely in possession for more than 12 years cannot be ejected under S. 34 by the landlord, who has lost his title by adverse possession. (*Mukerji, J.*) DAULAT SINGH v. SHEO NATH.  
114 I. C. 890=10 L. R. A. Cr. 179=  
A. I. R. 1929 All. 211.

**—S. 95—Ejectment decree.**

—Where a decree passed on 16th April is executed on 24th November, the execution is not in accordance with the law, as laid down in the Act, the ejectment in pursuance of such execution is illegal. An illegal ejectment does not give the zemindar any right of re-entry and the zemindar is not entitled to possession of the land. (*Dalal, J.*) NANDLAL CHAUDHRI v. EMPEROR.

112 I. C. 680=29 Cr. L. J. 1096=  
11 A. I. Cr. R. 154=1929 A. L. J. 92=  
10 L. R. A. Cr. 22.

**—S. 253—Revision.**

—*No cause for interference arises where lower Court acts within jurisdiction.*

Where the District Judge on appeal from the decision of the Assistant Collector files a complaint under S. 476-B, Cr. P. Code, which the trial Court refuses to file, he acts within his jurisdiction and there is no irregularity in his procedure necessitating interference. (*Dalal, J.*) NARAIN PRASAD v. EMPEROR.

120 I. C. 116=10 L. R. A. Cr. 147=  
30 Cr. L. J. 1148=13 A. I. Cr. R. 1=  
1929 Cr. C. 490=A. I. R. 1929 All. 898.

**AGRICULTURISTS' LOANS ACT (XII OF 1884).****—S. 5—Warrant.**

—*Warrant though signed by Tahsil-dar is valid.*

Warrant issued under S. 5 of Act XII of 1884 (Agriculturists' Loans Act) can be signed by the Tahsil-dar or issued under his order, where he has the authority of the Collector to do so. (*Pullan, J.*) JOWAD HUSSAIN v. EMPEROR.

2 Luck. 503=1 Luck. C. 159=  
103 I. C. 401=8 A. I. Cr. R. 321=28 Cr. L. J. 673=  
A. I. R. 1927 Oudh 296.

**—S. 5—Wrongful attachment.**

—*Property of a person attached as heir of the debtor*  
—*The person paying the amount under protest and getting the property released—Right of, for recovery of the amount but not for damages or mesne profits—U. P. Land Revenue Act (III of 1901), Ss. 183 and 233 (m).*

The revenue authorities, in pursuance of the provisions of S. 5 of the Act, attached a she-buffalo in the possession of D, on the ground that the latter was the heir of R, the original debtor, and the she-buffalo was the property of the deceased. D objected to the attachment on the ground that he was not the heir of R and that the she-buffalo belonged to him; but his petition of objection was summarily dismissed by the Collector. Thereupon D paid under protest in writing duly signed by him the amount of the takavi demand and the fees for attachment, and procured the release of the she-buffalo. During the intervening period, i.e., between the date of the attachment and removal of the buffalo from the possession of D and the date of its release, the calf of the buffalo died in consequence of its separation from its mother. D brought a suit for a refund of the amount with interest and for recovery of damages caused by the death of the buffalo calf and for the price of the milk of which the plaintiff was deprived on account of the unlawful attachment of the she-buffalo.

**APPROVER.**

*Held*, that D's right of suit is restricted to the recovery of the amount paid. He is not competent to sue the Government for damages either for the price of milk or the buffalo calf. 21 All. 341, Dist. (*Lindsay, A. C. J., Iqbal Ahmad and Sen, J.J.*) DAYA RAM v. SECRETARY OF STATE.

25 A. L. J. 1092=  
1 L. R. A. Rev 274=105 I. C. 621=  
A. I. R. 1927 All. 672 (S.B.).

**ALLAHABAD HIGH COURT RULES.****—Ch. I, R. 1 (14)—Jurisdiction.**

—*Single Judge has jurisdiction to dispose of an application for notice to printer and publisher of newspaper to show cause why they should not be convicted for contempt of Court and if such application come through jail authorities Judge can dispose of it in chambers.*

Under Chap. I, R. 1 (14), sub-cl. (b), a single Judge has jurisdiction to dispose of an application praying for a notice to be issued to printer or publisher of a newspaper to show cause why they should not be convicted for contempt of Court, when there is no rule expressly requiring it to be made by a Bench of two or more Judges. Further, when such an application is sent through the Superintendent of Jail, the Judge can dispose of the matter in chambers without fixing any date for its hearing. (*Sulaiman, J.*) DANGE v. SHEPPARD.

128 I. C. 14=32 Cr. L. J. 78=1930 A. L. J. 665=  
1930 Cr. C. 702=A. I. R. 1930 All. 483.

**ALTERATION.**

—of Document, etc.—*See* PENAL CODE.

—of Judgment—*See* CR. P. CODE, S. 369.

—of Sentence—*See* CR. P. CODE, S. 367.

**ALTERNATIVE CHARGES.**

*See* CR. P. CODE, SS. 235 AND 236.

**ANIMALS.****—Wild Animals.**

—*Property in wild animal killed is not in killer but in the proprietor of the land where the animal is killed—Owner and other assistants can rescue it from the killer*

If a person killed a wild animal or wild bird on the property of another person, such dead creature does not belong to the killer but to the proprietor and such proprietor either himself or by his duly authorized agent can lawfully demand and if refused seize such dead creature from the possession of the killer; and such persons as help him to exercise his right are doing no wrong; but as against any person other than the proprietor of the estate or his duly authorised agent or those lawfully helping the proprietor or his agent, the killer has a right to retain possession of the dead creature which he has thus killed. (*Adami and Bucknill, J.J.*) KING-EMPEROR v. ARTU RAUTRA.

3 Pat. 549=81 I. C. 82=25 Cr. L. J. 594=  
A. I. R. 1924 Pat. 564.

**APPEAL.****—Practice—Criminal.**

—*Appeal cannot be dismissed for default.*

There is no provision in Cr. P. Code for the dismissal of an appeal on account of the non appearance of the appellant or his pleader. Having admitted the appeal and fixed a date for its hearing, the appellate Court is bound to peruse the record and to decide the appeal judicially. 13 All. 171, Foll. (*Stuart, J.*) RAM CHANDAR v. EMPEROR.

21 A. L. J. 100=  
73 I. C. 694=4 L. R. A. (Cr.) 7=24 Cr. L. J. 622=  
A. I. R. 1923 All. 175 (2).

**APPROVER.**

*See* (1) CR. P. CODE, SS. 337-339.

(2) EVIDENCE ACT, SS. 144, 133.



**ARBITRATION.****—Rights of parties.**

—*Parties cannot be allowed to show that arbitrator's award was wrong on merits.*

The arbitrators are judges of both the questions of fact and of law and the parties cannot be allowed to show subsequently that their decision was wrong on the merits. (*Mirza, J.*) **RAMMAN SINGH v. DILLA SINGH.** 4 Luck. 243 = 10 L. B. A. (Rev.) 190 = 114 I. C. 803 = 6 O. W. N. 1315 = A. I. R. 1929 Oudh 334.

**ARMS ACT (XI OF 1878).****—Construction.**

—A penal enactment like the Arms Act must be construed in favour of the individual person where any doubt exists. (*Findlay, J. C.*) **SETH BALKISHAN v. EMPEROR.** 11 N. L. J. 84 = 29 Cr. L. J. 575 = 109 I. C. 511 = 10 A. I. Cr. R. 348 = A. I. R. 1928 Nag. 219.

**—Solitary Confinement.**

—*Penal Code, S. 73—Solitary confinement cannot be awarded for convictions under Arms Act.*

Solitary confinement cannot be awarded for offences under Special or Local Acts. 17 P. R. 1889 (Cr.); 20 P. R. 1870 (Cr.); 4 P. R. 1875 (Cr.); 24 P. R. 1879 (Cr.), Ref. (*Abdul Raof, J.*) **EMPEROR v. NAZIR SINGH.** 25 Cr. L. J. 120 = 76 I. C. 184 = A. I. R. 1924 Lah. 667.

**—S. 2 (7) (a)—Possession of lead.**

—*Possibility of same being used for industrial purposes—Duty of Magistrate to enquire.*

In a case under S. 19 (1), the quantity of lead found with the accused and the neighbourhood were such as to suggest that the lead was used for fishing purposes. The Magistrate merely asked each of the accused whether he admitted having the lead for sale without licence although they were not represented by counsel and on their pleading guilty convicted them.

*Held*, that the Magistrate should have in his examination of the accused put some questions with a view to elucidating from them whether they were *prima facie* vendors of lead for industrial, that is, fishing, purposes within the meaning of Arms Act, S. 2 (7) (a). (*Doyle, J.*) **ALI HOSSEIN v. EMPEROR.** 128 I. C. 845 = 1 R. 1931 Rang. 61 = 32 Cr. L. J. 206 = 1930 Cr. C. 1177 = A. I. R. 1930 Rang. 349.

**—S. 4—Ammunition.**

—*Empty cartridges are ammunition.*

Empty cartridges come within the definition of ammunition in S. 4 of the Arms Act. (32 All. 152, Foll.) (*Sulaiman and Ryves, J.J.*) **EMPEROR v. ALADIN.** 46 All. 107 = 81 I. C. 215 = 21 A. L. J. 879 = 5 L. B. A. Cr. 22 = 25 Cr. L. J. 727 = A. I. R. 1924 All. 215.

**—Ss. 4, 13 and 19 (e)—Arm—Meaning.**

—*Purpose regulates whether an implement should be deemed to be arms—C clasp-knife 5½ inches long is an arm.*

The criterion whether an implement should be deemed to be arms is the purpose for which the implement is primarily intended. A clasp knife which has a blade 5½ inches long with a pointed end and is fitted to a long handle and turns over into the handle falls within the meaning of the word "arms". 1 L. B. R. 271; 3 L. B. R. 1 and A. I. R. 1924 Cal. 714, Rel. on. (*Mya Bu, J.*) **EMPEROR v. NGA LU GALE.** 5 Rang. 710 = 106 I. C. 707 = 29 Cr. L. J. 115 = A. I. R. 1928 Rang. 49.

**ARMS ACT (1878), S. 13.****—Ss. 4 and 19—Arm—Meaning.**

—*Primary purpose and not use for which an implement is used is the test—Axe or knife does not become "arm" within S. 4 by merely using it for offending or defending on particular occasions.*

It is always the purpose for which an implement is primarily used which determines the question whether it does or does not fall within the definition of "arms" in S. 4. Implements of ordinary domestic use such as an axe or knife cannot fall within the definition of arms by the mere fact that they have been used as weapons of offence or defence on particular occasions. (*Failal, J.*) **MEHRDIN v. EMPEROR.** 28 Cr. L. J. 199 = 99 I. C. 935 = A. I. R. 1927 Lah. 162.

**—S. 4—Arm—Meaning.**

—*A hunting knife sharpened on one side only is "arms" within S. 4. (Greaves and Panton, J.J.)* **BISHAN SINGH v. EMPEROR.** 51 Cal. 573 = 81 I. C. 943 = 25 Cr. L. J. 1119 = A. I. R. 1924 Cal. 714.

—*Parts of arms, are arms.*

Bolts and bars of rifles are arms within S. 4. [38 P. R. 1889 (Cr.), Ref.] In order to fall within S. 4, the weapon need not be in a serviceable condition. (21 Mad. 360, F. B., Rel.) (*Moti Sagar, J.*) **KARM DIN v. THE CROWN.** 25 Cr. L. J. 539 = 77 I. C. 1003 = A. I. R. 1923 Lah. 617.

—*Arms—Dahs—Criterion is the intended purpose of the weapon.*

The true criterion is not whether any given *dah* is an "u-pyat" but what was the intention of the maker as regards its purpose. 5 L. B. R. 207, Ref. (*Duckworth, J.*) **POME v. KING-EMPEROR.** 23 Cr. L. J. 594 = 68 I. C. 818 = 11 L. B. R. 340 = 1 Bur. L. J. 238 = A. I. R. 1923 Rang. 23 (1).

**—Ss. 5 and 19—Manufacturing Kirpans.**

—*Manufacturing Kirpans without license is an offence.*

The exemption only applies to *kirpans* actually in existence and possessed or carried by Sikhs and not to the manufacture of *kirpans* by Sikhs. A Sikh is not prevented by any provision in the Arms Act from dealing with a *kirpan* which he possesses in any way he likes. A Sikh, however, is not exempted by the entry in Schedule II from the operation of the prohibition as to manufacture contained in section 5 of the Act. (*Scott-Smith and Harrison, J.J.*) **EMPEROR v. BASTA SINGH.** 3 Lah. 437 = 77 I. C. 230 = 25 Cr. L. J. 342 = A. I. R. 1923 Lah. 267.

**—S. 13—Going armed.**

—*Taking blunt spear, capable of being sharpened, to parade ground for gymnastic purposes is "going armed".*

A spear would not cease to be a spear by reason of its points and edges becoming blunt if they are capable of being sharpened at any time; and taking of such spear to the parade ground for gymnastic purposes amounts to going armed within the meaning of S. 13. (*Mirza and Broomfield, J.J.*) **EMPEROR v. SATTOGOWDA.** I. R. 1930 Bom. 449 = 126 I. C. 881 = 31 Cr. L. J. 1109 = 1930 Cr. C. 550 = 32 Bom. L. R. 571 = A. I. R. 1930 Bom. 174.

—*License need not be carried whenever the person has the gun with him.*

A person who holds a license for a gun or any other weapon is not obliged to carry it on his person whenever he has the gun with him. 20 Cal. 444, Foll. (*Daniels, A. J. C.*) **EMPEROR v. MUHAMMAD IBRAHIM.** 24 O. C. 265 = 64 I. C. 275 = 22 Cr. L. J. 755 = A. I. R. 1921 Oudh 149.

**ARMS ACT (1878), S. 14.****—Ss. 14 and 19 (f)—Empty Cartridges.**

—*Two empty brass 405 used cartridge cases found in accused's house in a locked box—Accused was held not liable.*

While the police were searching accused's house for stolen property (which was not present) they discovered in a locked box two empty brass 405 used cartridge cases which were incapable of being re-loaded in India.

*Held*, that accused was not guilty. (*Stuart, J.*)  
AMIR v. EMPEROR. 47 All. 629 = 87 I. C. 927 =  
23 A. L. J. 455 = 6 L. R. A. Cr. 127 =  
26 Cr. L. J. 1039 = A. I. R. 1925 All. 498.

**—S. 14—Possessing arm.**

—*License for a full-sized gun—Possessing half barrel gun is an offence.*

Where a license granted relates to a full-sized gun, the person holding such a license cannot keep a half-barrel gun under it. (*Dalip Singh, J.*) MURLI SINGH v. EMPEROR. 10 A. I. Cr. R. 206 = 29 Cr. L. J. 472 =

109 I. C. 120 = 10 L. J. 302 =  
A. I. R. 1928 Lah. 759.

**—Ss. 15 and 17—Possessing arms.**

—*U. P. Arms Rules and Orders (1924), R. 35—Repairer of arms in possession of guns for repairs cannot be convicted of offence of being in possession of arms without license—Length of time of possession depends upon circumstances.*

From the provisions of the U. P. Arms Rules and Orders (1924) it is perfectly clear that a person who repairs arms and is in possession of guns made over to him for repairs cannot be convicted of an offence of being in possession of arms without license. Once it is found that a person was in possession of arms for bona fide purpose of repairing them the length of time during which his possession thereof is justified depends upon the circumstances of each case. (*Niamatullah, J.*) MURLI v. EMPEROR. 30 Cr. L. J. 984 =

119 I. C. 13 = 10 L. R. A. Cr. 145 =  
1930 A. L. J. 201 = 12 A. I. Cr. R. 464 =  
1929 Cr. C. 304 = A. I. R. 1929 All. 720.

**—S. 19 (f)—Arm—Meaning.**

—*Instrument consisting of a lathi and an axe-like blade and not one used for domestic purposes is "arm".*

An instrument consisting of two separate pieces, namely, a lathi 6 ft. 3 ins. long at one end of which a hallow screw and an axe-like blade 5 ins. by 4½ ins. having a screw to allow of its being fixed into the long lathi was held to be an arm within the meaning of S. 19 (f), Arms Act, as no instrument like that is ever used for domestic or agricultural purposes. (33 P. L. R. 1914; 16 P. R. (Cr.) 1900; and 32 P. R. (Cr.) 1918, Foll. (*Addison and Johnstone, J.J.*) EMPEROR v. PURAN SINGH. 9 Lah. 137 = 29 P. L. R. 306 =

10 L. J. 538 = 29 Cr. L. J. 961 =  
112 I. C. 49 = A. I. R. 1928 Lah. 295.

**—Ss. 19 and 20—Concealing.**

—*In order to apply S. 20 indication of intention to conceal arms from public servant must be shown.*

Each case of concealment of arms must be decided on its own facts as to whether it falls under S. 19 or S. 20, Arms Act, but for S. 20 to apply there must be some special indication of an intention to conceal the possession of the arms from a public servant, railway official or public carrier. 8 P. R. 1915 (Cr.); A. I. R. 1923 Lah. 79; A. I. R. 1923 Lah. 434; and A. I. R. 1926 Lah. 262, Foll.; 9 P. R. 1912 Cr. and A. I. R. 1925 Lah. 395, Diss. from. (*Tek Chand, J.*) KARIM BAKHSI v. EMPEROR. 9 Lah. 550 = 29 Cr. L. J. 577 =

109 I. C. 593 = 10 A. I. Cr. R. 293 =  
A. I. R. 1928 Lah. 193.

**ARMS ACT (1878), S. 19.****—S. 19 (f)—Empty Cartridges.**

—*Possession of empty cartridges which cannot be re-loaded in India is not an offence.*

To support a conviction for possession of empty cartridges it should be proved that the cartridges can be re-loaded in India and used as ammunition by the persons with whom they are found. If this is not found the cartridges are not ammunition and so no prosecution can be made on their basis. 32 All. 152, Dist.; A. I. R. 1925 All. 498, Foll. (*Walsh, J.*) KALLU v. EMPEROR. 24 A. L. J. 208 = 7 L. R. A. Cr. 15 =

27 Cr. L. J. 136 = 91 I. C. 808 =  
A. I. R. 1926 All. 255.

**—S. 19 (a) and (d)—Going armed.**

—*Sikh carrying kirpans is not guilty.*

Sikh found in possession of kirpans of the length varying from nine to ten inches is not guilty of the offence under S. 19 (a) and (d) as such kirpans are not swords. A. I. R. 1924 Lah. 600, Dist. (*Patkar and Wild, J.J.*) DALJITSINGH FATTESING v. EMPEROR. 32 Bom. L. R. 106 = I. R. 1930 Bom. 339 =

125 I. C. 435 = 31 Cr. L. J. 847 = 1930 Cr. C. 477 =  
A. I. R. 1930 Bom. 153.

**—S. 19 (e)—Going armed.**

—*Going armed means carrying weapon intending to use it if necessary—Going need not be habitual.*

S. 19, cl. (e) does not include the word "habitually" and the words "goes armed" connote carrying a weapon with the intention of using it when the necessity arises. Even an isolated act of carrying a weapon in contravention of the license would amount to an offence under S. 19, Cl. (e). The words "goes armed," would imply a motion as well as the possession of the arms in contravention of the license, and mean nothing more than carrying a weapon with the intention of using it as a weapon when the necessity or opportunity arises for its use. The words do not necessarily connote a habitual course of conduct. Where, therefore, an accused gets himself possessed of a sword with the intention of using it as a weapon for the purpose of attacking his opponents and uses it, while using that weapon he must have moved about and he would therefore be considered to have gone armed within the meaning of cl. (e), S. 19. A. I. R. 1923 Bom. 35; 24 All. 454 and 37 Bom. 181, Rel. on. (*Mirza and Patkar, J.J.*) MANJUBHAI GORDHANDAS v. EMPEROR. 53 Bom. 604 = 31 Bom. L. R. 536 = 119 I. C. 641 =

1929 Cr. C. 38 = 30 Cr. L. J. 1059 =  
A. I. R. 1929 Bom. 283.

**—Ss. 19 (f) and 20—Going armed.**

—*Intention specified in S. 20 cannot be inferred by merely carrying a small arm in pocket.*

If a person carries on his person a small weapon such as a pistol, a dagger, or a blade of a *chhavi*, he naturally puts it in his pocket or dab, and if with that weapon in his pocket or dab he is in his house or in his village or in a bazaar or in a Court compound, it cannot be inferred that he was so carrying the weapon with the intention specified in S. 20. (*Zafar Ali, J.*) GHULAM MAHOMED v. EMPEROR. 28 Cr. L. J. 671 =

103 I. C. 207 = A. I. R. 1927 Lah. 561.

**—S. 19 (e)—Going armed.**

—*Intention and possibility of using are essential.*

The offence of going armed with fire-arm is considerably more narrow than the offence of being in possession merely of fire-arms. The expression 'going armed' clearly indicates two things, namely, firstly an intention to use it as a fire-arm and secondly the possibility of using it. (*Srinivasa Ayyangar, J.*) SONAIMUTHU AMBALAM v. EMPEROR.

**ARMS ACT (1878), S. 19.**

26 Cr. L. J. 1028 = 87 I. C. 916 =  
21 M. L. W. 644 = 1925 M. W. N. 217 =  
A. I. R. 1925 Mad. 585 = 48 M. L. J. 502.

—“Armed” includes carrying an arm not capable of immediate use.

A person who carries about a gun without any ammunition can be said to go “armed”. To define “armed” as meaning “one who is equipped with an arm capable of immediate use as an arm” seems contrary to the vernacular meaning of the word “armed” and is also not safe. (*Kincaid, J. C. and Kennedy, A. J. C.*)  
EMPEROR v. MAHOMED PUNJAL. 18 S. L. R. 272 =  
77 I. C. 736 = 25 Cr. L. J. 448 =  
A. I. R. 1925 Sind 177.

**—S. 19 (f)—Joint possession.**

Where a *chhavi* was found in a house admittedly in the joint possession of both the accused, *held*, it could not be said with any degree of certainty that one of them was in exclusive possession thereof. The accused must be given the benefit of this doubt. (*Abdul Raof, J.*)  
ALI v. THE CROWN. 25 Cr. L. J. 399 =

77 I. C. 447 = A. I. R. 1923 Lah. 613.  
—Possession of arms—Evidence doubtful—Conviction is illegal.

Where it was found that the two accused were found lying on a bed in the house of another and in the bedding a *chhavi* was found wrapped in a cloth, *held*, that it was impossible to say which of the two was actually in possession even if it was proved that the owner of the house was not the owner and therefore that the conviction of the accused was illegal. (*Harrison, J.*)  
NARINJAN SINGH v. EMPEROR.

4 U. P. L. R. (h) 32 = 65 I. C. 447 (1) =  
23 Cr. L. J. 95 (L.) = 13 P. W. R. 1922 (Cr.).

**—S. 19 (f)—Liability of relation.**

House occupied by person, his wife and father aged 80—*Chhavi* blade in wife's possession—Mere fact of father being 80 years old is not sufficient to establish person's possession of *chhavi*.

In the case of a house occupied by a joint family there is an initial presumption that an article found therein is in the possession of the head of the family. A. I. R. 1928 Lah. 272, Rel. on. Thus where a house was occupied by a person, his father who was 80 years old, and the person's wife and a *chhavi* blade was found in wife's possession the mere fact that the father is 80 years old is not sufficient to establish that the person was in possession of the *chhavi*. (*Bhide, J.*)  
KARAM SINGH v. EMPEROR. 1929 Cr. C. 544 =

116 I. C. 718 = 30 Cr. L. J. 668 =  
13 A. I. R. 111 = A. I. R. 1929 Lah. 872.

—Accused's brother holding licence—Accused firing blank shots to warn would-be mischief makers—Accused is not guilty.

When communal riots were taking place in different quarters of the town, the accused, brother of a licence-holder, took out his brother's gun and fired shots in the air so that people mischievously inclined might know that it was not safe for them to do any mischief to the people living in the house.

*Held*, that the possession of the gun was on behalf of the brother and the accused was not guilty under S. 19 (f). A. I. R. 1925 All. 175, Dist. (*Mukerji, J.*)  
BABU RAM v. EMPEROR. 47 All. 606 = 87 I. C. 523 =

23 A. L. J. 356 = 26 Cr. L. J. 987 =  
6 L. R. A. Cr. 121 = A. I. R. 1925 All. 396.

—Son of a licensee (the latter not being entitled to hand over gun to retainer) was convicted for possessing father's gun for shooting birds.

The accused's father held a license for a gun. The license which had been issued to him did not mention

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that he was entitled to hand over his gun to a retainer. The accused took out the gun of his father for the purpose of shooting birds. While thus possessing the gun near a pond, he was found out by an officer of the police and the Tahsildar.

*Held*, that though the spirit of the law was not contravened yet, the letter was certainly contravened but that a fine of Rs. 25 would answer the purpose. (*Mukerji, J.*)  
MUHAMMAD HASAN v. EMPEROR.

47 All. 267 = 22 A. L. J. 1095 = 6 L. B. A. Cr. 23 =  
26 Cr. L. J. 479 = 85 I. C. 159 =  
A. I. R. 1925 All. 175.

**—S. 19 (f)—Offence under.**

—Penal Code, S. 120-B—Agreement of parties makes offence complete—Conspiracy to possess fire-arms—Conspiracy in respect of particular fire-arms need not be proved.

An offence under S. 120-B consists in the conspiracy without any reference to the subject-matter of the conspiracy. It is true that the law does not take notice of the intention or the state of mind of the offender and there must be some overt act to give expression to that intention, but that overt act in a case of conspiracy under S. 120-B consists in the agreement of the parties. *Mulcahy v. The Queen* (L.R. 3 H. L. 306, 1868), Rel. on. The definition of conspiracy in S. 120-B excludes the agreement to commit an offence, from the category of such conspiracies, in which it is necessary that the agreement should be followed by some act. It is not therefore necessary in a case of conspiracy to possess fire-arms for the prosecution to specify in the charge or to prove that the accused conspired to possess any particular fire-arms. 42 Cal. 957, Rel. on. (*Suhrawardy and Panton, J.J.*)  
NIRMAL CHANDRA DE v. EMPEROR.

31 C. W. N. 239 = 100 I. C. 113 =  
28 Cr. L. J. 241 = A. I. R. 1927 Cal. 265.

—Forbidden weapon discovered by reason of information from accused—His conviction is valid—Evidence Act, S. 27.

Where an article, the possession of which is forbidden by the Indian Arms Act, has been discovered by reason of information given by an accused person, his conviction based upon that evidence is valid. 72 P. L. R. 1916, Foll. (*Fford, J.*)  
NAURANG SINGH v. EMPEROR.

9 L. L. J. 211 = 28 P. L. R. 626 = 100 I. C. 122 =  
28 Cr. L. J. 250 = A. I. R. 1927 Lah. 900.

—S. 19 (1)—Offence under—Lead found possibly used for industrial purposes—Duty of Magistrate to enquire.

In a case under S. 19 (1), the quantity of lead found with the accused and the neighbourhood were such as to suggest that the lead was used for fishing purposes. The Magistrate merely asked each of the accused whether he admitted having the lead for sale without license although they were not represented by counsel and on their pleading guilty convicted them.

*Held*, that the Magistrate should have in his examination of the accused put some questions with a view to elucidating from them whether they were *prima facie* vendors of lead for industrial, that is fishing, purposes within the meaning of Arms Act, S. 2 (7) (a). (*Doyle, J.*)  
ALI HOSSEIN v. EMPEROR.

128 I. C. 845 = I. R. 1931 Rang. 61 =  
32 Cr. L. J. 206 = 1930 Cr. C. 1177 =  
A. I. R. 1930 Rang. 349.

**—S. 19 (f)—Possessing arm.**

—Possession of jambia is not offence in Bombay Presidency under S. 19.

Possession of a jambia or a kind of dagger is not an offence under S. 19 unless the prohibition contained in S. 15 has been retained by some notification of the Local

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Government. The only prohibition retained by the Bombay Government by its notification published at p. 2093 of the Bombay Government Gazette is that contained in S. 13, and therefore possession of a jambia does not constitute an offence in Bombay Presidency under S. 19 (f). (*Mirza and Broomfield, J.J.*) **EMPEROR v. BABAJI MANAJE.**

32 Bom. L. B. 350 =  
I. R. 1930 Bom. 381 = 125 I. C. 717 =  
31 Cr. L. J. 932 = 1930 Cr. C. 483 =

A. I. R. 1930 Bom. 159.

—Before entering house to be searched police seeing some men throwing something from their persons—Police discovering cartridges under Chowki on which accused sat conversing with others—Charge against them resting on suspicion—Their possession or knowledge not proved—They cannot be convicted under S. 19 (f).

Before the police entered the house which was to be searched, certain persons inside were seen throwing down something from their person, and on a search being made certain cartridges were discovered under the Chowki on which the accused were sitting conversing with others. The cartridges were not proved to be in their possession, nor was it proved that they knew that they were there.

*Held*, that the charge against them rested on suspicion and their guilt not being proved they cannot be convicted under S. 19 (f). (*C. C. Ghose and Jack, J.J.*) **BAZ-LAR RAHMAN v. EMPEROR.**

33 C. W. N. 202 =  
30 Cr. L. J. 1038 = 119 I. C. 297 =  
A. I. R. 1929 Cal. 302.

**—S. 19 (d)—Possessing arms.**

—Ordering gun from dealer in Bombay ostensibly for another but really for himself does not amount to offence under S. 19 (d).

Where a person orders a gun from a dealer in Bombay ostensibly for an intending purchaser but in fact upon his own account, the act does not amount to offence of transporting without license under S. 19 (d). Under R. 24, Arms Rules, it is for the consignor and not for the consignee to apply for and obtain license and when the transporting is done by dealer in Bombay, it is fully covered by the license. Conviction under S. 19 (d) cannot in such a case be sustained. It is sufficient that the person ordering the gun should under R. 22 hold a license to possess the gun and if he is found without one he is liable to prosecution, on receipt of the weapon for possessing it without license. (*Curgenven, J.*) **VIRASWAMI NAIDU v. EMPEROR.**

52 Mad. 999 = 30 M. L. W. 945 =  
1929 M. W. N. 807 = 2 M. Cr. C. 296 =  
1929 Cr. C. 607 = 121 I. C. 617 = 31 Cr. L. J. 273 =  
A. I. R. 1929 Mad. 864 = 57 M. L. J. 520.

**—S. 19 (f)—Possessing arm.**

—Cartridges found during an investigation in a theft case in house of accused—Accused not knowing who kept them—Offence under S. 19 (f) is not made out.

During the investigation of a certain theft case the house of the accused was searched by the police and two cartridges of a rifle were discovered from an earthen pitcher placed in the house. The accused admitted the recovery of the cartridges but stated that it was not within its knowledge, and that his brother, who was an ex-military employee may have placed them in the house which was jointly occupied by the accused and his brother.

*Held*, that the accused was not guilty under S. 19 (f). (*Harrison, J.*) **MANIGIS v. EMPEROR.**

7 A. I. Cr. R. 671 = 100 I. C. 819 =  
28 Cr. L. J. 339 = A. I. R. 1927 Lah. 726.

**ARMS ACT (1878), S. 19.****—S. 19—Possessing arms.**

—Pistol found in room frequented by many persons other than accused—Accused is not in possession.

Where the evidence does not exclude a reasonable possibility of a pistol having been placed there by some other of the persons who frequented the rooms, or even by the person in whose possession it was at the time of the arrest.

*Held*, that it cannot be said that it has been proved beyond reasonable doubt that the pistol was in the possession of the accused. (*Daniels, J.*) **KRISHNA GOPAL v. EMPEROR.**

92 I. C. 589 =  
27 Cr. L. J. 301 (All.).

**—S. 19 (f)—Possessing arm.**

—Sikhs are exempt from prosecution for possessing a sword.

Sikhs are exempt in virtue of Schedule II, 3 (6) from prosecution under S. 19 (f) for possessing a sword or *kirpan*. (*Scott-Smith and Harrison, J.J.*) **HARI v. THE CROWN.**

26 Cr. L. J. 661 = 86 I. C. 37 =  
5 Lah. 308 = 6 L. L. J. 265 = A. I. R. 1924 Lah. 600.

**—S. 19—Public assemblage.**

—Condition of license being not to carry arms in religious procession or public assemblage—Marriage procession is neither religious procession nor public assemblage within condition of the license—Words.

A licensee was granted a license for gun on certain conditions one of which was "licensee shall not go armed otherwise than in good faith for the purpose of sport, protection, display and save where he is specially authorized in this behalf by the District Magistrate, he shall not take any such arms to a fair, religious procession or other public assemblage." The licensee was convicted under S. 19, Arms Act, in respect of his having gone armed with his gun in a marriage procession.

*Held*, that a marriage procession neither comes necessarily under the category of a religious procession nor of a public assemblage within the condition and therefore no special permission of the District Magistrate was required for the carrying of arms in such a marriage procession. (*Findlay, J.C.*) **SETH BALKISHAN v. EMPEROR.**

11 N. L. J. 84 = 29 Cr. L. J. 575 =  
109 I. C. 511 = 10 A. I. Cr. R. 348 =  
A. I. R. 1928 Nag. 219.

**—S. 19 (f)—Sanction.**

—In Aligarh District, for prosecution under S. 19 (f), District Magistrate's sanction is not necessary.

According to S. 29, sanction of the District Magistrate was necessary to prosecute a person under S. 19 (f) for possessing arms without a license in the District of Aligarh, only for three months after 15th March, 1878, and not subsequently. A. I. R. 1926 All. 143 and A. I. R. 1929 All. 68, Rel. on. (*Dalal and Kendall, J.J.*) **EMPEROR v. ANGADI.**

1929 A. L. J. 215 =  
117 I. C. 822 = 10 L. R. A. Cr. 38 =  
11 A. I. Cr. R. 255 = 30 Cr. L. J. 856 =  
A. I. R. 1929 All. 69.

**—Ss. 19 (f) and 29—Sanction.**

—Where unlicensed possession is clear, previous sanction is unnecessary.

Where the accused is clearly in possession of arms and ammunition without a license, no sanction is necessary for starting prosecution under S. 19 (f). A. I. R. 1926 All. 143, Foll. (*Bammerji and Bennet, J.J.*) **EMPEROR v. ABDUL GHAFUR.**

1929 A. L. J. 28 =  
116 I. C. 29 = 10 L. R. A. Cr. 17 =  
11 A. I. Cr. R. 149 = 30 Cr. L. J. 566 =  
A. I. R. 1929 All. 68.

**ARMS ACT (1878), S. 19.****—S. 19 (f)—Sanction.**

—*Prosecution under S. 19 (f)—Sanction of District Magistrate is not necessary in some part of United Provinces.*

In the Bijnor District and other parts of the United Provinces to the north of the rivers, Jumna and Ganges, the sanction of the District Magistrate for a prosecution under S. 19 of the Arms Act is not necessary. (*Daniels, J.*) **AMIR AHMAD v. EMPEROR.** 24 A. L. J. 30 =

6 L. R. A. Cr. 196 = 27 Cr. L. J. 15 =  
91 I. C. 47 = A. I. R. 1926 All. 143.

**—Ss. 19 (f) and 20—Sanction.**

—*Conviction under S. 19 (j) is bad if no express sanction obtained—No sanction is necessary for prosecution under S. 20.*

The appellant was in secret possession of local-made guns and the cartridges. Sanction was obtained for prosecution under S. 20. He was convicted both under S. 20 and S. 19 (f).

*Held*, that conviction under S. 20 was legal but the conviction under S. 19 (f) was bad for want of sanction. (*May Oung, J.*) **NGA THA HLA v. EMPEROR.**

2 Bur. L. J. 203 = 25 Cr. L. J. 203 =  
76 I. C. 571 = A. I. R. 1924 Rang. 85.

**—S. 19 (c)—Servant's liability.**

—*Even servant carrying master's gun in British India for having it repaired—No acknowledged license—Servant will not be protected.*

Even a servant who is found in British India carrying a gun for the purpose of having it repaired, which has no license acknowledged by the British Government, will not be protected from the provisions of S. 19 read with S. 6. 24 All. 454, Dist. (*Raza and Pullan, J.J.*) **EMPEROR v. ORI.**

6 O. W. N. 131 =  
115 I. C. 839 = 30 Cr. L. J. 543 =  
12 A. I. Cr. R. 357 = A. I. R. 1929 Oudh 157.

**—S. 19 (e)—Servant's liability.**

—*Use of a gun by the servant of a licensee for his own purposes is an offence though the servant can carry legally the gun for the purposes of his master or in the presence of his master. (Krishnan and Waller, J.J.)*

**VAIRAVAN SERVAL, In re.** 47 Mad. 438 =  
81 I. C. 623 = 19 M. L. W. 507 =  
1924 M. W. N. 375 = 34 M. L. T. 97 =  
25 Cr. L. J. 975 = A. I. R. 1924 Mad. 668 =  
46 M. L. J. 401.

**—S. 20—"Arms," meaning.**

—*'Arms'—Instrument of attack and defence, not being ordinary implement for domestic use is 'Arms.'*

Whether or not any particular instrument is included in the expression "arms" used in the Arms Act, must necessarily depend on the circumstances of each case. Whatever can be used as an instrument of attack or defence and is not an ordinary implement for domestic purposes, falls within the purview of the Act. (*Wilberforce and Martineau, J.J.*) **MANGAL SINGH v. EMPEROR.** 2 Lah. 291 = 64 I. C. 847 =  
12 P. L. R. 1922 = 23 Cr. L. J. 63 = 101 P. L. R. 1921 =  
A. I. R. 1922 Lah. 138.

**—S. 20—Concealing.**

—*Spear held next to skin—Intention to conceal from public servant cannot be inferred.*

The fact that the accused secreted the spear head next to his skin does not indicate any intention that the possession by the accused of the spear head might not be known to any public servant. (*Milton, J.*) **HARNAM SINGH v. EMPEROR.** 31 Cr. L. J. 79 =

120 I. C. 273 = 1929 Cr. C. 142 =  
13 A. I. Cr. R. 225 = A. I. R. 1929 Lah. 576.

**ARMS ACT (1878), S. 20.**

—*Person running away when challenged—Companion also running away with him—Intention under S. 20 cannot be inferred.*

The fact that the accused ran away when challenged by the constable indicates an intention of the character mentioned in S. 20. But where accused had a companion who also ran away but upon whose person nothing incriminating could be found as no such intention can be credited to the companion on the ground he also ran away, it cannot be attributed to the accused as well. (*Milton, J.*) **HARNAM SINGH v. EMPEROR.**

1929 Cr. C. 142 = 120 I. C. 273 = 31 Cr. L. J. 79 =  
13 A. I. Cr. R. 225 = A. I. R. 1929 Lah. 576.

—*Possession of arms—Person concealing weapon while on railway platform—S. 20 of the Act is applicable.*

In every case it is a question of fact whether the person found in possession of a concealed weapon is carrying the weapon in such a way as to indicate an intention to hide the article from the classes of persons referred to in S. 20. But the fact that a person is concealing a weapon while he is on a railway platform must indicate an intention to conceal that weapon from *inter alia* railway officials who are about that platform. A. I. R. 1926 Lah. 262, Foll. (*Fforde, J.*) **ABDUL WAHID v. EMPEROR.** 9 Lah. 302 = 9 L. L. J. 535 =

107 I. C. 495 = 29 Cr. L. J. 256 = 29 P. L. R. 329 =  
9 A. I. Cr. R. 454 = A. I. R. 1928 Lah. 110.

—*Special indication of intention to conceal must exist.*

Each case of concealment of arms must be decided on its own facts as to whether it falls under S. 19 or 20 of the Arms Act. 1 S. L. R. 18 Cr. (F. B.) and 8 P. R. Cr. 1915, Foll.

For a conviction to fall under S. 20 there must be some special indication of an intention that the possession of the arms was being concealed from a public servant or from a railway official. (*Addison, J.*) **CHET SINGH v. EMPEROR.** 7 Lah. 65 = 27 Cr. L. J. 625 =  
27 P. L. R. 523 = 94 I. C. 401 =  
A. I. R. 1926 Lah. 262.

**—Ss. 20 and 19—Concealing.**

—*Keeping ammunition and parts of arms hidden under clothes falls under S. 20 and not under S. 19.*

Keeping ammunition and parts of arms in a bag hidden under a *chaddar* or hidden under the clothes falls clearly under S. 20 and not merely under S. 19 of the Act. 44 P. W. R. (1912) Cr.; 1 P. W. R. 1914 (Cr.), Diss. (*Martineau, J.*) **MT. BABO v. EMPEROR.**

26 Cr. L. J. 1459 =  
89 I. C. 1027 = A. I. R. 1926 Lah. 61.

—*Where the circumstances under which a pistol was recovered from the accused, who had come on a visit to Lahore from his village, led to a clear inference that his intention was that the possession of the pistol by him may not be known to any public servant.*

*Held*, that it was not a case of an ordinary concealment and conviction should be one under S. 20. (*Jailal, J.*) **FAIZ v. EMPEROR.** 8 L. L. J. 301 =

96 I. C. 390 = 27 P. L. R. 446 = 27 Cr. L. J. 934.

—*S. 20 applies only where export or import of arms is attempted.*

S. 20 applies only where the possession is such as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway or to the servant of any public carrier. The section applies only to cases where the import or export of arms is attempted and not to every case of possession or concealment of arms. Something more than a mere ordinary concealment should be established in order to bring the posses-

**ARMS ACT (1878), S. 20.**

sion within the meaning of S. 20. Where the gun was upon a *charpoy* upon which the accused was sitting and was covered with a *dotahi* and the accused had been convicted under S. 20, the conviction was altered into one under S. 19 (f) of the Arms Act, 9 P. R. 1912 (Cr.); 15 L. R. 18 (Cr.) (F. B.) and 27 Cal. 692, Foll. (*Scott-Smith, J.*) **CHANAN SINGH v. THE CROWN.**

6 Lah. 151 =  
86 I. C. 221 = 7 L. L. J. 329 = 26 Cr. L. J. 733 =  
26 P. L. R. 49 = A. I. R. 1925 Lah. 395.

**—S. 20—Concealing.**

—Where the arms were discovered on the information given by the accused, the concealment of the *chhavis* and other arms recovered from the possession of the accused is clearly with the intention referred to in S. 20 of the Indian Arms Act. (*Moti Sagar, J.*)

A. I. R. 1923 Lah. 434.

—Concealment of weapon—Knowledge of where weapon was, does not show that he concealed it.

Petitioner was alleged to have given information which led to the discovery of a rifle. One of the prosecution witnesses deposed that the petitioner said were the rifle had been buried, the other deposed that he said "I buried it."

Held, in absence of any other evidence of possession by the petitioner it cannot be presumed that because he knew were the rifle was, he had concealed it himself. (*Campbell, J.*) **KHUDA BAKSH v. EMPEROR.**

A. I. R. 1923 Lah. 238.

—Each case must be decided on its own facts.

Each case of concealment of arms must be decided on its own facts.

Held, on the facts proved in the case the gun appeared to have been placed in the corn-bin in order to conceal it from the Police and therefore S. 20 was applicable. 8 P. R. 1915 (Cr.); 9 P. R. 1912 (Cr.), not Foll. (*Abdul Qadir, J.*) **SHER ALI v. EMPEROR.**

23 Cr. L. J. 609 = 68 I. C. 833 =

A. I. R. 1923 Lah. 79.

**—Ss. 20 and 19—Concealing.**

—Where the weapon which the accused was carrying was originally concealed but the appellant voluntarily took it from its place of concealment in order to threaten a railway servant who caught him for travelling without a ticket. Held, it indicates an indifference as to whether the weapon was seen or not. The intention requisite for an offence under S. 20 had not been established and conviction must be altered to S. 19 of the Act. (*Brasher, J.*) **SURJAN SINGH v. EMPEROR.**

26 Cr. L. J. 166 = 83 I. C. 726 =

A. I. R. 1923 Lah. 10.

**—Ss. 20 and 19 (f)—Sanction.**

—Conviction under S. 19 (f) is bad if no express sanction obtained—No sanction is necessary for prosecution under S. 20.

The appellant was in secret possession of local-made guns and the cartridges. Sanction was obtained for prosecution under S. 20. He was convicted both under S. 20 and S. 19 (f).

Held, that conviction under S. 20 was legal but the conviction under S. 19 (f) was bad for want of sanction. (*May Oung, J.*) **NGA THA HLA v. KING-EMPEROR.**

2 Bur. L. J. 203 = 76 I. C. 571 =

25 Cr. L. J. 203 = A. I. R. 1924 Rang. 85.

**—S. 20—Sentence.**

—Carrying *chhavi* concealed—Maximum sentence must not be inflicted in every case.

The maximum sentence must not be inflicted in every case merely because the weapon found concealed by the

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accused is a *chhavi*. 8 P. R. 1915 (Cr.), Dist. (*Chevis, J.*) **FAQIRIA v. THE CROWN.**

66 I. C. 995 = 3 L. L. J. 145.

**—S. 20—Suspicion.**

—Suspicion that accused was about to take part in some criminal offence is no consideration in passing sentence.

The fact that there was a suspicion in the mind of the police that the accused was about to take part in a criminal undertaking is not a circumstance which a Court can take into consideration in arriving at an appropriate punishment for the actual offence which has been proved under S. 20. (*Fforde, J.*) **ABDUL WAHID v. EMPEROR.** 9 Lah. 302 = 9 L. L. J. 533 = 107 I. C. 495 = 29 Cr. L. J. 256 = 29 P. L. R. 329 = 9 A. I. Cr. R. 454 = A. I. R. 1928 Lah. 110.

**—S. 22—Servant's liability.**

—Making over an arm to person not licensed merely to carry to its owner is no offence.

Where a gunmaker acting under the directions of the license-holder made over his gun to a person merely to carry it to its owner and not with any authority to use it as an arm,

Held, that the gunmaker did not commit an offence under S. 22, Arms Act. A license-holder of a gun can permit another person who is not so licensed to carry his gun. (*Dalal, J.*) **MANZUR HUSAIN v. EMPEROR.**

8 A. I. Cr. R. 560 = 8 L. R. A. Cr. 166 =

26 A. L. J. 162 = 29 Cr. L. J. 97 = 106 I. C. 689 =

A. I. R. 1928 All. 55.

**—S. 22—Scope.**

—Section 22 deals with persons without licenses dealing with licensed vendors or purchasers or with persons with licenses dealing with unlicensed vendors or purchasers. (*Suhrawardy and Panton, J.J.*) **NIRMAL CHANDRA v. EMPEROR.**

31 C. W. N. 239 =

100 I. C. 113 = 28 Cr. L. J. 241 =

A. I. R. 1927 Cal. 265.

**—Ss. 25, 19 and 20—Non-compliance.**

—Non-compliance with S. 25 is not fatal.

Want of compliance with the provisions of S. 25 will not render conviction under Ss. 19 and 20 illegal. (*Dalal, J.*) **SHIAM LAL v. EMPEROR.**

8 L. R. A. Cr. 7 = 8 L. R. A. Cr. 92 =

28 Cr. L. J. 652 = 103 I. C. 108 =

A. I. R. 1927 All. 516.

**—S. 27—Construction.**

—Notifications imposing penalty must be construed strictly.

Notifications relating to the Arms Act imposing a penalty upon the subject must be construed very strictly. (*Patkar and Wild, J.J.*) **DALJITSING FATESING v. EMPEROR**

32 Bom. L. R. 106 =

I. R. 1930 Bom. 339 = 125 I. C. 435 =

31 Cr. L. J. 847 = 1930 Cr. C. 477 =

A. I. R. 1930 Bom. 153.

**—Ss. 27 and 19—Sword-stick.**

—Sword-stick is not a kirpan.

A sword-stick is a weapon different from *kirpan*. The two expressions cannot be regarded as synonymous, and so the possession of a sword-stick by a Sikh is not exempted by S. 27 of the Arms Act. A. I. R. 1924 Lah. 600, Ref. (*Shadi Lal, C. J. and Agha Haidar, J.*) **RANDAIR SINGH v. EMPEROR.** 29 Cr. L. J. 425 =

108 I. C. 596 = 10 A. I. Cr. R. 81 =

A. I. R. 1928 Lah. 239.

**—S. 29—Illegal possession.**

—When unlicensed possession is clear accused cannot question legality of search.



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Whether the search was legal or illegal, arms having been found in the possession of the accused, no question of the legality of the search or otherwise can be raised by him. A. I. R. 1925 All. 434, Rel. on. (*Banerji and Bennet, J.J.*) **EMPEROR v. ABDUL GHAFUR.**

1929 A. L. J. 28 = 10 L. R. A. Cr. 17 =

116 I. C. 29 = 11 A. I. Cr. R. 149 =

30 Cr. L. J. 566 = A. I. R. 1929 All. 68.

**—S. 29—Institution of proceedings.**

*Entering case in a case-book and making out a charge is not institution of proceeding.*

Entering a case in the case-book and making out a charge is not institution of proceedings under S. 29. The proceedings really start when the accused is placed before the Court. The word "proceeding" in S. 29 does not mean that no action can be taken by any officer, police or otherwise in the matter without previous sanction of the Commissioner of Police 17 Cal. 574, Expl. and Dist. (*Suhrawardy and Cammiade, J.J.*) **ISMAIL KHAN v. EMPEROR.** 46 C. L. J. 35 = 104 I. C. 433 = 28 Cr. L. J. 817 = A. I. R. 1927 Cal. 721.

**—S. 29—"Proceedings" meaning.**

*Proceedings mean legal proceedings in Court.*

As in the case of a suit, a proceeding is instituted when for the first time the adjudication of a Court of competent jurisdiction is sought. Therefore the expression "proceedings" in S. 29 mean legal proceedings in Court and not searches or arrests or investigations made by the police in exercise of the powers conferred upon them by the Cr. P. Code, or any other law. A. I. R. 1925 All. 434, Rel. on. (*Mullick, Ag. C. J. and Wort, J.*) **EMPEROR v. GHULAM NABI.** 6 Pat. 768 = 9 A. I. Cr. R. 385 = 107 I. C. 835 = 29 Cr. L. J. 301 = A. I. R. 1928 Pat. 146.

**—Ss. 29 and 19 (f)—Sanction.**

*In Aligarh District, for prosecution under S. 19 (f), District Magistrate's sanction is not necessary.*

According to S. 29, sanction of the District Magistrate was necessary to prosecute a person under S. 19 (f) for possessing arms without a license in the District of Aligarh, only for three months after 15th March, 1878 and not subsequently. A. I. R. 1926 All. 143 and A. I. R. 1929 All. 68, Rel. on. (*Dalal and Kendall, J.J.*) **EMPEROR v. ANGAD.** 1929 A. L. J. 215 = 117 I. C. 822 = 10 L. R. A. Cr. 38 = 11 A. I. Cr. R. 255 = 30 Cr. L. J. 856 = A. I. R. 1929 All. 69.

**—S. 30—Officer's powers.**

*In U. P., Officer in charge of Police Station is empowered to conduct search—Officer taking action must be presumed to be empowered.*

In the United Provinces, an officer in charge of a Police Station is empowered to conduct a search. An officer who takes action under a particular section must be deemed to have full powers until the contrary is proved. (*Banerji and Bennet, J.J.*) **EMPEROR v. ABDUL GHAFUR.** 1929 A. L. J. 28 = 10 L. R. A. Cr. 17 = 116 I. C. 29 = 11 A. I. Cr. R. 149 = 30 Cr. L. J. 566 = A. I. R. 1929 All. 68.

**—S. 30—Search, legality of.**

*Search illegal, yet if evidence is conclusive, conviction is proper obiter; two persons must be present at the search—One making the search and the other officer specially appointed.*

Although the search is illegal, a person can be convicted where the evidence against him is conclusive. 35 A. 73, Foll. The ordinary meaning of "in the course

**ASSAM MUNICIPAL ACT (1923), S. 220.**

of any proceedings instituted" in S. 30, is in the course of any legal proceedings which have already begun.

*Obiter:* The words "in the presence of some officer specially appointed" mean that there must be at least two persons, namely the person making the search, and the officer especially appointed, within the meaning of S. 30 who is present at the search. (*Walsh and Boys, J.J.*) **EMPEROR v. KUTROO.** 47 All. 575 = 23 A. L. J. 364 = 88 I. C. 280 = 6 L. R. A. Cr. 124 = 26 Cr. L. J. 1112 = A. I. R. 1925 All. 434.

**ARMY ACT (VIII OF 1911).****—Ss. 69 and 70—Applicability.**

*Military servant committing criminal breach of trust and absconding—Military Court having concurrent jurisdiction as regards criminal breach of trust but exclusive jurisdiction as to desertion—Mere fact that accused was arrested by police, put up before Magistrate and that case proceeded to some length does not make S. 70 applicable.*

Where a military servant was accused of criminal breach of trust and desertion,

*Held*, that since the offence of criminal breach of trust was triable both by criminal Court and by a Court-martial, it rested with the military authority to decide whether the accused should be tried by Court-martial or not.

*Held*, further, that since the offence of desertion could be tried by the military Court only, S. 70 could not apply and that the mere fact that the accused was arrested by the police and was put up before the Magistrate and the case had proceeded to some length, could not make any difference. (*Sulaiman, Ag. C. J.*) **EMPEROR v. LACHMI DATT.** 26 A. L. J. 942 = 9 L. R. A. Cr. 143 = 10 A. I. Cr. R. 453 = 29 Cr. L. J. 803 = 111 I. C. 307 = A. I. R. 1928 All. 672 (673).

**ARREST.**

See CR. P. CODE, S. 54.

**ASSAM LABOUR AND EMIGRATION ACT (VI OF 1901).****—S. 213—Abetment.**

*Emigration or assisting in the emigration is not an abetment within S. 213—Penal Code, S. 107.*

Emigration or assisting in the emigration cannot be taken as forming an abetment of the offence of illegal recruitment within S. 213 of the Act; S. 213 expressly refers to abetment as meant by the Penal Code. (*Mukerji, J.*) **ASHITA RANJAN BOSE v. EMPEROR.** 48 C. L. J. 92 = 32 C. W. N. 1062 = 10 A. I. Cr. R. 572 = 29 Cr. L. J. 795 = 111 I. C. 123 = A. I. R. 1928 Cal. 339 (341).

**ASSAM MUNICIPAL ACT (I OF 1923).****—S. 30—Delegation of Power.**

*Chairman can delegate his powers only by written order—Act done by Vice-Chairman with Chairman's express or implied consent is not invalid.*

A written order is essential for delegation of authority to the Vice-Chairman by the Chairman of the Municipality, but if there is no such delegation, an act done by the former shall not be invalid if done with the express or implied consent of the latter previously or subsequently obtained. (*Mukerjee, J.*) **RADHA KISHEN v. GAUHATI MUNICIPALITY.** 48 C. L. J. 293 = 112 I. C. 780 = 11 A. I. Cr. R. 387 = 30 Cr. L. J. 12 = A. I. R. 1928 Cal. 357 (c) at 359.

**—Ss. 220 to 223—Procedure.**

*Attention of sanctioning officer should be directed to person or persons to be proceeded against.*

Sections 220 to 223 involve that the attention of the officer, who is to give order or consent to the institution

**ASSAM MUNICIPAL ACT (1923), S. 221.**

of the proceedings, should be directed to the person or persons against whom such proceedings are to be instituted, though a general order or consent to the prosecution may be made. (*Mukerjee, J.*) **RADHA KISHEN v. GAUHATI MUNICIPALITY.** 48 C. L. J. 293 = 112 I. C. 780 = 11 A. I. Cr. R. 387 = 30 Cr. L. J. 12 = A. I. R. 1928 Cal. 357 (b) at 358.

—**S. 221—Sanction.**  
 —*Person against whom sanction is not obtained cannot be convicted.*

G was the agent of M who dealt in mustard oil which was found to be not genuine. Order for prosecution was sanctioned against G alone, but during trial M appeared and took upon himself the responsibility. G remained absent. M was convicted under S. 221. Held, that the order obtained for prosecution was against G alone and, therefore, M could not be convicted. (*Mukerjee, J.*) **RADHA KISHEN v. GAUHATI MUNICIPALITY.** 48 C. L. J. 293 = 112 I. C. 780 = 11 A. I. Cr. R. 387 = 30 Cr. L. J. 12 = A. I. R. 1928 Cal. 357 (a) at 359.

11 A. I. Cr. R. 387 = 30 Cr. L. J. 12 = A. I. R. 1928 Cal. 357 (a) at 359.

**ASSAULT.**

See (1) PENAL CODE, SS. 349—358.

(2) TORT.

**ASSESSORS.**

See CR. P. CODE, S. 309.

**ATTEMPT.**—See PENAL CODE, S. 511.

**AUTREFOIS ACQUIT.**—See CR. P. CODE, S. 403.

**AUTREFOIS CONVICT, PLEA OF.**—See CR. P. CODE, S. 403, CRIMINAL TRIAL.

**BAIL.**

See (1) CR. P. CODE—SS. 496 to 502.

(2) CRIMINAL TRIAL.

**BAR COUNCILS ACT (XXXVIII OF 1926).**

—**Ss. 10 and 19 (2)—Procedure.**

—*Notice issued by High Court on 13th June, 1928*  
 —*Act coming into force on 1st June—Notice is ultra vires—Procedure in S. 10 must be followed—Letters Patent (Allahabad), S. 8.*

A notice was issued on 13th June, 1928 by High Court against a pleader calling upon him to show cause why he should not be dealt with under the Legal Practitioners' Act for professional misconduct. Objection was taken by the pleader in view of the Bar Councils Act which had come into force on 1st June, 1928.

Held, that the provisions of the Letters Patent, in so far as they may conflict with the provisions of the Act, were abrogated by S. 19 (2) and therefore it was necessary for the case to be either referred to the Bar Council or at any rate for the Bar Council to be consulted. The Court was not properly seised of the case and that the notice issued to show cause was, as framed *ultra vires* and a nullity. (*Boys, Weir and King, J.J.*)  
**A VAKIL OF AZAMGARH, In the matter of.**

51 All. 76 = 26 A. L. J. 1039 = 112 I. C. 214 =

29 Cr. L. J. 998 = A. I. R. 1928 All. 439 (F. B.).

**BAR TO FRESH TRIAL.** See CR. P. CODE, S. 403.

**BAR TO PROSECUTION.**

See (1) CRIM. PRO. CODE, S. 403.

(2) CRIMINAL TRIAL.

**BENCH OF MAGISTRATES.**—See CR. P. CODE, 1898, SS. 15, 16, ETC.

**BENEFIT OF DOUBT.**—See CRIMINAL TRIAL.

**BENGAL, AGRA AND ASSAM CIVIL COURTS ACT (XII OF 1887).**—See BENGAL, N. W. P. AND ASSAM CIVIL COURTS ACT.

**BENGAL ALLUVIAL LANDS ACT (V OF 1920)**

—**Revision.**

—*Order of Sub-Divisional Officer, ordering huts*

**BENGAL CHILDREN ACT (1922).**

*erected on disputed char to be sold is not reversible under Cr. P. Code., S. 439.*

Order passed by Collector as such under the Alluvial Lands Act cannot be revised by Criminal Bench of the High Court under S. 439.

Per *Suhrawardy, J.*—Order passed by a Sub-Divisional Officer under the Alluvial Lands Act directing that some huts which were erected on the disputed char were to be sold and the sale proceeds credited to the treasury, is not passed in judicial capacity but as an executive officer and as such cannot be revised by the High Court. (*Suhrawardy and Graham, J.J.*) **OSMAN MUNSHI v. KADIR PRAMANICK.** 33 C. W. N. 836 = 1929 Cr. C. 480 = A. I. R. 1929 Cal. 768.

—**S. 10—Effect.**

—*Effect of S. 10 is to stay earlier proceedings under S. 145, Cr. P. Code.—Cr. P. Code, S. 145.*

Some char lands became the subject-matter of proceedings under S. 145, Cr. P. Code, and at the time of the proceedings being initiated an attachment order was made against the lands. Various steps were taken in those proceedings and subsequently the Magistrate after reviewing the situation passed an order directing that the lands be released from attachment under S. 145 and decided to replace those proceedings with others under the Bengal Alluvial Lands Act, 1920. It was contended that S. 10 of that Act was intended to apply to proceedings under S. 145 so far as their institution or carrying on was concerned and not to the attachment order made under that section and that once an attachment was made, S. 10 conferred no right on the Collector to make a further attachment under that Act.

Held, that if the contention were sound it would result in nullifying the provisions of the Bengal Alluvial Lands Act of 1920. The provisions of S. 10 were wide enough to apply to all proceedings, including an attachment that may have been had under S. 145. The effect of S. 10, Bengal Alluvial Lands Act, would, therefore, be to stay the earlier proceedings under S. 145, Criminal Pro. Code. 13 C.W.N. 125 and A.I.R. 1921 Cal. 631, Dist. (*Pearson and Mullick, J.J.*) **DIGENDRA BEHARI ROY v. JANAKI NATH ROY.** 33 C. W. N. 1115 = 1929 Cr. C. 326 = A. I. R. 1929 Cal. 646.

—S. 10 negatives the implied repeal of S. 145 of the Crim. Pro. Code so far as recently formed alluvial lands are concerned. (*Graeves and Duval, J.J.*) **ABDUL JABBAR MUNSHI v. MUFIZUDDI SARKAR.**

28 C.W.N. 783 = 81 I. C. 931 = 25 Cr. L.J. 1107 = A. I. R. 1924 Cal. 980.

**BENGAL CHILDREN ACT (II OF 1922).**

—**Application.**

—*Calcutta Suppression of Immoral Traffic Act (Bengal Act XIII of 1923), S. 4—Act applies to females under S. 16, whether married or not.*

Acts apply whether the female in question is unmarried or married and the whole matter turns not on the status of the female from the point of view of marriage or no marriage but on the question of age. If the word "girl" were limited to mean a young unmarried female, it would be easy for a person who desired to live on the immoral earning of young girls to marry them solely for the purpose of enabling him to put himself outside the provisions of the statutes and to set the whole law at defiance. (*Castello and Lort Williams, J.J.*) **PANCHU GOPAL SHAW v. EMPEROR.**

56 Cal. 750 = 48 C. L. J. 586 = 115 I. C. 266 =

33 C.W.N. 198 = 30 Cr. L. J. 440 =

12 A. I. Cr. R. 304 = A. I. R. 1929 Cal. 99.



**BENGAL CRIMINAL LAW AMENDMENT ACT (1925).****—Ultra Vires.**

—*Bengal Criminal Law Amendment Act of 1925 is not ultra vires.*

The Bengal Criminal Law Amendment Act of 1925 does not affect Acts of Parliament and is not *ultra vires* of the Local Government that passed it. (*Rankin, C. J. and Majumdar, J.*) GIRENDRA NATH BANERJI v. BIRENDRA NATH PAL. 54 Cal. 727 = 31 C. W. N. 593 = 102 I. C. 647 = 8 A. I. Cr. R. 121 = A. I. R. 1927 Cal. 496.

**—S 11.—Scope.**

—*Whether a person is legally detained has to be dealt with under Cr. P. Code.*

Bengal Criminal Law Amendment Act is an Act which was intended to supplement the ordinary criminal law in Bengal and the question whether or not a particular person is legally detained under it has to be dealt with, if at all, under the Code of Criminal Procedure. (*Rankin, C. J. and Majumdar, J.*) GIRENDRA NATH BANERJI v. BIRENDRA NATH PAL. 54 Cal. 727 = 31 C. W. N. 593 = 102 I. C. 647 = 8 A. I. Cr. R. 121 = A. I. R. 1927 Cal. 496.

**BENGAL DISORDERLY HOUSES ACT (III OF 1906).****—S 2—Scope.**

If a prostitute lives with a man *en famille* she does not necessarily come within the category of disorderly persons. (*Macpherson, J.*) MUNSHI MIAN v. EMPEROR. 30 Cr. L. J. 517 = 10 P. L. T. 523 = 12 A. I. Cr. R. 325 = 1929 Cr. C. 199 = 115 I. C. 690 = A. I. R. 1929 Pat. 406.

**—S. 2 (2) —Scope.**

—*S. 2 (2) creates offence under S. 4 (a), Cr. P. Code, and so must be tried in accordance with provision of Cr. P. Code, S. 244.*

Section 2 (2), Bengal Disorderly Houses Act creates an offence within the definition of S. 4 (a), Cr. P. Code and under S. 5 of that Code the offence is triable according to the provisions of that Code since there is nothing in the Act itself which regulates the manner of trying the offence. The trial must, therefore, be held in accordance with S. 244 of the Code. (*Macpherson, J.*) MUNSHI MIAN v. EMPEROR. 30 Cr. L. J. 517 = 115 I. C. 690 = 10 P. L. T. 523 = 12 A. I. Cr. R. 325 = 1929 Cr. C. 199 = A. I. R. 1929 Pat. 406.

**BENGAL EMBANKMENT ACT (II OF 1882).****—Ss. 76 (a) and 91—Scope.**

—Section 76, Embankment Act, has no application in the case of river coming under the operation of the Canal Act. (*C. C. Ghose and Jack, J.J.*) HEMCHANDRA v. EMPEROR. 33 C. W. N. 88 = 118 I. C. 355 = 30 Cr. L. J. 914.

**—S. 78—Mala fides.**

—*Act of accused need not be mala fide.*

In order to support a conviction under S. 78 on the ground that the accused by any wilful act destroyed or diminished the efficiency of an embankment, it is not necessary that there should be a finding that the accused acted *mala fide*. (*Newbould and B. B. Ghose, J.J.*) EXECUTIVE ENGINEER, NADIA RIVER DIVISION v. ASHUTOSH SAHA. 52 Cal. 573 = 89 I. C. 719 = 26 Cr. L. J. 1407 = A. I. R. 1925 Cal. 921.

**BENGAL EXCISE ACT (V OF 1909).****—Applicability.**

—*Cr. P. Code., Ss. 102 and 103,*

Ss. 102 and 103, Cr. P. Code, do not apply to the search made under the Bengal Excise Act. (*Suhra-*

**BENGAL FERRIES ACT (1885), S. 16.**

*wardy and Mitter, J.J.*) HARBAJIAN SAO v. EMPEROR 54 Cal. 601 = 102 I. C. 547 =

31 C. W. N. 667 = 28 Cr. L. J. 579 =

8 A. I. Cr. R. 114 = A. I. R. 1927 Cal. 527.

**—S. 2—Diluted mixture.**

—*Opium diluted in water cannot be held to be an admixture for the purpose of smoking.* 41 Cal. 694, Ref. (*C. C. Ghose and Duval, J.J.*) DWARIKA NATH MISRA v. EMPEROR. 44 C. L. J. 111 = 30 C. W. N. 984 = 27 Cr. L. J. 1133 = 97 I. C. 653 = A. I. R. 1926 Cal. 1120.

**—S. 74 (4)—Report.**

—*Cr. P. Code., S. 250—Report of an Excise Sub-Inspector is not police report for S. 250—Cr. P. Code, S. 190.*

The report of a Sub-Inspector of Excise to a Magistrate is a police report only for the purposes of S. 190, Cr. P. Code. The report is not a police report for other purposes. (*Cuming and Gregory, J.J.*) RADHIKA MOHAN DAS v. HAMED ALI. 54 Cal. 371 = 100 I. C. 540 = 28 Cr. L. J. 316 = A. I. R. 1927 Cal. 405.

**BENGAL FERRIES ACT (I OF 1885).****—S. 5—Ferry'.**

—*Two points on two sides of the river for conveying persons and property are necessary.*

In order to constitute a ferry such as is contemplated by the Act, it is necessary that there should be two points on both sides of the river so that people and property may be conveyed from one side of the river to the other. It must be connected on both sides with land on the bank of the river. (*Jwala Prasad, J.*) JEORAN SINGH v. RAMKISHUN LAL. 4 Pat. 503 = 92 I. C. 871 = 7 P. L. T. 734 = 27 Cr. L. J. 359 = A. I. R. 1925 Pat. 623.

**—S. 9—Jurisdiction of Commissioner.**

The approval of the Commissioner is limited to the term of the lease and not to the whole lease. (*Mullick and Ross, J.J.*) SHEODHAR PRASAD SINGH v. RAMSAROOP SINGH. 7 P. L. T. 337 = 96 I. C. 623 = A. I. R. 1926 Pat. 318.

**—Ss. 16 and 18 —'Distance.'**

—*"Distance" meaning—How measured.*

The land "distance" in S. 16 means distance by river. The distance must be measured by reference to the water frontage and not by land, *Blissett v. Hart*, (1744) 125 E. R. 1923; *Huzzeby and Field*, 150 E. R. 186 and *Anderson v. Jellat*, (1883) 9 S. C. R. 10, Ref. (*C. C. Ghose and Pearson, J.J.*) CHAIRMAN, SERAJGANJ LOCAL BOARD v. BUDHISWAR PATNI. 57 Cal. 1261 = 127 I. C. 799 = 32 Cr. L. J. 38 = 51 C. L. J. 199 = 34 C. W. N. 422 = 1930 Cr. C. 361 = A. I. R. 1930 Cal. 281.

**—S. 16—Ferry.**

—*Limits of the ferry should be known.*

For the purposes of a prosecution under S. 16 read with S. 28, it is important that the limits of each ferry should be known. (*Adami, J.*) JEORAN SINGH v. RAMKISHUN LAL. 27 Cr. L. J. 970 = 96 I. C. 522 = A. I. R. 1926 Pat. 520.

**—Ss. 16 and 6—Ferry.**

—*Public ferry—What is declared to be so under S. 6 or Regulation VI of 1819, or Bengal Act I of 1866.* No ferry is a public ferry unless there has been a notification to that effect under S. 6 with regard to it, or unless the ferry has previous to 1866 been determined or declared to be a public ferry under Regulation VI of 1819 or Bengal Act I of 1866. (*Adami, J.*) JEORAN SINGH v. RAMKISHUN LAL. 27 Cr. L. J. 970 = 96 I. C. 522 = A. I. R. 1926 Pat. 520.

**BENGAL FERRIES ACT (1885), S. 16.****—Ss. 16 and 28—Ferry.**

*Only maintenance of ferry is not criminally punishable—Conveying persons and property in addition is an offence—Each trip is separate offence.*

The maintenance of a private ferry is in contravention of S. 16 of the Act for which the person maintaining it may be liable for damages and also an injunction may issue against him. If, in addition, to maintaining such a prohibited private ferry he carries passengers and property for hire he is liable criminally under S. 28 of the Act and each trip is a separate offence. (*Jwala Prasad, J.*) **JEOBARAN SINGH v. RAMKISHUN LAL.**

4 Pat. 503=92 I. C. 871=7 P. L. T. 784=  
27 Cr. L. J. 359=A. I. R. 1925 Pat. 623.

**—Ss. 18 and 16—Plying.**

*Plying along one bank is offence.*

The plying of a boat for hire along the one bank of the river would be no offence. (*Adami, J.*) **JEOBARAN SINGH v. RAMKISHUN LAL.**

27 Cr. L. J. 970=  
96 I. C. 522=A. I. R. 1926 Pat. 520.

**—Ss. 28 and 16—Ferry.**

*Person maintaining ferry and carrying persons for hire is guilty and not his servants.*

The person intended to be punished by the section primarily is the person who maintains a ferry in contravention of S. 16 and who, in working such ferry, conveys for hire any passengers, animal, vehicle or other thing. His servants or other persons helping him cannot be said to be doing so for hire because the hire does not belong to them, nor can they be said to contravene the provisions of S. 16, the ferry not being maintained by them but only by the former. (*Adami, J.*) **JEOBARAN SINGH v. RAMKISHUN LAL.**

27 Cr. L. J. 970=  
96 I. C. 522=A. I. R. 1926 Pat. 520.

**BENGAL FOOD ADULTERATION ACT (VI OF 1919).****—Ss. 5, 6 and 7—Adulteration.**

*It is no defence for accused to say that he had advertised that he was not selling pure foods and that purchaser knew the fact.*

The Food Adulteration Act is intended to protect the public from using adulterated articles and therefore it has made it penal to sell these adulterated articles irrespective of the fact whether the purchaser knew the article to be adulterated or otherwise. Articles mentioned in S. 6 are ordinarily articles of food and it is no defence to say that these articles can be adulterated and sold in market with the publication of the fact that they are adulterated. (*Suhrawardy, J.*) **RAKHAL CHANDRA v. PURNA CHANDRA.**

57 Cal. 1123=  
127 I. C. 57=31 Cr. L. J. 1151=  
34 C. W. N. 281=51 C. L. J. 227=  
1930 Cr. C. 353=A. I. R. 1930 Cal. 273.

**—S. 6 (1)—Adulteration.**

*Both owner and servant selling come under S. 6 (1).*

S. 6 (1) applies, not only to master or owner of the adulterated article sold, but also the servant or agent who sells such article. *Brown v. Foot*, (1892) 66 L. J. 649 and *Hutchin v. Hindmarsh*, (1899) 2 Q. B. 181, Ref. (*Rankin, C. J. and Pearson, J.*) **PEARY MOHAN v. HARENDRA NATH.**

57 Cal. 1084=  
125 I. C. 660=31 Cr. L. J. 907=  
34 C. W. N. 114=1930 Cr. C. 383=  
A. I. R. 1930 Cal. 295.

**—Ss. 6 and 15—Adulteration.**

*Bengal Municipal Act (1884), S. 44—Municipal Chairman cannot grant leave to prosecute under S. 15 of the Act of 1919.*

**BENGAL GENERAL CLAUSES ACT (1899). S. 25.**

S. 44 of the Bengal Municipal Act (1884) would not empower the Chairman to sanction prosecution under S. 6 of the Act VI of 1919. (*Newbould and Suhrawardy, J.J.*) **RAGHUNATH MODY v. KURSEONG MUNICIPALITY.**

25 Cr. L. J. 170=76 I. C. 394=  
A. I. R. 1923 Cal. 561.

**—S. 14 (2)—Evidence.**

*S. 14 (2)—Certificate of Public Analyst not in the prescribed form is not admissible.*

Under S. 14 (2) the Public Analyst should submit his certificates in the form prescribed in the schedule to this Act. Where no such certificate was submitted, but the Public Analyst reported on the case by a letter in the ordinary official form,

*Held*, his letter was not admissible in evidence without proof of the truth of its contents. (*Newbould and Suhrawardy, J.J.*) **RAGHUNATH MODY v. KURSEONG MUNICIPALITY.**

25 Cr. L. J. 170=  
76 I. C. 394=A. I. R. 1923 Cal. 561.

**—Ss. 21 and 15—Procedure.**

*Prosecution under S. 21 without sanction under S. 15 does not bar subsequent trial under Cr. P. Code, S. 403.*

Prosecution of an accused under S. 21 of Bengal Food Adulteration Act without any order or consent in writing of the Municipal Commissioners within the meaning of S. 15 of the Act, and his subsequent acquittal under S. 245, Cr. P. Code, is no bar to his subsequent trial on the same facts for the same offence. (*C. C. Ghose and Duval, J.J.*) **P. BANERJEE v. BEPIN BEHARY.**

43 C. L. J. 110=30 C. W. N. 382=  
27 Cr. L. J. 751=95 I. C. 79=  
A. I. R. 1926 Cal. 691.

**BENGAL GENERAL CLAUSES ACT (I OF 1899).****—S. 8.—Effect of.**

*Calcutta Municipal Act (III of 1923, B. C.), Ss. 363, 364—Calcutta Municipal Act (III of 1899, B. C.), S. 449—Effect of saving—Demolition order for building built without sanction before the new Calcutta Municipal Act, 1923—Sanction by General Committee to proceed under S. 449 of the old Municipal Act, re-affirmed by the new Corporation—Demolition order is not valid.*

A prosecution had been sanctioned by the General Committee under S. 449 of the old Act (III B. C. of 1899), but the case was actually started under the new Act (III B. C. of 1923) by the new Corporation and notice upon the party was issued and an order of demolition was passed.

*Held*, that whether the proceedings were under S. 363 or 364 of Act III, B. C. of 1923, they were irregular and the order of the Municipal Magistrate was not justified as the party had not been heard by the Corporation before sanction for prosecution was given.

*Held*, further that the proceedings under S. 449 of the Calcutta Municipal Act (III B. C. of 1899) could only be started by the General Committee and, therefore, in respect of unauthorized structures which existed before 1st April, 1924, when the Calcutta Municipal Act of 1923 came into force, there was, after the passing of the latter Act, nobody competent to take proceedings under S. 449 of the Act of 1899. (*Sanderson, C. J. and Panton, J.*) **RAM GOPAL GOENKA v. CORPORATION OF CALCUTTA.**

52 Cal. 962=80 I. C. 317=  
26 Cr. L. J. 1533=29 C. W. N. 898=  
A. I. R. 1925 Cal. 1251.

**—S. 25—Interpretation.**

*Prosecution of a person within the Howrah Municipal area under Ss. 466 and 574, Calcutta Muni*

**BENGAL GOONDAS ACT (1923), S. 4.**

*cipal Act of 1899, which had been extended to Howrah under a Government notification—Acquittal on the ground that the Act was repealed and no notification had been issued extending any part of the new Act to Howrah—Acquittal opposed on the ground that prosecution was competent under S. 25, General Clauses Act—Acquittal was held to be proper as any prosecution founded upon the notification must be under the new Act.*

A person, who was charged in respect of an offence under Ss. 466 (d) and 574, Calcutta Municipal Act (Act III of 1899), was acquitted on a preliminary objection that the prosecution did not lie, inasmuch as, though the provisions of Ss. 466 and 574 of the Act in question had been extended to Howrah by a notification under Act III of 1899, that Act had been repealed and re-enacted by the Calcutta Municipal Act (Act III of 1923), and no fresh notification had been issued extending any part of the new Act to Howrah. It was contended on behalf of the opposite party that though the Act of 1899 had been repealed, a prosecution under it was competent by virtue of provisions of S. 25, Bengal General Clauses Act (I of 1899). *Held*, that the provisions of S. 25, Bengal General Clauses Act, indicated that the notification is attracted to the provisions so re-enacted, and that any prosecution founded upon it must be under the new Act. Therefore prosecution under the old Act was not competent. (*Chotanar and Gregory, JJ.*) **S. MUKHERJEE v. HARUN TAR MAHAMED & CO.**

55 Cal. 1206 = 114 I. C. 406 = 32 C. W. N. 476 = 30 Cr. L. J. 298 = 12 A. I. R. Cr. R. 184 = A. I. R. 1928 Cal. 484.

**BENGAL GOONDAS ACT (I OF 1923).****—S. 4—Duties of officer.**

*—Warrant of arrest—Arresting officer cannot enquire whether person under arrest is good for the amount of security or other sureties shall be able to control him.*

Refusal of bail on the ground that the person arrested is not good for the amount of security required or that the other sureties would not be able to keep control over the person would be an illegal abuse of law, on general principles as well as on the face of Goondas Act and the warrant issued under it. On such a warrant the business of the officer who fixes the sum of money is to see that he fixes a reasonable sum of money having regard to all the circumstances and that it is not an excessive one and it is sufficient, so far as the person under arrest is concerned, that he is willing to execute a bond in that amount. (*Rankin and Duval, JJ.*) **BISSWAR ROY v. EMPEROR.**

53 Cal. 962 = 30 C. W. N. 791 = 28 Cr. L. J. 10 = 99 I. C. 42 = A. I. R. 1926 Cal. 961.

**—S. 4—Powers of High Court.**

*—Warrant—Secretary to Local Government issuing warrant is not Court subordinate to High Court—High Court can interfere only if case falls under Cr. P. Code, S. 491.*

The Commissioner of Police acting under warrant issued by Secretary to Local Government under S. 4, Goondas Act, is not acting under the Cr. P. Code. The Secretary to the Government in such cases is not in the position of a subordinate or inferior Court to the High Court (A. I. R. 1924 Cal. 698, Rel. on) and, therefore, the High Court will look at the question only from the point of view that the proceedings of the executive are armed with certain special powers and will interfere only if the case falls under S. 491, Cr. P. Code. (*Rankin and Duval, JJ.*) **BISSWAR**

**BENGAL MUNICIPAL ACT (1884), S. 202.**

**ROY v. EMPEROR.** 53 Cal. 962 = 99 I. C. 42 = 30 C. W. N. 791 = 28 Cr. L. J. 10 = A. I. R. 1926 Cal. 961.

**BENGAL LOCAL SELF-GOVERNMENT ACT (III OF 1885).****—Ss. 139, 140 and 78—Encroachments.**

*—Bye-law prohibiting encroachment—Imposition of penalty—Validity.*

The District Board has impliedly, if not expressly, power to provide for, by its by-laws, the punishment for encroachments over its roads in order to carry out the provisions of S. 78 of the Act, namely, to provide for the repair and maintenance of its road. 11 C. W. N. 175 (notes), Diss. (*Jwala Prasad and Adami, JJ.*) **MAHESH SHAH v. DARBARI HUSSAIN.**

1 Pat. 251 = 65 I. C. 571 = 3 Pat. L. T. 464 = 23 Cr. L. J. 139 = A. I. R. 1922 Pat. 545.

**BENGAL MUNICIPAL ACT (III OF 1884).****—Prosecution.**

*—Sanction to prosecute for one offence—Conviction for another offence is illegal.*

A Magistrate cannot convict persons of an alternative or disjunctive offence mentioned in bye-law No. 80 when sanction was by the Municipal authorities to prosecute the accused in connection with another offence. Where sanction was given to prosecute for the offence of "singing with a high sounding instrument" a conviction for the offence of "playing on a drum" was held illegal. (*Bucknill, J.*) **RAHIM v. EMPEROR.**

72 I. C. 894 = 1 Pat. L. R. Cr. 45 = 24 Cr. L. J. 478 = A. I. R. 1924 Pat. 377.

**—Ss. 30, 234 and 235—Scope.**

*—Municipality has no right to levy rent, etc., from the persons exposing goods for sale on the Municipal road—Preventing lessee of such rents from realising it is no offence—Penal Code, S. 143.*

S. 234 of the Municipal Act is a section of emergency referring to deposit of moveable property on the roadside. The right of the Municipality as to the road is governed by S. 30 by which the property in roads is vested in the Commissioners for the purposes given in the Act. Under S. 30 Municipality has no right to lease out its rights for the purpose of carrying on shops or exposing goods for sale. There is no right to collect rent, toll or any tax, unless there is a contract creating the relationship of landlord and tenant between the parties. If the provisions of S. 335 of the Municipal Act do not apply to any place like Lohardagga, accused who prevented the lessee of the Municipality of Lohardagga from realising rent from the shop-keepers or persons exposing their goods for sale along the road, not on a Municipal market nor on a market to which the provisions of Part X applied were not guilty of an offence under S. 143, Penal Code. (*Jwala Prasad, J.*) **DHUNMUN CHOWDHURY v. EMPEROR.**

3 Pat. L. T. 339 = 25 Cr. L. J. 114 = 76 I. C. 178 = A. I. R. 1922 Pat. 286.

**—S. 44.**

A distinction is drawn between acts done by "the Commissioners" and acts done by "the Commissioners at a meeting." (*Sutrawardy and Graham, JJ.*) **CHAIRMAN, HOWRAH MUNICIPALITY v. RAMSARUP SEROUGE.**

95 I. C. 726 = A. I. R. 1926 Cal. 1073.

**—S. 202—Nature of Proceedings.**

*—Proceedings under the section is a judicial proceeding which can be revised by High Court.*

An order made by a Magistrate under S. 202 of the Bengal Municipal Act, 1884, is a judicial proceeding and the High Court has power to revise the order.

**BENGAL MUNICIPAL ACT (1884), 202.**

(*Newbould and B. B. Ghose, JJ.*) NABADWIP MUNICIPALITY *v.* PURNA CHANDRA MUKERJI.

52 Cal. 670 = 88 I. C. 862 = 41 C. L. J. 611 =  
29 C. W. N. 817 = 26 Cr. L. J. 1246 =  
A. I. R. 1925 Cal. 934.

—*Proceedings under the section are not criminal—No procedure is given by the section—Application of C. P. Code, is not wrong.*

A Magistrate exercising his power under S. 202 is not engaged in a criminal proceeding. No procedure is prescribed by the section. He would not be wrong in following, so far as they seem applicable, the provisions of the Code of Civil Procedure. (*Newbould and B. B. Ghose, JJ.*) NABADWIP MUNICIPALITY *v.* PURNA CHANDRA MUKERJI.

52 Cal. 670 = 88 I. C. 862 =  
41 C. L. J. 611 = 29 C. W. N. 817 =  
26 Cr. L. J. 1246 = A. I. R. 1925 Cal. 934.

**—S. 202—Procedure.**

—*Orders under the section without hearing parties—Orders are illegal and must be set aside.*

The legislature do not intend to enable a Magistrate to deprive a person of his right to a civil action for acts done by the Commissioners in excess of their powers except by a judicial order passed after hearing the parties concerned. Where a Magistrate passed orders under S. 202 of the B. M. Act without giving the parties concerned an opportunity of being heard,

*Held*, that the orders were illegal since the Magistrate did not act judicially and that they must be set aside. (*Newbould and B. B. Ghose, JJ.*) NABADWIP MUNICIPALITY *v.* PURNA CHANDRA MUKERJI.

52 Cal. 670 = 88 I. C. 862 = 41 C. L. J. 611 =  
29 C. W. N. 817 = 26 Cr. L. J. 1246 =  
A. I. R. 1925 Cal. 934.

**—S. 209—Requisition.**

—*Municipality accepting gift of land on condition of erecting fencing at their own cost—Donor is not guilty of breach of requisition.*

The accused was served with a requisition under S. 209 of the Municipal Act requiring him to cause a fence to be erected for the protection of passengers and pedestrians over the bank of a tank belonging to the accused. The accused disobeyed this requisition, his grounds being that in 1898 certain land on the side of the tank was made over by him to the municipality and conditions were imposed by him on the municipality at the time to the effect that if in future any fencing had to be erected or was required on the side of the tank the municipality would erect such a fencing at their own cost. In 1914, the municipality caused certain departmental estimates to be prepared for fencing and for acquiring the extra strip of land on the side of the tank but that inasmuch as the funds did not permit of this work being done at once the work was left in abeyance and in September, 1922, the requisition, referred to above, was served on the accused under S. 209 of the Bengal Municipal Act.

*Held*, that there is nothing in the Municipal Act itself which can remotely suggest that the Municipality is incompetent to enter into a binding engagement of this description and therefore the Municipality is not in the circumstances of the particular case, competent to require the accused to cause a fencing to be erected at his own cost. (*C. C. Ghosh and Cumming, JJ.*) SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* NARAYAN CHANDRA BANERJI.

38 C. L. J. 13 = 24 Cr. L. J. 680 = 73 I. C. 776 =  
A. I. R. 1924 Cal. 101.

**BENGAL PUBLIC GAMBLING ACT (1867), S. 2.****—S. 350—Bye-laws under.**

—*Bye-law No. 80—Tabla is not a high sounding instrument.*

Under no circumstances can the playing of the *Tabla* be regarded as "singing with a high sounding instrument" within the Bye-law No. 80. (*Bucknill, J.*) RAHIM *v.* EMPEROR.

1 Pat. L. R. Cr. 45 =  
24 Cr. L. J. 478 = 72 I. C. 894 =  
A. I. R. 1924 Pat. 377.

**—S. 356—Service of.**

—*Warrant—Brother of owner in possession and paying taxes on behalf of owner—Service of warrant on brother of owner is sufficient.*

Where the house was not in the occupation of the recorded owner but his brother and, although the Municipal taxes were levied on the owner, they were collected from his brother.

*Held*, the service of the distress warrant on the brother of the owner was a proper service. (*Dawson Miller, C. J. and Ross, J.*) GOVT. ADVOCATE, BIHAR AND ORISSA *v.* GANGA PRASAD.

1 Pat. 423 = 3 Pat. L. T. 559 = 25 Cr. L. J. 31 =  
75 I. C. 719 = A. I. R. 1922 Pat. 532.

**—Sch. IV—Warrant.**

—*Date of return is not necessary to be mentioned.*

A distress warrant issued in the form provided in Schedule IV does not require that the date of return of warrant should be mentioned. (*Dawson Miller, C. J. and Ross, J.*) GOVT. ADVOCATE, BIHAR AND ORISSA *v.* GANGA PRASAD.

1 Pat. 423 =  
75 I. C. 719 = 3 Pat. L. T. 559 = 25 Cr. L. J. 31 =  
A. I. R. 1922 Pat. 532.

**BENGAL N.W.P. AND ASSAM CIVIL COURTS ACT (XII OF 1887).****—S. 22—Transfer.**

—*The District Judge is competent to transfer an appeal from an order under S. 476 to a Subordinate Judge.* A. I. R. 1927 All. 555, Foll. (*Mukerji, J.*) KARIMULLAH *v.* RAMESHWAR PRASAD.

51 All. 344 = 111 I. C. 595 = 1929 A. L. J. 55 =  
10 L. R. A. Cr. 121 = 12 A. I. Cr. R. 199 =  
A. I. R. 1929 All. 774.

**BENGAL PUBLIC GAMBLING ACT (II OF 1867.)****—S. 2 (as amended by Act IV of 1913)—Gaming.**

—*Definition of gaming is only descriptive—To bring case under "gaming" it must be established that game was for money staked on result of game.*

The definition in the Act does not really define gaming but merely indicates what it is like and excludes wagering or betting on some particular occasion and in some particular circumstances and also excludes "lottery." To bring the case within the meaning of "gaming" all that has to be seen is whether the game that was going on was for money which was staked on the result of the game which was to be lost or won according to the success or failure of the person who has staked provided of course that it was not a lottery. 31 Cal. 542; 39 Cal. 968; 40 Mad. 556, Ref. (*Mukerji, J.*) ARJOON SINGH *v.* EMPEROR.

57 Cal. 520 = 125 I. C. 643 = 31 Cr. L. J. 901 =  
1929 Cr. C. 513 = 33 C. W. N. 916 =  
A. I. R. 1929 Cal. 769.

—*Question whether game is of pure chance or one in which skill preponderates is no longer pertinent.*

The question as to whether a game is one of pure chance or one in which the element of skill preponderates are no longer pertinent under the Act as it stands

**BENGAL PUBLIC GAMBLING ACT (1867), S. 3.**

now. What is to be seen is whether the game is covered by what is meant by "gaming"; if it is, it is hit by the Act unless it is a game of mere skill. 6 C.L.J. 708, Expl. (*Mukerji, J.*) *ARJOON SINGH v. EMPEROR*.  
57 Cal. 520 = 125 I. C. 643 = 31 Cr. L. J. 901 =  
1929 Cr. C. 513 = 33 C. W. N. 910 =  
A. I. R. 1929 Cal. 769.

**—Ss. 3, 4, 5 and 6—Applicability.**

*Presumption under S. 6 arises only under peculiar circumstances mentioned by statute itself—Magistrate not satisfied that premises are used as common gaming house—No presumption under S. 6 arises.*

The presumption of law under S. 6 arises only in the peculiar circumstances mentioned by the statute itself, i.e., if the warrant authorises a search on the footing of the premises being a common gaming house and when the search results in a find of instruments of gaming. When the requirements of S. 5 are not strictly complied with inasmuch as the Magistrate does not say anywhere in the proceedings that the premises were used for a common gaming house, the presumption under S. 6 does not arise, and if there is no evidence showing that the premises had been kept for the profit or gain of the accused, they cannot be convicted under S. 3 or S. 4. (*Mukerji, J.*) *GANGADAS BANERJI v. EMPEROR*.

51 C. L. J. 224 = 51 C. L. J. 396 =  
1930 Cr. C. 541 = A. I. R. 1930 Cal. 365.

**—(Amendment) Act (IV of 1913)—Scope.****—Racing in partnership—Validity.**

If cannot be held that persons who enter into partnership for the purpose of making agreements not forbidden but recognised by Law, though unenforceable at Law, are persons who conduct a business, the very nature of which disentitles them to have recourse to Courts of law to recover the claims otherwise sustainable. (*Buckland, J.*) *LEICESTER CO. v. S. P. MALIK*.

27 C. W. N. 442 = 80 I. C. 498 =  
A. I. R. 1923 Cal. 445.

**BENGAL TENANCY ACT (VIII OF 1885).****—Ss. 121 and 54 (3)—Distrain.**

*Rent payable on 1st December—Distrain order and attachment made three days after is legal.*

Where the rent is payable on the 1st December, it is in arrear on the 2nd December and a distrain order and attachment made on the 2nd and 4th December are legal. (*Sanderson, C. J. and Mookerjee, J.*) *GOVERNMENT OF BENGAL v. KOJAL HADADAR*.

33 C. L. J. 24 = 25 C. W. N. 209 = 22 Cr. L. J. 491 =  
62 I. C. 187 = A. I. R. 1921 Cal. 361.

**BETTING.**

See GAMBLING ACTS (LOCAL, BENGAL, BOMBAY, BURMA AND IMPERIAL).

**BIGAMY.**

See PENAL CODE, Ss. 494 AND 495.

**BIHAR AND ORISSA EXCISE ACT (II OF 1915.)****—S. 2 (6) and (14)—Excisability.**

*Medicines containing alcohol are excisable.*

The statement of objects and reasons of the new enactment in Bihar and Orissa seems to indicate the intention of the legislature to make a medicinal preparation containing alcohol an excisable article. 24 Cal. 157, Not foll.; 45 Cal. 82, Rel. on. (*Jwala Prasad and James, J.J.*) *EMPEROR v. GOBIND PANDEY*.

10 P. L. T. 316 = 8 Pat. 884 = 120 I. C. 759 =  
1929 Cr. C. 74 = A. I. R. 1929 Pat. 302.

**BIHAR AND ORISSA FOOD ADULTERATION ACT (1919), S. 14.****—Ss. 47, 70 and 78—Arrest.**

*Sub-Inspector of Excise can arrest without warrant person found committing offence under S. 47—S. 78 has no application to such case.*

Under S. 70 of the Act, the Sub-Inspector of Excise is entitled to arrest without a warrant a person found committing an offence punishable under S. 47 of the Act and S. 78 has no application to such a case. (*James, J.*) *BECHU MIAN v. EMPEROR*.

12 Pat. L. T. 312 = 1930 Cr. C. 716 =  
31 Cr. L. J. 465 = 123 I. C. 68 =  
A. I. R. 1930 Pat. 344.

**—S. 47 (a) (f) and S. 92—Punishment.**

*Circulars not published in Gazette, exempting any excisable article, are not law—Under such unpublished circulars respectable ayurvedic practitioners selling medicines containing alcohol may not be prosecuted—But if prosecuted even under misapprehension they must suffer at least technical punishment.*

S. 94 empowers the Local Government to exempt any excisable article from the provisions of the Act either throughout the province or in any specified area or as regards any specified class of persons. Under S. 92, such notification when published in the Bihar and Orissa Gazette shall have the effect as if enacted in the Act. Not so published the circulars in question have not the force of law. Therefore, though according to instructions contained in unpublished circulars the excise authorities would not prosecute a respectable medical practitioner (*Kaviraj*) of repute who sells medicinal preparations containing alcohol unless he is endeavouring to cheat the Government of excise revenue, but if a prosecution is started even under misapprehension, the Courts have to inflict some punishment. (*Jwala Prasad and James, J.J.*) *EMPEROR v. GOBIND PANDEY*.

10 P. L. T. 316 = 8 Pat. 884 = 120 I. C. 759 =  
1929 Cr. C. 74 = A. I. R. 1929 Pat. 302.

**BIHAR AND ORISSA FOOD ADULTERATION ACT (II OF 1919).****—S. 9 (2)—Proviso—Procedure.**

*Application to have sample analysed refused—Magistrate was wrong in refusing application for analysis of sample in custody of local authority.*

A complaint was lodged against the applicant, based on an inspection made by the Inspector of the applicant's factory. The inspection related to the manufacture of mustard oil which the applicant carried on in his factory. Sample of oil was taken by the Inspector in three phials one of which was sent to the Chemical Examiner under S. 8 of the Act and the report of the Examiner showed that the sample was adulterated. That was the reason of the prosecution. During the trial, the applicant applied, under S. 9 (2) of the Act that the sample in the hands of the local authority, which was kept by them under sub-S. (2), S. 7 may be sent to the Government analyst. The trying Magistrate held that by reason of the proviso to S. 9 he was prevented from acceding to the application.

*Held*, that the trying Magistrate was wrong in not allowing the petition of the applicant to have the sample, in the custody of the local authority, analysed under S. 8. (*Wort, J.*) *GOPINATH SAHU v. ARRAH MUNICIPALITY*.

30 Cr. L. J. 895 = 118 I. C. 328 =  
1929 Cr. C. 270 = A. I. R. 1929 Pat. 510.

**—S. 14—Interpretation.**

*Neither the word "labelled" nor the word "sealed" necessarily means that it should contain the name of manufacturer. (Jwala Prasad and Ross, J.J.) EMPEROR v. SHIB DAS.*

9 P. L. T. 434 =

# BIHAR AND ORISSA FOOD ADULTERATION ACT (1919), S. 14.

29 Cr. L. J. 75=106 I. C. 587=9 A. I. Cr. E. 352=  
A.I.R. 1928 Pat. 213.

## —S. 14, Cl. (2)—Irregularity.

*Inspector not purchasing the entire tin — Accused can take advantage of the irregularity.*

Where the Inspector acted illegally in not purchasing the entire tin as is required by Cl. (2), S. 14.

*Held*, yet the oil of the tin was found to be highly adulterated, the accused could take advantage of the illegality or irregularity as the procedure adopted by the Inspector had prejudiced the accused seriously and deprived him of the best evidence to prove his *bona fides*. (*Jwala Prasad and Ross, J.J.*) **EMPEROR v. SHIB DAS.**  
9 P. L. T. 434=29 Cr. L. J. 75=  
106 I. C. 587=9 A. I. Cr. E. 352=  
A. I. R. 1928 Pat. 213.

# BIHAR AND ORISSA MUNICIPAL ACT (VII OF 1922)

## —S. 196—Scope.

In order that S. 196 may come into operation there must be proof that the property has vested in the Commissioners. (*Ross, J.*) **RADHA KISHUN MARWARI v. EMPEROR.**  
27 Cr. L. J. 1111=  
97 I. C. 423=A.I.E. 1927 Pat. 52.

## —S. 230 (2) and S. 196—Operation.

Failure to comply with a requisition issued by the Commissioners under S. 196 is a condition precedent to a person's liability to fine under S. 203. (*Ross, J.*) **RADHA KISHUN MARWARI v. EMPEROR.**  
27 Cr. L. J. 1111=97 I. C. 423=  
A. I. R. 1927 Pat. 52.

## —S. 259 (1) (14)—Interpretation.

*"Manufacture" does not cover the use of an oil engine.*

The plain meaning of the words "manufacture, process or business" used in Cl. 1, sub-Cl. (14) of S. 259 does not contemplate the use of an oil engine. (*Wort, J.*) **LAL SINGH v. ARRAH MUNICIPALITY.**  
11 A. I. Cr. E. 25=29 Cr. L. J. 756=  
110 I. C. 788=10 P. L. T. 393=  
A. I. R. 1928 Pat. 506.

## —S. 259—Legality.

*Renewal of license refused—No reason assigned—Refusal is not illegal.*

The provisions of sub-S. 2 of S. 259 of the Municipal Act themselves supply the only reason for which refusals of certain licenses can be made. But the omission of the commissioners to give the only reason which they could give for such refusal cannot be regarded as making their refusal illegal.

The Municipality has the right to declare that within the whole area of the municipality, certain offensive or dangerous trades cannot be carried on without a license. 17 C. W. N. 531, Foll. (*Bucknill and Ross, J.J.*) **MADARAN KASSAB v. EMPEROR.** 4 Pat. 311=  
86 I. C. 964=3 Pat. L. R. Cr. 150=  
6 P. L. T. 528=26 Cr. L. J. 900=  
1925 P. H. C. C. 44=A. I. R. 1925 Pat. 540.

## —S. 259 (1) (14)—Notification.

*It is necessary for a municipality to notify to the public that a certain offence has been created under a certain resolution—Person cannot be convicted for the breach of the resolution in the absence of such notification.*

If an offence is to be created by a by-law or order or notice, then it is necessary for those who have power under the Act to create such offence to publish the fact so that the public at large may know that such an offence has been created. A meeting of the commission-

# BOMBAY ABKARI ACT (1878), S. 43.

ers of a municipality resolved under S. 259 that certain trade should not be carried on within the area of the municipality without a license but no notification what ever to the public was made of this resolution, prosecution of a certain person was commenced for a breach of this resolution.

*Held*, that conviction could not stand as it was necessary for the municipality, to notify to the public that such an offence had been created. (*Wort, J.*) **LAL SINGH v. ARRAH MUNICIPALITY.**

11 A. I. Cr. E. 25=29 Cr. L. J. 756=  
110 I. C. 788=10 P. L. T. 393=A.I.R. 1928 Pat. 506.

## —S. 263—Offensive Trade.

*Pounding of tobacco leaf for the manufacture of hooka tobacco is not offensive trade.*

Where it has been found that the manufacture of hooka tobacco is not one giving rise to offensive or unwholesome smells, a person cannot be prosecuted under S. 263 for not taking out a license for carrying on the pounding of tobacco leaf for the manufacture of hooka tobacco. (*Mullick, J.*) **CHAIRMAN, PURULIA MUNICIPALITY v. BISHUN SAO.** 29 Cr. L. J. 1017=  
112 I. C. 345=11 A. I. Cr. E. 270=  
A. I. R. 1928 Pat. 193.

## —S. 356—Interpretation.

*"Directed" means a direction by the body who are granted the power to make by-laws.*

The word "directed" in S. 356 does not refer to a direction by the Act, but it means a direction by the people or the body, who are granted the power to make by-laws, orders or to issue notices. (*Wort, J.*) **LAL SINGH v. ARRAH MUNICIPALITY.**

11 A. I. Cr. E. 25=29 Cr. L. J. 756=  
110 I. C. 788=10 P. L. T. 393=  
A. I. R. 1928 Pat. 506.

# BOMBAY ABKARI ACT (V OF 1878).

## —Ss. 43 (1) (a) and (b)—Apparatus.

*Cr. P. Code, S. 35—Offences of possessing illicit liquor and of possessing apparatus for manufacturing such liquor are distinct.*

The offence of possessing illicit liquor is not necessarily covered by the offence of possessing the apparatus for manufacturing such liquor. The two offences are quite distinct, (1890), Rat. Unrep. Cr. C. 523, Foll. (*Fawcett and Mirza, J.J.*) **EMPEROR v. PANDU AVACHIT BHIL.** 52 Bom. 277=30 B. L. R. 378=  
108 I. C. 512=29 Cr. L. J. 412=  
10 A. I. Cr. E. 114=A. I. R. 1928 Bom. 141.

## —S. 43—Punishment.

*Cultivation of bhang—Deterrent punishment is called for as such offences are difficult for detection.*

The offences like cultivating bhang are difficult to detect and when discovered should be dealt with in such a manner as to deter other persons from committing similar breaches of law. A fine of Rs. 25 was held to be entirely inadequate. (*Kincaid, J. C. and Barlee, A.J.C.*) **EMPEROR v. BUDHO.** 7 A. I. Cr. E. 290=  
28 Cr. L. J. 162=99 I. C. 594=  
A. I. R. 1927 Sind 112.

The more appropriate form of punishment for an offence under the section is imprisonment and not fine. (*Kennedy, J. C. and Tyabji, A. J. C.*) **EMPEROR v. GULAB.**  
20 S. L. R. 1=27 Cr. L. J. 300=  
92 I. C. 588=A. I. R. 1926 Sind 176.

## —S. 43 (1)—Search.

*Cr. P. Code, S. 103—Punchas not witnessing every detail of search does not vitiate search if search carried on in presence of accused, provided possession of*



**BOMBAY ABKARI ACT (1878), S. 45.**

*offending object can be proved beyond doubt from evidence.*

The mere fact that the Panchas are not present throughout a search under S. 43 (1) (a), and do not witness every detail of it is not sufficient in itself to vitiate the conviction, especially where the accused is himself present at the search, and it is open to the Court to find the fact of possession of an offending article proved, provided that on a consideration of all the evidence in the case it is satisfied that the fact has been proved beyond reasonable doubt. 4 Cr. L. J. 390; 20 Cr. L. J. 742, Dist; 41 Cal. 350; A. I. R. 1925 All. 434 and A. I. R. 1926 All. 188, Foll. (*Mirza and Broomfield, J.J.*) **DINKAR NHANU MANGAONKAR v. EMPEROR.**

54 Bom. 471=125 I. C. 713=31 Cr. L. J. 927=32 B. L. R. 344=A. I. R. 1930 Bom. 169.

**—S. 45 (c)—Sale.**

*Keeping for sale in forbidden bottles does not amount to selling.*

Where the accused is found in his shop to have kept for sale ordinary denatured spirit in bottles, which were not full corked quart or pint bottles,

*Held*, that the accused cannot be said to have violated the condition, because it is not proved that he sold ordinary denatured spirit in the forbidden bottles.

Per *Fawcett, J.*—The word "sell" in condition 5 of the license cannot be properly construed as covering words such as "or keep for sale". (*Fawcett and Patkar, J.J.*) **EMPEROR v. S. V. MARATHE.**

29 Bom. L. R. 1012=103 I. C. 834=8 A. I. Cr. R. 442=28 Cr. L. J. 754=A. I. R. 1927 Bom. 518.

**BOMBAY CITY MUNICIPAL ACT (III OF 1888).****—Applicability.**

*—Cr. P. Code, S. 562 (1-A)—S. 562 (1-A) does not apply to offences under the Act.*

Sub-Sec. (1-A), S. 562, is confined to cases of an offence under the Penal Code and does not apply to an offence punishable under the City of Bombay Municipal Act. A. I. R. 1926 Bom. 230, Foll. (*Fawcett and Mirza, J.J.*) **MERWANJI M. MISTRY v. EMPEROR.**

30 Bom. L. R. 375=109 I. C. 502=52 Bom. 250=29 Cr. L. J. 566=10 A. I. Cr. R. 286=A. I. R. 1928 Bom. 152.

**—Interpretation.**

*—Premises do not mean contiguous buildings of one owner.*

Definition of the words "premises" meaning buildings which are contiguous to each other and owned by one private person, is not supported by any of the provisions of the Municipal Act. (*Patkar and Baker, J.J.*) **AMRATLAL v. EMPEROR.**

30 Cr. L. J. 5=11 A. I. Cr. R. 500=30 Bom. L. R. 1422=112 I. C. 773=A. I. R. 1928 Bom. 532.

**—Ss. 3 (m) and 380—Interpretation.**

*—Definition of "owner," in S. 3 (m) applies to S. 380.*

There is nothing in S. 380 which renders the definition of "owner" in S. 3 (m) inapplicable either to the case of the owner of a hut or shed or to the case of the owner of the land on which such hut or shed stands. In each case the definition is one that can properly be applied without there being inconsistency with the rest of the section. (*Fawcett and Mirza, J.J.*) **LAKSHMAN PANDU v. EMPEROR.**

30 Bom. L. R. 339=109 I. C. 344=10 A. I. Cr. R. 176=29 Cr. L. J. 520=A. I. R. 1928 Bom. 136.

**—S. 248—(Amended)—Interpretation.**

*—"Employed in any premises" means employed in private residence.*

**BOMBAY CITY MUNICIPAL ACT (1888), S. 402.**

The words "persons employed in any premises" in S. 248 should be construed as referring to the servants who are employed in the private residence. (*Patkar and Baker, J.J.*) **AMRAT LAL v. EMPEROR.**

30 Cr. L. J. 5=11 A. I. Cr. R. 500=30 Bom. L. R. 1422=112 I. C. 773=A. I. R. 1928 Bom. 532.

**—S. 248—Rent Contractor.**

*—Rent contractor is liable to comply with requisition under S. 248.*

A rent contractor falls within the definition "owner" in S. 3, cl. (m) of the Act and as such he is the person who under S. 248 of the Act is liable to comply with the requisition of the Municipal Commissioner under S. 248. (*Patkar and Baker, J.J.*) **AZIZ GAFFOOR v. EMPEROR.**

30 Cr. L. J. 17=30 Bom. L. R. 1439=112 I. C. 849=A. I. R. 1928 Bom. 527.

**—S. 248 (1) (c)—Rent farmer.**

*—Municipality can proceed either against landlord or rent farmer.*

The proper construction of S. 248 (1) (c) is that the Municipality may at their option proceed either against the landlord or his lessee who under the terms of his lease is entitled to sub-let the premises and receive rent from his sub-tenants. The term "owner" as defined in the Act, covers both cases. A. I. R. 1928 Bom. 527, Expl.; A. I. R. 1928 Bom. 136, Ref. (*Mirza and Patkar, J.J.*) **JAFFAR CASSAM MOOSA v. EMPEROR.**

30 Bom. L. R. 1442=112 I. C. 861=11 A. I. Cr. R. 546=30 Cr. L. J. 29=53 Bom. 181=A. I. R. 1928 Bom. 528.

**—S. 249—Premises.**

A godown in which more than 20 persons are employed as workmen or labourers, though contiguous to a residential building of the same owner, is premises within S. 249. (*Patkar and Baker, J.J.*) **AMRATLAL v. EMPEROR.**

30 Cr. L. J. 5=11 A. I. Cr. R. 500=30 Bom. L. R. 1422=112 I. C. 773=A. I. R. 1928 Bom. 532.

**—S. 257 (1)—Notice.**

*—Notice requiring owner to raise water to storage tank by means of hand pump can't be given under S. 257.*

The Commissioner can under S. 257 requisition work to bring the condition of the privy or water-closet within the previous provisions of the chapter with regard to their construction and maintenance, and nothing whatever is said throughout the chapter with regard to the water supply. The Commissioner is not entitled to give a notice under S. 257 (1) directing the landlord to maintain the water closet in good order by pumping a sufficient quantity of water into the cistern. (*Macleod, C. J. and Shah, J.*) **S. MAHOMED HAJI v. EMPEROR.**

26 Bom. L. R. 178=25 Cr. L. J. 968=81 I. C. 616=A. I. R. 1924 Bom. 337.

**—Ss. 380 and 3 (m)—Applicability.**

*—Definition of "owner," in S. 3 (m) applies to S. 380.*

There is nothing in S. 380, which renders the definition of "owner" in S. 3 (m) inapplicable either to the case of the owner of a hut or shed or to the case of the owner of the land on which such hut or shed stands. In each case the definition is one that can properly be applied without there being inconsistency with the rest of the section. (*Fawcett and Mirza, J.J.*) **LAKSHMAN PANDU v. EMPEROR.**

30 Bom. L. R. 339=10 A. I. Cr. R. 176=29 Cr. L. J. 520=109 I. C. 344=A. I. R. 1928 Bom. 136.

**—S. 402—Fruits.**

*—Fruits are articles of human food.*

**BOMBAY CITY MUNICIPAL ACT (1888), S. 402.**

Fruits are articles of human food within the scope of S. 402, Cl. 2. (*Patkar and Murphy, J.J.*) BOMBAY MUNICIPALITY *v.* VENKANNA. 30 Bom. L. R. 1128 = 52 Bom. 780 = 12 A. I. Cr. R. 30 = 30 Cr. L. J. 168 = 113 I. C. 506 = A. I. R. 1928 Bom. 413.

**—Ss. 402, 403 and 471—Private market.**

*Accused constructing a structure consisting of shops abutting a street—Shops let to tenants—No inter-communication between the shops—Tenants not selling the same commodity—Shops and user were held not to constitute a private market within Ss. 402 and 403.*

The accused with the sanction of the municipality erected a structure designed to be let as small shops abutting on a street. The shops were let to tenants. There was no inter-communication between the shops. Each tenant was independent of the other. Majority of tenants sold fruits. The shops looked like stalls or booths. The customers purchased the goods standing on the pavement of the road and had no right to enter the shops.

*Held*, that the structure was nothing more than a collection of shops and its user did not constitute a private market within the meaning of Ss. 402 and 403; 9 Bom. 272; 11 Bom. 106; *Mayor of Manchester v. Lyons*, (1882) 22 Ch. D. 287; 10 Mad. 216, Cons. (*Patkar and Murphy, J.J.*) BOMBAY MUNICIPALITY *v.* VENKANNA. 30 Bom. L. R. 1128 = 52 Bom. 780 = 12 A. I. Cr. R. 30 = 30 Cr. L. J. 168 = 113 I. C. 506 = A. I. R. 1928 Bom. 413.

**—S. 412-A (b)—Ghee.**

*Ghee does not come in "other milk products."*

The words "other milk products" appearing in S. 412-A (b) should be construed *ejusdem generis* with reference to what precedes; those words and the meaning to be given to them should be less comprehensive than they would otherwise be if they stood by themselves without the words "milk, butter" preceding them. They would include such products of milk as are the direct results of milk and would be liable to speedy decay, like butter, as for example, whey, curd, or cream, and would not include ghee which is not the direct result of milk and is not liable to speedy decay. (*Mirza and Patkar, J.J.*) RATANSI MIRJI *v.* EMPEROR.

53 Bom. 627 = 120 I. C. 356 = 31 Bom. L. R. 581 = 31 Cr. L. J. 103 = 1929 Cr. C. 41 = A. I. R. 1929 Bom. 274.

**—S. 471—Sentence.**

*Offence under—Warning and discharging the accused on his removing the nuisance is not a sentence according to law.*

Warning and discharging the accused on his removing the nuisance complained of is not a form of sentence or order that the Magistrate has power to pass in the case of an offence under S. 471; the accused should either be punished or acquitted. (*Fauvett and Mirza, J.J.*) MERWANJI MISTRY *v.* EMPEROR.

52 Bom. 250 = 30 Bom. L. R. 375 = 29 Cr. L. J. 566 = 109 I. C. 502 =

10 A. I. Cr. R. 286 = A. I. R. 1928 Bom. 152.

**—S. 515—Interpretation.**

*Magistrate may direct Municipal Commissioner to take measures in matters other than those referred to in sections mentioned in sub-S. (1)—Court is not competent to consider whether Legislature should have conferred such powers on Court—Mere residence is enough qualification for complaint—Mental assurance that licence would be granted does not absolve from duty not to cause nuisance inside—General considerations about public convenience should not override main purpose of section.*

**BOMBAY CITY MUNICIPAL ACT (1888), S. 515.**

Purely as a matter of construction there is nothing in the terms of the section to justify the contention that the second part of cl. (a) of sub-S. (2), which relates to the direction to the Municipal Commissioner to take such measures as to such Magistrate shall seem practicable and reasonable, applies only to the exercise of the powers under any one of the sections mentioned in sub-S. (1). The scheme of the section clearly is to give the right to any person to make a complaint where there is any nuisance or where in the exercise of any of the powers conferred by the respective sections, more than the least practicable nuisance has been created. The extent of the power of the Court is indicated in sub-S. (2), and the whole of cl. (a) of sub-S. (2) applies both to the case of nuisance, as well as to the case where in the exercise of powers under certain sections of the Act more than the least practicable nuisance is created. The argument, that the Legislature could not have contemplated that a Court should control and regulate the discretion of the Municipal Commissioner as to matters, about which the Municipal Commissioner would possess special knowledge, is not acceptable. This section appears to have been enacted for the protection of persons residing in the city; and it provides a remedy which is open to any resident of the City. The extent of the power of the Court is to be found in the words of cl. (a) of sub-S. (2). That provision undoubtedly implies some limitation upon the powers of the Commissioner and so some control over his acts where a proper case for giving direction to him in connection with a nuisance is made out. It is not open to a Court to consider whether the Legislature should have conferred such powers upon the Court or not. It may be that the absence of proceedings under this section has tended to create an impression as to the meaning and scope of this section which is not accurate. It is open to the Court to consider whether the existence of stables, having regard to all the facts, is or may be dangerous to life or injurious to health, even apart from the question of malaria. Whether the complainant is a paying guest or a tenant is not material. If he resides in the house that is sufficient for the purpose of enabling him to complain of the nuisance. Where a complaint was made against certain stables as a nuisance and the owner had incurred heavy costs in putting them up, and had sound grounds for expecting grant of licence through the support of the Municipal Commissioner, *held* that though he may have felt assured in his mind on account of the support which he had of the Municipal Commissioner, so far as the licence was concerned, he was not absolved from the obligation to see that no nuisance was caused by him to any residents in the locality. It has also to be remembered that while under the Rent Act, he may not be able to eject his present tenants, this nuisance itself, if allowed to remain, may be an effective means of enabling him to get possession. Where it was argued that the Commissioner's discretion should not be interfered with so as to affect public convenience, *Held* that such general considerations cannot be allowed to override the main purposes of the section in dealing with a particular nuisance.

*Per Crump, J.*—The circumstance that the wrongdoer is in some sense a public benefactor has never been considered a sufficient reason for refusing to protect by injunction an individual whose rights are being persistently infringed. 2 Ch. D. 692; 2 Ch. 588, Foll. (*Shah, Ag. C. J. and Crump, J.*) BOMBAY MUNICIPALITY *v.* L. R. MALLANDAINE.

48 Bom. 241 = 25 Bom. L. R. 1321 = 26 Cr. L. J. 374 = 84 I. C. 854 = A. I. R. 1924 Bom. 241.



# BOMBAY CITY MUNICIPAL ACT (1888), S. 515.

## —S. 515—Nuisance.

*Private and public nuisances can be remedied by injunction by one or all residents affected—Court can order refusal to grant license for stables but the order does not govern all cases of license for stables.*

It is necessary for the protection of the health and comfort of the inhabitants of a big city like Bombay or Calcutta that any resident, who is affected by a nuisance in the manner mentioned in S. 3 (z) of the Municipal Act, should have a right to go to a Magistrate over the head of the Commissioner or the Corporation and ask that the Commissioner should be restrained from exercising his powers so as to affect the complainant's individual right as resident by the creation of a private nuisance. If private nuisance affects two or three houses, the inhabitants of the two or three houses might either join in a complaint before the Magistrate and ask the Magistrate to decide specifically that the particular nuisance is a private nuisance affecting the residents of houses A, B and C. With regard to a public nuisance also, any resident of Bombay can ask for an order under S. 515, and, if the Court finds a public nuisance proved, the order of the Court would give relief to the public of the locality as against the nuisance, and vacating of any one or more houses would not mean an abatement of the nuisance in respect of the public. In the case of a public nuisance, no particular limits need be defined. The relief which the Court can grant, under S. 515 of the City of Bombay Municipal Act, in cases of public as well as private nuisance is *inter alia*, abatement of the nuisance by ordering the Commissioner not to grant a license for stables, etc. But it does not follow from the Court's making an order on the Commissioner that he should not grant a license, that that order is to govern all circumstances and all cases at all times. Where the Court passes an order under S. 515 to abate a nuisance with reference to a particular house, and that house falls vacant subsequent to the passing of the order and is not to be used any more for purposes other than those connected with the stables, the order ceased to have any operation. (*Taraporewala, J.*) **ALI MAHOMED SALEH MAHOMED v. MUNICIPAL COMMISSIONER OF BOMBAY.** 27 Bom. L. R. 581 = 87 I. C. 771 = A. I. R. 1925 Bom. 458.

*Person causing nuisance should ordinarily be treated as a necessary party to the proceeding.*

The person, who is said to have caused the nuisance, should be made a party to the proceedings, both in the inquiry which may be made by the Magistrate under S. 515 of the Act, and on the appeal in the High Court.

*Quære.*—Is the Government Pleader entitled to be heard in a matter of this kind? (*Shah, Ag. C. J. and Crump, J.*) **BOMBAY MUNICIPALITY v. L. R. MALLANDAINÉ.**

48 Bom. 241 = 25 Bom. L. R. 1321 = 26 Cr. L. J. 374 = 84 I. C. 854 = A. I. R. 1924 Bom. 241.

# BOMBAY CITY MUNICIPALITIES ACT (XVIII OF 1925.)

## —S. 110—Revision.

*Criminal Procedure Code, S. 435 — Further revision does not lie from revisional orders passed on order under S. 110.*

There is no right conferred by the statute on any of the aggrieved parties to make a further application for revision against the order passed by the Sessions Court in revision of the order passed by the Magistrate on appeal, against a notice of demand, under S. 110, Bombay City Municipalities Act. (*Patkar and Murphy, J.J.*) **AHMEDABAD MUNICIPALITY v. VADILAL.**

# BOMBAY CITY POLICE ACT (1902), S. 23.

30 Bom. L. R. 1084 = 112 I. C. 585 = 29 Cr. L. J. 1081 = A. I. R. 1928 Bom. 376.

## —S. 123—Construction of a building.

*Reconstruction of a wall amounts to construction of a building.*

Any material alteration or reconstruction of any wall amounts to a construction of a building within the meaning of S. 123. 35 Bom. 236, Appr.; (1888) Rat. Un-Cr. C. 402 and 35 Bom. 412, Dist. (*Patkar and Baker, J.J.*) **EMPEROR v. CHHOTALAL.**

30 Bom. L. R. 1082 = 29 Cr. L. J. 1060 = 112 I. C. 564 = A. I. R. 1928 Bom. 389.

# BOMBAY CITY POLICE ACT (IV OF 1902).

## —S. 23 (3)—Disobedience.

*Accused knowing that disobedience will result in conflict with police—Disobedience of order under S. 23 (3) constitutes offence under S. 188, I. P. C.*

Where having regard to the circular issued by the accused and his admissions that he convened the meeting, there is adequate ground for drawing the inference that the accused knew that the disobedience of the order of the Commissioner of Police would at least result in a conflict with police and the disobedience of the order under S. 23 (3) in such a case fulfils all the conditions necessary to constitute an offence under Penal Code, S. 188. A. I. R. 1923 All. 606, Ref. (*Patkar and Wild, J.J.*) **BHALCHANDRA TRIMBAK v. EMPEROR.** 54 Bom. 35 = 123 I. C. 497 = 31 Cr. L. J. 495 = 31 Bom. L. R. 1151 = 1929 Cr. C. 545 = A. I. R. 1929 Bom. 433.

—S. 23 (3) enlarges ambit of offence under Penal Code, S. 188—Disobedience of order under S. 23 (3) is punishable under S. 127 and equally under Penal Code, S. 188. *Lowe v. Dorling and Son*, (1906) 2 K. B. 772 and *Rex v. Wright*, (1758) 1 Burr. 543, Ref. (*Patkar and Wild, J.J.*) **BHALCHANDRA TRIMBAK v. EMPEROR.** 54 Bom. 35 = 123 I. C. 497 = 31 Cr. L. J. 495 = 31 Bom. L. R. 1151 = 1929 Cr. C. 545 = A. I. R. 1929 Bom. 433.

## —S. 23 (3)—Order of Commissioner—Validity of.

Power given to Police Commissioner can be used so as to interfere with rights of subjects as little as possible—Order issued by Police Commissioner prohibiting assembly to be convened even in private place is valid if necessary for public safety. 12 Bom. 490, Rel. on; *Duke of Bedford v. Dawson*, (1875) 20 Eq. 353, Ref. (*Patkar and Wild, J.J.*) **BHALCHANDRA TRIMBAK v. EMPEROR.** 54 Bom. 35 = 123 I. C. 497 = 31 Cr. L. J. 495 = 31 Bom. L. R. 1151 = 1929 Cr. C. 545 = A. I. R. 1929 Bom. 433.

## —S. 23 (3)—Promulgation of order.

*Order misdescribed as notification is not vitiated—Meeting convened against order of Police Commissioner—Order held duly promulgated under Penal Code, S. 188.*

On 19th July, 1920, the Commissioner of Police issued an order, styling it a "notification" under S. 23 (3) prohibiting the President, the Secretary, the members of the Managing Committee and the members of the Girni Kamgar Union from holding, convening, or calling together any assembly of mill hands or employers of the textile mills of Bombay for one week from the date of the order. The notification was duly promulgated in the mill area. On 13th July, 1929, a circular was issued purporting to be signed by six persons including the accused inviting the strikers to attend the meeting. The meeting was held in the evening and in consequence the accused were placed before a Magistrate who convicted them under I. P. C., S. 143.

**BOMBAY CITY POLICE ACT (1902), S. 23.**

*Held*, that in issuing the order under S. 23 (3) the Commissioner of Police properly exercised his discretion for the preservation of the public peace and safety and that it was lawfully promulgated within the meaning of Penal Code, S. 188.

*Held further*, that the order in writing was not vitiated by the misdescription as a notification. *Sharp v. Wakefield*, (1891) A. C. 17; A. I. R. 1924 Bom. 1, Ref. (*Patkar and Wild, J.J.*) **BHALCHANDRA TRIMBAK v. EMPEROR.** 54 Bom. 35=123 I. C. 497=

31 Cr. L. J. 495=31 Bom. L. R. 1151=1929 Cr. C. 545=A. I. R. 1929 Bom. 433.

**—S. 23 (3)—Scope.**

Any assembly or procession includes assembly in open space between chawls.

The words "any assembly or procession" in S. 23 (3) are very wide and are not restricted to an assembly or procession in a public place or street but includes an assembly convened in an open space between the chawls. (*Patkar and Wild, J.J.*) **BHALCHANDRA TRIMBAK v. EMPEROR.** 54 Bom. 35=123 I. C. 497=

31 Cr. L. J. 495=31 Bom. L. R. 1151=1929 Cr. C. 545=A. I. R. 1929 Bom. 433.

**—S. 33—Bail.**

Magistrate can grant bail to an accused who has been arrested in pursuance of S. 54 (7) of the Cr. P. C. whom, he has been asked to retain in custody, by the Dt. Magistrate of a Native State.

Per *Fawcett, J.*—As S. 54 (7) does not apply to arrests in Bombay, when the accused is arrested without warrant in Bombay, he must be deemed to have been arrested under S. 33 (g). But even in such a case under S. 23 of the Extradition Act, the Magistrate has power to grant bail. (*Marten and Fawcett, J.J.*) **SHRIRAM SHAMBHUDAYAL In re.**

87 I. C. 100=26 Bom. L. R. 984=26 Cr. L. J. 948=A. I. R. 1925 Bom. 104 (105.)

**—S. 33 (g)—Arrest under bail.**

Magistrate has power to grant bail to an accused who has been arrested in pursuance of S. 54 (7) of the Cr. P. C. whom, he has been asked to retain in custody, by the Dt. Magistrate of a Native State.

Per *Fawcett, J.*—As S. 57 (7) does not apply to arrests in Bombay, when the accused is arrested without warrant in Bombay, he must be deemed to have been arrested under S. 33 (g). But even in such a case under S. 23 of the Extradition Act, the Magistrate has power to grant bail. (*Marten and Fawcett, J.J.*) **SHRIRAM SHAMBHUDAYAL In re.**

26 Cr. L. J. 948=26 Bom. L. R. 984=87 I. C. 100=A. I. R. 1925 Bom. 104.

**—S. 45—Scope.**

The Act does not generally, nor does S. 45 in particular, deal with criminal Courts or their special powers. The special power of the Chief Presidency Magistrate, under S. 45, is not as a criminal Court, but as a *persona designata*: 38 Mad. 581; 21 Bom. 279; A. I. R. 1923 Bom. 421; 36 Bom. 47 and A. I. R. 1930 Bom. 231, Ref. (*Madgavkar, Ag. C. J. and Barlee, J.*) **USMAN HAJI MAHOMED In re.**

54 Bom. 664=32 Bom. L. R. 1138=129 I. C. 590=I. R. 1931 Bom. 190=1930 Cr. C. 1022=32 Cr. L. J. 397=A. I. R. 1930 Bom. 486.

**—S. 63—Evidence.**

Terms of S. 63 identical with old Cr. P. Code, S. 162—Objection to evidence must therefore fall under S. 63, *Bombay City Police Act*.

The terms of S. 63 have remained unaffected by

**BOMBAY CITY POLICE ACT (1902), S. 127.**

amendment of S. 162, Cr. P. Code, by the Amending Act of 1923 and remain identical with the corresponding section of the old Code. Therefore, any objection to the evidence being admissible must fall within the terms of S. 63, *Bombay City Police Act*, 1902. (*K. Kemp, J.*) **EMPEROR v. WAHIDUDDIN HAMIDUDDIN NO. 2.** 54 Bom. 628=I. R. 1930 Bom. 429=31 Cr. L. J. 1003=1930 Cr. C. 482=126 I. C. 333=32 Bom. L. R. 327=A. I. R. 1930 Bom. 158.

**—Ss. 70, 72 and 74—Police Custody.**

Accused though arrested under requisition from Magistrate are in police-custody.

The mere fact, that the Chief Presidency Magistrate is furnished with certain information to enable him to make the requisition does not mark the completion of police investigation and the commencement of an inquiry or trial before him. Therefore accused are, when arrested, not in Magistrate's custody but are in police custody. (*Macleod, C. J. and Coyajee, J.*) **P. B. PONDE v. EMPEROR.** 49 Bom. 623=

27 Bom. L. R. 612=26 Cr. L. J. 1181=88 I. C. 605=A. I. R. 1925 Bom. 387.

**—Ss. 89 (3) and 134 (2)—Notice.**

Service of order on the President, Secretary and Members of Committee or Union is sufficient in view of Ss 89 (3) and 134 (2) and Cr. P. C., S. 69 (3)—Knowledge of service of notice may be proved by circumstances.

Having regard to the provisions of S. 134, Cl. (2), S. 89 (3) and Cr. P. Code, S. 69, Cl. (3), the service on the President, the Secretary, the Members of the Managing Committee and the Members of Union, of the order issued by Commissioner of Police and duly promulgated is not irregular. Though the order was not personally served on the accused, yet the knowledge of the order by the accused may be proved by circumstances which would clearly show or give rise to an inference that the accused had such knowledge. Rat. 30 and A. I. R. 1927 Cal. 28, Ref. (*Patkar and Wild, J.J.*) **BHALCHANDRA TRIMBAK v. EMPEROR.** 54 Bom. 35=31 Cr. L. J. 495=31 Bom. L. R. 1151=

1929 Cr. C. 545=123 I. C. 497=A. I. R. 1929 Bom. 433.

**—S. 112 (d)—Reputed thief.**

The fact of there being two previous convictions for theft suffices to make the accused a 'reputed thief' within the meaning of cl. (d) of S. 112. (*Fawcett and Madgavkar, J.J.*) **EMPEROR v. CHAND MAHABOOB.**

27 Bom. L. R. 1388=27 Cr. L. J. 123=91 I. C. 699=A. I. R. 1926 Bom. 46.

**—S. 122—Charge.**

Cr. P. C., S. 227—Magistrate can alter a charge under S. 122 of Act (1902), to one under S. 352, I. P. C.

Where an accused is sent up on a police report for trial for an offence punishable under S. 122 of the *Bombay City Police Act* the trying Magistrate can alter the charge and convict him of an offence under S. 352, I. P. C. 36 Cal. 869, Foll. (*Marten and Madgavkar, J.J.*) **FRAMJI BOMANJI v. EMPEROR.** 28 Bom. L. R. 291=93 I. C. 896=27 Cr. L. J. 496=A. I. R. 1926 Bom. 255.

**—S. 127—Procedure.**

No special procedure is prescribed for offence under S. 127.

All the offences under a special law are tried in accordance with the Cr. P. Code, and there is no special procedure prescribed for an offence under S. 127 for disobedience of an order under S. 23 (3). *Institute of Patent Agents v. Lockwood*, (1894) A. C. 347 and *Queen*

**BOMBAY COTTON DUTIES ACT (1896), S. 16.**

*v. Hall*, (1891) 1 Q. B. 747, Ref. (*Patkar and Wild, J.J.*) BHALCHANDRA TRIMBAK *v.* EMPEROR.

54 Bom. 35=123 I.C. 497=31 Cr.L.J. 495=  
31 Bom. L.R. 1151=1929 Cr. C. 545=  
A.I.R. 1929 Bom. 433.

**BOMBAY COTTON DUTIES ACT (II OF 1896).****—S. 16—Scope.**

—*Free access to godown is covered by the section.*

Where the accused had notice to remove the lock and to give the complainant free access and he declined to do so.

*Held*, there was wilful obstruction on the part of the accused. (*Shah, Ag. C. J. and Fawcett, J.*) MUKUNDLAL BANSILAL *v.* KING-EMPEROR.

26 Bom. L.R. 721=25 Cr.L.J. 1281=82 I. C. 353=  
A. I. R. 1924 Bom. 492.

**—S. 25, Cl. 9—Wilful obstruction.**

—*Wilful obstruction does not require any overt act.*

The Inspector of cotton excise wanted access to the godown of the accused's mill for inspection of the goods or account books. The godown was locked. The requisition of the complainant to have it opened was not complied with. It was not suggested in the case that the accused had not the necessary control over the key and that he was not in a position to open the godown if he was minded to do so.

*Held*, under these circumstances if the accused refused to open the godown, he undoubtedly caused an obstruction to the free access to this godown to which the complainant was entitled. It does not matter as to what the object of the complainant was in asking the accused to open the godown. Obstruction is caused no less because the purpose for which it was wanted is not established as alleged by the complainant. (*Shah, Ag. C. J. and Fawcett, J.*) MUKUNDLAL BANSILAL *v.* KING-EMPEROR.

26 Bom. L.R. 721=  
25 Cr. L. J. 1281=82 I.C. 353=  
A. I. R. 1924 Bom. 492.

**BOMBAY DISTRICT MUNICIPAL ACT (III OF 1901).****—S. 3 (12)—Interpretation.**

—*Definitions of "building" is not exhaustive—It includes also foundation.*

The definition of the word "building" in S. 3 (7) is not intended to be an exhaustive definition. The word "include" is not equivalent to the word "mean." The word "building" is quite wide enough to include the foundations. (*Fawcett and Patkar, J.J.*) CHOJAN LAL MOTIRAM *v.* EMPEROR.

51 Bom. 818=  
29 Bom. L. R. 733=8 A. I. Cr. R. 418=  
103 I. C. 602=28 Cr. L. J. 714=  
A. I. R. 1927 Bom. 401.

**—S. 3 (12)—Street defined.**

—*Open space accessible to others is a street though owned privately.*

An open space owned by the accused but accessible to the occupiers of other houses in the same dehal is a street. "All other persons" would mean persons other than the occupier of such buildings and would not mean all occupiers, of all the buildings within that space. (*Shah, Ag. C. J. and Crump, J.*) DAYABHAI LALLUBHAI *v.* AHMEDABAD MUNICIPALITY.

25 Bom. L. R. 1218=25 Cr. L. J. 990=  
81 I.C. 638=A. I. R. 1924 Bom. 116.

**—Ss. 3 (12) and 96—Vacant portion.**

The accused left a vacant portion for passage between two proposed buildings the site of which belonged to him. Kuria Municipal Bye-Law No. 132 provided that the height of the building should not be more than the width of the street on which it abutted.

**BOMBAY DT. MUNICIPAL ACT (1901), S. 90.**

*Held*, that the vacant space left by the accused between his buildings was not a street within S. 3 (12). (*Macleod, C. J. and Shah, J.*) TYABALLI MULLA LUKMANJI *v.* EMPEROR.

26 Bom. L. R. 216=  
25 Cr. L. J. 1188=82 I. C. 52=  
A. I. R. 1924 Bom. 365.

**—S. 48 (f)—Information about children of school-going age.**

—*Bye-law 4—Not ultra vires—Bombay Primary Education Act (I of 1918), S. 18 does not curtail powers of Municipality to frame bye-laws.*

The accused was convicted for refusing to furnish information required by the Municipality under bye-law 4 framed under S. 48 (f) of the Bombay District Municipal Act, 1901, with regard to children of school-going age.

*Held*, that the bye-law is in no way inconsistent with the principal Act or with the rules made by the Local Government under Act I of 1918, (Primary Education Act). The powers of the Municipality to frame bye-laws under S. 48 of the principal Act are not in any way curtailed by the powers conferred under S. 18 of that Act. (*Shah and Kajiji, J.J.*) EMPEROR *v.* PARSHOTAM JAGJIVAN.

25 Bom. L. R. 767=25 Cr. L. J. 330=  
77 I. C. 186=A. I. R. 1924 Bom. 47.

**—S. 77, Cl. 2—'Defraud'.**

—A man is defrauded if thereby he is deprived of some right or property to which he is entitled, and any act done with the intention of wrongfully depriving him of the benefit of such right would amount to an attempt to defraud him within the meaning of S. 77 (2). (*Fawcett and Madgavkar, J.J.*) EMPEROR *v.* HARJIVAN VALJI.

50 Bom. 174=28 Bom. L. R. 115=  
27 Cr. L. J. 1335=98 I. C. 407=  
A. I. R. 1926 Bom. 231.

**—S. 86—Revision of Magistrate's order.**

—*Magistrate's order on appeal under S. 86 is not revisable by High Court under Cr. P. C., S. 435.*

Under S. 86 a Magistrate hearing an appeal is merely an appellate authority having jurisdiction given by the Act to deal with the question of a civil liability. He is, therefore, not an inferior criminal Court within S. 435, and the High Court has no power to revise his order. 9 Bom. L. R. 1347, Foll. (*Kincaid, J. C. and Barlee, A. J. C.*) KARACHI MUNICIPALITY *v.* JAFFERJI TAYABJI.

21 S. L. R. 51=27 Cr. L. J. 1127=  
97 I. C. 647=A. I. R. 1927 Sind 23.

**—S. 90 (3)—Manner of Work.**

—*Manner of work must be specified.*

Where the manner in which the work is to be carried out is not attempted to be specified, the conviction must be set aside. (*Shah, Ag. C. J. and Crump, J.*) DAYABHAI LALLUBHAI *v.* AHMEDABAD MUNICIPALITY.

25 Bom. L. R. 1218=25 Cr. L. J. 990=  
81 I. C. 638=A.I.R. 1924 Bom. 116.

**—S. 90—Old public streets.**

—*Applies to old as well as new streets.*

S. 90 is not confined to new public streets alone. It applies to all public streets whether old or new. (*Raymond and Aston, A.J.Cs.*) HYDERABAD MUNICIPALITY *v.* KAZI FAKHRUDIN.

81 I. C. 134=  
17 S. L. R. 273=25 Cr. L. J. 646=  
A. I. R. 1925 Sind 90.

**—Ss. 90, 50 and 122—Purpose not authorised by statute.**

—*Under S. 90 a Municipality cannot authorise the use of a strip of a street for purpose not authorised by statute—Corporation.*

**BOMBAY DT. MUNICIPAL ACT (1901), S. 96.**

A strong presumption arises that the Legislature did not intend, by the general powers it gives to the Municipality to discontinue or stop up public streets, that they should use that power for a purpose which contravenes the intention shown by S. 122. It rests upon anyone who supports the action of the Municipality to show that it had statutory authority to divert a portion of a public street for such a purpose. A Municipality has no power to authorize the use of a part of the street for the purpose of keeping logs of wood for sale. (*Fawcett and Madgavkar, J.J.*) **EMPEROR v. VISHVANATH.**

50 Bom. 674 = 28 Bom. L. R. 1033 =  
27 Cr. L. J. 1160 = 97 I. C. 744 =  
A. I. R. 1926 Bom. 535.

**—Ss. 96 and 97—Alteration of charge.**

*—Charge of offence under S. 96—Offence not proved—Charge cannot be altered into one under S. 97 read with S. 155.*

The Magistrate, when once he had come to the conclusion that the offence of the accused of erecting huts on Municipal land without permission did not come within S. 96, could not alter the charge and treat the offence as if it was punishable under S. 97 read with S. 155. (*MacLeod, C. J. and Shah, J.*) **MATUBHAI M. SHAH v. EMPEROR.**

66 I. C. 323 =  
24 Bom. L. R. 105 = 46 Bom. 657 =  
23 Cr. L. J. 259 = A. I. R. 1922 Bom. 97.

**—Ss. 96, 92 and 91-A—Building beyond street-line.**

*—Permission to build—Permission subject to keeping land within regular line of street unbuilt upon is legal—Building beyond the line is an offence.*

The Rander Municipality granted permission to the accused to build, subject to the condition that the house should be built after leaving open the land within the alignment of the road in front. The accused, in spite of the condition, built up his house within the alignment.

*Held*, that the accused had offended against S. 96 as amended in 1914; for he was bound to ask for permission to re-construct his building within the regular line of the street and the Municipality were entitled to issue such orders as they thought proper not inconsistent with the Act and to impose in writing such conditions with reference to the location of the building in relation to any street existing or projected as they thought proper. Under S. 92 certain powers are given to a Municipality, if any of the conditions mentioned therein exist, to require the owner by written notice to remove his building to the regular line of the street or the front of the adjoining building on either side. (*MacLeod, C. J. and Coyajee, J.*) **EMPEROR v. THAKORDAS MOTIRAM.**

89 I. C. 1031 = 26 Cr. L. J. 1463 =  
27 Bom. L. R. 1023 = A. I. R. 1925 Bom. 505.

**—S. 96 (5)—Interference by High Court.**

*—High Court will interfere in revision where Municipality has acted capriciously or unreasonably—Motive of Municipality is irrelevant where it has acted in accordance with law.*

No doubt High Court will interfere where it is clearly shown that a Municipality, or other public body, has acted capriciously, arbitrarily, or unreasonably to the prejudice of the applicant, in delaying the sanction. But a Court of law is not entitled to go into the question of the exact motives with which the Municipality or an officer of the Municipality has acted, provided that the action taken is in accordance with law. The question of motive then becomes irrelevant. (*Fawcett and Patkar, J.J.*) **CHHAGANLAL MOTIRAM v. EMPEROR.**

51 Bom. 818 = 29 Bom. L. R. 733 =  
103 I. C. 602 = 28 Cr. L. J. 714 =  
A. I. R. 1922 Bom. 401.

**BOMBAY DT. MUNICIPAL ACT (1901), S. 96.****Ss. 96 (5) and 161 (1)—Interpretation.**

*—Foundation begun long before 6 months—Walls begun within 6 months—Prosecution in respect of walls is in time—“Makes” means not only beginning of a building but also its continuance.*

The erection of a wall of a building is a distinct stage from the stage of laying its foundations; and house-walls, as well as compound walls are covered by the word “building” in S. 96. A. I. R. 1921 Bom. 62, Ref. The words “or makes” show that it is not only the mere beginning of a building that is punishable, but its continuance even to completion without the requisite permission, or in defiance of legal orders. Therefore, where the walls of a building for which no sanction has been obtained have been built within 6 months, prosecution in respect of such walls is in time although the foundation was begun long before 6 months. (*Fawcett and Patkar, J.J.*) **CHHAGANLAL MOTIRAM v. EMPEROR.**

51 Bom. 818 = 29 Bom. L. R. 733 =  
8 A. I. Cr. R. 418 = 103 I. C. 602 = 28 Cr. L. J. 714 =  
A. I. R. 1927 Bom. 401.

*—“Further orders” also include demand for further particulars.*

The words “further orders” in Cl. (b) of S. 96 (4) do not mean only orders of the kind referred to in sub-S. (2) and they include any demand for further particulars. (*Fawcett and Patkar, J.J.*) **CHHAGANLAL MOTIRAM v. EMPEROR.**

51 Bom. 818 =  
29 Bom. L. R. 733 = 8 A. I. Cr. R. 418 =  
103 I. C. 602 = 28 Cr. L. J. 714 =  
A. I. R. 1927 Bom. 401.

*—“All information they may require” etc.—Demand for modified plan excluding land falling within alignment of a proposed street is included.*

The words “all information they may require regarding the location of the building with reference to any existing or projected streets” in S. 96 (1) (b) are wide enough to include a demand for a modified plan, excluding certain land which falls within the alignment of a proposed street and proposed to be built upon. (*Fawcett and Patkar, J.J.*) **CHHAGANLAL MOTIRAM v. EMPEROR.**

51 Bom. 818 = 29 Bom. L. R. 733 =  
8 A. I. Cr. R. 418 = 103 I. C. 602 = 28 Cr. L. J. 714 =  
A. I. R. 1927 Bom. 401.

*—“Regarding the limits, etc.” refer to limits of building apart from its location.*

The words “regarding the limits of the proposed building” in sub-S. (1) of S. 96. refer to the limits of the building apart from any question as to its location with reference to any existing or projected streets. (*Fawcett and Patkar, J.J.*) **CHHAGANLAL MOTIRAM v. EMPEROR.**

51 Bom. 818 = 29 Bom. L. R. 733 =  
8 A. I. Cr. R. 418 = 103 I. C. 602 = 28 Cr. L. J. 714 =  
A. I. R. 1927 Bom. 401.

*—“Any building” in the section covers one in a private Mahala.*

The words “any building” in S. 96 are wide enough to cover a building in a private Mahala. (*Fawcett, J. C. and Kemp, A. J. C.*) **EMPEROR v. JANA FAKIR.**

66 I. C. 999 = 15 Sind L. R. 171 = 23 Cr. L. J. 343 =  
A. I. R. 1922 Sind 22.

**—S. 96 (5)—Privies.**

*—Pen Municipality—By-law 9—Does not apply to privies built without permission.*

So far as rule 9 is concerned, it seems clear that the communication that is required by rule 9 to be made after the completion of the privy relates to a privy with reference to which permission has been granted under rule 8, and not to a privy which has been constructed without the permission of the municipality. (*Shah, Ag.*)

**BOMBAY DT. MUNICIPAL ACT (1901), S. 96.**

*C. J. and Fawcett, J.*) KING EMPEROR *v.* EZEKIEL  
26 Bom. L. R. 715 =  
MOSES PENKAR.

25 Cr. L. J. 1290 = 82 I. C. 362 =  
A. I. R. 1924 Bom. 484.

**—S. 96—Stone compound wall.**

—*Erection of stone compound wall at a distance is erecting building.*

Erecting a stone compound-wall at a distance from the house is erecting a building within the meaning of S. 96. (*MacLeod, C. J. and Shah, J.*) EMPEROR *v.* RAMRAO ABAJI.

45 Bom. 1151 = 23 Bom. L. R. 831 =  
22 Cr. L. J. 622 = 63 I. C. 158 =  
A. I. R. 1921 Bom. 62.

**—Ss. 101 (1) and 107 (1)—Distinction.**

—*Distinction is difficult to make.*

A notice served upon the Respondent by which he is called upon to repair two sinks on the first storey so as to discharge waste water into the drainage-cess-pool falls under S. 101 (1) and not under S. 107. It is difficult to lay down with precision the scope of S. 107, sub-section 1; and it may not be always easy to draw the dividing line between orders falling under S. 107 (1) and those under S. 107. (*Shah and Kajiji, J.J.*) EMPEROR *v.* RAMCHANDRA GANGADHAR.

25 Cr. L. J. 1148 =  
81 I. C. 972 = A. I. R. 1924 Bom. 70.

**—Ss. 107 and 131—Service of Notice.**

—*Notice cannot be served on a person as agent nor can he be prosecuted on such notice.*

Under S. 154, cl. (2) it is open to the Municipality to issue the notice addressed to the owner of the premises without specifying his name. If they do so they can prosecute the trustee who was recovering rents from tenants of the property, as the owner of the premises under S. 3, cl. (8) of the Act, but he could not be prosecuted for failure to comply with notice addressed to another person and delivered to him as the agent of that person. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) HARSOMAL M. GURUBUXANI *v.* EMPEROR.

18 S. L. R. 90 = 88 I. C. 187 =  
26 Cr. L. J. 1099 = A. I. R. 1925 Sind 262.

**—S. 113—Private Street.**

—*House abutting private street—Height of the eaves cannot be regulated.*

S. 113 which empowers the Municipality to regulate the height of the eaves does not apply to the eaves of a house which abuts on a private street; 44 Bom. 193; A. I. R. 1921 Bom. 130 and 27 Bom. 221, Dist. (*Patkar and Baker, J.J.*) EMPEROR *v.* GAFUR DAUD BOHRA.

31 Bom. L. R. 578 = 120 I. C. 360 =  
1929 Cr. C. 37 = 31 Cr. L. J. 108 =  
A. I. R. 1929 Bom. 286.

**—S. 122—Power to issue Notice.**

—*Municipality has no power to issue under.*

S. 122 gives no power to a Municipality to issue a notice to a person alleged to have erected an encroachment to remove it. Although the Municipality may send such a notice, it is not a notice under the section. Such a notice may be sent as a matter of courtesy, preliminary to the Municipality taking action under the powers given them by the section to remove an encroachment themselves. (*MacLeod, C. J. and Coyajee, J.*) ATMARAM SHAMJI *v.* EMPEROR.

24 Bom. L. R. 384 = 66 I. C. 817 = 23 Cr. L. J. 321 =  
A. I. R. 1923 Bom. 30.

**—S. 131—Liability of Occupier.**

An occupier of land cannot plead as a defence to a notice under S. 131, that none but the owner is responsible to remove a nuisance. (*Kennedy, J. C. and Aston, A. J. C.*) HAJI UMAR *v.* KING-EMPEROR.

**BOMBAY DT. MUNICIPAL ACT (1901), S. 155.**

18 S. L. R. 104 = 87 I. C. 104 = 26 Cr. L. J. 952 =  
A. I. R. 1925 Sind 264.

**—S. 151—Continuing fine.**

—*For awarding continuing fine it must be proved that accused was continuing offence after prior conviction—Unless such charge is specifically made and finding is given as to number of days of continuing breach, an order awarding continuing fine is unwarranted.*

Before a continuing fine is imposed for a continuing offence it must be alleged and proved that the accused had continued to use the premises for a specific number of days after his conviction, and that he had no license during those days. This charge must be the subject of a separate prosecution, and a separate inquiry. It is only on proof of the charge so laid that the Magistrate is called upon to exercise his discretion and to determine what would be the proper amount of fine per day which the accused should be made to pay and to give a finding as to the number of days for which such fine is to be levied. (*Rupchand and DeSouza, A. J. C.*) HUSSAIN HAJI UMAR *v.* EMPEROR.

23 S. L. R. 125 =  
115 I. C. 307 = 30 Cr. L. J. 442 =  
12 A. I. Cr. R. 260 = A. I. R. 1929 Sind 50.

**—S. 151 (1) (n)—Interpretation.**

—*Keeping wood for selling comes properly within Cl. (n).*

Where the accused used what is described as a shop for selling wood, and kept wood there in order to sell it.

Held, that it is a case which properly comes within the meaning of Cl. (n), as there would be continual storing of wood for the purpose of selling it, and not a casual storage of a few days' supply for domestic use. 29 Bom. 193, Dist. (*Shah and Fawcett J.J.*) EMPEROR *v.* NANUBHAI.

50 Bom. 760 = 28 Bom. L. R. 1070 =  
27 Cr. L. J. 1179 = 97 I. C. 811 =  
A. I. R. 1926 Bom. 546.

**—S. 151 (1)—Manufacture of Oil.**

—*Person manufacturing oil by machinery without license can be convicted.*

A manufactory or place of business where machinery is used for the purpose of extracting oil does involve a risk of fire. A person can, therefore, be convicted for manufacturing oil by means of machinery within the Municipal district without obtaining a license in respect thereof. (*Rupchand and DeSouza, A. J. C.*) HUSSAIN HAJI UMAR *v.* EMPEROR.

23 S. L. R. 125 =  
115 I. C. 307 = 30 Cr. L. J. 442 =  
12 A. I. Cr. R. 260 = A. I. R. 1929 Sind 50.

**—S. 155—Daily fine.**

—*For daily fine, person must be first convicted for principal breach and secondly conviction for continuing the same.*

There must first be a conviction for the breach, and again a subsequent conviction for continuing the breach from the date of the first conviction, before an order can be passed inflicting a daily fine. A. I. R. 1929 Sind 50, Foll. (*Percival and Rupchand, A. J. C.*) JETHANAND *v.* EMPEROR.

23 S. L. R. 222 = 115 I. C. 308 =  
30 Cr. L. J. 443 = 12 A. I. Cr. R. 424 =  
A. I. R. 1929 Sind 52.

—*No previous conviction—Imposing daily fine is illegal.*

A Court cannot sentence a person to pay a fine for a prospective offence, but can only impose a daily fine for failure or disobedience which is proved to have continued for a certain period after the date of the first conviction or after the date of such notice or requisition as may be required by the enactment. The last words in S. 155 show that there should be a conviction for a

**BOMBAY DT. MUNICIPAL ACT (1901), S. 155.**

previous breach, and then a subsequent conviction for continuing the breach after the date of that first conviction, and therefore when there is no previous conviction under S. 155, a Magistrate cannot impose a continuing daily fine. (*Fawcett and Madgavkar, J.J.*) **EMPEROR v. DHARALA MUNGAL.**

28 Bom. L.R. 1040 = 98 I.C. 400 =  
27 Cr. L. J. 1328 = A.I.R. 1926 Bom. 526.

**—S. 155—Disobedience of notice.**

—S. 155—*Lawful order—Notice under S. 122 is not a lawful order and disobedience thereto is no offence.*

Where the accused was served with a notice under S. 122 of the Act to remove an *otta* which he had constructed and was convicted under S. 155 for having disobeyed a lawful order, *held*, on application to the High Court that no notice need be issued under S. 122 and therefore disobedience of such a notice does not amount to disobedience of a lawful order within S. 155. (*MacLeod, C.J. and Coyajee, J.*) **ATMARAM SHAMJI v. EMPEROR.**

24 Bom. L.R. 384 = 23 Cr. L. J. 321 =  
66 I.C. 817 = A.I.R. 1923 Bom. 30.

**—S. 161—Extension of period.**

—*Application by accused under consideration—Time is not extended.*

The delay caused by the fact that petitions made by the accused were under consideration cannot extend the period of six months allowed in such cases. (*Percival and Rupchand, A. J. Cs.*) **JETHANAND v. EMPEROR.**

23 S.L.R. 222 = 115 I.C. 308 = 30 Cr. L. J. 443 =  
12 A.I.Cr.R. 424 = A.I.R. 1929 Sind 52.

**—S. 188—Interpretation.**

—*Notified Area rules—R. 18, Proviso 1.*

Proviso to R. 18 contemplates that the occupier from whom the taxes are leviable should be a tenant of the property. 43 Bom. 864, Ref. (*Mirza and Patkar, J.J.*) **In re NURMAHOMED KAMELAHLI.**

31 Bom. L.R. 541 = 30 Cr.L.J. 992 = 1929 Cr.C. 46 =  
119 I.C. 191 = A.I.R. 1929 Bom 273.

**—S. 188 (1)—Scope.**

—*Rules under R. 27 (1), (2), (3), (4) and (5)—Permission cannot be refused for indefinite period—Notice given under R. 27 (1)—Conviction under R. 27 (5) is wrong.*

An order refusing permission for an indefinite period cannot be passed. There is no justification for the conviction under R. 27 (5) if the petitioner has given notice as required by sub-rule (1) and the Municipal Committee have neither passed orders under sub-rule (2) nor issued any provisional order or demand for further particulars under sub-rule (3). (*MacLeod, C.J. and Shah, J.*) **ARDESHWAR JIVANJI MISTRI v. EMPEROR.**

66 I.C. 331 = 24 Bom. L. R. 102 = 23 Cr. L. J. 267 =  
A. I. R. 1922 Bom. 221.

**BOMBAY DISTRICT POLICE ACT (IV of 1890).**

—**Ss. 11, 51 (e) and 53, Sch. B—What 'on duty' includes.**

—*Police Officer aiding another officer outside his jurisdiction, but in same district where he serves, is deemed to be on duty—Penal Code, S. 353.*

For the purposes of this act Police Officers of every grade are appointed to an entire district in which they have to serve and are to be deemed to be on duty in all parts of that district. Although a Police Officer may be outside the area of his jurisdiction, he is bound within the limits of the district for which he is appointed to aid another Police Officer when called on by him to do so or to keep order as required under Ss. 51 (e) and 53. Therefore, any person assaulting a Police Officer while he is engaged in discharging the duty under Ss. 51 (e)

**BOMBAY POLICE ACT (1890), S. 61.**

and 53 is guilty of an offence under S. 353, Penal Code. 40 All. 28, Dist. (*Kincaid, J. C. and Aston, A. J. C.*) **KHAIRO v. EMPEROR.** 88 I.C. 15 = 18 S.L.R. 221 =  
26 Cr. L. J. 1071 = A.I.R. 1925 Sind 280.

—**Ss. 51 (1) (b) and S. 80 (1)—Applicability of S. 80 (1).**

—*The act of investigating police officer of reducing a statement of a witness in writing is one done under colour or in excess of duty imposed by S. 51 (1) (b) even if he acts mala fide.*

Where an investigating police officer reduces a statement of a witness to writing, his act is one done under colour or in excess of a duty imposed or an authority conferred on him by S. 51 (1) (b), whether he acts *bona fide* or otherwise and even if he acts *mala fide* and in deliberate disregard of his proper duty or authority and deliberately takes down the statement of such witnesses incorrectly S. 80 (3) applies. (1885) Rat. 220 and 41 Bom. 737, Foll. (*Fawcett, Madgavkar, and Mirza, J.J.*) **NARAYAN HARI v. YESHWANT RAOJI.**

114 I.C. 246 = 30 Bom. L.R. 1018 = 62 Bom. 832 =  
30 Cr.L.J. 278 = 12 A.I.Cr.R. 154 =  
A.I.R. 1928 Bom. 352 (F.B.).

**—S. 53—Failure to obey order.**

—*Hindu procession proceeding in particular authorised street—Mahomedan procession coming in opposite direction ignoring orders of police to go by another route—Accused are guilty under Penal Code, S. 153.*

In ordinary circumstances undoubtedly a police constable has not the power to stop a person from proceeding along a particular street and order him to go by another. He can stop him for a certain time in order to regulate traffic so as to prevent the traffic getting mixed up and obstructing passage along the street. Where the accused Mahomedans formed themselves into a procession, and proceeded along a certain route at the time when another procession of Hindus was passing in the opposite direction along the same route as settled by authorities, ignoring the orders of policemen stationed there to control traffic that they should go by another route, and a riot with injury to many persons was the result.

*Held*, that the act of the accused in refusing to comply with the orders of the police was an offence under Penal Code, S. 153, the orders of the police being valid under Bombay District Police Act, S.53. (*Fawcett and Mirza, J.J.*) **GULAM KADAR v. EMPEROR.**

30 Bom.L.R. 367 = 10 A.I.Cr.R. 204 =  
29 Cr.L.J. 489 = 109 I.C. 217 =  
A.I.R. 1928 Bom. 156.

**—S. 53 (1) (a)—Interpretation.**

—*Control—Meaning explained.*

The ordinary meaning of the verb "control" conveys an idea of hindering or checking a person in doing something; and the extent of any particular prevention must depend upon the special necessities of the occasion. (*Fawcett and Mirza, J.J.*) **GULAM KADAR v. EMPEROR.**

30 Bom. L.R. 367 = 109 I. C. 217 =  
10 A.I.Cr.R. 204 = 29 Cr. L. J. 489 =  
A. I. R. 1928 Bom. 156.

**—S. 61 (o)—Failure to frame charge.**

—*Cr.P.Code, S. 403 (1)—Acquittal under S. 160, Penal Code, is a bar to subsequent trial under S. 61 (o).*

Failure to frame alternative charges both under S. 160, I. P. C. and also under S. 61 (o). Bombay District Police Act, and acquittal under the former operate as a bar to the fresh prosecution under the latter. 45



**BOMBAY DT. POLICE ACT (1890), S. 61.**

Cal. 727 and 1 B.L.R. 15, Foll. (*Patkar, and Baker, J.J.*) **EMPEROR v. KALLASANI.** 29 Bom.L.R. 1478 = 28 Cr.L.J. 1032 = 106 I. C. 216 = A.I.R. 1927 Bom. 629.

**—S. 61 (a)—Ignorance of law.**

*Ignorance of law is no excuse.*

That the driver accused was ignorant of the requirements of law, by itself would not be a lawful excuse within S. 61 (a), for his driving a cart without a lamp. (*Shah and Fawcett, J.J.*) **EMPEROR v. CHHITIA DHURIYA.** 28 Bom.L.R. 1058 = 97 I.C. 976 = 27 Cr. L. J. 1216.

**—S. 61 (a)—Interpretation.**

*Lawful excuse must be reasonable and not opposed to any law—Person, driving a bullock-cart unexpectedly kept out till dark, is not reasonable excuse.*

The word "excuse" in clause (a) of S. 61 conveys the idea of an excuse that is (a) reasonable and (b) not opposed to any law or principle of law. If an owner or driver of a vehicle fails to have a lamp available in cases where he may find such a lamp required by law, he is not "taking all steps reasonably practicable" to prevent the vehicle being without a lamp. There is, in such a case, an implied duty to have a lamp or lantern available when required; and therefore, the mere excuse that the accused was unexpectedly kept out till dark is not ordinarily a reasonable one except under exceptional circumstances. (*Shah and Fawcett, J.J.*) **EMPEROR v. BHANGDA FAKIRA.** 28 Bom. L. R. 1061 = 27 Cr. L. J. 1182 = 97 I. C. 814 = A. I. R. 1926 Bom. 530.

**—Lawful excuse.**

Per *Shah, J.* What a lawful excuse is, is a question which must be determined on the facts and circumstances of each case. (*Shah and Fawcett, J.J.*) **EMPEROR v. BHANGDA FAKIRA.** 28 Bom. L. R. 1061 = 27 Cr. L. J. 1182 = 97 I. C. 814 = A. I. R. 1926 Bom. 530.

**—S. 61-A—Lands used as streets.**

*Lands in Borsad temporarily vesting in Municipality do not cease to be lands included for purposes of Land Revenue Administration—Corporation.*

The mere fact that the lands used as streets, vest for the time being in the Municipality, as trustees under the Bombay District Municipal Act, does not prevent the lands being included within the limits of the town for the purposes of the Land Revenue Administration and S. 61-A will apply to such lands. (*Fawcett and Madgavkar, J.J.*) **CHUNILAL HARGOVAN v. EMPEROR.** 28 Bom. L. R. 1023 = 97 I. C. 668 = 27 Cr. L. J. 1148 = A. I. R. 1927 Bom. 67.

**—S. 66, cl. (f)—Obstruction with permission of Municipality.**

*Municipality authorising exposure of timber for sale—Public street obstructed—Person exposing is still not exempted under S. 61.*

The mere fact that the Municipality has authorised some persons to use a portion of the public street for exposing logs of timber for sale, does not exempt those persons from being prosecuted under S. 61 (f) if such exposure has caused obstruction in that public street. (*Fawcett and Madgavkar, J.J.*) **EMPEROR v. VISHWANATH NANA KARPE.** 27 Cr. L. J. 1160 = 97 I. C. 744 = 28 Bom. L. R. 1033 = 50 Bom. 674 = A. I. R. 1926 Bom. 535.

**—Ss. 80 (1) and 51 (1) (b)—Applicability.**

*The act of investigating police-officer of reducing a statement of a witness in writing, is one done under colour or in excess of duty imposed by S. 51 (1) (b), even if he acts mala fide.*

**BOMBAY GENERAL CLAUSES ACT (1904), S. 103.**

Where an investigating police-officer reduces a statement of a witness to writing, his act is one done under colour or in excess of a duty imposed or an authority conferred on him by S. 51 (1) (b), whether he acts *bona fide* or otherwise and even if he acts *mala fide* and in deliberate disregard of his proper duty or authority and deliberately takes down the statement of such witnesses incorrectly, S. 80 (3) applies. (1885) Rat. 220 and 41 Bom. 737, Foll. (*Fawcett, Madgavkar and Mirza, J.J.*) **NARAYAN HARI v. YESHWANT RAOJI AND DATTATRYA v. ANNAPPA.** 30 Bom.L.R. 1018 =

52 Bom. 832 = 30 Cr. L. J. 278 = 12 A. I. Cr. R. 154 = 114 I. C. 246 = A. I. R. 1928 Bom. 352 (F. B.).

**—S. 80 (4)—Applicability.**

*Suit for damages for assault and battery by police-officer while investigating cognizable offence—Police-officer is not entitled to notice either under S. 80 (4) or C. P. Code, S. 80.*

A Sub-Inspector of Police while investigating a cognizable offence against two *berads* sent for the plaintiff and questioned him as to his connexion with the *berads*. The plaintiff disclaimed all knowledge about the *berads*. Then it was alleged, defendant 1, the Sub-Inspector, grew angry and abused the plaintiff and pulled him up by his moustache. It was further alleged that defendant 2 at the instance of defendant 1 beat the plaintiff. The plaintiff filed a suit to recover damages from the defendants for their alleged wrongful treatment of him. *Held*, that both the defendants were acting in the discharge of the duty imposed and the authority conferred by S. 51 (1), cl. (b), Bombay District Police Act, when they summoned the plaintiff and questioned him in regard to the alleged offence; but that the alleged assault or battery cannot be said to have been committed under colour or in excess of such duty or authority within S. 80 (1) and that the defendants are not entitled to notice either under S. 80 (4), Bombay District Police Act or C. P. Code, S. 80. 26 All. 220, Diss. from; 41 Mad. 792 (F.B.) and 7 A. L. J. 301, Foll. (*Fawcett Madgavkar and Mirza, J.J.*) **NARAYAN HARI v. YESHWANT RAOJI AND DATTATRYA v. ANNAPPA.** 30 Bom.L.R. 1018 = 52 Bom. 832 = 30 Cr. L.J. 278 = 12 A. I. Cr. R. 154 = 114 I. C. 246 = A. I. R. 1928 Bom. 352 (F.B.).

**BOMBAY GENERAL CLAUSES ACT (I OF 1904).****—S. 21—Applicability.**

*Previous notification can be rescinded only subject to conditions governing those notifications.*

The resolution of the Municipality which purports to rescind the prior notification of 1919 must be published in the Local Government Gazette, and must have received the previous sanction of the Local Government because under S. 21 of the Bombay General Clauses Act (I of 1904) the Municipality would have the power of rescinding the notification published in 1919 subject to the sanction and conditions to which the first notification was subject. (*Shah and Kajiji, J.J.*) **EMPEROR v. PARSHOTAM JAGJIVAN.** 25 Bom. L. R. 767 = 25 Cr. L. J. 330 = 77 I. C. 186 = A.I.R. 1924 Bom. 47.

**—S.103 (as amended in 1913)—Survey Settlement.**

*Government sanctioning rates on 5th July, 1926—Notification published on 26th July 1926—Survey Settlement is legally introduced for 1925-26.*

Two conditions are laid down under S. 103 to validate the introduction of the survey settlement, first, the sanction under S. 102, and second, the notice in accord-

# **BOMBAY GENERAL CLAUSES ACT (1904), S. 103.**

ance with the rules made by the Governor in Council. Where Government sanctioned the rates for the various classes of land recommended by the Commissioner on 5th July, 1926 and the notification according to the rule was published by the Police Patil in the village on 26th July, 1926.

*Held*, the introduction of the survey settlement was in the year 1925-26 and the notification inviting objections was superfluous. (*Patkar and Murphy, J.J.*) **MORESHWAR JANARDHAN v. EMPEROR.**

30 Bom. L. R. 1255 = 30 Cr. L. J. 353 = 114 I. C. 854 = A. I. R. 1928 Bom. 497.

## **—S. 103—Survey Settlement.**

*Government Resolution of 1903 and Note 19 of Anderson's Manual are only departmental orders having no force of statutory rules—Non-observance of these rules does not nullify the validity of the survey settlement legally introduced under S. 103.*

Government Resolution No. 6141 of 1903 and note No. 19 in Anderson's Manual at p. 8 to the effect that when Government raises the rates proposed by the Settlement Officer, a fresh notice must be issued and a fresh opportunity of objection must be afforded, are departmental orders and have not the force of a legislative enactment or statutory rules. If the introduction of the settlement is legal under S. 103, the mere fact that certain formalities, which are required to be observed under a Government resolution, are not so observed, does not nullify the validity of the introduction of the survey settlement under S. 103. (*Patkar and Murphy, J.J.*) **MORESHWAR JANARDHAN v. EMPEROR.**

30 Cr. L. J. 353 = 114 I. C. 854 = 30 Bom. L. R. 1255 = A. I. R. 1928 Bom. 497.

## **—S. 157—Arrest.**

*Provincial Insolvency Act, S. 23—Person arrested under order of Manager, Encumbered Estates under S. 10 with S. 157. Bombay Land Revenue Act—Insolvency Court cannot grant him interim order of protection.*

Where a person is arrested under the orders of the Manager, Encumbered Estates, under the provisions of S. 10 of the Sind Encumbered Estates Act read with S. 157 of the Bombay Land Revenue Code, the Insolvency Court has no jurisdiction to grant him an interim order of protection as he is not under arrest in execution of a decree of any Court for payment of money. (*Kincaid, J. C. and Barlee, A. J. C.*) **GHANSHAMDAS KHATUMAL v. MANAGER, ENCUMBERED ESTATES.**

28 Cr. L. J. 194 = 7 A. I. Cr. R. 345 = 99 I. C. 930 = A. I. R. 1927 Sind 123.

# **BOMBAY PLEADERS' ACT (XVII OF 1920)**

## **—Mukhtyar.**

*Cr. P. Code, S. 4 (1) (r)—Legal Practitioners' Act (XVIII of 1879), Ss. 6, 7 and 10.*

In Bombay Presidency "Mukhtyar" is a person who can with the permission of the Court represent an accused in any proceeding within the meaning of S. 4 (1) (r), Cr. P. Code, and so a general order of a District Magistrate against employment of Mukhtyars in criminal cases in his district is improper. (*Patkar and Baker, J.J.*) *In re* **BAJIRAO ABOJI KULKARNI.**

113 I. C. 402 = 29 Bom. L. R. 1587 = 107 I. C. 56 = 29 Cr. L. J. 226 = 9 A. I. Cr. R. 403 = A. I. R. 1928 Bom. 33.

# **BOMBAY PREVENTION OF GAMBLING ACT (IV OF 1887).**

## **—Common gaming house.**

*Probability of profit to the owner is sufficient.*

To prove that a particular house, room or place is common "gaming house" it need not be established

# **BOMBAY PREVENTION OF GAMBLING ACT (1887), S. 3.**

that the owner or occupier takes a fixed commission which is irrespective of the result of gaming, or that he manipulates the conditions in such a manner that he cannot possibly lose. It is sufficient if the house is one in which instruments of gaming are kept or used for the profit or gain of the person keeping or using such place, i.e., where the person keeping or using the house knows that profit or gain will in all probability result from the use of the instrument of gaming. The profit or gain may not actually result from such use. But if profit or gain is the probable and the expected result of the game itself and if that is the purpose of keeping or using the instruments, it would be sufficient to bring the case within the scope of the definition. 23 Cr. L. J. 196, Diss. (*Shah, Ag. C. J. and Coyaee, J.*) **EMPEROR v. DATTATRAYA SHANKAR.**

47 Bom. 960 = 25 Bom. L. R. 1089 = 25 Cr. L. J. 531 = 77 I. C. 995 = A. I. R. 1924 Bom. 184.

## **—S. 3—Betting.**

*A bet need not be as regards the issue of a future uncertain event and may be upon a past event, e.g., whether a particular horse won a race in a certain year. In such a case the bet is upon the accuracy of the information, belief or memory of the parties and the event is the proof that one or the other was accurate. A person may bet against what he believes the issue will be, e.g., a man may bet against a horse which he believes will win in order to secure himself against loss in either event. Thacker v. Hardy (1878) 4 Q. B. D. 685; Carlill v. Carbolic Smoke Ball Co., (1892) 2 Q. B. 484, Rel. on. (Patkar and Wild, J.J.)* **EMPEROR v. ISMAIL HIRJI.**

31 Bom. L. R. 1349 = 1930 Cr. C. 113 = 124 I. C. 106 = 54 Bom. 146 = 31 Cr. L. J. 633 = A. I. R. 1930 Bom. 49.

## **—S. 3—Instrument of gaming.**

*Public Gambling Act (1867), S. 1—Books of record are instruments of gaming.*

Books used for the purpose of registering or recording any gaming transaction would fall within the definition of "instruments of gaming". 6 Bom. L. R. 249; 29 Bom. 264; and 40 Bom. 263, Rel. on. A register or record of transactions in American Futures was held to be an instrument of gaming. 28 Bom. 616, Dist.; so also a book which contained a register or Kacha Khandi transaction and Teji Mandi transactions. A. I. R. 1922 Bom. 408 and 37 Bom. 264, Ref.; 24 Bom. 227, Rel. on; *Thacker v. Hardy*, (1878) 4 Q. B. D. 685, Dist. (*Mirza and Baker, J.J.*) **EMPEROR v. THAVARMAL RUPCHAND.**

53 Bom. 367 = 116 I. C. 251 = 31 Bom. L. R. 158 = 30 Cr. L. J. 595 = 12 A. I. Cr. R. 466 = A. I. R. 1929 Bom. 157.

## **—Ss. 3, 4 and 6—Scope.**

*Passage surrounded by building appropriated for betting business—Passage is "place" within Ss. 3, 4, and 6.*

Where the passages are surrounded by buildings and are closed at night by doors and the accused have appropriated them for the business of betting, the business of betting is localized and this localization converts the passage into a "place," within the meaning of Ss. 3, 4 and 6. 37 Bom. 651, Rel. on. *Powell v. Kempton Park Race Course Co.*, (1899) A. C. 143; *Eastwood v. Miller*, (1874) 9 Q. B. 440 and *Brown v. Patch*, (1899) 1 Q. B. 892, Ref. (*Patkar and Wild, J.J.*) **EMPEROR v. ISMAIL HIRJI.**

31 Bom. L. R. 1349 = 1930 Cr. C. 113 = 54 Bom. 146 = 31 Cr. L. J. 633 = A. I. R. 1930 Bom. 49.



# **BOMBAY PREVENTION OF GAMBLING ACT (1887), S. 4.**

## **—Ss. 4 and 5—Common Gaming-house.**

*—Stranger obtaining a bet on horse race—Other documentary evidence as betting books—House can be inferred to be common gaming-house.*

From the fact that a stranger went into the house and obtained a bet on a horse race, coupled with the discovery of documentary evidence, such as betting books, etc., found when the police searched the house very shortly afterwards, the proper inference that the house was a common gaming house can be drawn. (*Marten and Madgavkar, J.J.*) **EMPEROR v. ABASBHAI.** 50 Bom. 344 = 28 Bom. L.R. 272 = 27 Cr. L. J. 503 = 93 I. C. 967 = A. I. R. 1926 Bom. 195.

## **—Ss. 4 and 5—Evidence.**

*—Evidence of a stranger recording a bet is admissible to show nature of house.*

The evidence of a stranger who recorded a bet is admissible as part of the evidence to show that the house in question is a common gaming-house under S. 4 or S. 5. (*Marten and Madgavkar, J.J.*) **EMPEROR v. ABASBHAI.** 50 Bom. 344 = 28 Bom. L.R. 272 = 27 Cr. L. J. 503 = 93 I. C. 967 = A. I. R. 1926 Bom. 195.

*—Specific evidence that game played was one of luck and not of skill must be given in doubtful circumstances, e.g., playing cards by respectable persons.*

There is no doubt a presumption from the use of instruments of gambling like cards that gambling has taken place, yet where the circumstances are ambiguous, it is more desirable that there should be some evidence that game actually being played at the moment was not a game of skill but of chance and that in view of the number and position and the income of players the game was one where loss might be the result not of lack of skill but of lack of luck which is the essence of the offence of gambling. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) **TILLOCKCHAND v. EMPEROR.** 20 S. L. R. 66 = 26 Cr. L. J. 1356 = 89 I. C. 396 = A. I. R. 1926 Sind 65.

## **—S. 4—Gaming-house.**

*—Habitual use is not necessary.*

Under S. 4 it need not be shown that the house was habitually used for gaming. (*Kincaid, J. C. and Lobo, A. J. C.*) **BHANJI v. EMPEROR.** 20 S. L. R. 10 = 27 Cr. L. J. 905 = 96 I. C. 217 = A. I. R. 1926 Sind 254.

## **—S. 4—Joint owner of house.**

*—Joint owner of house present when gambling presumed to be going on—If can be convicted for having knowingly permitted it to be so used.*

Where the joint owner of house is present when gaming is presumed to be going on in his house, he can be convicted under S. 4 for having knowingly permitted the house to be used as a gaming house. (*Mirza and Broomfield, J.J.*) **EMPEROR v. NANALAL DWARAKADAS.** I. R. 1930 Bom. 462 = 126 I. C. 894 = 31 Cr. L. J. 1112 = 1930 Cr. C. 782 = 32 Bom. L. R. 794 = A. I. R. 1930 Bom. 350.

## **—Ss. 4 and 5—Procedure.**

*—Offence under, is cognizable within Cr. P. Code, S. 4 (1) (f).*

As under S. 6 certain officers have power to issue warrants of search and also of arrest, and to cause search or arrest without warrant personally, the offence under S. 4 or 5 of Bombay Act IV of 1887 is a cognizable offence under S. 4 (1) (f), Cr. P. Code. (*Marten and Madgavkar, J.J.*) **EMPEROR v. ABASBHAI.** 50 Bom. 344 = 28 Bom. L.R. 272 = 27 Cr. L. J. 503 = 93 I. C. 967 = A. I. R. 1926 Bom. 195.

# **BOMBAY PREVENTION OF GAMBLING ACT (1887), S. 6.**

## **—S. 5—"Found in Gaming-house."**

*—Person seen coming out of gaming-house and arrested then—He is found in the house.*

When a police officer armed with a warrant sees a person come out of a house, and he is arrested as he comes out, he is found in the house. "Found in the house" does not mean "arrested in the house": 8 B. H. C. R. 1. and 22 P. R. 1895, Rel. on. (*Mirza and Baker, J.J.*) **TRIBHOWN MOTI RAM v. EMPEROR.** 53 Bom. 137 = 117 I. C. 434 = 31 Bom. L. R. 53 = 30 Cr. L. J. 794 = A. I. R. 1929 Bom. 74.

## **—S. 5—Procedure.**

*—Honorary Magistrate can issue warrant under S. 5.*

Whatever the powers of the Honorary Magistrate may be under the Cr. P. Code, there is nothing in the Bombay Gambling Act which requires that a Magistrate issuing a warrant thereunder should be vested with any special jurisdiction. All that is required is that there should be a warrant by a First Class Magistrate and therefore an Honorary First Class Magistrate is entitled to issue a search warrant. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) **TILLOCKCHAND v. EMPEROR.** 20 S. L. R. 66 = 26 Cr. L. J. 1356 = 89 I. C. 396 = A. I. R. 1926 Sind 65.

## **—S. 5—Wager.**

*—Date of horse race postponed—Bets were entered into irrespective of adjournment—Accused not contending that either race or particular horse should run on given particular date—Agreement to bet held to be wager amounting to offence.*

Evidence in a case showed that the race which was to be run on 29th September was adjourned to 6th October early in the morning and still in the afternoon of that day bets were entered into with regard to the meeting which had already been adjourned, and the bets were to remain good for the race that was to be run on 6th October. The accused did not intend either that the race should run on 29th September or that a particular horse should run that day, as the condition of the agreement.

*Held*, that even though the race was postponed, the agreement to bet would be a wager and would amount to an offence under S. 5. (*Patkar and Wild, J.J.*) **EMPEROR v. ISMAIL HIRJI.**

31 Bom. L. R. 1349 = 1930 Cr. C. 113 = 54 Bom. 146 = 31 Cr. L. J. 633 = A. I. R. 1930 Bom. 49.

## **—S. 6—Complaint.**

*—S. 6 does not impose any limitation on power of any person to make complaint.*

Section 6 does not impose any limitation on the power of any person to make a complaint on oath to the Commissioner of Police. As a general rule any person, having knowledge of the commission of an offence, may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. 13 Bom. 600, Foll.; A. I. R. 1929 Bom. 74, Ref. (*Patkar and Wild, J.J.*) **EMPEROR v. ISMAIL HIRJI.**

31 Bom. L. R. 1349 = 1930 Cr. C. 113 = 54 Bom. 146 = 31 Cr. L. J. 633 = A. I. R. 1930 Bom. 49.

*—Complaint on oath may be oral or in writing—It need not be recited in warrant—Issuing of warrant raises presumption that complaint was on oath.*

The complaint on oath referred to in S. 6 does not appear necessarily to be a complaint in writing on the filing of which process is to issue as in ordinary criminal trials. It may be either oral or in writing. It is not necessary that it should be recited in the warrant or set

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out in any complaint that may be subsequently filed before the Magistrate. The fact that the warrant has been issued would raise a presumption that *omnia rite esse acta*. (*Mirza and Baker, J.J.*) TRIBHOWN MOTIRAM v. EMPEROR. 53 Bom. 137 = 31 Bom. L. R. 53 = 117 I. C. 434 = 30 Cr. L. J. 794 = A. I. R. 1929 Bom. 74.

## **—S. 6—Construction.**

—*Provisions should be strictly construed.*

The powers given under S. 6 was very wide and are apt seriously to interfere with the liberty and property of the subject; the section therefore should be strictly construed and the conditions required for its coming into operation should be strictly complied with. Where a warrant contained somewhat inaccurate description of the place to be searched but it was clear from the rest of the description contained in the warrant that the inaccuracy was not so material or substantial as to mislead a stranger if one were to go to the locality and attempt to find the place intended to be raided, with the help of the warrant.

*Held*, that the inaccuracy did not amount to more than a misdescription and was not of a nature to vitiate the warrant. A. I. R. 1926 Bom. 195, Dist.

Per *Baker, J.*—The absence of numbers of buildings would not vitiate the warrant if the buildings to be searched are otherwise sufficiently described. 6 Bom. L. R. 52; A. I. R. 1926 Sind 254; (1905) A. W. N. 105, Ref. (*Mirza and Baker, J.J.*) EMPEROR v. THAVARMAL RUPCHAND. 31 Bom. L. R. 158 = 116 I. C. 251 = 53 Bom. 367 = 30 Cr. L. J. 595 = 12 A. I. Cr. R. 466 = A. I. R. 1929 Bom. 157.

## **—S. 6—Evidence.**

—*Extraneous evidence to prove special warrant cannot be allowed.*

A warrant is not a special warrant if it is not on the face of it a special warrant; and if it is not directed to a special officer, extraneous evidence cannot be admitted to prove that it was meant to be executed by a Special Police Officer personally and only by him. (*Barlee and Kalumal A. J. Cs.*) ASSUDOMAL v. EMPEROR. 30 Cr. L. J. 1075 = 119 I. C. 535 = 23 S. L. R. 441 = 1930 Cr. C. 123 = A. I. R. 1930 Sind 59.

## **—S. 6—Procedure.**

—S. 6 is wide enough to include a complaint on oath made by a Polic-officer. (*Mirza and Broomfield, J.J.*) EMPEROR v. NANALAL DWARKADAS.

I. R. 1930 Bom. 462 = 126 I. C. 894 =

31 Cr. L. J. 1112 = 1930 Cr. C. 782 =

32 Bom. L. R. 794 = A. I. R. 1930 Bom. 350.

—There is nothing illegal if the warrant is issued to the Police-officer who has sworn on the complaint before the District Superintendent of Police. (*Mirza and Broomfield, J.J.*) EMPEROR v. NANALAL DWARKADAS. I. R. 1930 Bom. 462 = 126 I. C. 894 =

31 Cr. L. J. 1112 = 1930 Cr. C. 782 =

32 Bom. L. R. 794 = A. I. R. 1930 Bom. 350.

—Under S. 6 the Commissioner of Police can arrest without warrant. 31 Bom. 438 and A. I. R. 1926 Bom. 195, Rel. on. (*Parthkar and Wild, J.J.*) EMPEROR v. ISMAIL HIRJI. 31 Bom. L. R. 1349 =

1930 Cr. C. 113 = 124 I. C. 106 = 54 Bom. 146 =

31 Cr. L. J. 633 = A. I. R. 1930 Bom. 49.

—*Arrest by Police-officer authorized to arrest by Commissioner of Police and in his presence though not within view is not illegal.*

Where the arrest by a Police-officer are under the express authority of the Commissioner of Police and in the presence of the Commissioner, though not within

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his view, the arrests by the Police-officer are not illegal. (*Patkar and Wild, J.J.*) EMPEROR v. ISMAIL HIRJI.

124 I. C. 106 = 31 Bom. L. R. 1349 =

1930 Cr. C. 113 = 54 Bom. 146 = 31 Cr. L. J. 633 =

A. I. R. 1930 Bom. 49.

—*Special warrant must be directed to person by name.*

A special warrant must be a warrant which is specially directed to a person by name and not one which can be endorsed over to any other police-officer of a similar rank. 3 S. L. R. 56, Foll. (*Barlee and Kalumal, A. J. Cs.*) ASSUDOMAL v. EMPEROR. 30 Cr. L. J. 1075 = 119 I. C. 535 = 23 S. L. R. 441 = 1930 Cr. C. 123 = A. I. R. 1930 Sind 59.

—*Warrant comprising more than one tenement does not cease to be special.*

The words "house, room or place" contained in S. 6 have no reference to a particular house, room or place, or to houses, rooms or places if they are owned by one and the same person and are used for a common purpose. The words should be taken broadly as meaning houses, rooms or places apart from the more restricted notion of a tenement. If the houses, rooms or places have substantially been utilized for the common purpose of gambling it would not matter if the houses, rooms or places comprised more than one tenement. The fact therefore that the warrant comprised more than one tenement would not make it a general warrant. The term "special warrant" has reference only to the limitation as regards the person or persons who would be competent to execute it. (*Mirza and Baker, J.J.*) EMPEROR v. THAVARMAL RUPCHAND. 53 Bom. 367 =

31 Bom. L. R. 158 = 116 I. C. 251 =

30 Cr. L. J. 595 = 12 A. I. Cr. R. 466 =

A. I. R. 1929 Bom. 157.

—*Cr. P. Code, S. 98—Special warrant cannot be endorsed to another officer.*

The special warrant when issued authorizes the officer or officers named therein to do all the things that are detailed in the warrant. It cannot be endorsed over to any other police-officer of similar rank. The only person who can execute such a warrant is the officer who is named in the warrant. (*Mirza and Baker, J.J.*) EMPEROR v. THAVARMAL RUPCHAND.

31 Bom. L. R. 158 = 53 Bom. 367 = 116 I. C. 251 =

30 Cr. L. J. 595 = 12 A. I. Cr. R. 466 =

A. I. R. 1929 Bom. 157.

## **—S. 6—Scope.**

—*District Superintendent of Police if can administer oath to complainant.*

Sec. 6, Gambling Act, confers the power *inter alia* on the District Superintendent of Police to receive a complaint on oath in cases contemplated by the section and such a power necessarily implies that the District Superintendent of Police is competent in cases contemplated by S. 6 to administer an oath to the person making the complaint before him. (*Mirza and Baker, J.J.*) TRIBHOWN MOTI RAM v. EMPEROR. 53 Bom. 137 = 31 Bom. L. R. 53 = 30 Cr. L. J. 794 = 117 I. C. 434 = A. I. R. 1929 Bom. 74.

## **—S. 7—Irregularity.**

—*Omission to mention sub-division of a house is not material.*

If the description of the warrant is such that an ordinary person can identify the spot, the Crown can take advantage of the presumption created by S. 7. An omission to mention sub-division of a building is

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immaterial. 6 Bom. L. R. 52, Rel. on. (*Kincaid, J. C. and Lobo, A. J. C.*) *BHANJI v. EMPEROR.*

20 S. L. R. 10=27 Cr. L. J. 905=96 I. C. 217=  
A. I. R. 1926 Sind 254.

## **—S. 7—Presumption.**

—Special warrant not issued under S. 6—Presumption cannot be drawn.

No presumption under S. 7 can be drawn where the warrant is not a special warrant issued under S. 6 of the Act. (*Barlee and Kalumal, A. J. C.*) *ASSUDOMAL v. EMPEROR.*

30 Cr. L. J. 1075=119 I. C. 535=  
23 S. L. R. 441=1930 Cr. C. 123=  
A. I. R. 1930 Sind 59.

—If search warrant is bad, presumption under S. 7 cannot be made but that does not prevent prosecution from establishing their case by other evidence.

If the warrant under which a search is made is bad, then the presumption under S. 7 of the Act cannot be made, but the mere fact that such presumption cannot be raised does not prevent the prosecution from establishing by evidence in the ordinary way that on the facts proved the accused were guilty of the offences charged. 37 Bom. 402, Foll. (*Marten and Madgavkar, J.J.*) *EMPEROR v. ABASBHAI.* 50 Bom. 344=  
28 Bom. L. R. 272=27 Cr. L. J. 503=93 I. C. 967=  
A. I. R. 1926 Bom. 195.

## **—S. 12—Gaming in public street.**

—Person sitting in a shop readily accessible to public is liable.

A person sitting in a shop at a place where he is readily accessible to any person who wished to bet with him from the public street without having to enter the shop at all, is liable for betting or gaming in the street under S. 12. 15 Bom. L. R. 101; 30 Bom. 348 and 31 Cal. 910, Dist. (*Fawcett and Madgavkar, J.J.*) *FAKIRBHAI v. EMPEROR.* 28 Bom. L. R. 92=27 Cr. L. J. 452=  
93 I. C. 244=A. I. R. 1926 Bom. 149.

## **—S. 12 (a)—Hotel.**

—“Any place to which public have or are permitted to have access” includes hotel.

The words in the amended S. 12, Gambling Act, “in any place to which the public have or are permitted to have access” would include a hotel. The public have a right to go to a hotel provided there is accommodation available in it, and can be said to have or to be permitted to have access to it. 30 Bom. 348 and 14 Cr. L. J. 167, Expl. and Dist. (*Mirza and Broomfield, J.J.*) *MANGUBHAI DAHYABHAI v. EMPEROR.*

54 Bom. 491=I. R. 1930 Bom. 465=127 I. C. 81=  
31 Cr. L. J. 1119=32 Bom. L. R. 790=  
1930 Cr. C. 848=A. I. R. 1930 Bom. 369.

## **—S. 12—Instrument of gaming.**

—Currency notes and cash if used for gaming are instruments of gaming.

Although currency notes and cash found on the person alleged to be a gambler cannot in themselves be regarded as “instruments of gaming” but if they are used as a subject or means of gaming they would fall within the definition of “instruments of gaming.” 16 Bom. 283 (F.B.), Held, overruled by Act VI of 1919. (*Mirza and Baker, J.J.*) *TRIBHOWN MOTI RAM v. EMPEROR.*

53 Bom. 187=117 I. C. 434=  
31 Bom. L. R. 53=30 Cr. L. J. 794=  
A. I. R. 1929 Bom. 74.

## **—S. 12 (a)—Object of amendment.**

—The object of the amended S. 12 (a) was to free the word “place” which had been originally used in that section from the restricted meaning which it was held to bear, appearing as it did between the expression

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“public street” and the word “thoroughfare”. (*Mirza and Broomfield, J.J.*) *MANGUBHAI DAHYABHAI v. EMPEROR.* 54 Bom. 491=I. R. 1930 Bom. 465=  
127 I. C. 81=31 Cr. L. J. 1119=32 Bom. L. R. 790=  
1930 Cr. C. 848=A. I. R. 1930 Bom. 369.

# **BOMBAY PREVENTION OF PROSTITUTION ACT (XI OF 1923).**

## **—Ss. 3 and 10 (1)—Arrest without complaint.**

—Arrest by police-officer without complaint is illegal—Magistrate has no jurisdiction to try the accused.

A police-officer, who is not specially authorised by the Commissioner of Police as required by S. 10 (1) cannot arrest a woman under S. 10 (1) without a complaint under S. 3 of the Act, and the Magistrate has no jurisdiction under S. 190 of the Cr. P. Code, to try the woman so wrongly arrested for the offence, unless a complaint within the meaning of S. 4 (1) (h) is made to him. (*Marten and Fawcett, J.J.*) *CANDRI BAWOO v. EMPEROR.*

49 Bom. 212=26 Cr. L. J. 441=  
26 Bom. L. R. 1225=85 I. C. 57=  
A. I. R. 1925 Bom. 131.

## **—S. 6—Procuration.**

—Brothel-keeper availing herself of the supply of the procuress is guilty of abetment.

Sec. 6 is directed against attempts to seduce the virtue of a woman or a girl for the purpose of prostitution, whether with or without her consent or whatever her age. The section is directed against both a brothel-keeper and her procuress; the brothel-keeper who avails herself of the supply of the procuress is guilty of abetment of the offence under S. 6, Bom. Act XI of 1923. The brothel-keeper facilitates the prostitution and completes it. (*Madgavkar, J.*) *EMPEROR v. VITHABAI SUKHA.* 52 Bom. 403=30 Bom. L. R. 613=29 Cr. L. J. 993=  
11 A. I. Cr. R. 221=112 I. C. 209=  
A. I. R. 1928 Bom. 336.

## **—S. 7—Prostitute.**

—Mistress is not necessarily prostitute.

The idea underlying prostitution is that a woman should surrender her body for a monetary consideration to some one who is not in law entitled to have sexual intercourse with her. The position of a mistress is not necessarily that of a prostitute. The relationship is of a more permanent nature than the casual relationship implied in prostitution. Having a stray paramour would not constitute a woman a prostitute. (*Mirza and Murphy, J.J.*) *EMPEROR v. LALYA BAPU.*

31 Bom. L. R. 521=117 I. C. 336=30 Cr. L. J. 787=  
A. I. R. 1929 Bom. 266.

—The matter whether a woman is an ordinary or common prostitute rests more on degree than on kind. (*Mirza and Murphy, J.J.*) *EMPEROR v. LALYA BAPU.*

31 Bom. L. R. 521=117 I. C. 336=  
30 Cr. L. J. 787=A. I. R. 1929 Bom. 266.

# **BOMBAY PRIMARY EDUCATION (DISTRICT MUNICIPALITIES) ACT (I OF 1918).**

## **—Ss. 9, 10 and 8 (b)—Scope.**

—Provision Mandatory—Right of parents to give education elsewhere not taken away—Object is that the child should get education somewhere—Instruction need not conform to standards in recognised schools.

The words “and after such enquiry as it considers necessary” in S. 9 are not merely permissive. That expression has a compulsory force, regard being had to the object of the enactment, to the wide powers conferred on the committee in derogation of the parents’ rights and to the language of S. 9 itself. It is clearly the function of the Court when a complaint is made under S. 10 to see whether it is proved that the parent

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failed to send the child to a recognised school, without reasonable cause on or after the date specified in the attendance order. The Act does not inflict penalty on a parent for a mere failure to carry out an attendance order passed under S. 9. For, it is not to be supposed, unless the statute clearly said so, that once attendance order is made by the school committee under S. 9, the parent is for all time deprived of the right to give efficient instruction to his own child otherwise than in a recognised primary school. The main object of the enactment is to see that a child is not left without the benefit of education. It is sufficient if it is receiving efficient instruction elsewhere than in a recognised primary school. It is not essential that the instruction in order to be efficient within the meaning of S. 8 (b) should conform to the standard as adopted in the recognised primary school. (*Shah, Ag. C. J. and Coyajee, J.*)

KING-EMPEROR v. NEMCHAND NATHA.

47 Bom. 942=25 Bom. L. R. 896=77 I. C. 226=  
25 Cr. L. J. 338=A. I. R. 1924 Bom. 105.

**BOMBAY PUBLIC CONVEYANCES ACT (VII OF 1920).****—S. 2 (b)—Interpretation.**

—*Plying for hire and 'letting for hire' distinguished.*

There seems to be a difference between "letting for hire" and "plying for hire". If A keeps motors at Poona in order to let them out to clients who wish to go to Mahabaleshwar the motors would not become on that account public conveyances; it would be otherwise if A kept a motor bus which plied regularly between Poona and Mahabaleshwar. (*MacLeod, C. J. and Crump, J.*)

EMPEROR v. NASARVANJI BAWANJI.

25 Bom. L. R. 95=72 I. C. 70=24 Cr. L. J. 310=  
A. I. R. 1923 Bom. 248.

**—S. 26—Licence.**

—*Driving without licence—Licence suspended by Assistant Superintendent of Police under powers orally delegated by Superintendent of Police under S. 12 (2)—Conviction for failure to produce licence is bad—Bombay General Clauses Act (Bom. I of 1904), S. 19.*

Where the accused, a licensed public conveyance driver, was convicted under S. 26 (2) of Act VII of 1920 for failure to produce his licence and it was found that his licence had been suspended by Assistant Superintendent of Police under S. 12 (2) in exercise of the powers delegated to him only orally by the Superintendent of Police, *Held*, the conviction of the accused was illegal. The delegation of powers under the Act of 1920 can be effected but in a case where there has been an exercise of a power under alleged delegated authority, it is clearly necessary that the delegation should be clearly shown. The question of such authority should not depend on a general verbal order but it should be by written orders, giving references to the various sections of the Act and specifying particular powers and duties delegated to an Assistant or Deputy Superintendent of Police. (*Fawcett and Madgavkar, JJ.*)

EMPEROR v. KARIM.  
27 Bom. L. R. 1421=27 Cr. L. J. 150=91 I. C. 886=  
A. I. R. 1926 Bom. 77.

**BOMBAY VILLAGE POLICE ACT (VIII OF 1867).****—S. 3—Pagis.**

—*District Magistrate can appoint pagis nominated by Talukdar—Recovery of share in salaries can be had from Jivaidar under Contract Act, S. 69.*

Plaintiff as Talukdar owned half revenues while the defendants were entitled as *Jivaidars* to a half share of the revenues of a village. The District Magistrate

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called upon the defendants to appoint two *pagis* for the villages and as they failed, he appointed the *pagis* nominated by the plaintiff. The wages of the *pagis* were paid by the plaintiff alone.

*Held*, (1) that the *pagis* were validly appointed by the District Magistrate under S. 3; and (2) that the pay of the *pagis* was a charge on the revenues of the village and the plaintiff had a right of reimbursement under S. 69 of the Contract Act. (*Pratt and Fawcett, JJ.*)

ACHAL SINGH KESRI SINGH v. DOLAT SINGH SURAJMALJI.  
26 Bom. L. R. 678=  
83 I. C. 30=A. I. R. 1924 Bom. 471 (a).

**BONA FIDES**—*See* CR. P. CODE, S. 133.

**BREACH OF THE PEACE**—*See* CR. P. CODE, SS. 106, 123, 145.

**BRIBE**—*See* PENAL CODE, S. 161, ETC.

**BURMA ANTI-BOYCOTT ACT (V OF 1922).****—S. 4—Essentials.**

—Hanging out notice-boards that certain non-members of Thanga Thama Gyi Society are not recognised is an offence under S. 4 (a). (*Brown, J.*)

U. NANDIYA alias U. P. O. GAN and U THUMANA v. EMPEROR.  
3 Bur. L. J. 186=84 I. C. 450=  
26 Cr. L. J. 306=A. I. R. 1924 Rang. 379.

**—S. 4 (a)—Joint Trial.**

—*Promoting commission of offence justifies joint trial—Actual instructions need not be proved—Acquittal of principal accused does not necessitate acquittal of all.*

Promoting by A and B of the commission of offence, viz., the boycotting of the headman in pursuance of C's resolution at a meeting justifies joint trial. Even if the proposal by A was not proved, but the promotion of the boycott of which he was the alleged proposer, was proved against A and B the fact that all the three were tried together would not render the trial illegal or be a valid reason for acquitting A and B against whom a charge under S. 4 (c) was brought home. (*Pratt, J.*)

EMPEROR v. NGA AUNG GYAW.  
1 Rang. 604=2 Bur. L. J. 224=76 I. C. 830=  
25 Cr. L. J. 270=A. I. R. 1924 Rang. 98.

**—S. 6 (a)—Ex-communication.**

—*Spurious ceremony not conducted in Thein—Ex-communication for partly political purpose is not exempted under S. 7 (a).*

Where a village headman used abusive language towards certain monks who were preaching on Home Rule and kindred matters and had thereby run the risk of being ex-communicated and the first petitioner, who was among the abused, proposed a boycott of the headman and called a meeting of monks and laymen together and purported to perform the rite of ex-communication.

*Held*, (1) The ex-communication was a spurious ceremony and not having been proclaimed in a Sima or Thein by a properly convened chapter and the procedure laid down in the Vinaya not having been strictly followed, the benefit of S. 7 (a) could not be claimed. (2) It was necessary to prove that the boycott was proposed for bona fide religious purposes; where a motive other than religious is present, the burden of establishing good faith lies heavily on the proposer. (3) The mere fact that the second petitioner allowed the use of his compound does not amount to abetment but having become cognizant of the proposal to boycott on the first day, and having continued to lend his house for the ceremony on the second day, he facilitated the commission of the offence and had intentionally aided the boycott under S. 107, Expl. 2, I. P. C. (4) That the sentence was rightly reduced from one year to three

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months by the Sessions Judge, as the complainant was shown to have been a tactless, irreverent and foul-mouthed individual but no further reduction of sentence was granted in view of the fact that the petitioner had tried to give effect to his proposal by a spurious ceremony. (*May Oung, J.*) **U TILOKA v. BA SEIN.**  
 1 Rang. 629 = 2 Bur. L. J. 221 = 76 I. C. 719 =  
 25 Cr. L. J. 255 = A. I. R. 1924 Rang. 169.

**—S. 9—Sanction.**

*Facts incorrectly set out in the sanction—Sanction is not invalid—Cr. P. Code, Ss. 195 and 196.*

The provisions in the Anti-Boycott Act requiring the authority of the Government for a prosecution under the Act correspond to those in S. 196, Code of Criminal Procedure, which is less stringent than S. 195. Strictly the "order" or "authority" required by S. 196 is not the same as the "sanction" referred to in S. 195 and the classes of the offences dealt with by the two sections are quite distinct. Moreover, in the latter section there is no provisions corresponding to sub-section (4) of the earlier section. The intention of the legislature was to ensure that no prosecution for an offence falling within S. 196 or under the Anti-Boycott Act should be launched except on a complaint authorised by the Government, and where this intention is given effect to it is immaterial whether or not all the facts on which the complaint was to be based were stated in the "authority" with meticulous precision. Indeed, it is doubtful if it is even necessary to set out any fact other than the alleged fact that the accused had committed an offence under a certain section of the Act. (*May Oung, J.*) **NGA AUNG HMAU v. EMPEROR.**  
 2 Bur. L. J. 196 = 76 I. C. 561 = 25 Cr. L. J. 193 =  
 A. I. R. 1924 Rang. 65.

**BURMA CRIMINAL LAW AMENDMENT (CONDITIONALLY RELEASED PRISONERS) ACT (III OF 1928).****—S. 2—Interpretation.**

*Penal provision has no retrospective effect—Interpretation of statutes.*

Section 2 has no retrospective effect. On the ordinary principles of penal legislation a penal provision does not have retrospective effect. (*Carr, J.*) **NGA PO NGWE v. EMPEROR.**  
 7 Rang. 355 = 120 I. C. 692 =  
 1929 Cr. C. 446 = 31 Cr. L. J. 174 =  
 A. I. R. 1929 Rang. 278.

**—S. 2—Sentence—Legality of.**

*Penal Code, S. 227—Magistrate sentencing person, convicted under S. 227, Penal Code, and S. 2, Burma Act, for period in excess of his powers—Such sentence is illegal.*

There is nothing in either S. 227, Penal Code or S. 2, Burma Act to empower any Magistrate to pass a sentence in excess of that which he is empowered under the Cr. P. Code, to pass. Thus if a Magistrate sentences a person, convicted under S. 227 of the Code, and under S. 2, Burma Act, for a period which is in excess of his power, the sentence is legal. (*Carr, J.*) **NGA MYA v. EMPEROR.**  
 7 Rang. 358 = 120 I. C. 693 =  
 1929 Cr. C. 464 = 31 Cr. L. J. 175 =  
 A. I. R. 1929 Rang. 279.

**BURMA EXCISE ACT (BUR. ACT V OF 1917).****—Conviction.**

*Conviction of accused caught in the same sampan where were found 9 bundles containing four bottles each of liquor was held bad.*

The accused were all caught in one sampan, and in the sampan were found thirty-six quarts of *kasaw-ye* in nine bundles of four bottles each. Conviction of them

**BURMA EXCISE ACT (1917), S. 30.**

all, on the ground that they were in joint possession of thirty-six quarts was held bad. 8 L. B. R. 464, Dist. (*Baguley, J.*) **APPAYA v. EMPEROR.**

26 Cr. L. J. 327 = 84 I. C. 551 =  
 3 Bur. L. J. 255 = 2 Rang. 657 =  
 A. I. R. 1925 Rang. 135.

**—S. 30 (a)—Conviction.**

*Person cannot be convicted for possession of less than one quart of country spirit or country alcoholic liquor other than spirit.*

A person cannot be convicted under S. 30 (a) for mere possession of less than one quart of country spirit or country alcoholic liquor other than spirit, the quantity being within the limits for possession prescribed for either of the kinds of liquor in the Excise Department Notification No. 61 of 14th June, 1928. (*Heald, J.*) **EMPEROR v. NGA PO SEIK.**  
 7 Rang. 316 = 30 Cr. L. J. 990 = 119 I. C. 223 =  
 1929 Cr. C. 451 = A. I. R. 1929 Rang. 256.

**—S. 30 (a)—"Country liquor."**

*"Country liquor" explained—Particular kind must be specified.*

"Country liquor" is a generic term which can be equally applied to tari, country spirit, and country alcoholic liquor other than spirit, *i.e.*, country fermented liquor. In excise cases, it is always necessary to distinguish between these different kinds of country liquor and specify which particular kind is involved in the case, as the quantities of each of these different kinds of alcoholic liquor which may be possessed without a licence differ. (*Heald, J.*) **EMPEROR v. NGA PO SEIK.**  
 7 Rang. 316 = 30 Cr. L. J. 990 = 119 I. C. 223 =  
 1929 Cr. C. 451 = A. I. R. 1929 Rang. 256.

**—Ss. 30 (a) and 16 (3)—Offence under.**

*Bona fide private consumption proved — Accused are not liable for any offence.*

Applicant was manager of a Chinese store; the firm employed 25 or 30 men; and the 3 cases of Chinese wine were sent quite openly as such from Rangoon, just before the New Year. Kin Woon, one of the proprietors of the firm, was a Roman Catholic and observed the New Year and the anniversary of the election of Dr. Sun Yet Sen as President.

*Held*, in these circumstances the liquor, 48 quarts which does not seem excessive, was intended for the *bona fide* private consumption of the firm and its employees at the New Year.

*Held*, further, the evidence ought to have been recorded in manner provided for summary trials with appealable sentence. (*MacGregor, J.*) **CHOO KHIN v. EMPEROR.**  
 1 Bur. L. J. 105 = 93 I. C. 522 =  
 26 Cr. L. J. 42 = A. I. R. 1923 Rang. 41.

**—Ss. 30 (a) and 37—Procedure.**

*Alteration of offence under S. 30 (a) to one under S. 37—Cr. P. Code, S. 227.*

An illegal conviction under S. 30 (a) cannot be altered to a conviction under S. 37 if the accused is not called upon to answer a charge under the latter section. (*Heald, J.*) **EMPEROR v. NGA PO SEIK.**  
 7 Rang. 316 = 30 Cr. L. J. 990 = 119 I. C. 223 =  
 1929 Cr. C. 451 = A. I. R. 1929 Rang. 256.

**—Ss. 30 and 5—Proof.**

*To prove an offence under the Act it is necessary to show that the place of possession or sale of tari is within five miles of licensed tari shop. (Carr, J.)* **EMPEROR v. AUNG SHAN.**  
 7 Rang. 3 = 117 I. C. 254 = 30 Cr. L. J. 752 =  
 A. I. R. 1929 Rang. 120

**BURMA EXCISE ACT (1917), S. 37.****—S. 37—Proof.**

*—Proof of offence under—Guilty knowledge must be proved.*

In order to establish an offence under S. 37 it is necessary that the guilty knowledge or brief, which is an essential ingredient of the offence should be included in the particulars of the offence stated to the accused and proved at the trial. (*Herald, J.*) **EMPEROR v. NGA PO SEIK.**

7 Rang. 316 = 30 Cr. L. J. 990 =  
119 I. C. 223 = 1929 Cr. C. 451 =  
A. I. R. 1929 Rang. 256.

**—Ss. 53, 54, 55 and 56—Admission.**

*—Excise officer is not police-officer and admission to him is admissible—Evidence Act, S. 25.*

Although under Burma Excise Act (V of 1917) an Excise Officer has power of arrest, search and granting bail he is not a police-officer and an admission made to him is admissible in evidence. (1907-9) U.B.R. 1, *Held* no longer good law. (*Baguley, J.*) **MAUNG SAN MYIN v. EMPEROR.**

7 Rang. 771 = 121 I. C. 715 = 31 Cr. L. J. 303 =  
A.I.R. 1930 Rang. 49.

**—S. 64—Applicability.**

*—Burma Habitual Offenders' Restriction Act (Burma Act II of 1919)—Applicability.*

The Habitual Offenders' Restriction Act should not be applied to persons against whom action is taken under S. 64-A of the Excise Act. A.I.R. 1926 Rang. 182, *Foll.* (*Herald, J.*) **NGA PA v. KING-EMPEROR.**

4 Rang. 455 = 99 I. C. 349 = 28 Cr. L. J. 141 =  
A. I. R. 1927 Rang. 98.

**BURMA EXPULSION OF OFFENDERS' ACT (I OF 1926).****—S. 2-B, (3) and (4)—Scope.**

*—Under S. 2-B, (3) and (4), person may become offender not by reason of conviction of offence.*

Under S. 2-B. (3) and (4) a person may become an offender not by reason of conviction of an offence, for it is well recognised law that orders under S. 118, Cr. P. Code, or under S. 7, Burma Habitual Offenders' Restriction Act are not convictions of offences. (*Carr, J.*) **EMPEROR v. NGA PO SEIN GYI.**

7 Rang. 266 = 119 I. C. 213 = 30 Cr. L. J. 990 =  
1929 Cr. C. 450 = A. I. R. 1929 Rang. 254.

**—S. 4 (1)—Applicability.**

*—Wording of S. 4 (1) restricts its application to offenders under S. 2-B (1) and (2).*

Wording of S. 4 (1) restricts the application of the section to persons who are offenders under S. 2-B (1) and (2) and the section can have no application to a person who is an offender under S. 2-B (3) and (4). (*Carr, J.*) **EMPEROR v. NGA PO SEIN GYI.**

7 Rang. 266 = 30 Cr. L. J. 990 = 119 I. C. 213 =  
1929 Cr. C. 450 = A. I. R. 1929 Rang. 254.

**—S. 4—Jurisdiction.**

*—Neither District Magistrate nor High Court has jurisdiction to deal with person against whom order of restriction is passed under Burma Habitual Offenders' Restriction Act, S. 7.*

Although a person against whom an order of restriction is passed under S. 7 is an offender and is liable under S. 3 to be expelled, the Act provides no machinery for the enforcement of the liability and so neither the District Magistrate nor the High Court has any jurisdiction to deal with the matter under S. 4. (*Carr, J.*) **EMPEROR v. NGA PO SEIN GYI.**

7 Rang. 266 = 30 Cr. L. J. 990 = 119 I. C. 213 =  
1929 Cr. C. 450 = A. I. R. 1929 Rang. 254.

**BURMA GAMBLING ACT (1899), S. 3.****BURMA FERRIES ACT (II OF 1898).****—S. 15—(as substituted by Amendment Act II of 1916)—Offence under.**

*—Both points must be within limits for an offence under S. 25 or S. 27.*

Accused conveyed paddy from Taungmint-byaung, a point outside the ferry limits, to Kamyawgin, a point within the ferry limits.

*Held*, that on a proper construction of S. 15, if one of the two points, either departure or arrival, is outside two miles from the limits of a ferry, there can be no offence either under S. 25 or S. 27. In other words, both these points must be within the two miles limit. (*Duckworth, J.*) **MAUNG THA GYAN v. EMPEROR.**

1 Rang. 313 = 76 I. C. 646 = 2 Bur. L. J. 125 =  
25 Cr. L. J. 214 = A. I. R. 1923 Rang. 161.

**BURMA FOREST ACT (IV OF 1902).****—S. 25—Selling timber.**

*—Selling a house built with timber is not selling timber and is not an offence.*

The accused had some timber made over to him by one P. He also had some round logs of unreserved kinds, made over to him and in 1920 he got a saw pit license to enable him to cut up these logs. With the timber so obtained he built a house in 1920. In 1922 he sold that house to one T, whereupon the Forest authorities came down upon him, and after he had refused to pay the fine asked for by them, he was prosecuted and convicted.

*Held*, that no offence was committed. (*MacGregor, J.*) **NGA PO MYIT v. KING-EMPEROR.**

2 Bur. L. J. 12 = 81 I. C. 75 = 25 Cr. L. J. 587 =  
A. I. R. 1923 Rang. 143.

**—S. 64 (1)—Applicability.**

*—Section 64 only applies to cases in which any person is convicted of a forest offence. (Baguley, J.)*

**MAUNG PO MAUNG v. EMPEROR.**  
26 Cr. L. J. 322 = 84 I. C. 546 = 3 Bur. L. J. 257 =  
A. I. R. 1925 Rang. 100.

**—R. 65—Contravention.**

*—A contractor who removes fire-wood without paying royalty to the licensee commits an offence under R. 65, notwithstanding the fact that there is a dispute about the amount of royalty. (Herald, J.)* **U THA v. MG. TUN PRU.**

3 Bur. L. J. 198 = 84 I. C. 352 =  
26 Cr. L. J. 288 = A.I.R. 1924 Rang. 382.

**—R. 88 (2) (iii)—Liability of Master.**

*—Use of hammer mark by servant of licensee in contravention of rule 88 creates liability of master for conviction.*

Any use of the marking hammer by a licensee or by his servant in contravention of any rule under the Forest Act, renders the licensee liable to punishment either under the terms of the old license form No. 20 or new form No. 26, between which there is no difference in this respect. Impressing the property mark on timber other than in accordance with the rules and the license and any illegitimate use of the hammer mark is punishable. Licensee can be held criminally liable for his servant's breaches of the forest rules though it is not established that he had in some way authorised those breaches. (9 L. B. R. 112, *Foll.*) (*Herald, J.*) **MG. TWA BWA v. EMPEROR.**

2 Bur. L. J. 214 = 76 I. C. 867 =  
25 Cr. L. J. 275 = A.I.R. 1924 Rang. 171.

**BURMA GAMBLING ACT (I OF 1899).****—S. 3 (1)—Gaming-house.**

*—A house where instruments of gaming are kept for the profit of the owner of that house, is a common*



**BURMA GAMBLING ACT (1899), S. 3.**

gaming-house. (*Otter, J.*) NGA NGWE KYI v. EM-  
PEROR. 5 Bur. L. J. 230=101 I. C. 659=  
8 A. I. Cr. E. 142=28 Cr. L. J. 483.

**—Ss. 3 (2) 11 and 12—"Gonnyin."**

"Gonnyin" is a game of pure skill. The fact  
that the ground was somewhat sloping cannot appre-  
ciably alter the nature of the game. (*Brown, J.*) MG.  
PAW KYAN ZAN MG. YIN AND SU KIN v. EMPEROR.  
3 Bur. L. J. 166=86 I. C. 961=  
26 Cr. L. J. 897=A. I. R. 1924 Rang. 378.

**—S. 3, sub-S. (2)—Machauk.**

*Machauk, game of, is excepted under S. 3 (2).*  
The game of 'Machauk' or 'Sparrow' is one of those  
excepted under sub-S. (2) of S. 3. (*May Oung, J.*) AH  
SHEIN v. KING-EMPEROR. 1 Rang. 303=  
76 I. C. 396=25 Cr. L. J. 172=  
A. I. R. 1923 Rang. 214.

**—S. 7—Presumption under.**

*Cr. P. Code, S. 103—Witness helping actively in  
making search—Search is legal and presumption arises  
under S. 7.*

The object of the section is to ensure that searches  
are conducted fairly and squarely and that there is no  
"planting" of articles by the police. Therefore, where,  
before entering, the witnesses are given an opportunity  
of satisfying themselves that the police had nothing on  
their persons, the mere fact that the witnesses actually  
helped the police in making the search will not make the  
search one in contravention of S. 103 so as to destroy  
the presumption under S. 7, Gambling Act. *Obiter  
dictum* in 8 L. B. R. 38, Diss. (*Maung Ba, J.*) EM-  
PEROR v. WUN NA. 103 I. C. 557=5 Rang. 291=  
28 Cr. L. J. 701=8 A. I. Cr. R. 391=  
A. I. R. 1927 Rang. 241.

**—Ss. 11 and 12—Sentence.**

*Daing should be punished much more heavily  
than ordinary gambler.*

A comparison of the maximum fines and the maxi-  
mum sentences of imprisonment under Ss. 11 and 12  
clearly shows that the daing under ordinary circum-  
stances should be punished very much more heavily than  
the ordinary gambler. It is the daing who makes op-  
portunities for other people to commit offences under S.  
11 and not vice versa. (*Baguley, J.*) EMPEROR v.  
JAN MAISTRY. 6 Rang. 655=117 I. C. 60=  
30 Cr. L. J. 709=A. I. R. 1929 Rang. 30.

**—S. 12—Conviction.**

*Receipt of money from a winner on a single oc-  
casion is not enough for conviction.*

The mere receipt of a sum of money from one of the  
players or from the winner on a single occasion would  
not be sufficient to prove an offence under S. 12 without  
evidence of other incriminating circumstances. (*Len-  
taigne, J.*) NGA SAN DUN v. KING-EMPEROR.  
2 Bur. L. J. 8=75 I. C. 357=24 Cr. L. J. 933=  
A. I. R. 1923 Rang. 144.

**—S. 12—Gaming-house.**

*Knowingly permitting house to be used as common  
gaming house—Evidence of knowledge is necessary.*

In order to justify a conviction under S. 12, there must  
be actual evidence of knowledge on the part of the  
accused and this knowledge cannot be presumed from  
the mere fact that the place had been kept as a common  
gaming-house for a month. (*May Oung, J.*) AH LIN  
v. KING-EMPEROR. 2 Bur. L. J. 5=75 I. C. 71=  
24 Cr. L. J. 871=A. I. R. 1923 Rang. 141.

**—S. 16—Applicability.**

*Burma Habitual Offenders' Restriction Act, S. 3  
(1).*

**BURMA HABITUAL OFFENDERS' RESTRICTION ACT (1919).**

S. 3 (1) of the Habitual Offenders' Restriction Act  
does not apply to a case arising under S. 17 of the  
Burma Gambling Act. A. I. R. 1926 Rang. 182, Rel. on.  
(*Otter, J.*) NGA PAN E v. KING-EMPEROR.

5 Bur. L. J. 228=101 I. C. 666=28 Cr. L. J. 490=  
8 A. I. Cr. R. 138=A. I. R. 1927 Rang. 122.

**—S. 17—Scope.**

*Burma Habitual Offenders' Restriction Act,  
S. 18 (1).*

The Habitual Offenders' Restriction Act does not  
apply to persons proceeded against under S. 17, Gamb-  
ling Act. A. I. R. 1926 Rang. 182 and A. I. R. 1927  
Rang. 98, Rel. on. (*Baguley, J.*) EMPEROR v. MAUNG  
PO SEIN. 7 Rang. 1=117 I. C. 255=  
30 Cr. L. J. 755=1929 Cr. C. 60=  
A. I. R. 1929 Rang. 147.

**BURMA GHEE ADULTERATION ACT (VI OF 1927).****—S. 10 (5)—Adulteration.**

*Whether ghee is to be deemed adulterated or not is  
question of law—Chemical Examiner is simply to sub-  
mit result of his analysis and Court is to draw infer-  
ence therefrom.*

Whether the ghee is to be deemed adulterated or not  
is question of law and it is not a matter on which the  
chemical examiner should be required to express an  
opinion. What he has to do is to state the results of his  
analysis and leave the Court to determine whether on  
those results the offence charged is proved or not. (*Carr,  
J.*) NARINJAN DAS v. EMPEROR.

I. R. 1930 Rang. 311=126 I. C. 535=  
31 Cr. L. J. 1065=1930 Cr. C. 243=  
A. I. R. 1930 Rang. 51.

**—S. 11—Procedure.**

*Cr. P. Code, S. 190—Complaint charging two  
people in alternative cannot be accepted—Sanction to  
prosecute such people is wrong.*

It is wrong that any Court should accept a complaint  
which charges two people in the alternative and it is also  
wrong that an order sanctioning such a prosecution in  
the alternative should be passed. (*Carr, J.*) NARIN-  
JAN DAS v. EMPEROR. I. R. 1930 Rang. 311=  
126 I. C. 535=31 Cr. L. J. 1065=  
1930 Cr. C. 243=A. I. R. 1930 Rang. 51.

**BURMA HABITUAL OFFENDERS' RESTRICTION ACT (BUR. ACT II OF 1919).****—Applicability.**

*Burma Excise Act (V of 1917), S. 64-A.*

The Habitual Offenders' Restriction Act should not  
be applied to persons against whom action is taken under  
S. 64-A of the Excise Act. A. I. R. 1926 Rang. 182, Foll.  
(*Heald, J.*) NGA PA v. KING-EMPEROR.

4 Rang. 455=28 Cr. L. J. 141=99 I. C. 349=  
A. I. R. 1927 Rang. 98.

*The Act does not justify the restriction of the  
accused to a particular local area for the purpose of  
preventing him from going to his place of residence and  
business where he worries some of the residents of that  
place.*

Where the accused does not go out of the local area  
in which he lives for the purpose of committing breaches  
of the peace in other local areas, but merely he worries  
certain people in the local area in which he lives, because  
he is a bully and where the only possible object in the  
order restricting the accused to a particular area seems to  
be to deport him from a certain other place which is his  
place of residence and business because he has made  
himself objectionable to certain residents of that place,  
and where no useful public purpose would be served by

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an order expressly prohibiting him from moving into other areas where he would not be likely to do any harm, or by such operation of such an order in presumably curtailing his means of livelihood it is open to question whether this is the class of cases to which the Burma Habitual Offenders' Restriction Act, 1919, is intended to apply. (*Lentaigne, J.*) *PARSODAN v. EMPEROR.*

26 Cr. L. J. 417 = 85 I. C. 33 =  
2 Rang. 524 = A. I. R. 1925 Rang. 69.

**—Procedure.**

*Usual rules of procedure and evidence apply except modifications suggested by Cr. P. Code, S. 117 (4).*

The idea that in cases under this Act the ordinary rules of Criminal Procedure and of evidence are abrogated, is entirely erroneous. In proceedings under the Act it is not everything that may be proved by evidence of general repute. The ordinary rules of evidence apply with such modification only as is made in S. 117 (4) of the Code of Criminal Procedure which is made applicable to the Habitual Offenders' Restriction Act by S. 4 of that Act. (*Carr, J.*) *SAN DUN v. EMPEROR.*

26 Cr. L. J. 395 = 84 I. C. 939 = 2 Rang. 641 =  
A. I. R. 1925 Rang. 112.

**—S. 3 (1)—Applicability.**

*Burma Gambling Act (Burma Act XVII of 1899), S. 17.*

S. 3 (1) of the Habitual Offenders' Restriction Act does not apply to a case arising under S. 17 of the Burma Gambling Act. A.I.R. 1926 Rang. 182, Rel. on. (*Otter, J.*) *NGA PAN E v. EMPEROR.*

5 Bur. L. J. 228 = 101 I. C. 666 =  
28 Cr. L. J. 490 = 8 A. I. Cr. R. 138 =  
A. I. R. 1927 Rang. 122.

**—Ss. 3, 7 and 18—Restriction.**

*Order of restriction under—When may be passed.*

The Act makes no provision for taking a bond and for demanding sureties. It merely provides for an order of restriction. The order cannot be passed except in those cases in which the Magistrate could have acted under S. 110 of the Cr. P. Code and unless the person restricted has adequate means of earning his livelihood in that area. Violation of such an order is punishable under S. 18 of the Act. (*Robinson, J.*) *EMPEROR v. PO MYA.*

13 Bur. L. T. 155 = 10 L. B. R. 274 =  
61 I. C. 1005 = 22 Cr. L. J. 477 (Rang.).

**—S. 4, Proviso (a)—Restriction.**

*Term during which the proposed restriction is intended to last must be stated in the preliminary order required under S. 112 of the Cr. P. Code.*

Proviso (a) to S. 4 makes it essential that the preliminary order required under S. 112 of the Code of Criminal Procedure set forth the substance of the information received and shall state the term during which the order of restriction shall be in force. If the additional requirement as to the term during which a proposed restriction is intended to be in force, is not specified in such preliminary order, no order under S. 7 of the Act should be passed. (*Lentaigne, J.*) *PARSODAN v. EMPEROR.*

26 Cr. L. J. 417 = 85 I. C. 33 =  
2 Rang. 524 = A.I.R. 1925 Rang. 69.

**—S. 7—Evidence.**

*General repute—Evidence of policemen and headmen is not insufficient—Cr. P. Code, S. 110.*

The rule, that in order to satisfy himself that an accused's general repute is that of an habitual offender of one of the types mentioned a Magistrate should require more evidence than that of policemen and village authorities, is not a rule of law and a Magistrate must,

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in each case, weigh the evidence and decide as to its sufficiency. 2 L.B.R. 166, Ref. and Expl. (*May Oung, J.*) *NGA PAN YIN v. EMPEROR.*

1 Rang. 447 =  
2 Bur. L. J. 153 = 76 I. C. 709 = 25 Cr. L. J. 245 =  
A.I.R. 1924 Rang. 22.

**—S. 7 (a)—Illegality.**

*Surety bond under S. 118, Cr. P. Code—Double order under both Act is illegal.*

Where a bond has been executed by an offender, with sureties under S. 118, Cr. P. Code, it is illegal to pass an order against him under the Habitual Offenders' Restriction Act. (*MacGregor, J.*) *PAN ZYAN v. KING-EMPEROR.*

1 Bur. L. J. 257 = 73 I. C. 975 =  
24 Cr. L. J. 735 = A.I.R. 1923 Rang. 134.

**—S. 7—Irregularity.**

*Omission to state the period of restriction in the preliminary order as required by S. 4, Proviso (a)—Omission is an irregularity curable by S. 537, Cr. P. Code.*

Omission to state the period of restriction in the preliminary order does not render the whole proceeding void. [2 R. 524, Dist.] It is only an irregularity curable by Upper Burma Criminal Justice Reg., Chap. XV. (*Carr, J.*) *MAUNG THWE v. EMPEROR.*

26 Cr. L. J. 1391 = 89 I. C. 527 = 3 Rang. 74 =  
A.I.R. 1925 Rang. 214.

**—S. 7—Jurisdiction.**

*Burma Expulsion of Offenders Act, S. 4—Neither District Magistrate nor High Court has jurisdiction to deal with person against whom order of restriction is passed under S. 7.*

Although a person against whom an order of restriction is passed under S. 7 is an offender and is liable under S. 3 to be expelled, the Act provides no machinery for the enforcement of the liability and so neither the District Magistrate nor the High Court has any jurisdiction to deal with the matter under S. 4. (*Carr, J.*) *EMPEROR v. NGA PO SEIN GYI.*

7 Rang. 266 =  
119 I. C. 213 = 30 Cr. L. J. 990 = 1929 Cr. C. 450 =  
A.I.R. 1929 Rang. 254.

**—S. 7—Procedure.**

*Procedure laid down in Cr. P. Code, S. 117, with necessary modifications and additions must be followed in taking preventive action.*

The same procedure as is laid down in the Cr. P. Code, S. 117, with necessary modifications and additions, must be followed where it is intended to take preventive action under S. 7 of the Burma Habitual Offenders' Restriction Act (1919). (*Lentaigne, J.*) *PARSODAN v. EMPEROR.*

2 Rang. 524 =  
26 Cr. L. J. 417 = 85 I. C. 33 = A.I.R. 1925 Rang. 69.

**—S. 7—Restriction.**

*Burma Opium Law Amendment Act (Burma Act, VII of 1909), S. 3—Person placed on security under, cannot be proceeded against under S. 110, Cr. P. Code.*

A person who earns his living in whole or in part by unlawful sale of opium, can be placed on security under S. 3, but an order of restriction cannot be passed under S. 7 on those grounds. 2 Rang. 61, Dissented from. (*Carr and Duckworth, J.J.*) *EMPEROR v. NGA KYAN HLA.*

4 Rang. 123 = 98 I. C. 714 = 5 Bur. L. J. 78 =  
27 Cr. L. J. 1402 = A.I.R. 1926 Rang. 182.

*No power to call for security bond or to order person to make two reports to Police and to village headman exists.*

There is no provision for ordering execution of a security bond under the Act. Where such offender is restricted to another village than his own, it must be proved that he will be able to earn his livelihood at that



# **BURMA HABITUAL OFFENDERS' RESTRICTION ACT (1919), S. 9.**

village. A double report both to the Headman and the Police is not called for under the Act. 10 L. B. R. 274, Foll. (*Duckworth, J.*) KING-EMPEROR v. NGA KALA. 1 Bur. L. J. 36 = 73 I. C. 157 = 24 Cr. L. J. 541 = A. I. R. 1923 Rang. 68.

## **—S. 9—Conviction.**

*—To be old offender is not a sufficient ground for conviction.*

The mere fact that the accused is "an old offender" is not a ground on which a restriction order can be passed under S. 9. (*Carr, J.*) NGA PO THAN v. EMPEROR.

26 Cr. L. J. 1344 = 89 I. C. 320 = 3 Rang. 156 = A. I. R. 1925 Rang. 277.

## **—S. 9—Illegality.**

*—Addition of term to sentence under S. 18 is not authorised.*

S. 9 does not authorize the addition of a term of restriction to the sentence in the case of a conviction under S. 18. (*Carr, J.*) NGA THA BAY v. EMPEROR.

26 Cr. L. J. 1359 = 89 I. C. 399 = 3 Rang. 167 = A. I. R. 1925 Rang. 279.

## **—Ss. 10 and 2—Illegality.**

*—Police Department Notification No. 280, dated 17th November, 1919, Rr. 3, 5 and 6—Order confining person to his own house at night is illegal—Accused must be able to earn his livelihood within area of restriction.*

An order confining a man to the four corners of his own house at night is not a proper order under the provisions of the Act. The narrowest limits of restriction should be the village of the man concerned or the limits of the village to which he is restricted, as the case may be. If in order to obtain leave from the Police Station Office the person would have to leave his village tract, and thereby offend against the order this is contrary to the spirit of R. 5 of the Notification. The Magistrate must satisfy himself that the accused is able to earn his livelihood within the area of restriction. (*Duckworth, J.*) NGA BA SEIN v. KING-EMPEROR.

11 L. B. R. 383 = 73 I. C. 175 = 1 Bur. L. J. 177 = 24 Cr. L. J. 559 = A. I. R. 1923 Rang. 102.

## **—S. 13—Illegality.**

*—Section cannot be relied on as justifying a Sub-Divisional Magistrate in not complying with the provisions of S. 4, Prov. (a) of the Act, when taking preventive action against a person under S. 7 of the Act.*

Where a Sub-Divisional Magistrate takes preventive action against a person under S. 7 of the Act without complying with the provisions of S. 4, Prov. (a). S. 12 of the Act, 1919, cannot be relied on as justifying the special procedure of the case, because the District Magistrate is the only Magistrate empowered under that section and even the District Magistrate cannot intervene in a case unless there has been a proper preliminary order and unless the Sub-Divisional Magistrate has also previously passed his order under S. 118 of the Cr. P. Code. In such a case, it would be the duty of the District Magistrate to have some good reason for the change over to the Burma Habitual Offenders' Restriction Act, 1919; and Rule 12 of the Rules framed under that Act indicates the class of reasons which would justify such a change. (*Lentaigne, J.*) PARSODAN v. EMPEROR.

26 Cr. L. J. 417 = 85 I. C. 33 = 2 Rang. 524 = A. I. R. 1925 Rang. 69.

## **—S. 18 (1)—Applicability.**

The Habitual Offenders' Restriction Act does not apply to persons proceeded against under S. 17, Gambling Act. A. I. R. 1926 Rang. 182 and A. I. R. 1927 Rang. 98, Rel. on. The facts are clear from the following report of the District Magistrate of Protne.

# **BURMA LAND AND REVENUE ACT (1876), R. 69.**

(*Baguley, J.*) EMPEROR v. MAUNG PO SEIN.

7 Rang. 1 = 117 I. C. 255 = 30 Cr. L. J. 755 = 1929 Cr. C. 60 = A. I. R. 1929 Rang. 147.

## **—S. 18 (2)—Interpretation.**

*—Accused absent from the tract—Exclusion of that period is not allowed.*

S. 18 (2) provides only that a period of imprisonment under S. 18 (1) is to be excluded in computing the period for which the order of restriction shall remain in force. It does not allow of the exclusion of any period during which the accused has been absent from his tract in contravention of the order or of any period during which he has been under trial. (*Carr, J.*) NGA THA BAY v. EMPEROR. 26 Cr. L. J. 1359 = 89 I. C. 399 = 3 Rang. 167 = A. I. R. 1925 Rang. 279.

# **BURMA LAND AND REVENUE ACT (II OF 1876).**

## **—R. 69—Illegality.**

*—Planting of rubber trees on waste land—Subsequent notification as grazing ground—Order for removal of trees and conviction under rule 69 are illegal.*

The petitioner planted rubber trees on State waste land pending his application for a grant in anticipation and paid assessment thereon. The grant was refused and the land notified as a grazing ground whereupon petitioner applied for refund of the revenue paid by him. The Deputy Commissioner passed an order that the petitioner do vacate the land and remove the rubber trees and the revenue paid would be refunded when petitioner vacated. Petitioner failed to remove the trees and was prosecuted under R. 69 and fined for occupying a finally demarcated grazing ground and convicted on his admission that the rubber trees planted by him were still on the land.

*Held*, that R. 69 did not empower the revenue authorities to order petitioner to remove the trees he had planted and the mere fact that the trees remained on the ground did not constitute occupation of the grazing ground, and that the Magistrate's order that the rubber trees must be cut down, root and branch, within a month was without jurisdiction and must be set aside. (*Heald, J.*) MAUNG PE v. EMPEROR.

3 Bur. L. J. 73 = 25 Cr. L. J. 1264 = 82 I. C. 272 = A. I. R. 1924 Rang. 289.

## **—R. 69—Procedure.**

*—Use of grazing ground for purposes other than grazing—Proof as to the ground demarcated and marked with boundary posts must be strict—Procedure indicated.*

It is essential in all prosecutions under R. 69 that there should be evidence not only that the grazing ground has been allotted but also that it has been finally demarcated; that is that the boundaries have been clearly marked with permanent posts or visible marks of some kind, so that there is no room for mistake as to the limits of the grazing ground.

The proper procedure in such cases is for the Land Records Officer to file in each case along with his complaint or report a map showing the relevant boundaries of the grazing ground with the demarcation marks and the area alleged to be occupied by the accused within the grazing ground, and for the Court to take evidence that the grazing ground has been allotted and demarcated and that the alleged trespass has been committed. The evidence of the Land Records Officer on all these points is of course important, as would be also that of the village headman. (*Heald, J.*) MAUNG THA E v. KING-EMPEROR. 5 Bur. L. J. 177 = 99 I. C. 595 = 28 Cr. L. J. 163 = 7 A. I. R. 264 = 1927 Rang. 59.

**BURMA LAND AND REVENUE ACT (1876), B. 107.****—R. 107-G—Liability.**

*—Brickmaking—Digging clay without license—Owner of land—Supply of labour—Liability for.*

The accused contracted to dig clay and supply labour to another person for the purpose of making bricks without a license. Bricks were actually made without a license. *Held*, that the owner of the field who engaged the contractors was liable, but that the accused were not guilty under R. 107-G of the Lower Burma Land and Revenue Act. (*Heald, J.*) **KABUDIN v. EMPEROR.**

3 Bur. L. J. 145=84 I. C. 329 (1)=  
26 Cr. L. J. 265 (Bang.).

**BURMA (LOWER) COURTS ACT (IMPERIAL ACT VI OF 1900).]****—Jurisdiction.**

*—Burma—Military Police Act, S. 6 (b)—Offence under in Rangoon is triable only by Chief Court and not by Adjutant.*

A sepoy of the Rangoon Military Police Battalion was tried for assaulting a senior officer with a "Kukri" before the Adjutant of that Battalion and convicted and sentenced to two years under S. 6 (b) of Burma Military Police Act.

*Held*, that under the provisions of the Lower Burma Courts Act of 1900 such offences would be triable by the Chief Court. Therefore the Adjutant in trying the case to the finish did so without jurisdiction and his proceedings were void. (*Maung Kin, J.*) **EMPEROR v. RAMBAHADUR RAI.**

25 Cr. L. J. 623=  
2 Bur. L. J. 21=81 I. C. 111=  
A. I. R. 1923 Rang. 139.

**BURMA (LOWER) VILLAGE ACT (IMPERIAL ACT III OF 1889).****—Police Officer.**

*—Evidence (Act I of 1872), S. 25—Village headman is not a "Police Officer" though invested with power of arrest.*

The mere bestowal on a village headman of some powers of arrest as are given to a police officer does not make him a police officer any more than it makes a Magistrate a police officer. A confession, therefore, made to him is not inadmissible in evidence, but the weight to be attached to such confession will depend on the circumstances of the case and the part he has taken in the elucidation of the crime. 1 L.B.R. 65, Affirmed. (*Young, Offg. C. J., Heald and May Oung, JJ.*) **NGA MYIN v. KING-EMPEROR.**

2 Rang. 31=81 I. C. 540=3 Bur. L. J. 11=  
25 Cr. L. J. 924=A.I.R. 1924 Rang. 245 (F.B.).

**BURMA MILITARY POLICE ACT (IMPERIAL ACT XV OF 1887).****—S. 6 (b)—Jurisdiction.**

*—Offence under, in Rangoon is triable only by Chief Court and not by Adjutant—Lower Burma Courts Act (1900).*

A sepoy of the Rangoon Military Police Battalion was tried for assaulting a senior officer with a "Kukri" before the Adjutant of that Battalion and convicted and sentenced to two years under S. 6 (b) of Burma Military Police Act.

*Held*, that under the provisions of the Lower Burma Courts Act of 1900 such offences would be triable by the Chief Court. Therefore, the Adjutant in trying the case to the finish did so without jurisdiction and his proceedings were void. (*Maung Kin, J.*) **KING-EMPEROR v. RAMBAHADUR RAI.**

25 Cr. L. J. 21=  
81 I. C. 111=25 Cr. L. J. 623=  
A. I. R. 1923 Rang. 139.

**BURMA MUNICIPAL ACT (1898), S. 142.****BURMA MOTOR VEHICLES RULES.****—R. 16—Negligence.**

*—To pass tram-car on right hand side is prima facie negligent.*

Except for reasonable cause a tram-car must be passed on the left side: the proviso in R. 16 merely allows a special exception to the general rule. To pass it, therefore, on the right side is *prima facie* negligent since the sudden appearance of a vehicle from behind a tram-car on the unexpected side is a fruitful source of accidents. (*Doyle, J.*) **AHMED v. KING-EMPEROR.**

6 Bur. L. J. 76=101 I. C. 660=  
28 Cr. L. J. 484=A. I. R. 1927 Rang. 149.

**—R. 26 (3)—Negligence.**

*—Motor Vehicles Act (VIII of 1914), S. 16.*

Owner of a motor-car is not criminally liable for negligence of the driver in driving the car without properly illuminated rear light, if the owner has made provision for such illumination. 36 C. 415, and 45 C. 430, Dist. (*May Oung, J.*) **MAHOMED SURTY v. KING-EMPEROR.**

1 Rang. 600=76 I. C. 564=  
2 Bur. L. J. 201=25 Cr. L. J. 196=  
A. I. R. 1924 Rang. 63.

**BURMA MUNICIPAL ACT (III OF 1898).****—Ss. 92 (4) and 180—Building.**

*—Notice under—Whether wall is a "building" depends upon mischief aimed at by the Act.*

There is no definition of the word "building" in the Act or the bye-laws thereunder and the question must therefore be decided with reference to the mischief aimed at by the Act. The erection of a mere fence or boundary wall is not an offence under the Burma Municipal Act. But where such a wall is built so as to enable the occupier of the main house to use the enclosed area as part of his habitation and not merely as a boundary or fence it comes within the definition of a "building" and disobedience to an order or direction to dismantle the same is an offence under the Act. (*Maung Kin, J.*) **KALOO KHAN v. M. A. RAHIM.**

1 Bur. L. J. 102=24 Cr. L. J. 732=  
73 I. C. 972=A. I. R. 1923 Rang. 65.

**S. 121—Committee is empowered to have reasonable access to the lands for its servants for scavenging purposes.**

Section 121 empowers the Committee to require an owner to allow the servants of the Committee reasonable access to or passage over his land for scavenging purposes, whether these purposes concern the land in question or other land. 1 U. B. R. 230, Foll.; Cr. R. No. 1333 of 1909, Diss. from. (*Heald, J.*) **KING-EMPEROR v. MA NU.**

4 Rang. 423=99 I. C. 339=  
28 Cr. L. J. 131=A.I.R. 1927 Rang. 60.

**—S. 142—Bye-law No. 5—S. 2 (6)—Construction.**

*—To attract the application of the bye-law, some part of the building must be used in common.*

If a building is divided into separate and independent dwellings or tenements and those dwellings or tenements are such that the occupants of them do not to any extent use or occupy the building as a whole in common then even if separate tenements or some of them are actually used as lodging house, the building as a whole does not thereby become a lodging house and only those separate and independent tenements which are used as lodging houses need to be registered and licensed. Note to S. 2 says that the buildings commonly called "tenement lodging houses" should be brought within the operation of the lodging house rules if they have kitchens, privies or other conveniences, in common, that is, if the building as a whole is occupied to any extent in common by the tenants of the separate

# **BURMA OPIUM LAW AMENDMENT ACT (1909), S. 3.**

tenement, but that they do not come within the operation of the lodging house rules if each tenement is entirely independent and provided with its own kitchen and privy, that is, if the building as a whole is not occupied to any extent in common by the tenants of the separate tenements. If a building as a whole is let in lodgings or otherwise occupied to any extent in common by members of more than one family, then it is a lodging house and is subject to the bye-laws. If there is no such common occupation of the building as a whole but there is such common occupation of a particular part of it, then that particular part is a lodging house but the building as a whole is not a lodging house. If neither the building as a whole nor any part of it separately is occupied to any extent in common by members of more than one family, neither the building nor any part of it is a lodging house. (*Heald, J.*)

EMPEROR v. P. D. SETH. 2 Bur. L. J. 298 = 25 Cr. L. J. 1136 = 81 I. C. 960 = A. I. R. 1924 Rang. 109.

# **BURMA OPIUM LAW AMENDMENT ACT (BURMA ACT VII OF 1909).**

## **—S. 3—Interpretation.**

—Cr. P. Code, S. 110.

The effect of S. 3, Burma Opium Law Amendment Act, is to introduce an additional ground on which S. 110 of the Code can be applied. (*May Oung, J.*) KING-EMPEROR v. NGA KYAUNG. 2 Rang. 61 = 81 I. C. 546 = 3 Bur. L. J. 17 = 25 Cr. L. J. 930 = A. I. R. 1924 Rang. 244.

## **—S. 3—Procedure.**

—Person placed on security under, cannot be proceeded against under S. 110, Cr. P. Code—Burma Habitual Offenders' Restriction Act (Burma Act II of 1919). S. 7.

A person who earns his living in whole or in part by unlawful sale of opium can be placed on security under S. 3, but an order of restriction cannot be passed under S. 7 on those grounds. 2 Rang. 61, Diss. from. (*Carr and Duckworth, J.J.*) EMPEROR v. NGA KYAW HLA. 4 Rang. 123 = 5 Bur. L. J. 78 = 27 Cr. L. J. 1402 = 98 I. C. 714 = A. I. R. 1926 Rang. 182.

# **BURMA PROCESS FEES ACT (I OF 1910).**

## **—Procedure.**

—Cr. P. Code, Ss. 252 and 257—Non-cognizable warrant case—Process-fees not paid—Court is not bound to summon witnesses.

In a non-cognizable warrant case the Court is not bound to summon witnesses for the prosecution or the defence under Ss. 252 and 257 if the party at whose instance or in whose interest the process is issued does not pay process fees as required by Rr. 17 and 18 of the Process Fees Rules made under the Burma Process Fees Act, 1910. Ss. 252, 256 and 257 of the Code must be read as subject to the rules made under the Burma Process Fees Act, 1910. 16 Mad. 234, Dist.; A. I. R. 1926 Rang. 13, Overruled. (*Ruledge, C. J., Carr and Chari, J.J.*) EMPEROR v. THA SHWE. 4 Rang. 146 = 98 I. C. 708 = 5 Bur. L. J. 90 = 27 Cr. L. J. 1396 = A. I. R. 1926 Rang. 164 (F.B.).

# **BURMA RURAL SELF-GOVERNMENT ACT (IV OF 1921).**

## **—S. 12—Bye-laws.**

—Abetment of breach of bye-laws is not offence under Penal Code, S. 109.

The abetment of a breach of the bye-laws framed by a District Council under the authority of the Burma Rural Self-Government Act is not punishable under

# **BURMA VACCINATION LAW (AMENDMENT) ACT (1909), S. 4.**

S. 109, I. P. C., as it is not an abetment of an offence within the meaning of that section. 23 P. R. 1894 Cr., Rel. on. (*Mya Bu, J.*) MA KHWET KYI v. EMPEROR. 6 Rang. 791 = 30 Cr. L. J. 509 = 115 I. C. 664 = 12 A. I. Cr. R. 307 = A. I. R. 1929 Rang. 75.

# **BURMA SALT ACT (II OF 1917).**

—Ss. 9 (c) and 14—Rules under Rr. 41 and 42—Scope.

—Rules 41 and 42 under the Salt Act by implication make the removal of salt without a pass illegal. (*Chari, J.*) NGA YOK O v. KING-EMPEROR.

5 Bur. L. J. 220 = 101 I. C. 496 = 28 Cr. L. J. 464 = A. I. R. 1927 Rang. 120.

# **BURMA TOWNS ACT (III OF 1907).**

## **—S. 7—Headman.**

—To provide coolies to take out a Deputy Commissioner's letters from his headquarters does not form a part of the ordinary duty of a ward headman. (*Heald, A. J. C.*) EMPEROR v. NGA PO SIN.

(1920) 3 U. B. E. 234 = 60 I. C. 63 = 22 Cr. L. J. 207 (Rang.).

## **—S. 9 (2)—Headman.**

—Refusal to convey letters not illegal—Ordinary duties of headman.

If a person residing within a ward is requested by the headman to convey letters to the Deputy Commissioner's camp and he fails, he is not guilty under S. 9 (2) as to provide coolies to convey such letters is not a part of the ordinary duty of the headman. (*Heald, A. J. C.*) EMPEROR v. NGA PO SIN. (1920) 3 U. B. E. 234 = 60 I. C. 63 = 22 Cr. L. J. 207.

# **BURMA (UPPER) CRIMINAL JUSTICE REGULATION (V OF 1892).**

## **—S. 15—Interference by the Judicial Commissioner.**

—Under S. 15, the Judicial Commissioner will not interfere with the order of a District Magistrate though procedure is irregular unless it has caused failure of justice. (*Heald, A. J. C.*) NGA SAN DUN v. EMPEROR. 22 Cr. L. J. 309 = 60 I. C. 997 = (1920) 3 U. B. E. 270.

# **BURMA (UPPER) RUBY REGULATION (XII OF 1887).**

## **—S. 8—Application of.**

—When an offence under S. 6 has been committed, S. 8 should be applied even though the purchaser of the stone might have acted bona fide. (*Duckworth, J.*) MAUNG PO LON v. EMPEROR. 26 Cr. L. J. 289 = 84 I. C. 433 = 3 Bur. L. J. 168 = 2 Rang. 321 = A. I. R. 1925 Rang. 12.

# **BURMA VACCINATION LAW (AMENDMENT) ACT (I OF 1909).**

## **—S. 4 and S. 13—Vaccination.**

—Child above six months—Parent refusing to allow child to be vaccinated—Conviction under S. 13 is unsustainable—Procedure must be followed as laid down in Vaccination Act (XIII of 1880), Ss. 17, 18 and 22.

In Burma Act I of 1909, S. 4 is the only provision under which vaccination of a child can be ordered and that section applies only if the child is under six months of age and had been exposed to infection. There is nothing in Burma Act I of 1909 to authorise any officer to require the parent of a child over six months of age to have it vaccinated. In such cases S. 9, Vaccination Act (XIII of 1880), would apply and then the procedure prescribed in Ss. 17, 18 and 22 must be followed. Conviction of a person under S. 13 (1), Burma Vaccination Act, for refusing to allow his child to be vaccinated can-

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not be sustained. (*Carr, J.*) **EMPEROR v. MAUNG BA WIN.**  
 7 Rang. 14=117 I. C. 246=  
 30 Cr. L. J. 750=1929 Cr. C. 58=  
 A. I. R. 1929 Rang. 150.

**BURMA VILLAGE ACT (VI OF 1907).****—Police Officer.**

*Evidence Act, S. 25—Village headman is not a police officer though invested with power of arrest.*

The mere bestowal on a village headman of some powers of arrest as are given to a police officer, does not make him a police officer any more than it makes a Magistrate a police officer. A confession therefore made to him is not inadmissible in evidence but the weight to be attached to such confession will depend on the circumstances of the case and the part he has taken in the elucidation of the crime. 1 L. B. R. 65, Affirmed. (*Young, Offg. C. J., Heald and May Oung, JJ.*) **NGA MYIN v. EMPEROR.**  
 2 Rang. 31=81 I. C. 540=  
 3 Bur. L. J. 11=25 Cr. L. J. 924=  
 A.I.R. 1924 Rang. 245 (F. B.).

**—S. 12—Disobedience.**

*Disobedience of Thug's order to reap for revenue purposes is an offence.*

The reaping and measuring of paddy, for the purpose of revenue assessment, is a public duty within the meaning of S. 12, and it is an offence under the Act for a villager to refuse to comply with a requisition of the headman to assist him in such work. (*Duckworth, J.*) **PAN BU v. EMPEROR.**  
 11 L. B. R. 412=  
 77 I. C. 419=1 Bur. L. J. 150=25 Cr. L. J. 371=  
 A.I.R. 1923 Rang. 81.

**—S. 19—Disobedience.**

*Disobedience of order to remove to another site is no offence.*

Refusing to obey an order given to the accused by the headman to remove to another site, which had been provided for them, is not an offence under S. 19. (*MacColl, A. J. C.*) **EMPEROR v. NGA SEIN.**  
 4 U. B. R. 127=76 I. C. 1039=25 Cr. L. J. 319=  
 A. I. R. 1923 Rang. 132.

**—S. 20-A—Receiving in pawn.**

*Rules under—Receiving an article in pawn without a licence is not offence.*

Sec. 20-A and the rules under it do not create any such offence as that of receiving an article in pawn without a licence. What they do make punishable is the carrying on of the business of a pawn-broker. (*Carr, J.*) **EMPEROR v. MUTU ALAGI.**

6 Rang. 108=10 A. I. Cr. R. 400=110 I. C. 102=  
 29 Cr. L. J. 646=A. I. R. 1928 Rang. 158.

**—S. 21 (1) (a)—Offence under.**

The word "Pwe" as used in the Burma Village Act means only "anyin pwe" performed for profit, or by travelling troupes who tour for the purpose of performing such pwe, and does not include the other performances to which the term is loosely applied in the Burmese language. (*Maung Kin, J.*) **EMPEROR v. MA LE.**  
 13 Bur. L. T. 243=63 I. C. 865=  
 22 Cr. L. J. 705.

**—S. 21-A—Pwe.**

*Pwe included performance for public entertainment—Entertainment at an Ahlu comes within the section and holding Ahlu without permit is an offence.*

Pwe ordinarily includes a theatrical or dramatic performance held for public entertainment whether on public or private property. The object of requiring a permit is to ensure that the authorities get timely notice to arrange for precautionary measures. Where performance was for public entertainment at an ahlu and the

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authorities had not been given any notice and a robbery took place.

*Held*, that though the troupe was composed of local amateurs the offence was committed under the section. (*Maung Ba, J.*) **EMPEROR v. NGA THAN GYAUNG.**  
 27 Cr. L. J. 342=92 I. C. 854=4 Bur. L. J. 145=  
 3 Rang. 514=A. I. R. 1925 Rang. 375.

**—S. 23—Revision.**

*Deputy Commissioner as such cannot revise order of conviction for an offence under the Act or rules thereunder.*

The conviction and sentence of a person for an offence made punishable by the Act or rules made under it is not "an order made under this Act." Nor is a Magistrate, when exercising his jurisdiction as such, "an authority subordinate to the Deputy Commissioner" and therefore an order of conviction for such an offence cannot be revised by the Deputy Commissioner as such. (*Carr, J.*) **EMPEROR v. MUTU ALAGI.**  
 6 Rang. 108=10 A. I. Cr. R. 400=110 I. C. 102=  
 29 Cr. L. J. 646=A. I. R. 1928 Rang. 158.

*Order of Deputy Commissioner, if wrong, can be set aside by High Court (Obiter).*

It is the duty of the High Court, and within its powers, on the matter being brought to its notice, to declare that an order of the Deputy Commissioner even though he is not a criminal Court, is of no effect if it is wrong. (*Carr, J.*) **EMPEROR v. MUTU ALAGI.**  
 6 Rang. 108=10 A. I. Cr. R. 400=  
 110 I. C. 102=29 Cr. L. J. 646=  
 A. I. R. 1928 Rang. 158.

**—S. 23—Procedure.**

*Offence within the Act must be prosecuted under the authority of Deputy Commissioner but not other offences.*

A village headman is protected by S. 28 of the Village Act to this extent that he cannot be prosecuted for an act or omission punishable under S. 10 of the Act or for an abuse of his power similarly punishable, even though such act or omission or such abuse of power is punishable under the Indian Penal Code or some other law, unless the prosecution is instituted by order of or under authority from, the Deputy Commissioner. The village headman has no power to cause hurt to or insult another person and there appears to be no reason why a Magistrate should not enquire into the charges brought against the headman under Ss. 323 and 504 of the Indian Penal Code. 1 L. B. R. 336, Foll. (*Saunders, J.C.*) **NGA TUN LIN v. KING-EMPEROR.**  
 4 U. B. R. 101=73 I. C. 325=  
 1 Bur. L. J. 245=24 Cr. L. J. 581=  
 A. I. R. 1923 Rang. 27.

**—S. 28—Scope.**

*Does not apply where Magistrate takes cognizance of offence of his own motion under Cr. P. Code, S. 190 (1) (c).*

The terms of S. 28, Burma Village Act, must be strictly construed. The section applies only to the entertainment of a complaint and does not impose any restriction upon the prosecution of a headman if the prosecution is instituted otherwise than on complaint. It does not, therefore, apply to a case in which a Magistrate of his own motion takes cognizance of an offence under the provisions of S. 190 (1) (c), Cr. P. Code. (*Carr, J.*) **EMPEROR v. NGA PO WIN.**  
 8 Rang. 246=125 I. C. 360=31 Cr. L. J. 867=  
 1930 Cr. C. 906=A. I. R. 1930 Rang. 253.

# **CALCUTTA HIGH COURT RULES AND CIRCULAR ORDERS.**

—Ch. 1, p. 31, R. 93—Nature of rule.

—R. 93, p. 31, Ch. 1 of the Calcutta High Court's General Rules and Circular Orders, as amended, has the force of law. (*C. C. Ghose and Jack, Jf.*) **EMPEROR v. AHMED SHEIKH.** 56 Cal. 460 = 113 I. C. 572 = 30 Cr. L. J. 199 = 12 A. I. Cr. R. 58 = 48 C. L. J. 288 = 33 C. W. N. 174 = A. I. R. 1928 Cal. 815.

—Ch. 1—Removal of property.

—C. P. Code, O. 21, R. 43—Removal of property as illegal.

Removal by attaching officer of property attached is illegal. (*C. C. Ghose and Jack, Jf.*) **EMPEROR v. AHMED SHEIKH.** 48 C. L. J. 288 = 113 I. C. 572 = 33 C. W. N. 174 = 56 Cal. 460 = 30 Cr. L. J. 199 = 12 A. I. Cr. R. 58 = A. I. R. 1928 Cal. 815.

—Ch. 2—Vakil in criminal appeal.

—Criminal appeal from original side—Question whether a vakil can act is not concluded by Cr. P. Code, but by the rules of the High Court—Cr. P. Code, Ss. 340 and 449.

The question whether a vakil can act for a party in a criminal appeal from the Original Side of a High Court depends upon the rules of that Court and is not concluded by anything in the Cr. P. Code. (*Rankin, C. J. and Chotzner, J.*) **SATYA NARAIN v. EMPEROR.**

55 Cal. 858 = 32 C. W. N. 319 = 29 Cr. L. J. 1022 = 112 I. C. 350 = A. I. R. 1928 Cal. 675.

—Criminal appeal from Original Side—A vakil cannot act unless a question of Hindu or Mahomedan law is involved.

A vakil cannot act in an appeal from a trial held on the Original Side before a Judge and a jury at the High Court Sessions, unless in such appeal a question of Hindu or Mahomedan law or usage should arise. (*Rankin, C. J. and Chotzner, J.*) **SATYA NARAIN MAHTO v. EMPEROR.**

55 Cal. 858 = 32 C. W. N. 319 = 29 Cr. L. J. 1022 = 112 I. C. 350 = A. I. R. 1928 Cal. 675.

## **CALCUTTA MUNICIPAL ACT (III OF 1899).**

—S. 622—Interpretation.

—Non-compliance with requisition for carrying out improvements—Obstruction by some tenants—Onus not completely absolved.

It would be unreasonable to construe S. 622 (3) in the sense that an owner, who has not complied with a requisition at all is discharged from liability, merely because the occupier of a portion of the land has rendered compliance impracticable only in part. Upon a fair interpretation of S. 622, it appears that the owner is discharged from liability only to the extent that compliance is rendered impossible by the conduct of the occupier. (*Mookerjee and Rankin, Jf.*) **THE CORPORATION OF CALCUTTA v. BIJOY KUMAR.**

50 Cal. 813 = 77 I. C. 529 = 38 C. L. J. 360 = 27 C. W. N. 787 = A. I. R. 1924 Cal. 334.

—S. 631—Limitation.

—Limitation runs from the date of first commission of offence.

The period of Limitation under S. 631 begins to run from the date of the first commission of the offence, the date when the obstruction or projection was first placed over the street. (*Chatterjee and Cuming, Jf.*) **NARAYAN KISSEN v. CORPORATION OF CALCUTTA.**

48 Cal. 602 = 33 C. L. J. 377 = 22 Cr. L. J. 619 = 63 I. C. 155 = A. I. R. 1921 Cal. 385.

## **CALCUTTA MUNICIPAL ACT (1923), S. 299.**

—(III OF 1923).

—Nature of proceedings.

—Proceedings by Municipal Magistrate are not criminal.

The Act has invested Municipal Magistrates with power to deal with certain proceedings under the Act which are not criminal proceedings. One of such powers is to order demolition of unauthorised structures. (*Sukrawardy and Cammiade, Jf.*) **KRISHAN DAYAL v. CORPORATION OF CALCUTTA.**

54 Cal. 532 = 31 C. W. N. 506 = 101 I. C. 183 = 45 C. L. J. 469 = 28 Cr. L. J. 407 = 8 A. I. Cr. R. 35 = A. I. R. 1927 Cal. 509.

—S. 3—'New Building.'

—The test whether a building is new or not within the meaning of the Act has reference to the date of commencement of the Act. (*Rankin and Duval, Jf.*) **SATISH CHANDRA v. CORPORATION OF CALCUTTA.**

53 Cal. 974 = 44 C. L. J. 37 = 27 Cr. L. J. 1146 = 97 I. C. 666 = A. I. R. 1926 Cal. 1138.

—S. 175—Applicability.

—Rr. 12 to 14 need not be resorted to where application for cancellation of notice is not disposed of—Magistrate must decide whether licence is necessary—Mere issue of notice does not conclude the case.

Where the accused was informed that his representation for the cancellation of the notice was receiving attention.

*Held*, that the accused was under no obligation whatsoever to avail himself of the provisions of Rr. 13 and 14 of Sch. 6.

*Held*, further that the Magistrate, apart from the question of the accused's availing himself or not of the provisions of Rr. 13 and 14 of Sch. 6, was bound to find if it was necessary for him to take out a license. (*C. C. Ghose and Duval, Jf.*) **UMESHCHANDRA v. CORPORATION OF CALCUTTA.**

43 C. L. J. 231 = 27 Cr. L. J. 549 = 93 I. C. 1045 = A. I. R. 1926 Cal. 614.

—S. 271—Pendency of suit for ejectment.

—Pendency of suit for ejectment of tenant, or existence of injunction against owner of premises or mere application under S. 527 would not relieve owner from liability for conviction for non-compliance with notice under S. 271 but such proceedings cannot be ignored while considering what should be proper sentence for offence of non-compliance.

The pendency of a suit in ejectment against the tenant or the existence of an injunction against the owner of the premises restraining him from taking possession of the premises or even the mere filing of an application under S. 527 would not be sufficient to relieve the owner from a liability for a conviction for non-compliance with a notice under S. 271 requiring him to erect privies connected with the premises. One cannot entirely overlook, however, the existence of such proceedings in considering the gravity of the offence and in determining the proper sentence. (*Mukerji, J.*) **JUMAN SADAGAR v. CORPORATION OF CALCUTTA.**

30 Cr. L. J. 1026 = 119 I. C. 369 = 1929 Cr. O. 172 = A. I. R. 1929 Cal. 490.

—S. 299—Scope and Interpretation.

—Interpretation and scope of—Inapplicability of corresponding provisions of the Act of 1899.

According to S. 299 of the Act a person may be served with notice for any alleged unlawful encroachment. The words "fixture attached to a building" should be construed as they stand and the structure complained of whether constructed either before or after the "building".

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ing" is within the section. The corresponding provision of the Act of 1899 which required the building to be erected before the fixture does not govern the interpretation of the present Act. 23 C. W. N. 752, Ref. (*Pearson and Mallik, J.J.*) PURNA CHANDRA DUTT v. CORPORATION OF CALCUTTA. 122 I. C. 549 = 31 Cr. L. J. 424 = 1929 Cr. C. 72 = A. I. R. 1929 Cal. 440.

**—S. 346—Refusal of notice.**

—Corporation cannot refuse notice under S. 359—Bustee owner prosecuted and fined under S. 346 is immaterial—Prosecution within six months of notice is not valid.

It is obligatory on the Corporation to accept notice given to them under S. 359 and it is not open to them under the section to refuse to accept such a notice and the owner of the bustee giving the notice is entitled to six months' time allowed by the section within which he is to effect the removal of all the huts standing on the land. It is immaterial whether the bustee owner had already been prosecuted and fined for neglect to carry out a requisition under S. 346; he is entitled to serve a notice under S. 359 on the Corporation and to get six months' time, allowed under that section for the removal of all the huts on the land, but it is open to the Corporation if, on the expiry of the six months from the date of the notice, the huts had not been removed to revive once more the former proceedings under S. 346. The Corporation are clearly not entitled to prosecute the bustee owner within six months from the date of notice. (*Cuming and Gregory, J.J.*) BARADAPRASAD ROY v. CORPORATION OF CALCUTTA. 44 C. L. J. 579 = 99 I. C. 933 = 28 Cr. L. J. 197 = 7 A. I. Cr. R. 330 = A. I. R. 1927 Cal. 218.

**—S. 363—Administration of Oath.**

—Party to proceeding under, is not exempted from administration of oath under Cr. P. Code, S. 342.

A party to a proceeding under S. 363 of the Calcutta Municipal Act relating to demolition of an unauthorised structure is not an accused person and as such is not exempted from administration of oath under S. 342 of the Cr. P. Code. A. I. R. 1925 Cal. 1251, Expl. (*Suhrawardy and Cammiade, J.J.*) KISHEN DAYAL v. CORPORATION OF CALCUTTA. 54 Cal. 532 = 31 C. W. N. 506 = 101 I. C. 183 = 45 C. L. J. 469 = 28 Cr. L. J. 407 = 8 A. I. Cr. R. 35 = A. I. R. 1927 Cal. 509.

**—S. 363—Applicability.**

—Calcutta Municipal Act (III of 1899 B. C.), S. 449—Bengal General Clauses Act (I of 1899 B. C.), S. 8—Effect of saving—Demolition order for building built without sanction before the new Calcutta Municipal Act, 1923—Sanction by General Committee to proceed under S. 449 of the old Municipal Act, reaffirmed by the new Corporation—Demolition order is not valid.

A prosecution had been sanctioned by the General Committee under S. 449 of the old Act (III B. C. of 1899) but the case was actually started under the new Act (III B. C. of 1923) by the new Corporation and notice upon the party was issued and an order of demolition was passed.

*Held*, that whether the proceedings were under S. 363 or 364 of Act III B. C. of 1923, they were irregular and the order of the Municipal Magistrate was not justified as the party had not been heard by the Corporation before sanction for prosecution was given.

*Held*, further that the proceedings under S. 449 of the Calcutta Municipal Act (III B. C. of 1899) could only be started by the General Committee and, therefore, in respect of unauthorized structures which existed before

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1st April, 1924, when the Calcutta Municipal Act of 1923 came into force, there was, after the passing of the latter Act, nobody competent to take proceedings under S. 449 of the Act of 1899. (*Sanderson, C. J. and Panton, J.*) RAM GOPAL GOENKA v. CORPORATION OF CALCUTTA. 29 C. W. N. 898 = 90 I. C. 317 = 52 Cal. 962 = 26 Cr. L. J. 1533 = A. I. R. 1925 Cal. 1251.

**—S. 363—Burden of proof.**

—Onus of proving that work was done more than five years previously is on owner.

Under S. 363 (2), the question before the Magistrate is not whether the Corporation has shown the date of the work being done or that the date was within five years of the institution of the proceedings but whether the owner has established to his satisfaction that the work has been done more than five years previously. (*Rankin, C. J. and Patterson, J.*) RAM GOPAL GOENKA v. CORPORATION OF CALCUTTA.

50 C. L. J. 527 = I. B. 1930 Cal. 440 = 124 I. C. 488 = 31 Cr. L. J. 670 = 1930 Cr. C. 222 = A. I. R. 1930 Cal. 222.

**—S. 363—Demolition not punishment.**

—The demolition of unlawfully erected work is not a punishment within the meaning of S. 363. 8 C. W. N. 142, Foll. (*Suhrawardy and Cammiade, J.J.*) KISHEN DAYAL v. CORPORATION OF CALCUTTA.

54 Cal. 532 = 31 C. W. N. 506 = 101 I. C. 183 = 45 C. L. J. 469 = 28 Cr. L. J. 407 = 8 A. I. Cr. R. 35 = A. I. R. 1927 Cal. 509.

**—S. 363—Necessity for privacy.**

—However necessary for privacy, it is breach of S. 363 to erect boundary walls 18 feet high without sanction—Magistrate's discretion ordering demolition held rightly exercised.

A person without sanction and in defiance of the Calcutta Municipal Act and rules of the Corporation erected a boundary wall 18 feet high though under law he was limited to a height of 10 feet and the Magistrate ordered demolition. It was admitted that the walls were necessary for securing privacy of the premises.

*Held*, (*Per Buckland and Graham, J.J.*), that there was breach of S. 363 read with S. 3 (7) and the order of demolition by the Magistrate was valid and legal and the discretion was rightly exercised. (*Per Suhrawardy, J., contra.*) The Magistrate should not as a course of equity order demolition and that Magistrate did not exercise proper discretion when he took into account simply the fact that the structure was put up without the sanction of the Corporation. (*Buckland, J. On difference between Suhrawardy and Graham, J.J.*) SHAM LAL v. CORPORATION OF CALCUTTA.

1929 Cr. C. 525 = 33 C. W. N. 777 = A. I. R. 1929 Cal. 781.

**—S. 363—Old Act.**

—Procedure under S. 363 cannot be applied to provisions of S. 449 of old Act.

It is quite impossible to carry out the provisions of S. 449 of the old Act, by means of the procedure set forth in S. 363 of the New Act. A. I. R. 1925 Cal. 1251, Dist. (*Rankin and Duval, J.J.*) SATISH CHANDRA BOSE v. CORPORATION OF CALCUTTA.

53 Cal. 974 = 44 C. L. J. 37 = 27 Cr. L. J. 1146 = 97 I. C. 666 = A. I. R. 1926 Cal. 1138.

**—S. 363—Scope and Discretion.**

—Discretion should be exercised on equitable grounds.

*Suhrawardy, J.*—S. 363 is not imperative inasmuch as it says that the Magistrate may make an order direct-



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ing that such erection, etc., or so much thereof as has been executed unlawfully be demolished or altered. One of the grounds on which such an order can be passed is that the erection has not been commenced after obtaining the permission of the Corporation, but the section makes it discretionary with the Magistrate to make such an order and it has been interpreted by the Court that the discretion vested in the Magistrate under this section should be exercised on equitable ground. 33 Cal. 287; 34 Cal. 341, Foll. (*Buckland, J.* on difference between *Suhrawardy and Graham, J.J.*) *SHAM LAL v. CORPORATION OF CALCUTTA.*

I. R. 1930 Cal. 612=125 I. C. 740=  
31 Cr. L. J. 912=1929 Cr. C. 525=  
33 C. W. N. 777=A.I.R. 1929 Cal. 781.

**—S. 385—No continuance of offence.**

—*Conviction under S. 385 (1) read with S. 488 (1)*  
—*Continuing to work mill after conviction is not continuance of the offence—Second conviction is bad.*

The accused set up a flour mill intending to work it by electricity without the previous written permission of the Corporation and was convicted under S. 385, Cl. (1) read with S. 488, Cl. (1), and was sentenced to pay a fine on 30th March, 1927. After the said conviction, he worked the mill from 1st April onwards. For this he was prosecuted for having committed an offence under S. 385, Cl. (1) read with S. 488, Cl. (2), and was sentenced to pay a daily fine of Rs. 10.

*Held*, that once the mill has begun to work with electricity, etc., the thing passes beyond the range of intention and it cannot be said to be a continuance of the same offence, but must be regarded as a new offence altogether and the conviction is bad in law and must be set aside. (*Mukerji, J.*) *MURLIDHAR RAM v. CORPORATION OF CALCUTTA.*

32 C. W. N. 591=  
108 I.C. 241=29 Cr. L. J. 361=10 A.I. Cr. R. 7=  
A.I.R. 1928 Cal. 387.

**—S. 406—Applicability.**

—*Accused found taking delivery of consignment of ghee discovered to be adulterated is not guilty of offence under S. 406.*

An accused was found by a Food Inspector unloading a consignment at a railway station. One of the tins which the accused said, contained ghee, appeared to the Food Inspector to contain something else. He accordingly seized the consignment and took it to the Municipal Office. Thereafter he purchased for a sum of four annas a sample of one of the tins for analysis and the analysis, when made, disclosed the fact that the ghee was grossly adulterated. Upon these facts, the accused was convicted.

*Held*, that he could not be convicted of an offence under S. 406. (*Chotzner and Lort Williams, J.J.*) *AKHOY KUMAR GHOSE v. CORPORATION OF CALCUTTA.*

113 I.C. 139 (1)=32 C. W. N. 842=  
30 Cr. L. J. 256=A. I. R. 1928 Cal. 320.

**—S. 406—Compulsory sale.**

—*Compulsory sale is not sale within S. 406*

A compulsory sale made under the provisions of S. 424, Cl. (1) cannot make any person amenable to the punishment provided for under S. 488 of the Act. (*Chotzner and Lort Williams, J.J.*) *AKHOY KUMAR GHOSE v. CORPORATION OF CALCUTTA.*

113 I. C. 139 (1)=30 Cr. L. J. 256=  
32 C. W. N. 842=A.I.R. 1928 Cal. 320.

**—S. 418—Interpretation.**

—*"Prosecution" includes proceedings under S. 421.*  
*Graham, J.*—The word "prosecution" used in S. 418, Sub-S. (2) does not necessarily connote prosecution for an offence, and where it is intended to be so used it is

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usual to state so in plain terms. Prosecution in its wider or more general sense means a proceeding by way of indictment, or information, and as used in S. 418 (2) it may include such proceedings as those taken under S. 421 of the Act. (*Suhrawardy and Graham, J.J.*) *DAULAT RAM v. CORPORATION OF CALCUTTA.*

121 I. C. 561=31 Cr. L. J. 280=49 C.L.J. 502=  
A. I. R. 1929 Cal. 283.

**—S. 421—Burden of proof.**

—*Article ordered to be destroyed—Onus is not on Corporation to prove that the article was intended for human consumption.*

It cannot be contended that because S. 418, Cl. (2) puts the burden upon the accused to prove that the article is not intended for human consumption in a case of prosecution under the chapter, it indicates that in all other cases, e.g., in a case where the article is ordered to be destroyed under S. 421, the onus will be upon the Corporation to prove that it is intended for human consumption. (*Suhrawardy and Graham, J.J.*) *DAULAT RAM v. CORPORATION OF CALCUTTA.*

121 I. C. 561=31 Cr. L. J. 280=49 C.L.J. 502=  
A. I. R. 1929 Cal. 283.

**—S. 424—Procedure not followed.**

Where the procedure prescribed by S. 424 of the Act was not followed, conviction under S. 412 was set aside. (*Mukerji, J.*) *LALJI RAM v. CORPORATION OF CALCUTTA.*

A. I. R. 1928 Cal. 243.

**—S. 449—Applicability.**

—*Bengal General Clauses Act (I of 1899 B. C.), S. 8—Effect of saving—Demolition order for building built without sanction before the new Calcutta Municipal Act, 1923—Sanction by General Committee to proceed under S. 449 of the old Municipal Act, re-affirmed by the new Corporation—Demolition order is not valid.*

A prosecution had been sanctioned by the General Committee under S. 449 of the old Act (III B. C. of 1899), but the case was actually started under the new Act (III B. C. of 1923) by the new Corporation and notice upon the party was issued and an order of demolition was passed.

*Held*, that whether the proceedings were under S. 363 or 364 of Act III, B.C. of 1923, they were irregular and the order of the Municipal Magistrate was not justified as the party had not been heard by the Corporation before sanction for prosecution was given.

*Held*, further that the proceedings under S. 449 of the Calcutta Municipal Act (III B. C. of 1899) could only be started by the General Committee and, therefore, in respect of unauthorized structures which existed before 1st April, 1924, when the Calcutta Municipal Act of 1923 came into force, there was, after the passing of the latter Act, nobody competent to take proceedings under S. 449 of the Act of 1899. (*Sanderson, C.J. and Panton, J.*) *RAM GOPAL GOENKA v. CORPORATION OF CALCUTTA.*

52 Cal. 962=90 I. C. 317=  
26 Cr. L. J. 1533=29 C. W. N. 898=  
A. I. R. 1925 Cal. 1251.

**—S. 488—No continuing offence.**

—*Re-thatching of roof with leaves and allowing it to remain in contravention of the requirements of R. 7 is not a continuing offence.*

Where the owner of a hut put new golpatta leaves upon the old framework of the roof of his hut and the charge against him on that occasion was that he had entirely re-thatched the roof of the hut with new golpatta, and thereafter another prosecution was instituted and it was contended on behalf of the Corporation that because the accused had not pulled down the golpatta

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roof or altered it in accordance with the requirements of R. 7, Sch. 17, he was guilty of a continuing offence.

*Held*, that he was not guilty of continuation of the offence within S. 488 (2), as allowing the roof to remain is not a continuation of the offence of making the roof. *Marshall v. Smith*, 8 C. P. 416, Cons. (*Rankin, C. J. and C. C. Ghose, J.*) CORPORATION OF CALCUTTA v. ANANTA DHAR. 56 Cal. 126=

114 I.C. 402=30 Cr. L. J. 296=12 A. I. Cr. B. 147=32 C. W. N. 696=A. I. R. 1928 Cal. 336.

**—S. 488—Scope.**

—So long as there is no disobedience by a party to the order of demolition of an unauthorised structure passed by the Magistrate, he commits no offence. (*Sukrawardy and Cammiade, J.J.*) KISHEN DAYAL v. CORPORATION OF CALCUTTA. 54 Cal. 532=

31 C. W. N. 506=101 I. C. 183=8 A. I. Cr. B. 35=45 C. L. J. 469=28 Cr. L. J. 407=A.I.R. 1927 Cal. 509.

**—S. 531—Revision of orders.**

—Order of Magistrate appointed under S. 531 is revisable by High Court—Cr. P. Code, S. 6.

The Municipal Magistrate appointed under S. 531 is a Court of inferior criminal jurisdiction within the meaning of S. 6, Cr. P. Code, and orders for demolition passed by such a Magistrate are subject to revision by the High Court under Ss. 435 and 439, Cr. P. Code. Further, an order for demolition is a judicial order and whether made in the exercise of the Magistrate's civil or criminal jurisdiction is open to revision by the High Court. 43 Mad. 146 (P. C.), Foll. (*Sanderson, C. J. and Panton, J.*) RAM GOPAL GOENKA v. CORPORATION OF CALCUTTA. 29 C. W. N. 898=

90 I.C. 317=52 Cal. 962=26 Cr. L. J. 1533=A. I. R. 1925 Cal. 1251.

**—S. 533—Duty of Magistrate.**

—S. 533 must be taken to be subject to the provisions of S. 200 (b), Cr. P. Code—Cr. P. Code, S. 200 (b).

Provisions of S. 533, Calcutta Municipal Act, must be taken to be subject to the provisions of S. 200 (b), Cr. P. Code, and a Municipal Magistrate is bound to examine the complainant before recording conviction of a person under S. 291 (2), Calcutta Municipal Act. (*C. C. Ghose and Gregory, J.J.*) AMBICA PRASAD DAS v. CORPORATION OF CALCUTTA.

48 C. L. J. 190=114 I. C. 82=32 C. W. N. 1091=30 Cr. L. J. 231=12 A. I. Cr. B. 204=A. I. R. 1928 Cal. 483.

**—S. 535—Application for costs.**

—Order passed under S. 535 (2) (a)—Person in whose favour order was passed claiming costs by subsequent application—Magistrate can consider that question.

There is nothing in the terms of S. 535 or in any other section, which prevents the Magistrate from taking into his consideration on a date subsequent to the date of order under S. 535 (2) (a) the question of costs raised by an application by the person in whose favour that order was passed. (*C. C. Ghose and Panton, J.J.*) CORPORATION OF CALCUTTA v. T. H. E. EDWARDS. I. R. 1930 Cal. 732=126 I. C. 412=31 Cr. L. J. 1014=1930 Cr. C. 799=57 Cal. 497=A. I. R. 1930 Cal. 487.

**—S. 537—Scope.**

—Provisions of S. 248 Cr. P. Code, are not affected by S. 537—Powers under S. 537 are to be exercised in accordance with Cr. P. Code, S. 248.

The provisions of S. 248, Cr. P. Code, have not been affected or abrogated in cases or proceedings by

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the Corporation by the provisions of S. 537 of the Calcutta Municipal Act, S. 537 of the Municipal Act is merely an enabling section and the powers given thereunder to do the various acts specified therein can only be exercised in accordance with the provisions of the Cr. P. Code. (*C. C. Ghose and Duval, J.J.*) SISHIR KUMAR v. CORPORATION OF CALCUTTA.

53 Cal. 631=96 I. C. 648=43 C. L. J. 369=30 C. W. N. 598=27 Cr. L. J. 984=A. I. R. 1926 Cal. 786.

—Calcutta Municipal Act, S. 554—Cr. P. C., S. 200—Conservancy Overseer of Calcutta Corporation is public servant—On written complaint by such officer it is not necessary to examine complaint before issuing process—Penal Code, S. 21.

A conservancy officer of the Calcutta Corporation is a public servant within the meaning of S. 21, I. P. C. and as such on the written complaint of such officer made in the discharge of his official duties it is not necessary to examine the complaint before issuing process. (*Cuming, J.*) S. C. NANDI v. CORPORATION OF CALCUTTA. 34 C. W. N. 449=128 I. C. 335=

32 Cr. L. J. 138=I. R. 1931 Cal. 95=1930 Cr. C. 1057=A.I.R. 1930 Cal. 665 (1).

**—S. 557—New procedure.**

—New procedure prescribed by Act V of 1926 is to be applied to proceedings in contravention of the old Act as well as the new Act.

By Act V of 1926 provision has been made whereby proceedings relating to a contravention of the provisions of the Calcutta Municipal Act, 1899, are to be taken in the manner prescribed by the Act of 1923; in other words, the new procedure is to be applied to contravention of the old Act as well as to contravention of the new Act. (*Rankin, C. J. and Buckland, J.*) RAM GOPAL v. CORPORATION OF CALCUTTA.

55 Cal. 964=47 C. L. J. 208=32 C. W. N. 454=10 A. I. Cr. B. 174=29 Cr. L. J. 509=109 I. C. 237=A.I.R. 1928 Cal. 207.

**—S. 557—Scope and effect.**

—Effect and scope enunciated.

The effect of Cl. (4), S. 557-A is this that between August 1926 and August 1927, in a proceeding for demolition of structure under S. 363 even although five years may have expired, a legal proceeding would have been competent because the clause was intended as an extension of limit in view of the fact that legal proceedings had not been possible effectively for some considerable period prior to the amending Act. The clause does not say and it does not mean that no legal proceeding under S. 557-A is ever to be taken after the expiry of one year from August 1926. What it says is that if in the Act or any other law a legal proceeding between August 1926 and August 1927 would have been barred it is not to be barred until August 1927. Such a clause at no time was of any use to anyone except to the Corporation, and that in a case in which it was desired to get an extension of some restrictive period of limitation imposed by some other section of the Act or some other law. (*Rankin, C. J. and Patterson, J.*) RAM GOPAL GOENKA v. CORPORATION OF CALCUTTA. I. R. 1930 Cal. 440=124 I. C. 488=31 Cr. L. J. 670=50 C. L. J. 527=1930 Cr. C. 222=A.I.R. 1930 Cal. 222.

**—S. 559, Cl. 18—Bye-law.**

—Calcutta Municipal Act (1889), S. 559, Cl. 18—Bye-law 10 framed under cl. 18 is not superseded by R. 24 framed by Local Government under S. 11 (2), cls. (f) and (i) of Motor Vehicles Act, 1914. (*Mookerjee,*



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*A.C.J. and Fletcher, J.)* MANAGER, INDIAN MOTOR TAXICAB CO. v. CORPORATION OF CALCUTTA.

61 I. C. 641=25 C.W.N. 21=33 C.L.J. 19=  
22 Cr.L.J. 401=A.I.R. 1921 Cal. 107 (b).

**—Sch. 17—Scope.**

Rules 30 and 32 are intended to affect buildings and structures dealt with by the Act of 1899 and were never intended to apply to boundary walls which are included in the term "building" by the Act of 1923. (*Buckland, J.* on difference between *Suhrawardy and Graham, J.J.)* SHAM LAL KHETTRY v. CORPORATION OF CALCUTTA. I. R. 1930 Cal. 612=

125 I.C. 740=31 Cr. L.J. 912=1929 Cr. C. 525=  
33 C.W.N. 777=A.I.R. 1929 Cal. 781.

**CALCUTTA POLICE ACT (IV OF 1866).****—Detention for unlimited period.**

*Deputy Commissioner in Calcutta has no power of detention for unlimited period.*

There is no power of detention for an unlimited period in the Deputy Commissioner, Calcutta by virtue of his being a Justice of Peace. (*Mukerji, J.)* EMPEROR v. PANCHI KOWRI DUTT.

52 Cal. 67=86 I.C. 414=29 C.W.N. 300=  
26 Cr.L.J. 782=A.I.R. 1925 Cal. 587.

**—S. 3—Interpretation.**

"Profit or gain" is the cardinal constituent of the definition of a "common gaming house". (*Mukerji, J.)* PURAN MULL v. EMPEROR. 122 I. C. 218=

31 Cr.L.J. 376=33 C.W.N. 668=  
1929 Cr. C. 325=A.I.R. 1929 Cal. 644.

**—S. 44—Applicability.**

*Members of association alleged to carry on business for purchase and sale of jute for future delivery—No delivery intended—Accused are guilty under S. 44.*

Certain persons were members of an association called the Bengal Jute Association which carried on business at particular premises in respect of transactions for purchase and sale of jute for future delivery. It was found that there was no intention between the parties either to take or give delivery.

*Held*, that the accused were guilty under S. 44, their intention being to gamble and not to deal in jute. (*Rankin, C.J.)* THAKURDAS MUNDRA v. EMPEROR.

I. R. 1931 Cal. 90=34 C.W.N. 522=  
1930 Cr. C. 973=128 I. C. 330=  
32 Cr. L. J. 134=A.I.R. 1930 Cal. 637.

*Conviction under S. 44 requires sufficient evidence of gain.*

For conviction under S. 44 it is necessary to have sufficient evidence of the element of "profit or gain." (*Mukerji, J.)* PURAN MULL v. EMPEROR.

122 I.C. 218=31 Cr.L.J. 376=33 C.W.N. 668=  
1929 Cr. C. 325=A.I.R. 1929 Cal. 644.

**—S. 45—Presumption.**

*Presumption is inapplicable where search in consequence of which find takes place is of place other than that order to be searched.*

Under S. 47, Police Act, if gaming instruments are found in a house, the presumption is that it is a common gaming house, provided the finding of the instrument is in conformity with S. 46. The search in consequence of which the find takes place must, therefore, be of a place of which a search warrant is issued and no such presumption can be drawn from search resulting in find of a place which is not ordered to be searched. (*Mukerji, J.)* AH YUNG v. EMPEROR.

57 Cal. 457=34 C. W. N. 197=  
I. R. 1930 Cal. 810=127 I. C. 58=  
31 Cr. L. J. 1152=1930 Cr. C. 567=  
A.I.R. 1930 Cal. 369.

**CALCUTTA POLICE ACT (1866), S. 46.****—S. 45—Scope.**

*S. 45 must be read with definition of gaming in S. 2 of Bengal Act IV of 1919.*

Sec. 45, Calcutta Police Act, must be read having regard to definition of gaming in S. 2 of Bengal Act IV of 1913. A petition began with the statement that "at No. 160, Harrison Road, cotton figure gambling has been carried on;" it went on with the statement that "all that happens is that a person who wants to take money will go to a stall-keeper as Modi; a number of them infest the place; every one of them has a book in which entries are made of the stake made by gamblers."

*Held*, that on these statements it is not possible to say that that does not disclose an offence under S. 45. (*Sanderson, C. J. and Richardson, J.)* BAJRANG LAL v. EMPEROR. 33 C.L.J. 287=25 C.W.N. 428=  
22 Cr.L.J. 599=62 I.C. 871=A.I.R. 1921 Cal. 719.

**—S. 46—Defect in warrant.**

*Warrant under S. 46 defective—Presumption under S. 47 should not be raised.*

Where a search warrant purported to have been issued under S. 46 of the Act was defective;

*Held*, that no presumption under S. 47 that the house in question was a common gaming house should be raised. A.I.R. 1926 Cal. 966, Appl. (*Suhrawardy and Cammade, J.J.)* GOUR MOHAN v. EMPEROR. 46 C.L.J. 186=9 A.I.Cr.B. 25=28 Cr.L.J. 871=  
104 I. C. 711=A.I.R. 1927 Cal. 801.

**—S. 46—Interpretation.**

*"Reason to believe" is not same as "cause to suspect"—Officer issuing warrant must judicially have reason to believe.*

The expression "reason to believe" is entirely different from the expression "cause to suspect." The police may have cause to suspect that a certain house or place is used as a common gaming house, but the officer who issues the warrant has to bring his judicial mind to bear upon the question and he can only issue the warrant contemplated under S. 46 of the Act, if in his opinion there is reason to believe that a certain house or place is used as a common gaming house. (*C. C. Ghose and Chotner, J.J.)* WALVEKAR v. EMPEROR.

53 Cal. 718=30 C.W.N. 713=27 Cr.L.J. 920=  
96 I.C. 264=A.I.R. 1926 Cal. 966.

**—S. 46—Proof of contents.**

*Warrant issued under S. 46 is not public record—Its contents must be proved in a regular way—Evidence Act, S. 57 (7).*

A warrant issued under the provisions of S. 46 of the Calcutta Police Act is not a public record and there is no presumption of any kind attaching to it; therefore the contents thereof must be proved in the popular way and, therefore, it is incumbent upon the prosecution to prove that a warrant of this description was in strict compliance with the provisions of S. 46 of the Act and that it was issued after information upon oath had been brought before the issuing officer and after such enquiry as he thought it necessary to make had been made. (*C. C. Ghose and Chotner, J.J.)* WALVEKAR v. EMPEROR.

53 Cal. 718=30 C.W.N. 713=  
27 Cr.L.J. 920=96 I. C. 264=  
A.I.R. 1926 Cal. 966.

**—S. 46—Regularity of warrants.**

*Warrants—Presumption under S. 114, Evidence Act, does not apply—Essential preliminaries must be proved to have been observed.*

Sec. 114, Ill. (e) of the Indian Evidence Act cannot be relied upon in order to presume the irregularity of warrants under S. 46, Calcutta Police Act, and unless the law expressly says that proof shall be required, evidence

**CALCUTTA POLICE ACT (1866), S. 54.**

ought to be required in every case of this description that the essential preliminaries precedent to the issue of such a warrant have been complied with. (*C. C. Ghose and Chotzner, J.J.*) *WALVEKAR v. EMPEROR.*

53 Cal. 718 = 30 C.W.N. 713 = 27 Cr.L.J. 920 = 96 I. C. 264 = A.I.R. 1926 Cal. 966.

**—S. 54—Scope—Interpretation.**

—To uphold conviction actual physical and not potential possession of the 'thing' in some shape or form is necessary—Meaning of the terms 'possession' and 'thing' explained.

Per *Mukerji, J.*—The word 'possession' should be understood in a sense *ejusdem generis* with the words 'conveys' and 'offers and etc.' and in the sense of actual physical possession. The word 'thing' appears in the section, in Sub-S. (1) as "anything" and in Sub-S. (2) as "the thing" and must necessarily mean tangible moveable property having a corporeal existence and capable of being handled. It is the suspected thing itself in some shape or form that can form the subject-matter of a case under S. 54. If a man was in possession of stolen gold ornaments and had got it melted or converted into gold, the gold is still the thing itself in a different shape or form. If instead of having the gold in his hand he keeps it in his house or with a friend or goldsmith, the gold is still in his possession. To such a case the section will apply. If a man deposits money in a bank, or purchases a cash certificate with it, the money loses all its identity and it cannot be said that he is still in actual physical possession of the money as a tangible piece of moveable property. The cash certificate or the fixed deposit receipt may represent the money for certain purposes but it is not the money itself as a 'thing' in another shape or form of such thing. (*Graham, J. contra.*) (*Buckland, J.* on difference between *Mukerji and Graham, J.J.*) *RADHA KRISHNA GUPTA v. JAMUNADAS FATEHPURIA.* 33 C.W.N. 477 = 49 C.L.J. 506 = 31 Cr.L.J. 59 = 120 I. C. 250 = 1929 Cr. C. 31 = A.I.R. 1929 Cal. 401 (403).

**—S. 54-A—Applicability.**

—Prosecution must show that accused had stolen goods found with him.

For the purposes of S. 54-A of the Police Act, it is obligatory on the prosecution to show that there is reason to believe that the goods had been stolen or fraudulently obtained. The mere evidence of the Police that second-hand articles of clothing were recovered from the house of the accused would hardly warrant one in saying that the articles had been stolen or fraudulently obtained. (*Walmsley and Suhrawardy, J.J.*) *RASIK LAL DAS v. EMPEROR.* 71 I. C. 503 = 26 C.W.N. 712 = 24 Cr. L. J. 151 = A.I.R. 1922 Cal. 492.

**—S. 54-A—Burden of proof.**

—S. 54-A is revolutionary in its provision of casting the entire burden of proof on the accused.

The provision contained in S. 54-A is revolutionary in its character, as it relieves the prosecution of its ordinary burden of proof in a criminal case, beyond what is necessary to create a reasonable suspicion, and throw the entire onus on the accused of removing that suspicion. A penal provision of this character should be strictly construed. (*Buckland, J.* on difference between *Mukerji and Graham, J.J.*) *RADHA KRISHNA v. JAMUNADAS FATEHPURIA.* 33 C.W.N. 477 = 49 C.L.J. 506 = 31 Cr.L.J. 59 = 120 I.C. 250 = 1929 Cr.C. 31 = A.I.R. 1929 Cal. 401.

**—S. 54-A—Condition precedent.**

—Condition precedent is that property in possession of accused is stolen property.

**CALCUTTA POLICE ACT (1866), S. 76.**

There must be reason to believe that the property found in the accused's possession was stolen property as a preliminary condition before the accused can be called on to account for that possession. 20 B. 348; 22 C. W. N. 936 and 23 C. W. N. 1053, Ref. (*Newbould and Suhrawardy, J.J.*) *TULSI TOLINI v. EMPEROR.*

72 I.C. 372 = 24 Cr.L.J. 372 = 50 Cal. 564 = A.I.R. 1923 Cal. 596.

**—S. 54-A—Trial under I. P. Code.**

—When an accused has been tried under Ss. 381 and 411, I.P. Code he may be convicted of an offence under S. 54-A, Calcutta Police Act, though not separately charged with it. A.I.R. 1923 Cal. 596, *Foll.*, but not *Appr.*; 29 Cal. 481, Ref. (*Buckland, J.* on difference between *Mukerji and Graham, J.J.*) *RADHA KRISHNA GUPTA v. JAMUNADAS FATEHPURIA.* 120 I.C. 250 = 33 C.W.N. 477 = 49 C.L.J. 506 = 31 Cr.L.J. 59 = 1929 Cr.C. 31 = A.I.R. 1929 Cal. 401.

**—S. 62-A—Kirpans exceeding limit.**

—Carrying kirpans, exceeding nine inches in length, in the town of Calcutta is illegal—Notification of Commissioner of Police dated 21st October, 1922.

The carrying of a sword by calling it a kirpan, exceeding nine inches in length, in the town of Calcutta, is an offence under S. 62-A read with notification of Commissioner of Police dated 21st Oct. 1922. (*Ghose and Cumming, J.J.*) *KRIPAL SINGH v. EMPEROR.*

81 I.C. 940 = 25 Cr.L.J. 1116 = 50 Cal. 912 = A.I.R. 1924 Cal. 231.

**—S. 68—Applicability and effect.**

—Cr. P. Code, S. 403 (1)—Conviction under Calcutta Police Act, S. 68—Trial under Merchants Shipping Act, S. 103 (4) on the same facts is barred.

Where the accused, an officer of a steamship, was convicted under S. 68 of the Calcutta Police Act on a charge of drinking and disorderly conduct creating a disturbance by assaulting the Captain of the vessel and sentenced to pay a fine, and the Captain subsequently filed a complaint on the same facts under S. 103 (4) of the Merchants Shipping Act charging the accused with having assaulted him and he was convicted under the said section and sentenced.

*Held*, that the substantial charge under the Police Act being "assault," Cr. P. C., S. 403 (1), 2nd part is a bar to a second conviction upon the same facts under a different enactment, namely, the Merchants Shipping Act. (*Rankin and Chotaner, J.J.*) *ALFRED LAIRD v. EMPEROR.*

99 I. C. 1033 = 31 C. W. N. 195 = 28 Cr. L. J. 233 = 7 A. I. Cr. R. 386 = A. I. R. 1927 Cal. 224.

**—S. 76—Period of detention.**

—Deputy Commissioner of Police cannot detain arrested person longer than is necessary to bring him before Magistrate—He cannot order his detention till completion of police investigation.

A Deputy Commissioner of Police by virtue of his powers as a Justice of the Peace or otherwise, cannot lawfully order the detention in police custody of a person arrested without warrant, for any longer time than is necessary to enable such person to be brought before a Presidency Magistrate, nor can he lawfully order that the detention of any such person as aforesaid at a police station or in police custody shall continue until the police investigation shall have been (a) further advanced; or (b) completed, notwithstanding that the time within which such person might have been brought before a Presidency Magistrate has elapsed. Cr. Mis. Case 51 of 1926, *Overruled.* (*Chatterjee, Greaves, Rankin, Pantton and Mukerji, J.J.*) *MUHAMMAD SULEMAN v. EMPEROR.* 54 Cal. 218 = 44 C. L. J. 138 =

**CALCUTTA POLICE ACT (1866), S. 76.**

30 C. W. N. 985=27 Cr. L. J. 1201=  
7 A. I. Cr. R. 298=97 I. C. 961=  
A. I. R. 1926 Cal. 1121 (1127) (F. B.).

**—S. 76.**

*Quere.*—Has a Deputy Commissioner of Police as a Justice of the Peace in Calcutta, power under the Calcutta Police Act to order detention for an unlimited period. (*Walmsley and Mukerji, JJ.*) SUBHODH CHANDRA ROY CHOUDHURI v. EMPEROR.

85 I. C. 913=40 C. L. R. 489=29 C. W. N. 98=  
52 Cal. 319=26 Cr. L. J. 625=  
A. I. R. 1925 Cal. 218 (a).

*Arrest under orders of Deputy Commissioner of Police—Persons arrested can be detained in Police custody till investigation is over, but if they cannot be released on bail they should be produced before a Magistrate without unreasonable delay.*

It is not the duty of the Deputy Commissioner of Police, a Justice of the Peace, to place an offender forthwith before a Magistrate, for in the first instance there is no period mentioned in the Calcutta Police Act within which this must be done, and in the second place as a Justice of the Peace, the Deputy Commissioner is entitled to take such steps as may be necessary to complete an investigation before placing the matter before a Magistrate. A. I. R. 1925 Cal. 587, Rel. on. It is also proper that if the officer does not see his way to release the petitioners on bail, he should produce them before a Magistrate with as little delay as possible, so that the Magistrate may determine whether in the circumstances of the case the persons arrested are entitled to be enlarged on bail, and if there is any improper exercise of such power, that can be corrected by the High Court under suitable provisions of the law, such as S. 491, Cr. P. Code. (*Suhrawardy and Duval, JJ.*) SRILAL AGARWALLA v. EMPEROR. 44 C. L. J. 134=97 I. C. 945=27 Cr. L. J. 1185.

**—S. 78-A—Complainant's statement.**

*Statements made by complainant under S. 78-A must be allowed to be used in evidence.*

A statement by the complainant during investigation to a Police Inspector reduced into writing and entered in a diary must be produced before the Court and allowed to be proved by the defence. (*Suhrawardy, J.*) PANCHANAN MUKHERJEE v. EMPEROR.

33 C. W. N. 203=116 I. C. 160=30 Cr. L. J. 577=  
12 A. I. Cr. R. 448=A. I. R. 1929 Cal. 257.

**—S. 78-A—Powers of police.**

*A statement obtained in contravention of S. 78-A Sub-S. (3), is not admissible—Police have no general inherent power in matters of investigation apart from the powers conferred on them by Acts and Circulars.*

There are no powers inherent in the Police which are not expressly set out in the four corners of the Calcutta Police Act. All investigations by the Police must be controlled, in the mofussil, by the Cr. P. C. and in Calcutta by the Police Act itself or by any circular Orders issued. Taking of statements generally by the Police apart from the provisions of any Act and then putting the statements so taken in evidence against the person by whom they were made is not permissible. (*Greaves and C. C. Ghose, JJ.*) SATYA CHARAN MITTER v. EMPEROR. 53 Cal. 650=30 C. W. N. 427=45 C. L. J. 15=27 Cr. L. J. 602=94 I. C. 266=A. I. R. 1926 Cal. 586.

**CALCUTTA PORT ACT (III OF 1890).****—S. 83—Effect.**

*Section prohibits structures on private land and thus interferes with private rights.*

**CAL. SUPPRESSION OF IMMORAL TRAFFIC ACT (1923), S. 4.**

Sec. 83 does expressly deprive owners of property of their rights. It prohibits the erection of certain structures on private land, *i. e.*, land below high water-mark which is clearly an interference with the rights of the owners. If it were assumed that all land below high water-mark is the property of the Crown to which no other person had any rights, the provisions under the Act would have been superfluous since it would not be necessary to provide a special statute for the removal of structures erected by trespassers. (*Newbould and B. B. Ghose, JJ.*) RADHA KISSEN CHAMRIA v. EMPEROR. 51 Cal. 1030=84 I. C. 941=26 Cr. L. J. 397=A. I. R. 1925 Cal. 404.

**—S. 84—Injunction by Civil Court.**

*Proceedings for contravention of S. 83 cannot be stopped by an injunction by a Civil Court.*

The Commissioners for the Port of Calcutta cannot be restrained by injunction by a Civil Court from proceeding with a certain criminal prosecution instituted by them against certain persons under S. 84, Calcutta Port Act, for contravention by the said persons of the provisions of S. 83 of the Act. (*C. C. Ghose and Chotzner, JJ.*) COMMISSIONERS FOR THE PORT OF CALCUTTA v. SURAJ MULL JULAN. 55 Cal. 978=112 I. C. 712=32 C. W. N. 576=A. I. R. 1928 Cal. 464.

**CALCUTTA RENT ACT (III OF 1920).****—Alteration of order.**

*Order fixing standard rent is judgment in rem and cannot be altered on application by subsequent tenant.*

An order passed by the Rent Controller fixing the standard rent is an order which affects the house and it is therefore one which operates as a judgment *in rem* and the question cannot be re-opened on the application of a subsequent tenant. No doubt the standard rent can be altered or varied under certain circumstances, for instance, when there has been any alteration in the premises or an additional burden has been cast upon the landlord or similar circumstances, but that does not show that the judgment fixing the standard rent is not a judgment *in rem* and that it can be re-opened at any subsequent time. (*Suhrawardy and Graham, JJ.*) AHAMUDDIN v. BANKU BEHARI. 31 C. W. N. 308=100 I. C. 781=A. I. R. 1927 Cal. 305.

**CALCUTTA SUBURBAN POLICE ACT (II OF 1866).****—S. 47-A (inserted by III of 1910)—Police diary.**

In areas covered by the Act, a police-officer investigating a case maintains a diary under S. 47-A and hence no privilege attaches to it. (*C. C. Ghose and Cuming, JJ.*) SURESH CHANDRA GHOSE v. EMPEROR. 24 Cr. L. J. 757=74 I. C. 261=A. I. R. 1924 Cal. 542.

**CALCUTTA SUPPRESSION OF IMMORAL TRAFFIC ACT (XIII OF 1923).****—S. 3—Jurisdiction.**

*Girl over sixteen—Police have no jurisdiction.*

If a girl has attained the age of 16, the police has no further jurisdiction to exercise under the Act of 1923. (*Suhrawardy and Panton, JJ.*) MAHARANI DASI v. EMPEROR. 30 C. W. N. 72=27 Cr. L. J. 159=91 I. C. 895=A. I. R. 1926 Cal. 339.

**—S. 4—Applicability.**

*Act applies to females under S. 16, whether married or not—Bengal Children Act (II of 1922).*

Acts apply whether the female in question is unmarried or married and the whole matter turns not on the status of the female from the point of view of marriage or no marriage but on the question of age. If the word

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"girl" were limited to mean a young unmarried female, it would be easy for a person who desired to live on the immoral earning of young girls to marry them solely for the purpose of enabling him to put himself outside the provisions of the statutes and to set the whole law at defiance. (*Costello and Lort Williams, J.J.*) PANCHU GOPAL v. EMPEROR. 48 C. L. J. 586 = 33 C. W. N. 198 = 115 I. C. 266 = 30 Cr. L. J. 410 = 56 Cal. 750 = 12 A. I. Cr. R. 304 = A. I. R. 1929 Cal. 99.

## —S. 4—Residence.

*Temporary residence is enough.*

A residence in a brothel for about four days before rescue comes within the meaning of the words "lives in." The whole purpose of the Act would be frustrated if a girl has to be an ordinary resident before the section can come into operation. (*C. C. Ghose and Duval, J.J.*) HEMANGINI DASI v. EMPEROR. 30 C. W. N. 768 = 27 Cr. L. J. 1066 = 97 I. C. 42 = A. I. R. 1926 Cal. 944.

## —S. 6—Conviction under.

*Lessee sub-letting premises to prostitutes, collecting rent daily by sitting outside and actively associating with the business of the brothel—Conviction under S. 6 is proper.*

The accused took on lease certain houses for the purpose of making a living out of them and sub-let the houses to prostitutes and made a fine profit out of them. He was not content with simply collecting his rents once a week or once a month but he attended there daily and had full control over them. He was also daily sitting outside the houses collecting his rents, at times interviewing visitors, and having men there to assist him.

*Held* (per *Graham and Duval, J.J.*)—That it was not a case of simply having let out the houses to some women who used them for immoral purposes, but was also a case where the lessee took the houses so as to make a profit out of prostitution and that his conviction under S. 6 was proper.

Per *Cammiade, J., contra.*—Letting rooms to prostitutes and sitting at the gate of the premises to collect daily rent does not amount to the offence punishable under S. 6. (*Duval, Graham and Cammiade, J.J.*) KAMBHO BERA v. EMPEROR. 32 C. W. N. 195 = 29 Cr. L. J. 917 = 111 I. C. 725 = A. I. R. 1928 Cal. 381 (F. B.).

## —S. 6—Offence.

Per *Graham, Cammiade and Duval, J.J.*—Mere letting of rooms to prostitutes or collecting rents from them is not an offence. (*Duval, Graham and Cammiade, J.J.*) KAMBHO BERA v. EMPEROR.

32 C. W. N. 195 = 29 Cr. L. J. 917 = 111 I. C. 725 = 11 A. I. Cr. R. 68 = A. I. R. 1928 Cal. 381 (F. B.).

# CANTONMENTS ACT (XV OF 1910).

## —S. 266—Interpretation.

S. 266, Cantonments Act, only lays down that no Court shall proceed to the trial of any offence under Cantonments Act unless moved by the persons mentioned therein and if the persons mentioned therein initiate the proceedings as provided in the section, the Court must follow the procedure laid down in Cr. P. Code. (*Ghulam Mohiuddin, J.*) SURAJDEEN BANIA v. EMPEROR. 10 A. I. Cr. R. 365 = 109 I. C. 307 = 29 Cr. L. J. 591 (Nag.).

## —S. 266—Procedure.

*Cr. P. Code, S. 537—Cantonment Board lodging a complaint signed by execution officer filing no authority but having power to file such complaint—Affidavit filed in the Revision Court showing that he had an authority to do so—Omission to file is curable.*

# CATTLE TRESPASS ACT (1871), S. 10.

A complaint was lodged by the Cantonment Board, through a Sub-Overseer, signed by the Executive Officer of the Board. The Executive Officer never appeared before the Magistrate. Sub-Overseer did not hold any power of attorney on behalf of the Board. No power of authority was filed to show that the Executive Officer had any authority to lodge such a complaint. On conviction the accused filed a revision. The Executive Officer filed an affidavit that he had an authority to file the complaint.

*Held*, that failure to file the authority is an omission curable under S. 537. 116 P. L. R. 1907, Foll. (*Addison, J.*) KUSHAL CUSHAND v. EMPEROR.

11 A. I. Cr. R. 13 = 111 I. C. 326 = 29 Cr. L. J. 822 = A. I. R. 1928 Lah. 946.

## —(II OF 1924).

## —S. 118—Ingredients.

The giving of offence by the exposure of the person is not a necessary ingredient of the offence under S. 118 (1)(a)(iii). The offence is complete if the exposure is "wilful or indecent" and in a public place. (*Boys, J.*) BEHARI v. EMPEROR. 27 Cr. L. J. 107 = 1 I. C. 539 = A. I. R. 1926 All. 263.

## —S. 118—Scope.

*Takhtposh or moveable wooden platform does not fall within Cl. (c).*

A takhtposh or moveable wooden platform cannot be held to be "earth, or material of any description, or any offensive matter, or rubbish" within the meaning of Cl. (c), S. 118 (1). (*Shadilal, C. J.*) SRIRAM v. EMPEROR. 28 Cr. L. J. 683 = 103 I. C. 411 = 9 A. I. Cr. R. 24 = A. I. R. 1927 Lah. 647.

## —S. 213—Presumption—Evidence Act, S. 114.

Where a person, who was a butcher by trade and had no licence, actually imported meat in large quantities far more than could be required for his personal use and had distributed it but where there was no evidence that he actually received any money the presumption that he actually imported meat and sold it can be legitimately drawn. (*Barlee, J. C. and Kalumal Pahlumal, A. J. C.*) MAHOMEDDIN v. EMPEROR.

1929 Cr. C. 318 = 118 I. C. 223 = 30 Cr. L. J. 906 = A. I. R. 1929 Sind 150.

## —S. 236—Males.

A Magistrate can convict a male of the offence of loitering for the purpose of prostitution under S. 236 (1). (*Marten and Madgavkar, J.J.*) EMPEROR v. MARIDAS LAZAR. 28 Bom. L. R. 298 = 27 Cr. L. J. 555 = 93 I. C. 1051 = A. I. R. 1926 Bom. 227.

# CATTLE—See CATTLE TRESPASS ACT.

# CATTLE POUNDS—See CATTLE TRESPASS ACT.

# CATTLE TRESPASS ACT (I OF 1871).

## —Conviction—Legality of.

*Conviction not justified under law and fine arbitrary—Conviction can be set aside—Cr. P. Code, S. 439.*

Where a conviction was not justified under the Cattle Trespas Act and especially where the fine was arbitrary High Court interfered and set aside the conviction. (*Pullan, J.*) EMPEROR v. MADHO.

6 Luck. 26 = I. R. 1930 Oudh 369 = 126 I. C. 497 = 31 Cr. L. J. 1015 = 1930 Cr. C. 570 = 7 O. W. N. 461 = A. I. R. 1930 Oudh 250.

## —S. 10—Offence under.

*Penal Code, S. 379—Detaining cow for 24 hours is not theft, or any offence.*

A person, detaining cow in his custody for less than 24 hours as he is entitled under S. 10, Cattle Trespas Act, is not guilty of offence under S. 379, intention for

**CATTLE TRESPASS ACT (1871), S. 10**

causing wrongful loss being absent. Where the accused kept the cow in his custody for damages done over-night for the purpose of impounding unless he received compensation, *held*, that he was legally entitled to keep it in his own custody for 24 hours before lodging it in the pound. 14 C. W. N. 238, Foll. (*Batters, J. C.*) *RAMRATAN v. EMPEROR*. 23 Cr. L. J. 511 = 68 I. C. 47 = A. I. R. 1923 Nag. 64.

**—S. 10—Private defence.**

*—Penal Code, S. 105—Right of private defence—Trespass by cattle—Cattle can be chased even outside the fields trespassed.*

Certain cattle belonging to accused trespassed a field where they were grazing. An attempt was made by the owner of the field to seize them in order to take them to cattle pound. The cattle ran towards the field of the accused where the chasers followed them. The accused inflicted mortal injuries on one of the chasers, who consequently died. It was urged that the chaser had no right to pursue out of the field trespassed and the accused were entitled to a right of private defence.

*Held*, that notice of trespass being taken at once, the mere fact that the cattle had left the land, before they could be seized, did not deprive the owner of the field of the right of seizure conferred upon him by S. 10, and no case for private defence was proved. A. I. R. 1925 Nag. 53, Dist. (*Shadi Lal, C. J.*) *WARYAMI v. EMPEROR*. 13 A. I. Cr. R. 39 = 116 I. C. 463 = 30 Cr. L. J. 627 = A. I. R. 1928 Lah. 692.

**—S. 10—Seizure.**

*—Right to seize cattle subsists only until the cattle leave the land.*

The owner of the land trespassed on cannot go to the owner of the errant cattle and demand their delivery in order that he may take them to the cattle pound. Because, under S. 10 the right to take hold of cattle trespassing on land and doing damage subsists only while the cattle are on the land. It does not continue after the cattle have left the land. (*Kinkhede, A. J. C.*) *BHAGWANT RAO v. CHAMPAT RAO*. 25 Cr. L. J. 1004 = 81 I. C. 716 = A. I. R. 1925 Nag. 50.

*—Watchman—General instruction to seize cattle trespassing—Rescuing cattle seized by watchman is an offence.*

Under S. 10, a watchman watching crops on land on behalf of a cultivator or occupier is entitled to seize cattle trespassing on the land under his charge when he is given general instructions to seize them while so trespassing. (*Adami, J.*) *K. DUSADH v. SARABI DUSADH*. A. I. R. 1922 Pat. 317.

**—Ss. 11 and 24—Conviction under.**

*—Railways Act, S. 125 (4)—Cattle passing over regular track at place where there is no fencing to railway line—Unless there is damage conviction under S. 24 cannot be sustained.*

In order that an offence may be established under S. 24, the seizure of the cattle must be legal and consequently driving herds of cattle across the railway line at a place where there is no fence and where there is a regular track does not constitute any offence under S. 24 in the absence of any damage to the line. 43 I. C. 445; 1 P. L. T. 176 and 23 C. W. N. 387, Rel. on. (*Pullan, J.*) *EMPEROR v. MADHO*. 6 Luck. 26 = I. R. 1930 Oudh 369 = 126 I. C. 497 = 31 Cr. L. J. 1015 = 1930 Cr. C. 570 = 7 O. W. N. 461 = A. I. R. 1930 Oudh 250.

**—S. 20—Interpretation.**

*—General Clauses Act, S. 10—Principle of S. 10 may be applied to S. 20.*

**CATTLE TRESPASS ACT (1871), S. 22.**

Although S. 10, General Clauses Act, only applies to Acts made on or after 14th January, 1897, and does not cover in terms, an Act like Cattle Trespass Act passed in 1871, the principle underlying S. 10, General Clauses Act, should be applied to complaints under Cattle Trespass Act, S. 20. (*Findlay, J. C.*) *MAHADEO GANPATI PATIL v. NABHA VISHWANATH*. 30 Cr. L. J. 125 = 113 I. C. 285 = 12 A. I. Cr. R. 69 = A. I. R. 1929 Nag. 96.

**—S. 20—Jurisdiction.**

*—Cr. P. Code (V of 1898), Ss. 4 (c) and 29—Magistrate generally empowered under Cr. P. Code, to try offences has jurisdiction to try offences under S. 20.*

A Magistrate generally empowered under the Cr. P. Code to receive complaints of offences, has jurisdiction in respect of offences under S. 20 of the Cattle Trespass Act without any special authorization by the District Magistrate to receive complaints under the above section. 44 Bom. 42 and 34 Cal. 926, Foll. (*Wallace, J.*) *DEENADAYALU v. RATNA PADAYACHI*. 100 I. C. 381 = 25 M. L. W. 282 = 1927 M. W. N. 167 = 28 Cr. L. J. 301 = 50 Mad. 841 = A. I. R. 1927 Mad. 396 = 52 M. L. J. 251.

**—S. 21—Complaint—Validity of.**

*—Agent authorised to file a complaint though can not give direct evidence of all circumstances.*

For a complaint by an agent to be valid, it is not necessary that the agent must know all about the matter from what he has seen himself and not from what he has been told by others; that is, the agent need not be a person who is capable of giving what is called direct evidence of all the circumstances and not of a part of them only. (*Hallifax, A. J. C.*) *JUKARAM v. GANPAT*. 26 Cr. L. J. 327 = 84 I. C. 551 = A. I. R. 1923 Nag. 156.

**—S. 22—Appeal.**

*—An order awarding compensation and repayment of fines under S. 22 of the Cattle Trespass Act (I of 1871) is appealable under S. 408 of the Cr. P. Code the compensation so awarded not being a fine, the restrictive provisions of S. 413, Criminal Procedure Code are not applicable. (Macleod, C. J. and Shah, J.) BARTHOL DUMING RODRIKS v. PAPA DADA.* 63 I. C. 160 = 46 Bom. 58 = 23 Bom. L. R. 836 = 22 Cr. L. J. 624 = A. I. R. 1922 Bom. 191.

**—S. 22—Compensation.**

*—Compensation cannot be awarded in absence of loss and unless specifically claimed—Sentence of imprisonment under S. 22 in default of compensation is illegal.*

Compensation under S. 22 cannot be allowed in the absence of loss alleged or proved. The Magistrate cannot award it arbitrarily at his own sweet will. The complainant must make a specific claim about it. Further the Magistrate can only award compensation for illegal seizure of cattle and cannot impose fine. He is also not competent under S. 22 to pass sentence of imprisonment and thus when he passes a sentence of imprisonment in default of payment of compensation, the sentence is illegal. (*Mohiuddin, A. J. C.*) *RAMDULAREY v. MANOHAR*. 31 Cr. L. J. 278 = 121 I. C. 665 = 26 N. L. R. 158 = A. I. R. 1930 Nag. 149.

*—Compensation may be awarded to owner of the cattle and not to agent filing complaint.*

Where the complaint is lodged by an agent, the Magistrate can award reasonable compensation, which will be paid to the complainant (owner of cattle and not to the agent who filed the complaint. (*Mohiuddin, A. J. C.*) *MANOHAR v. RAMDULAREY*. 30 Cr. L. J. 633 = 116 I. C. 424 = 1929 Cr. C. 18 = 13 A. I. Cr. R. 63 = A. I. R. 1929 Nag. 152.

**CATTLE TRESPASS ACT (1871), S. 22.**

—*Compensation need not be claimed in the complaint.*

There is no restriction in the Act that the Court cannot award compensation unless it is claimed in the complaint. A. I. R. 1923 Pat. 292, not foll. (*Jackson, J.*) KOLANDAI CHETTY v. PERUMAL KAVUNDAN.

29 Cr. L. J. 325=108 I. C. 80=1 M. Cr. C. 125= A. I. R. 1928 Mad. 369.

—*Loss not proved—Compensation not asked for in petition—Compensation order is illegal.*

If no compensation was claimed in the petition of complaint and no allegation was made as to the loss caused by the seizure of the cattle, the order directing payment of compensation cannot stand. The person under whose orders the cattle were seized is liable to compensate the complainant, equally with those who directly seized them under his orders. (*Ross, J.*) BAIJ-NATH SAHAY v. KING-EMPEROR. 4 P. L. T. 231=

72 I. C. 71=1923 P. H. C. C. 96= 1 Pat. L. R. Cr. 34=24 Cr. L. J. 311= A. I. R. 1923 Pat. 292.

**—S. 22—Grazier.**

—*Grazier of cattle is agent within S. 22.*

A grazier is entrusted with the charge of the cattle during the period the cattle are with him for the purpose of grazing and therefore he may be presumed to be an agent of the owners of the cattle during the time the cattle are in his charge. Such an authority must be presumed from the circumstances of the case. The person personally acquainted with the circumstances can only be the person in charge of the cattle when seizure is made and therefore comes under the category of "an agent personally acquainted with the circumstances" mentioned in S. 21. A. I. R. 1923 Nag. 156, Ref. (*Mohiuddin, A. J. C.*) MANOHAR v. RAMDULAREY. 30 Cr. L. J. 633=116 I. C. 424=1929 Cr. C. 18= 13 A. I. R. Cr. 63=A. I. R. 1929 Nag. 152.

**—S. 24—Liability.**

—*For conviction under S. 24 liability of the cattle to be seized must be proved.*

Before a conviction under S. 24 can be sustained it is necessary to prove that the cattle which has been rescued was liable to be seized under the Act. (*Sulaiman, J.*) BABU v. EMPEROR. 24 A. L. J. 280= 27 Cr. L. J. 313=7 L. R. A. Cr. 40=92 I. C. 697= A. I. R. 1926 All. 276.

**—S. 24—Offence.**

—*Penal Code, Ss. 447, 441 and 40—"Offence" in S. 441 includes offence under S. 24.*

Entering the cattle pound with intent to commit an offence under S. 24, Cattle Trespass Act amounts to criminal trespass within the meaning of S. 447, I. P. C. and entering the pound with intent to intimidate the person in charge of the pound amounts to an offence under S. 447. (*Fforde and Addison, J.J.*) EMPEROR v. BHOLA. 8 Lah. 331=103 I. C. 201=

28 Cr. L. J. 665=28 P. L. R. 519= 8 A. I. Cr. B. 293=9 L. L. J. 354= A. I. R. 1927 Lah. 495.

**—S. 24—Offence under.**

—*Wrongful removal of cattle from pound—Offence of theft if constituted—Act constituting offence under Cattle Trespass Act also—Procedure.*

A person who removes cattle from a pound where they are secured without paying the legitimate fee has the dishonest intention of saving himself the fee and is liable to be convicted under S. 24 of the Cattle Trespass Act as well as under S. 380, I. P. C. In such cases however the conviction cannot be under both provisions of law. Conviction for theft upheld. (*Pandalai, J.*) VEERA-

**CENTRAL PROVINCES LAND REVENUE ACT (1917), S. 188.**

SWAMI NAICKEN v. EMPEROR.

1930 M. W. N. 529=33 L. W. 205=

129 I. C. 451 (1)=32 Cr. L. J. 354=

I. B. 1931 Mad. 252 (1)=1931 Cr. C. 32=

A. I. R. 1931 Mad. 18.

**—S. 24—Sentence.**

—*Penal Code, S. 323—Separate sentences can be passed.*

The offence of causing hurt is a separate offence from that of rescuing cattle and separate sentences may legally be passed. (*Wallace, J.*) ANTHONI UDAIYAN v. RAYAPPUDAYAR. 39 M. L. T. 543=

1927 M. W. N. 850=105 I. C. 806=

28 Cr. L. J. 982=9 A. I. Cr. R. 160=

A. I. R. 1928 Mad. 18=53 M. L. J. 653.

**CENTRAL PROVINCES CRIMINAL CIRCU-LARS.**

—No. 1-28, Para. 6—Procedure.

—*Trial of young offenders by Second Class Magistrate is barred.*

The Circular states that adolescents should be tried by a Magistrate not below the rank of Sub-Divisional Magistrate. It does not say that a Second Class Magistrate may try an adolescent but must refer the case for punishment to the Sub-Divisional Magistrate. (*Kotwal, A. J. C.*) BABA v. EMPEROR. 22 N. L. B. 166=

74 I. C. 66=24 Cr. L. J. 738=

A. I. R. 1924 Nag. 37.

**CENTRAL PROVINCES LAND REVENUE ACT (II OF 1917).**

—S. 131—Offence under.

—*Penal Code, S. 353—C. P. Code, O. 21, R. 24—O. 21, R. 24 applies to warrants under L. R. Act, S. 131—Resistance to a time-barred warrant issued under S. 131 is no offence.*

Where the date fixed for the return of the warrant had already expired on the day that the process-server went to execute it,

*Held*, that he was not acting in the execution of his duty and the conviction under section 353 for assaulting him was bad. O. 21, R. 24, C. P. Code, applies to a warrant issued under S. 131 of the Land Revenue Act. 10 C. 18 and 31 C. 424, Foll. (*Baker, Offg. J. C.*) NANDLAL v. EMPEROR. 19 N. L. R. 183=

76 I. C. 655=25 Cr. L. J. 223=

A. I. R. 1924 Nag. 68.

**—S. 188—Consent.**

—*Condition in a wajib-ul-arz—Consent of every co-sharer in petty cases is not necessary.*

Where under the *wajib-ul-arz* of the village the lambardar who to manage the village with the consent of the co-sharers, the lambardar need not obtain the consent of every individual co-sharer, in petty cases such as allowing a cow to graze in the village. (*Baker, J. C.*) PARASRAM v. KANHIA. 7 N. L. J. 193=

84 I. C. 862=26 Cr. L. J. 382=

A. I. R. 1923 Nag. 336.

**—S. 188—Lambardar.**

—*Lambardar of undivided village has no sole right to appoint village servants.*

There is no authority to support the proposition that a person as the lambardar of the undivided village has the right to appoint persons who simply make a living in the village by their labour as village servants and a co-sharer has no right to interfere with their appointment. (*Subhedar, A. J. C.*) KASHIRAM HAZARI v. ASARAM. 1929 Cr. C. 532=31 Cr. L. J. 20=

120 I. C. 215=A. I. R. 1929 Nag. 328.



# CENTRAL PROVINCES MUNICIPAL ACT (XV OF 1903).

## —S. 35—Market due.

—“Market due” meaning—Unpaid lease—Money is not a tax recoverable under S. 44.

At an auction held by the Municipal Committee of Nagpur of the right to sell provisions at a certain stall in the Cotton Market near the Railway Station the applicant Yeshwant made the highest bid. He paid a portion of the amount of his bid and the sale was presumably sanctioned in due course. But before Yeshwant executed the deed required of him, the Committee broke one of the conditions of the contract and he filed a suit for damages. The Committee then applied under S. 44 to a Magistrate to recover the unpaid balance of the lease money from him by distress and sale of his moveable property.

*Held*, that the unpaid lease money was not a “market-due” or tax of the kind mentioned in S. 35 as it was never imposed in the manner prescribed by that section and, therefore, not recoverable by the summary procedure provided by S. 44. (*Hallifax, A. J. C.*) **YESHWANT RAO v. NAGPUR MUNICIPALITY.**

19 N. L. R. 122=73 I. C. 52=24 Cr. L. J. 516=  
A. I. R. 1923 Nag. 264.

## —S. 66—Building.

A building means a structure with a roof. (*Drake Brockman, J. C.*) **THAKUR LAL v. SECRETARY, MUNICIPAL COMMITTEE, KHANDWA.**

22 Cr. L. J. 754=64 I. C. 274=  
A. I. R. 1921 Nag. 147.

## —S. 105—By-law 5 (a).

—Lease can only be terminated according to law and it does not come to end at mere will of Committee—Transfer of Property Act, S. 106.

A lease can only be terminated according to law and it does not come to an end, at the sweet will of the Committee, by passing a resolution. A Municipal Committee granted a lease of immovable property. The lease was from month to month. No 15 days' notice as required by law was given, but the Committee passed a resolution by which the lessee was to quit the land after seven days' notice. On lessee's failure to do so he was convicted for breach of the bye-law 5 (a).

*Held*, that the lease could only be terminated with 15 days' notice and as no such notice was given, there was no breach of the bye-law 5 (a), and the conviction was illegal. (*Mohiuddin, A. J. C.*) **MULCHAND BALBADHAR v. MUNICIPAL COMMITTEE, GONDIA.**

124 I. C. 256=31 Cr. L. J. 667=  
1929 Cr. C. 511=A. I. R. 1929 Nag. 332.

## —S. 122—Encroachment.

—Encroachment by previous owner—Present owner omitting to remove it is not guilty.

S. 122 cannot be interpreted as making punishable an omission to remove an existing encroachment not made by the accused person. The word “obstructs” in S. 122 of the Act applies to the persons who built or caused to be built the encroachment and not to the accused who originally had nothing to do with its erection. Sub-S. (2) of S. 67 read with S. 139 provides a remedy in the case of an encroachment not made by the present owner. (*Prideaux, A. J. C.*) **CHUNILAL v. MUNICIPAL COMMITTEE, ARVI.**

23 Cr. L. J. 127=  
65 I. C. 559=18 Nag. L. R. 92=  
A. I. R. 1922 Nag. 167.

# CENTRAL PROVINCES MUNICIPALITIES ACT (II OF 1922).

## —S. 98—Bye laws.

—Breach of sub-S. (2)—Bye-laws framed under sub-S. (3) enabling Municipality to prosecute party concerned are not ultra vires.

# CENTRAL PROVINCES MUNICIPALITIES ACT (1922), S. 218.

If a person who does not give notice in writing of his intention to erect or re-erect any building as required by sub-S. (2), erects or re-erects or commences to erect or re-erect the building without the sanction of the Committee which is necessary under sub-S. (1) of S. 98 of the new Act, the person can be prosecuted for not giving the notice in the manner prescribed by bye-laws framed by the Committee in exercise of the power conferred under sub-S. (3) of the said section. Such bye-laws are not *ultra vires*. (*Kinkhede, A. J. C.*) **KING-EMPEROR v. SHRIBALLABH.** 26 Cr. L. J. 1084=88 I. C. 28=A. I. R. 1925 Nag. 393.

## —S. 199—Interpretation.

—Words “every day after the first” must be interpreted as every day after first day to which conviction relates.

The words “every day after the first” must be interpreted as every day after the first to which the conviction relates. If a person has been committing a breach of a bye-law since 8th July, 1928, he can be properly fined Rs. 50 on 21st November, 1928. It is misleading S. 199 to think that he should be fined Rs. 5 only on 21st November, 1928, because he was on that date continuing the offence. (*Macnair, Off. J. C.*) **SECRETARY, MUNICIPAL COMMITTEE, NAGPUR v. YENKA KHATISH.** 1929 Cr. C. 684=121 I. C. 64=31 Cr. L. J. 197=A. I. R. 1929 Nag. 360.

## —S. 199—Proof.

—Lawful direction by a notice lawfully issued and disobedience to such a direction must be proved.

What the prosecution has to prove under S. 199 is that a lawful direction was given to the accused by a notice lawfully issued under the powers conferred by Part 3 of the Act and that the accused disobeyed the said direction. (*Kolhatkar, A. J. C.*) **WASUDEO v. AKOLA MUNICIPALITY.** 10 A. I. Cr. R. 566=29 Cr. L. J. 785=111 I. C. 113=A. I. R. 1928 Nag. 337.

## —S. 218—Complainant.

—Police officer authorised to make complaints by committee—Police officer making complaint and not committee is complainant.

Where a police officer is authorized under S. 218 by the Municipal Committee to make complaints with regard to offences under the Municipal Act, that police officer making the complaint and not the committee is to be regarded as complainant. (*Staples, A. J. C.*) **NANHE v. MUNICIPAL COMMITTEE, JUBBULPORE.**

25 N. L. R. 194=1930 Cr. C. 89=  
31 Cr. L. J. 382=12 N. L. J. 127=  
122 I. C. 258=A. I. R. 1930 Nag. 33.

## —S. 218—Public servant.

—Committee delegating authority to public servant by virtue of his office—Such public servant acts in his capacity as public servant when making complaint and his personal attendance in Court for examination is not necessary—Cr. P. Code, S. 200, Proviso (aa).

As a Municipal Committee is empowered to delegate its authority of making complaint under S. 218 (2), when such authority is delegated to a public servant by virtue of his office and not by name, he acts in his capacity as a public servant when making a complaint within the meaning of S. 200, proviso (aa), Cr. P. Code, and his personal attendance for examination is not necessary. (*Staples, A. J. C.*) **NANHE v. MUNICIPAL COMMITTEE, JUBBULPORE.** 25 N. L. R. 194=122 I. C. 258=1930 Cr. C. 89=31 Cr. L. J. 382=12 N. L. J. 127=A. I. R. 1930 Nag. 33.

**CHARGE.**

See CR. P. CODE, SS. 221—240.

**CHARGE TO JURY.** See CR. P. CODE, SS. 297—307.

**CHEATING.** See PENAL CODE, SS. 415-420.

**CHEMICAL EXAMINER'S REPORT.**

See CR. P. CODE, S. 510.

**CHILD.**

See (1) CR. P. CODE, S. 488 (2).

(2) FATAL ACCIDENTS ACT.

(3) PENAL CODE, S. 317.

**CHIN HILLS REGULATION (V OF 1896).**

—S. 4—Interpretation.

—An application under S. 488, Cr. P. Code, is not of a civil nature—S. 4, Cl. 1 is qualified by clauses 4 and 5.

An application under S. 488, Cr. P. Code, cannot be regarded as a proceeding of a civil nature within S. 12 although the failure to maintain a child is not a criminal offence. Cl. 1 of S. 4 is qualified by Cls. 4 and 5. The words "so far as regards persons other than Chins" in S. 4 (i) must be construed as meaning "so far as regards liabilities imposed by law on persons other than Chins." (*MacColl, A. J. C.*) MAUNG v. MANG TOM. 25 Cr. L. J. 111=76 I. C. 111=4 U. B. R. 169=A. I. R. 1925 Rang 140.

**CHOTA NAGPUR TENANCY ACT (VI OF 1908).**

—S. 14—Effect of resumption.

—Resumption of jagir tenure annuls all Sub-tenures—Lands on which mines sunk are excepted—Onus of proof of consent.

"Land whereon a mine has been sunk under lawful authority is expressly excepted from annulment by exception (a) of S. 14. When a jagir tenure is resumed, all sub-tenures created by the previous Jagirdars are annulled and become void, and not merely voidable. The words "grantee or any of his ancestors" clearly mean 'succeeding grantees' and under tenures, created by whichever grantee (who successively held the tenures), would be annulled on resumption. To prove consent to the under-tenure is upon him who asserts it. A grantee or any of his successors could not create an under-tenure to exceed in duration the subsistence of their own tenure. S. 14 expressly provides that on resumption of the tenures all sub-tenures granted by the grantee of tenure whom he succeeded should be deemed to be annulled. 27 Cal. 156; 24 Cal. 715 and 17 M.L.J. 598, Foll. (*Adami, J.*) MAHARAJA PRATAB v. SUNDERBANS KOER. 71 I. C. 999=3 P. L. T. 628=24 Cr. L. J. 279=A. I. R. 1923 Pat. 76.

—S. 63—Appeal against order.

—Order under S. 63 is appealable under S. 215 and not under Criminal Procedure Code.

An order under S. 63 shall have the force and effect of a decree of a civil Court and consequently it follows that any procedure to be adopted by a party subsequent to the making of that order cannot be governed by the Code of Criminal Procedure but comes under S. 215 and the appeal lies to the officers named therein. (*Adami and Wort, J.J.*) KRISHNA PRASAD v. EMPEROR. 7 Pat. 421=9 P. L. T. 496=29 Cr. L. J. 420=108 I. C. 556=10 A. I. R. B. 154=A. I. R. 1928 Pat. 370.

—S. 72—Rights of under raiyat.

—S. 72, Cl. (4), does not require an ejectment suit to be brought against the under-raiyat, nor is any notice or formality necessary to eject him. The landlord is entitled to enter on the holding immediately after surrender by the raiyat and either let it to another or take

**CRIMINAL INTIMIDATION.**

it under cultivation. The right of an under-raiyat ceases after surrender by the raiyat and he becomes a trespasser so far as the landlord is concerned. 40 Cal. 858; 4 C.W.N. 792; A.I.R. 1922 Pat. 197; and A. I. R. 1926 Pat. 244, Foll. (*Jwala Prasad, J.*) HARPRASAD SINGH v. HULSAN CHAMAR. 10 A. I. Cr. R. 420=110 I. C. 98=9 P. L. T. 728=29 Cr. L. J. 642.

**CIRCUMSTANTIAL EVIDENCE.**

See (1) CRIMINAL TRIAL.

(2) EVIDENCE.

**COURT-FEES ACT (VII OF 1870).**

—S. 19 (17)—Application by counsel of accused.

—Adjournment application.

An application filed by an advocate or counsel on behalf of the prisoner and purporting to be from the prisoner himself, is a petition "by a prisoner" within the meaning of S. 19 (17), and the fact that it was an adjournment application made by the counsel for his personal convenience is immaterial. A.I.R. 1922 U. B. 14; 14 N.L.R. 77 and A.I.R. 1924 Rang. 160. Rel. on. (*King, J.*) BHAYA LAL v. EMPEROR. 52 All. 542=I. R. 1930 A. 875=126 I. C. 827=31 Cr. L. J. 1121=1930 Cr. C. 373=11 L. R. A. Cr. 45=1930 A. L. J. 682=A. I. R. 1930 All. 261.

—Appeal or revision.

A petition of appeal or revision signed and filed by an advocate or pleader on behalf of a prisoner under an authority signed by the prisoner, need not bear a Court-fee stamp. (*Robinson, C. J.*) In re COURT-FEES ACT, S. 19. 76 I. C. 869=1 Rang. 510=25 Cr. L. J. 277=A. I. R. 1924 Rang. 160.

—S. 31—Cognizable cases.

—In a cognizable case it is inequitable to order the accused to pay the costs of the complainant. (*May Oung, J.*) MAUNG SAN MYIN v. KING-EMPEROR. 81 I. C. 187=2 Bur. L. J. 37=25 Cr. L. J. 699=A. I. R. 1923 Rang. 245.

—S. 31—Cognizable offence.

—Under S. 31 payment has only to be ordered when the offence is non-cognizable. (*Stuart, J.*) MINGAN v. EMPEROR. 81 I. C. 56=25 Cr. L. J. 568=A. I. R. 1923 All. 86.

—S. 31—Effect.

—"Fines"—Scope of.

The making of an order under S. 31 does not ordinarily amount to an enhancement of sentence but may be made as an incidental order to bring the judgments into conformity with the law. S. 31 of the Court Fees Act provides that all fees ordered to be repaid under the section shall be recoverable "as if they were fines" but does not thereby make them part of the sentence. 22 M. 153, Dist. (*Spencer, J.*) E. THIMMAIAH v. EMPEROR. 82 I. C. 141=47 Mad. 914=20 M. L. W. 293=35 M. L. T. 39=1924 M. W. N. 489=25 Cr. L. J. 1213=A. I. R. 1925 Mad. 136=47 M. L. J. 355.

**CRIMINAL BREACH OF CONTRACT.**

See (1) ACT XIII OF 1859 (WORKMEN'S BREACH OF CONTRACT ACT).

(2) PENAL CODE, SS. 490-492.

**CRIMINAL BREACH OF TRUST.** See PENAL CODE, SS. 403-409.

**CRIMINAL CASE.** See CRIMINAL TRIAL.

**CRIMINAL CONSPIRACY.** See CRIMINAL PROCEDURE CODE, SS. 120 A AND 120-B.

**CRIMINAL FORCE.** See PENAL CODE.

**CRIMINAL INTIMIDATION.** See PENAL CODE, S. 506.



# CRIMINAL LAW AMENDMENT ACT (XIV OF 1908).

## —S. 15—Instigation.

### —*Formation of an unlawful association.*

The accused was alleged to have stated that the British Raj had come to an end or at any rate was about to do so and exhorted the people to hold a Diwan and to take steps to establish an Independent State at Bagrian. After staying at Bagrian the accused went away and immediately after the departure an unlawful association was formed of which the accused's son was made the secretary. He also told the people that he had paid Rs. 2,000 towards the movement. Subsequent to the formation the Diwans were held of a political nature.

*Held*, on these facts that the accused's act was not covered by S. 1 or 2, as he did not contribute to the funds or assist in the management of the existing association. But that he did instigate the formation of an association which was unlawful under S. 15, cl. (2) (a) and therefore abetted its formation and as any one becoming a member of that association or contributing funds to it would be guilty of an offence under S. 17 (1), accused's act amounted to an abetment of an offence and as this abetment was of the commission of an offence by persons exceeding 10, the action came within the purview of I. P. Code, S. 117. (*Broadway and Moti Sagar, J.J.*) **EMPEROR v. MIHAN SINGH.**

89 I. C. 392=5 Lah. 1=26 Cr. L. J. 1352=  
A. I. R. 1924 Lah. 440.

## —S. 17—Admission, effect of.

### —*Managing an unlawful association.*

An accused person does not plead to a section of a criminal statute. He pleads guilty or not guilty to the facts alleged to disclose an offence under that section. Where the charge stated that the accused was the jathadar of the Akali Dal and as such addressed meetings of the Akalis and appealed to the Sikhs to organize themselves into jathas, and he admits himself to be a jathadar of that organization, he is admitting that he is a member of an unlawful association, therefore pleading guilty to an offence under the provisions of S. 17 (1). The words "jathadar" means a person who leads or controls a jatha, and if it is proved that there was any jatha being at that time led or controlled by the accused, he would obviously be guilty of managing an unlawful association. (*Broadway and Fforde, J.J.*) **BASANT SINGH v. THE CROWN.**

7 Lah. 359=8 L. J. 251=27 Cr. L. J. 907=  
27 P. L. R. 551=96 I. C. 219=  
A. I. R. 1926 Lah. 406.

## —S. 17—Essentials.

### —*Existence of the association.*

The offence of promoting or assisting in promoting a meeting of an unlawful association implies that the association is already in existence. No doubt a thing not already existing may be promoted, but the offence under the Act consists in promoting, of assisting in promoting, not an unlawful association, but a meeting of such an association and therefore the association must exist before a meeting of it can be promoted. It cannot therefore be said that a person by urging his hearers to form themselves into "jathas" promotes or assists in promoting meetings of the "jathas" when the "jathas" themselves had not come into existence. The person alleged to have promoted such meetings on behalf of an unlawful association must be proved to have authority from that association to convene the meetings. (*Martineau, J.*) **ATTAR SINGH v. EMPEROR.**

88 I. C. 367=6 Lah. 349=7 L. L. J. 521=  
26 Cr. L. J. 1135=26 P. L. R. 411=  
A. I. R. 1925 Lah. 522.

# CRIMINAL LAW AMENDMENT ACT (1908), S. 17.

## —S. 17—Instigation.

Exhorting the Sikhs in a meeting to enlist themselves for shahidi jathas for the purpose of going to a certain place and collecting funds for a committee which was declared as unlawful by the Government, is not an offence under S. 17 (1) and S. 17 (2) of the Criminal Law (Amendment) Act, but is an offence under S. 117, Penal Code, as the accused instigated people to become members of a jatha under the orders of the said committee which jatha would be an unlawful association within the meaning of S. 16. A. I. R. 1924 Lah. 440, Ref. (*Scott-Smith, J.*) **KIRPAL SINGH v. EMPEROR.**

26 P. L. R. 412=26 Cr. L. J. 1374=  
89 I. C. 462=A, I. R. 1926 Lah. 115.

## —S. 17—Offence under.

The accused was alleged to have stated that the British Raj had come to an end, at any rate was about to do so and exhorted the people to hold a Diwan and to take steps to establish an Independent State at Bargrian. After staying at Bargrian the accused went away and immediately after the departure an unlawful association was formed of which the accused's son was made the secretary. He also told the people that he had paid Rs. 2,000 towards the movement. Subsequent to the formation, the Diwans were held of a political nature.

*Held*, on these facts that the accused's act was not covered by S. 1 or S. 2, as he did not contribute to the funds or assist in the management of the existing association. But that he did instigate the formation of an association which was unlawful under S. 15, cl. (2) (a) and therefore abetted its formation and as any one becoming a member of that association or contributing funds to it would be guilty of an offence under S. 17 (1) accused's act amounted to an abetment of an offence and as this abetment was of the commission of an offence by persons exceeding 10, the action came within the purview of I. P. Code, S. 117. (*Broadway and Moti Sagar, J.J.*) **EMPEROR v. MIHAN SINGH.**

89 I. C. 392=5 Lah. 1=26 Cr. L. J. 1352=  
A. I. R. 1924 Lah. 440.

## —S. 17—Prima facie case.

### —*Assisting volunteers by giving shelter.*

The case against petitioners originated on a police report which was in these words: "I beg to report that Srijiut Parmanand Agarwala has been assisting the volunteers by giving them shelter in a house belonging to him in the Tejpur town. I, therefore, request that action under the Criminal Law (Amendment) Act may be taken against him." Upon this, the Deputy Commissioner ordered "Issue warrant with bail under S. 17 (2) of the Act."

*Held*, this report failed to make out a *prima facie* case in respect of the offence, described in this section with the result that the proceedings based on the report were liable to be quashed. (*Walmesley and Suhrawardy, J.J.*) **PARMANAND AGARWALA v. EMPEROR.**

71 I. C. 49=36 C. L. J. 179=24 Cr. L. J. 1=  
A. I. R. 1922 Cal. 538.

## —S. 17—Promoting.

### —*Assisting in organizing meeting.*

A person who takes an active part in organising or assisting to organize a meeting must clearly be regarded as promoting or assisting to promote it. In the ordinary dictionary sense to promote an undertaking is to forward, further or encourage it and a person who takes a part in the actual management of a meeting is obviously furthering or encouraging such meeting. (*Broadway and Fforde, J.J.*) **MEHR SINGH v. THE CROWN.**

96 I. C. 223=7 Lah. 357=8 L. L. J. 255=

# CRIMINAL LAW AMENDMENT ACT (1908), S. 17.

27 Cr. L. J. 911=27 P. L. R. 529=  
A. I. R. 1926 Lah. 405.

## —S. 17—Scope.

*Person in charge of an office—Unauthorised persons taking part in meetings.*

A person who is in charge of an office is not necessarily the person who manages or assists in managing the association which owns that office.

Clause (1) of S. 17 makes it an offence not only to be a member of an unlawful association or to take part in its meetings, but also to help it in any way and it is immaterial whether the person who renders such help has been authorised to do so or whether he acts purely on his own initiative. (A. I. R. 1925 Lah. 522, Expl.)

# CRIMINAL MISAPPROPRIATION.

Cl. (1) of S. 17 is obviously intended to deal with members and all other persons identifying themselves with any unlawful body of persons as defined by S. 15; and Cl. (2) of S. 17 is directed against the ring-leaders of such a body; that is, the persons who actually control or direct the activities of the association, or who organize or help to organize any of its meetings. Cr. App. No. 912 of 1924 and Cr. Rev. No. 1045 of 1925, Rel. on. (*Broadway and Fforde, J.J.*) MEHR SINGH v. EMPEROR. 96 I. C. 257=7 Lah. 348=8 L. L. J. 242=27 Cr. L. J. 913=27 P. L. R. 555=A. I. R. 1926 Lah. 357.

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# CRIMINAL PROCEDURE CODE (V OF 1898, as amended in 1923).

## —Construction.

—*Strictly in favour of the accused.*

Extradition Act and Criminal Procedure Code both being penal enactments their terms must be strictly construed in favour of accused persons wherever such construction can be reasonably justified. (*Mirza and Baker, J.J.*) BAI AISHA, *In re*. 117 I. C. 321 = 31 Bom. L. R. 62 = 53 Bom. 149 = 30 Cr. L. J. 772 = A. I. R. 1929 Bom. 81.

## —Evidence Act.

The Evidence Act is a separate statute dealing with an important branch of law, and its provisions are independent of the rules of procedure contained in the Criminal Procedure Code and must have full scope unless it is clearly proved that they have been repealed or altered by another statute. (*Shadi Lal, C. J. and Addison, J.*) RANNUN *v.* KING-EMPEROR.

7 Lah. 84 = 27 Cr. L. J. 709 = 27 P. L. R. 583 = 94 I. C. 901 = A. I. R. 1926 Lah. 88.

## —Internal arrangement of High Court.

The internal arrangements of the High Court are dealt with by its rules and the Code does not decide what functions can be exercised by a single Judge or must be exercised by a Division Bench. Code deals with the High Court as one and the definitions of the High Court are not intended to do more than to point to the Court itself so as to distinguish it from other Courts. (*Rankin, C. J., C. C. Ghose, Buckland, B. B. Ghose, and Mukerji, J.J.*) GIRISH CHANDRA *v.* EMPEROR.

57 Cal. 1042 = I. R. 1930 Cal. 321 = 123 I. C. 433 =

31 Cr. L. J. 506 = 50 C. L. J. 408 =

34 C. W. N. 13 = 1929 Cr. C. 468 =

A. I. R. 1929 Cal. 756 (F.B.).

## —Mandatory provisions.

There is no universal rule that disobedience of a mandatory provision in a statute has the consequence of nullification of all proceedings irrespective of any question of prejudice. Whether a mandatory provision is imperative or only directory depends upon a consideration of various circumstances, 1924 Cal. 1035, Doubtful. (*Walmsley and B. B. Ghose, J.J.*) U. R. T. FORBES *v.* MAHOMMAD ALI HAIDAR KHAN. 90 I. C. 308 =

42 C. L. J. 131 = 26 Cr. L. J. 1524 = 53 Cal. 46 =

A. I. R. 1925 Cal. 1246.

## —S. 1—Applicability.

Orders passed under the Upper Burma Ruby Regulations of 1887, S. 6, are within the scope of the Criminal Procedure Code, as regards appeal and revision though no provision is made in the Regulation for an appeal or revision. (*Duckworth, J.*) MAUNG PO LON *v.* KING-EMPEROR. 84 I. C. 433 = 2 Rang. 321 =

3 Bur. L. J. 168 = 26 Cr. L. J. 289 =

A. I. R. 1925 Rang. 12.

## —S. 1—Complaints by Village Magistrate.

S. 1 of the Code merely means that Village Magistrates are not with reference to the proceedings before them as such Magistrates governed by the provisions of the Criminal Procedure Code and not that they cannot complain. (*Krishnan, J.*) PUBLIC PROSECUTOR *v.* MARI MUDALI. 76 I. C. 653 = 19 M. L. W. 30 =

1924 M. W. N. 145 = 25 Cr. L. J. 221 =

A. I. R. 1924 Mad. 730.

## —S. 1—Police investigation.

—S. 164.

The change by amendment of 1923 is made to allow a Presidency Magistrate to record a confession in the course of a police investigation. Although S. 1 bars the application of the Code to the police it does not bar an application of the Code to a Magistrate or any Magis-

# CR. P. CODE (1898), S. 4—Pleader.

trate not being a police officer. (*Adami and Bucknill, J.J.*) NIL MADHAB CHOWDHRY *v.* EMPEROR.

96 I. C. 509 = 5 Pat. 171 = 27 Cr. L. J. 957 =

7 A. I. Cr. R. 75 = A. I. R. 1926 Pat. 279.

## —S. 4—Complaint.

—*Essentials of.*

It is of the essence of a complaint that the accusation should have been made with a view to action being taken under the Code of Criminal Procedure. An express request to that effect is unnecessary, but whether a statement is made with a view to action being taken upon it as upon complaint must be determined in the light of the circumstances. (*Courtney Terrell, C. J. and Dhaule, J.*) BANTI PANDE *v.* EMPEROR.

12 Pat. L. T. 109 = 129 I. C. 87 = 32 Cr. L. J. 210 =

1930 Cr. C. 1094 = A. I. R. 1930 Pat. 550.

—A process-server presented a report on the back of a warrant to the Civil Court that he was beaten by A when he was attaching property in its execution. Thereupon, the Civil Court reported the matter to the police who challaned A under Ss. 332 and 394, I. P. C. The Magistrate found these offences not proved, but he convicted A under S. 186.

Held, that the Magistrate had no jurisdiction to convict the accused under S. 186, as neither the report nor the police challan constituted a complaint. (*Shadi Lal, C. J.*) MT. DARKAN *v.* EMPEROR.

110 I. C. 101 = 10 A. I. Cr. R. 486 =

29 Cr. L. J. 645 = A. I. R. 1928 Lah. 827.

## —S. 4—Complaint without order.

—*Pending.*

Where on a referred charge-sheet, the complainant put in a complaint of his own, and there was no order disposing of it but where no further action had been taken on it, the complaint was regarded as still pending. (*Wallace, J.*) HAMEED SAHIB *v.* ABDUL KHADAR.

123 I. C. 11 = 31 Cr. L. J. 462 =

1929 M. W. N. 508 = 2 M. Cr. C. 191 =

1929 Cr. C. 511 = A. I. R. 1929 Mad. 849.

## —S. 4—Interpretation.

—*Self-contained.*

Sec. 4 of the C. P. Code, is an interpretation clause or section. Its legitimate function is to declare that certain words and expressions used in the Code shall, wherever permissible, not only have the meaning which is generally attached to such words and expressions but such meaning as is assigned to such words and expressions by the interpretation clause. But by no means it is intended to annex to such words or expressions every incident which may seem to be attached to them by any other Act of the Legislature. 12 Cal. 430, Ref. (*Kennedy, J. C., Raymond, Aston, Rupchand Bilaram and Percival, A. J. Cs.*) WALTER JOHN BROOKS *v.* NEE BURWICK. 91 I. C. 99 =

A. I. R. 1926 Sind 58 (F.B.).

## —S. 4—Pleader.

—*Estate manager.*

It is open to an accused to appoint his estate manager to appear in his stead, and plead and to other acts on his behalf in the case against him, and it is equally open to the Court to permit the estate manager to represent the accused as a pleader; but there should be clearly on record something to show that the person who represents the accused has been duly appointed by him and to show that the Court has given the requisite permission for his appearance in place of the accused. 1862 Rat. Unrep. Cr. C. 1 and 1884 Rat. Unrep. Cr. C. 206, Cons. (*Fawcett and Madgankar, J.J.*) DORAB SHAH *v.* EMPEROR. 93 I. C. 232 =

50 Bom. 250 = 28 Bom. L. R. 102 =

27 Cr. L. J. 440 = A. I. R. 1926 Bom. 218

**CR. P. CODE (1898), S. 4—Presentation of complaint.****—S. 4—Presentation of complaint.**

It is not essential that the complaint should be presented in person by the complainant and the fact that it is not so presented does not render it the less a complaint under the Code. For the purpose of vesting the Magistrate with jurisdiction to take cognizance of a case on a complaint made to him it is not essential such complaint should be presented to him by the complainant personally. 17 C. W. N. 448; A. I. R. 1925 Oudh 144, Ref. (*Percival, J.C. and Rupchand, A.J.C.*) *CHUHERMAL NIHALMAL v. EMPEROR*.

117 I. C. 147=23 S. L. R. 285=30 Cr. L. J. 732=1929 Cr. C. 160=A. I. R. 1929 Sind 132.

**—S. 4—Right to make complaint.**

Any person who knows about the commission of an offence may make a complaint. (*Suhrawardy and Graham, J.J.*) *BASIRULLA v. ASADULLA*.

119 I. C. 130=33 C. W. N. 576=30 Cr. L. J. 1013=1929 Cr. C. 357=A. I. R. 1929 Cal. 639.

**—S. 4 (1) (f)—Cognizable offence.**

*Bombay Prevention of Gambling Act.*

As under S. 6 certain officers have power to issue warrants of search and also of arrest, and to cause search or arrest without warrant personally, the offence under S. 4 or 5 of Bombay Act 4 of 1887 is a cognizable offence under S. 4 (1) (f), Cr. P. Code. (*Marten and Madgavkar, J.J.*) *EMPEROR v. ABASBHAI*.

93 I. C. 967=27 Cr. L. J. 503=50 Bom. 344=28 Bom. L. R. 272=A. I. R. 1926 Bom. 195.

**—S. 4 (1) (f)—Interpretation.**

*Applicability of maxims.*

The words "under any law for the time being in force" in S. 4 (f) are wide enough to include an express or implied provision of any law or enactment and would cover the application of the maxims *qui facit per alium facit per se* (whatever a man may do of himself, he may do by another) and *qui per alium facit per seipsum facit* (he who does an act through another is deemed in law to do it himself) to any provision of any enactment, in order to arrive at the true intention of the enactment. (*Patkar and Wild, J.J.*) *EMPEROR v. ISMAIL HERJI*.

I. R. 1930 Bom. 234=

124 I. C. 106=31 Bom. L. R. 1349=

1930 Cr. C. 113=54 Bom. 146=31 Cr. L. J. 633=

A. I. R. 1930 Bom. 49.

**—S. 4 (1) (h)—Complaint by Court.**

Petitioner gave evidence in a case tried by the Chief Presidency Magistrate. Part of his evidence was regarded as false and the Magistrate deemed it necessary to take proceedings under S. 476, C. P. Code. He accordingly drew up a complaint. This complaint he preferred in his own Court and then he transferred it to a Presidency Magistrate for disposal. This latter issued process, held an enquiry and committed the petitioner for trial. The petitioner was then tried and convicted.

*Held*, by Court (*Rankin and Chakravarti, J.J.*, dissenting) that the procedure was not illegal.

*Held*, per *Walsley, J.*—The Magistrate committed nothing worse than an irregularity which may be disregarded.

*Held*, per *Rankin, J.*—The proceedings have been had throughout in defiance of the express provisions of the Code and of fundamental principles of law.

A document which is not addressed to a person other than the writer is not a complaint either in the ordinary sense or in the sense in which the word is used in S. 476 of the Cr. P. Code.

*Held*, per *Cuming, J.*—There is nothing in the Code that prevents a Magistrate from taking cognizance of his own complaint.

**CR. P. CODE (1898), S. 4 (1) (h)—Contents and validity of Complaint.**

*Held*, per *B. B. Ghose, J.*—The complaint and the subsequent trial was not illegal and the irregularity was curable under S. 532 (i), C. P. Code. (*Walsley, Rankin, Cuming, B. B. Ghose and Chakravarti, J.J.*) *EMPEROR v. COLIN MACKENZIE MACKAY*.

93 I. C. 33=53 Cal. 350=43 C. L. J. 310=

30 C. W. N. 276=27 Cr. L. J. 385=

A. I. R. 1926 Cal. 470 (F.B.).

**—S. 4 (1) (h)—Complaint defined.**

There is nothing in the definition of "complaint" which requires it to be made by the person aggrieved or only in a non-cognizable case, 18 All. 465, Foll. (*Bennet, J.*) *SHEO PRATAP SINGH v. EMPEROR*.

129 I. C. 436=32 Cr. L. J. 306=1930 A. L. J. 1316=1930 Cr. C. 1204=A. I. R. 1930 All. 820.

**—S. 4 (1) (h)—"Complaint" what is.**

A Tahsildar alleged in writing to a Magistrate that three persons named in the document have committed an offence and had made a definite request that they should be tried under the Penal Code.

*Held*, that such a document sent by the Tahsildar to the Magistrate was a complaint. 12 C. W. N. 438; A. I. R. 1924 All. 190=26 I. C. 148 and 11 Mad. 443, Ref. (*Bennet, J.*) *SHEO PRATAP SINGH v. EMPEROR*.

129 I. C. 436=32 Cr. L. J. 306=

1930 A. L. J. 1316=1930 Cr. C. 1204=

A. I. R. 1930 All. 820.

**—S. 4 (1) (h)—Complaint and information differentiated.**

The essential difference between a complaint and information is that a Magistrate acts on a complaint because the complainant has asked him to act, but a Magistrate acts on information on his own initiative. In the case of a complaint the Magistrate is asked to prosecute the person named as accused and he has then to decide whether he will accede to the request or not. If he does not, then he must record his reasons under S. 202 (1), and may either make an enquiry himself or direct an inquiry or investigation or dismiss the complaint under S. 203 after recording his reasons. But in the case of receiving information, the Magistrate is not asked by any one to issue process and if he does not choose to act on the information, he need not record any reason or pass any order. In the case of information there is no complainant to examine on oath. On a complaint the complainant is first examined on oath unless it has been made by a public servant acting in the discharge of his official duty. 1 C. W. N. 105; (1899) A. W. N. 201; 3 C. W. N. 65 and 43 Mad. 709, Ref. (*Bennet, J.*) *SHEO PRATAP SINGH v. EMPEROR*.

129 I. C. 436=32 Cr. L. J. 306=

1930 A. L. J. 1316=1930 Cr. C. 1204=

A. I. R. 1930 All. 820.

**—S. 4 (1) (h)—Contents and validity of Complaint.**

Where the person aggrieved asked the Court in his petition to take action under the preventive S. 107 or 145, Cr. P. Code, and there was no allegation in his petition or in his statement as recorded by the Magistrate that an offence had been committed and that the Magistrate should take action in respect of such offence against any person under the C. P. Code.

*Held*, that the petition of the aggrieved person did not amount to a complaint. (*Pullan, J.*) *SARFARAZ SINGH v. EMPEROR*.

28 I. C. 279=

32 Cr. L. J. 124 (2)=7 O. W. N. 947=

1930 Cr. C. 1164=A. I. R. 1930 Oudh 500.

**—Commission of offence.**

In a complaint of a non-cognizable case to a Magistrate after the allegations that the accused had committed

**CR. P. CODE (1898), S. 4 (1) (h)—Contents and validity of Complaint.**

ted an offence the prayer was worded thus: "Under the circumstances complainant prays that your Honour would be pleased to order the D. D. Police to cause an enquiry to be made into the matter and the allegations made against the complainant and to submit the report of the same to your Honour And, for the time being, your petitioner reserves the right of bringing a case of defamation against the accused in future."

*Held*, that the petition satisfies the definition of complaint as given in S. 4 (h), C. P. Code. (*Mukerji, J.*) MUHAMMAD GUL v. FAZLEY KARIM

122 I. C. 205 = 31 Cr. L. J. 369 =  
33 C.W.N. 446 = 56 Cal. 1013 =  
A. I. R. 1929 Cal. 346.

**—Commission of offence.**

If the facts alleged disclose an offence, it is immaterial if the section is not mentioned in the complaint. (*Reilly, J.*) BALUSAMY AYYAR v. EMPEROR.

112 I. C. 566 = 29 Cr. L. J. 1062 = 2 M. Cr. C. 60 =  
11 A. I. Cr. R. 362 = A. I. R. 1929 Mad. 188.

**—Asking for action of Magistrate in his judicial capacity.**

The mere fact that a document in writing contains an allegation that a specific offence has been committed does not necessarily constitute that document a complaint. The allegation of the specific offence must be with a view to action being taken under the Code, i.e., for the prosecution of the offender for having committed the specific offence. Besides, it must be made to the Magistrate in the judicial capacity so that he may exercise his powers of taking cognizance of that specific offence and proceed in respect of it against the person accused.

"Where, therefore, a petition clearly shows that the object of the petition is not that the particular offence should be punished, but rather the mention of the particular offence is put in with a view to illustrate the kind of conduct which the accused person is supposed to be following and against which the petitioner is seeking protection, such a petition is not a complaint. What is supermost in the mind of the petitioner is the anticipated conduct of the person whom he mentions and against that conduct he is asking the Magistrate in his executive capacity to make enquiry and protect him against a repetition of such conduct. (*Courtney Terrel, C. J., Davile and James, J.J.*) BHARAT KISHORE v. JUDHISTIR.

119 I. C. 413 = 10 P. L. T. 779 =  
30 Cr. L. J. 1056 = 1929 Cr. C. 341 =  
A. I. R. 1929 Pat. 473 (F.B.).

**—Wrong section of law.**

The essence of the complaint is the statement of facts relied upon as constituting the offence. It is sufficient that the complainant shall state the true facts in his own language, and it is for the Magistrate to apply the law to those facts. Where a Court, while making a complaint under S. 476, Cr. P. Code, wrongly described S. 477, I. P. C., though the facts disclosed a case under S. 465, I. P. C., and it was contended that the complaint was invalid on the ground that S. 477 was not one of those sections mentioned in S. 195, Cr. P. Code.

*Held*, that the complaint was not illegal on that ground. A. I. R. 1925 Lah. 631, Ref. (*Addison and Coldstream, J.J.*) EMPEROR v. BALMUKAND.

110 I. C. 108 = 9 Lah. 678 = 10 A. I. Cr. R. 474 =  
29 Cr. L. J. 652 = A. I. R. 1928 Lah. 510.

**—Action under S. 107—Prayer for.**

The definition does not require that the action asked for should be under any particular provision of the Code and does not exclude a request for action under S. 107, provided the facts alleged do amount to a substantive

**CR. P. CODE (1898), S. 4 (1) (h)—What amounts to Complaint.**

offence. (*Daniels, J.*) KHACHO MAL v. EMPEROR.

93 I. C. 69 = 27 Cr. L. J. 405 =

7 L. R. A. Cr. 76 = A. I. R. 1926 All. 358.

**—Section of law.**

A complaint need not quote any section of I. P. C. but must contain a statement of the facts relied on as constituting the offence, and it is for the Magistrate to determine on these facts what offence has *prima facie* been committed; the nature of the charge will be determined by him. All that is necessary for him to see is that the enquiry into the charge is within his competency and that, in the case of certain offences, the complaint has been made by the proper person. (*Le Rossignol and Fforde, J.J.*) MT. NAURATI v. EMPEROR.

95 I. C. 305 = 6 Lah. 375 = 26 P. L. R. 552 =  
27 Cr. L. J. 769 = A. I. R. 1925 Lah. 631.

**—S. 4 (1) (h)—What amounts to complaint.**

A process-server presented a report on the back of a warrant to the Civil Court that he was beaten by A when he was attaching property in its execution. Thereupon, the Civil Court reported the matter to the police who challaned A under Ss. 332 and 394, I. P. C. The Magistrate found these offences not proved, but he convicted A under S. 186.

*Held*, that the Magistrate had no jurisdiction to convict the accused under S. 186, as neither the report nor the police challan constituted a complaint. (*Shadi Lal, C. J.*) MT. DARKAN v. EMPEROR.

110 I. C. 101 =  
10 A. I. Cr. R. 486 = 29 Cr. L. J. 645 =  
A. I. R. 1928 Lah. 827.

A petition praying for an opportunity to prove the petitioner's case by witnesses is a complaint under the Criminal Procedure Code. (*Jwala Prasad, J.*) SUKHADEVA SAHAV v. HAMID MIYAN.

111 I. C. 862 = 7 Pat. 561 = 10 P. L. T. 14 =  
29 Cr. L. J. 942 = 11 A. I. Cr. R. 209 =  
A. I. R. 1928 Pat. 585.

**—Police report—Non-cognizable offence.**

*Patkar, J.*—The wording of S. 190 is quite general and would include even a non-cognizable offence being taken cognizance of by a Magistrate upon a report by a police officer. The report of a police officer in respect of a non-cognizable offence if it contains an allegation in writing to a Magistrate with a view to his taking action under the Code that some person has committed an offence would amount to a complaint within the meaning of S. 4 (h). A Magistrate can in a proper case treat a police report of a non-cognizable offence as a complaint and take cognizance under S. 190, cl. (a), especially where such report is made by the Police Officer regarding an offence committed by his subordinate. 26 Bom. 150 and A. I. R. 1926 Mad. 865, Foll.; A. I. R. 1925 Bom. 131, Dist. (*Fawcett and Patkar, J.J.*) EMPEROR v. SHIVASWAMI GURUSWAMI.

105 I. C. 459 = 51 Bom. 498 = 29 Bom. L. R. 742 =  
28 Cr. L. J. 939 = A. I. R. 1927 Bom. 440.

**—Report by an officer to his superior.**

In a complaint it is the complainant who sets the law in motion. The only functions that remain to the Magistrate are judicial functions. He may reject the complaint, but in doing so he performs a judicial act. Where the Superintendent of Police simply submitted the report of his subordinate to the Magistrate for the Magistrate to exercise his discretion as to whether he would initiate judicial proceedings or not.

*Held*, that there was no complaint as required by law. (*Daniels, J.*) BALDEO SINGH v. KING-EMPEROR.  
96 I. C. 211 = 7 L. R. A. Cr. 133 = 27 Cr. L. J. 899 =  
A. I. R. 1926 All. 566.

**CR. P. CODE (1898), S. 4 (1) (h)—What amounts to Complaint.**

—S. 476.

Sanction granted under S. 476 for prosecution is not complaint within S. 4 (h). (*Newbold and B. B. Ghose, J.J.*) *DURJODHA N. BHAT v. EMPEROR*.

89 I. C. 1027 = 52 Cal. 666 = 26 Cr. L. J. 1459 = A. I. R. 1925 All. 1226.

—Non-cognizable case—Police report.

The written allegation of a non-cognizable offence made by a police officer who is also a Public Prosecutor with the idea of making the Court take action on it is not the report of a police officer but is a complaint as defined in S. 4 of the Cr. P. Code and it is competent for the Court to take action thereon. The words "Report of a Police Officer" refer to the report of a police officer in a case in which he is authorised to investigate, by the Code. (*Shadi Lal, C. J. and Le Rossignol, J.*) *EMPEROR v. GHULAM HUSSAIN*.

82 I. C. 753 = 6 L. L. J. 606 = 25 Cr. L. J. 1361 = A. I. R. 1925 Lah. 237.

—Order on police complaint for summons—S. 476.

Where a prosecution was initiated by the Police who made the complaint and on that complaint the Magistrate passed an order to summon the accused,

Held, that the order could not be construed as a "complaint" within the meaning of the Code. (*Bucknill and Ross, J.J.*) *SHAIKH MUHAMMAD YASSIN v. EMPEROR*.

86 I. C. 825 = 4 Pat. 323 = 6 P. L. T. 457 = 26 Cr. L. J. 889 = A. I. R. 1925 Pat. 483.

—Where a case was pending before a Subordinate Magistrate, the parties compounded and filed the agreement into Court. The Magistrate found that there was a material alteration in the agreement after it was filed in Court and that the accused was responsible for it and made a report of it to the District Magistrate. He made no order under S. 476, but the District Magistrate ordered prosecution of the accused.

Held, that the report cannot in any sense be treated as an order under S. 476, Cr. P. Code, but the report falls within the definition of complaint as given in S. 4 (h) and his order therefore cannot be said to have been passed without any jurisdiction. 26 All. 514, Ref. (*Sulaiman, J.*) *SARJU PRASAD v. THE CROWN*. 81 I. C. 595 = 21 A. L. J. 825 = 4 L. R. A. Cr. 248 = 25 Cr. L. J. 947 = A. I. R. 1924 All. 190.

—Application under S. 107.

An application under S. 107 is not "complaint" under S. 4 (h) and S. 203 of the Code therefore does not apply to such an application. (*Zafar Ali, J.*) *SHAMAS-UD-DIN v. RAM DAYAL SINGH*.

76 I. C. 25 = 25 Cr. L. J. 89 = A. I. R. 1924 Lah. 630.

—Oral complaint.

The sworn statement and the written complaint of a complainant may be read together for the purpose of ascertaining what the nature of the complaint in any particular case is. (*Spencer, J.*) *ARUNACHALAM CHETTY, In re*.

74 I. C. 949 = 33 M. L. T. 268 = 1923 M. W. N. 876 = 24 Cr. L. J. 837 = A. I. R. 1924 Mad. 323 = 45 M. L. J. 543.

—One M applied to Deputy Commissioner, alleging that his application to the Police was not enquired into and praying that the Deputy Commissioner should order an enquiry or start himself an enquiry. M did not ask for the trial and punishment of the accused.

Held, that the application was not a "complaint" for the purposes of S. 211, I. P. C. (*Korwal, A. J. C.*) *MAHADU v. EMPEROR*.

75 I. C. 543 = 24 Cr. L. J. 959 = A. I. R. 1924 Nag. 115.

—Application to continue proceedings.

**CR. P. CODE (1898), S. 4 (1) (k)—Trial and enquiry.**

An application by the complainant stating that the proceedings against the accused already taken be reviewed as he has sufficient material to support the case against accused, is not a complaint but an application for continuing the case. (*Kulwant Sahay, J.*) *GAJO CHAUDHRY v. DEBI CHAUDHRY*. 72 I. C. 945 = 1 Pat. L. R. Cr. 97 = 24 Cr. L. J. 481 = A. I. R. 1923 Pat. 532.

—S. 4 (1) (i)—European British subject.

—Marriage.

The words "naturalised or domiciled" which follow "born" are disjunctive of and not conjunctive with what precedes. A European British subject who marries a native British Indian husband or an Indian subject of a Native State does not thereby cease to be a "European British subject" as defined in the Code. (*Mirza and Baker, J.J.*) *BAI AISHA, In re*. 117 I. C. 321 = 53 Bom. 149 = 31 Bom. L.R. 62 = 30 Cr. L. J. 772 = A. I. R. 1929 Bom. 81.

—S. 4 (1) (j)—High Court.

—Sonthal Parganas Regulation (V of 1893.)

Under Cl. 1 (ii) (a) of S. 4 the High Court of Patna has only jurisdiction to deal with appeals under S. 417 against an order of acquittal. It has no power to deal with an application under S. 439 for setting aside acquittal for which the proper forum in the Commissioner of Bhagalpur. (*Jwala Prasad and Macpherson, J.J.*) *ANWAR ALI v. CHAIRMAN DEOGHAR MUNICIPALITY*. 99 I. C. 112 = 28 Cr. L. J. 80 = 8 P.L.T. 271 = 7 A. I. Cr. R. 231 = 6 Pat. 83 = 1926 P.H.C.C. 267 = A. I. R. 1926 Pat. 449.

—S. 4 (1) (k)—Inquiry and judicial proceedings.

S. 176, Criminal Procedure Code—Proceedings under, fall within Ss. 4 (1) (k) and 4 (1) (m).

Proceedings of a Magistrate under S. 176 are an "inquiry" as defined by S. 4 (1) (k) and a "judicial proceeding" as defined by S. 4 (1) (m). (*Mirza and Patkar, J.J.*) *LAXMINARAYAN TIMMANNA KARKE, In re*.

112 I. C. 567 = 30 Bom. L. R. 1050 = 29 Cr. L. J. 1063 = 11 A.I. Cr. R. 324 = A.I.R. 1928 Bom. 390.

—S. 4 (1) (k)—Trial and enquiry.

Trial is a judicial proceeding which ends in conviction or acquittal. All other proceedings are enquiries and they have various endings according to circumstances. (*Courtney Terrell, C. J. and Dhawle, J.*) *HEMA SINGH v. EMPEROR*. I. R. 1930 Pat. 578 = 126 I. C. 146 = 31 Cr. L. J. 961 = 12 Pat. L. T. 86 = 9 Pat. 155 = 1929 Cr. C. 372 = A.I.R. 1929 Pat. 644.

—Commitment to Sessions.

If a Magistrate on receipt of a complaint issues process against the accused and ultimately concludes that an offence triable at Sessions has been committed and commits the accused, the trial does not begin until the accused appears at the Sessions and the proceedings before the Magistrate constitute an enquiry only. (*Courtney Terrell, C. J. and Dhawle, J.*) *HEMA SINGH v. EMPEROR*. I. R. 1930 Pat. 578 = 126 I. C. 146 = 31 Cr. L. J. 961 = 12 Pat. L. T. 36 = 9 Pat. 155 = 1929 Cr. C. 372 = A.I.R. 1929 Pat. 644.

—Explosive Substances Act, S. 4.

The failure to obtain necessary consent of Government as required by S. 7 of Explosive Substances Act (VI of 1908) does not invalidate the commitment proceedings conducted by a Magistrate for an offence under S. 4 and exclusively triable by the Sessions Court as the commitment proceedings are only an "inquiry" as defined in cl. (k) of S. 4 of the Cr. P. Code. (*Fawcett and Madgavkar, J.J.*) *EMPEROR v. KALLAPPA DUNDAPPA*. 99 I. C. 37 = 50 Bom. 695 = 28 Bom. L. R. 1290 =



**CR. P. CODE (1898), S. 4 (1) (m)—Re-trial.**

21 Cr. L. J. 5 = 7 A. I. Cr. R. 161 =  
A. I. R. 1927 Bom. 21.

**—S. 4 (1) (m)—Re-trial.**

—The trial of a suit after an *ex parte* decree against the defendant is set aside may be regarded as a continuation of the trial of the same suit which first ended in a decree. The definition of "judicial proceeding" in S. 4 (m), Cr. P. Code, is not opposed to this view. 32 M. 49 and 42 M. 422 (F. B.), Dist. (*Spencer, J.*) ARUMUGAM PILLAI, *In re.*, 81 I. C. 219 = 18 M. L. W. 133 = 25 Cr. L. J. 731 = A. I. R. 1924 Mad. 86.

**—S. 4 (1) (n)—Complaint by Police.****—Non-cognizable case.**

A police officer is not prohibited under the Cr. P. Code from presenting a complaint to the Magistrate in a non-cognizable case. (*Shadi Lal, C. J. and Le Rossignol, J.*) EMPEROR v. GHULAM HUSSAIN, 82 I. C. 753 = 6 L. L. J. 606 = 25 Cr. L. J. 1361 = A. I. R. 1925 Lah. 237.

**—S. 4 (1) (o)—Accused.**

—Person called on to give security is not an accused. (*C. C. Ghose and Cumming, J.J.*) BINODE BEHARI NATH v. EMPEROR, 81 I. C. 909 = 50 Cal. 985 = 25 Cr. L. J. 1085 = A. I. R. 1924 Cal. 392.

**—S. 4 (1) (o)—Triable offences.****—Mussalman Wakf Act.**

There does not appear to be anything in the Mussalman Wakf Act which is repugnant to the definition of an offence contained in the General Clauses Act and in the Cr. P. Code and as the Act contains no provision regarding the Court by which offences under S. 10 of the Act should be tried, they can be tried by any Magistrate. (*Percival, J. C. and Aston, A. J. C.*) ALI MAHOMED v. EMPEROR, 105 I. C. 666 = 28 Cr. L. J. 954 = 9 A. I. Cr. R. 142 = 22 S. L. R. 141 = A. I. R. 1928 Sind 43.

**—Cattle Trespass Act. S. 20—Complaints under.**

A Magistrate generally empowered under the Cr. P. Code to receive complaints of offences has jurisdiction in respect of offences under S. 20 of the Cattle Trespass Act without any special authorization by the District Magistrate to receive complaints under the above section 44 Bom. 42 and 34 Cal. 926, Foll. (*Wallace, J.*) DEENADAYALU NAIDU v. RATNA PADAYACHI, 100 I. C. 381 = 50 Mad. 841 = 25 M. L. W. 282 = 1927 M. W. N. 167 = 28 Cr. L. J. 301 = A. I. R. 1927 Mad. 396 = 52 M. L. J. 251.

**—S. 4 (1) (p)—Officer in charge of police station****—Officer on tour.**

Assistant Sub-Inspector on duty in mofussil during investigation is not officer-in-charge of the police station for purposes of S. 154, when the first information report is made to him unless he comes within the strict terms of S. 4. (*C. C. Ghose, and Jack, J.J.*) MOMIN TALUKDAR v. EMPEROR, 117 I. C. 601 = 30 Cr. L. J. 803 = A. I. R. 1928 Cal. 771.

**—S. 4 (1) (r)—Mukhtyar.**

—In Bombay Presidency "Mukhtyar" is a person who can with the permission of the Court represent an accused in any proceeding within the meaning of S. 4 (1) (r), Cr. P. Code, and so a general order of a District Magistrate against employment of Mukhtyars in criminal cases in his district is improper. (*Patkar and Baker, J.J.*) BAJIRAU ABAJI KULKARNI, *In re.*, 107 I. C. 56 = 29 Bom. L. R. 1587 = 29 Cr. L. J. 226 = 9 A. I. Cr. R. 403 = A. I. R. 1928 Bom. 33.

**CR. P. CODE (1898), S. 6—Municipal Magistrate.****—S. 4 (1) (r)—Pleader for accused.****—Public Prosecutor.**

The District Magistrate considering it possible that the complaint against two Government Officials was a false one, made in consequence of the accused performing their duty, directed the Prosecuting Inspector to defend the accused. The trying Magistrate allowed the Prosecutor to so defend the accused.

*Held*, that though the Public Prosecutor was not a member of the Bar it could not be held that he was not a person appointed by the accused with the permission of the Court to defend them though it was desirable that they had made such appointment. A. I. R. 1926 Bom. 218, Ref. (*Macnair, A. J. C.*) EMPEROR v. CHOTE KHAN, 122 I. C. 442 = 31 Cr. L. J. 419 = I. E. 1930 Nag. 170 = 1930 Cr. C. 506 = 26 N. L. E. 172 = A. I. R. 1930 Nag. 150.

**—S. 5—Abkari Act.****—Special law.**

The police have no right to file a charge sheet or otherwise to proceed under Chapter 14 of the Cr. P. Code in respect of an offence under the Abkari Act Chapter 14 is controlled by S. 5 (2) of the Cr. P. Code and this is an offence under a special law, which can be investigated and tried only according to the provisions of the law. (*Oldfield and Ramesam, J.J.*) KUPPUSAMI, *In re.*, 72 I. C. 175 = 24 Cr. L. J. 335 = 17 M. L. W. 308 = A. I. R. 1923 Mad. 339 = 44 M. L. J. 231.

**—S. 5—Village Panchayats.****—Transfer of cases.**

By S. 5 read with S. 526 High Court has jurisdiction to transfer cases from village panchayats constituted under the U. P. Village Panchayat Act of 1920. A. I. R. 1926 All. 27 Rel. on. (*Iqbal Ahmad, J.*) BASDEO MISRA v. BADAL MISRA, 99 I. C. 128 = 25 A. L. J. 157 = 8 L. R. A. Cr. 33 = 28 Cr. L. J. 94 = 49 All. 188 = 7 A. I. Cr. R. 246 = A. I. R. 1927 All. 199.

**—S. 6—Court of Session.****—High Court.**

The High Court exercising Original Criminal Jurisdiction is not a Court of Session within the meaning of the Code of Criminal Procedure. (*Mukerji, J.*) EMPEROR v. HARENDRA CHANDRA CHAKRAVARTY, 84 I. C. 929 = 51 Cal. 980 = 29 C. W. N. 384 = 26 Cr. L. J. 385 = A. I. R. 1925 Cal. 384.

**—S. 6—District Magistrate.****—Subordinate to District Court.**

There is no Court of a District Magistrate as such within the meaning of S. 6 of the Code. A District Magistrate's Court is only a Court of Magistrate; first class, and subordinate to the Court of the Sessions Judge for the purposes of S. 195 (3). An appeal therefore, under S. 476-B lies to the Court of the Sessions Judge, from an order passed by the District Magistrate under S. 476 A and not to the High Court. (*Kinkhede, Mohiuddin and Staples, A. J. C.'s*) PILALAL v. EMPEROR, 116 I. C. 77 = 25 N. L. E. 1 = 30 Cr. L. J. 550 = 12 A. I. Cr. R. 345 = A. I. R. 1929 Nag. 97 (F. B.).

**—S. 6—Municipal Magistrate.****—Calcutta Municipal Act.**

The Municipal Magistrate appointed under S. 531 is a Court of inferior criminal Jurisdiction within the meaning of S. 6, Cr. P. Code, and orders for demolition passed by such a Magistrate are subject to revision by the High Court under Ss. 435 and 439. Cr. P. Code.



**CR. P. CODE (1898), S. 6—Order under S. 144.**

Further, an order for demolition is a judicial order and whether made in the exercise of the Magistrate's civil or criminal jurisdiction is open to revision by the High Court. 43 Mad. 146 (P. C.), Foll. (*Sanderson, C. J. and Pantor, J.*) **RAMGOPAL GOENKA v. CORPORATION OF CALCUTTA.** 90 I. C. 317 =

52 Cal. 962 = 26 Cr. L. J. 1533 =  
29 C. W. N. 898 = A. I. R. 1925 Cal. 1251.

**—S. 6—Order under S. 144.**

—'Court'.

Order of the Magistrates acting under S. 144 is not the order of a Court. No revision, therefore, lies against such order under S. 435, in spite of omission of cl. 3 from the Code of 1898. A. I. R. 1923 Mad. 473, Foll. Magistrates are not always Courts. S. 6 is not inconsistent with the idea that Magistrates may sometimes act in executive and administrative capacity and not as Courts. 39 Cal. 953 (P. C.), Dist.; A. I. R. 1924 Pat. 703, not Appr. (*Ramesam, J.*) **VEDAPPAN SERVAI v. PERIANAN SERVAL.** 113 I. C. 279 =

28 M. L. W. 506 = 1928 M. W. N. 779 =  
52 Mad. 69 = 1 M. Cr. C. 304 = 30 Cr. L. J. 119 =  
12 A. I. Cr. R. 17 = A. I. R. 1928 Mad. 1108 =  
55 M. L. J. 621.

**—S. 14—'Case', meaning.**

—Charges.

Where a public servant was suspended, and his prosecution was sanctioned in respect of three charges but the words used in an order under S. 14 were: "To try the case relating to the prosecution of Mr. . . . Deputy Collector, under suspension."

*Held*, the words of the order must be interpreted in the light of the facts in relation to which they are used and the word "case" covered all the three charges. (*Crumph and Madgawker, J.J.*) **EMPEROR v. JEHANGIR ARDESHIR.** 106 I. C. 100 = 8 A. I. Cr. R. 324 =

29 Bom. L. R. 996 = 28 Cr. L. J. 1012 =  
A. I. R. 1927 Bom. 501.

**—S. 14—Duration.**

—Honorary Magistrate.

Where an Honorary Magistrate has been appointed in the Central Provinces for a term of years his jurisdiction to decide cases must be considered to continue unless there is an order cancelling such appointment. (*Subhedar, A. J. C.*) **TUKARAM v. DAGHU.**

120 I. C. 223 = 1930 Cr. C. 201 =  
31 Cr. L. J. 24 = A. I. R. 1930 Nag. 96.

**—S. 15—Difference of opinion.**

In cases wherever the Chairman of the Bench Magistrates is opposed to the majority, and where he is not prepared to write a judgment for the majority, one of the Magistrates ought to be asked to write the judgment which should form part of the record. (*Devadoss, J.*) **SEETHARAMAYYA, In re.** 91 I. C. 394 =

23 M. L. W. 537 = 27 Cr. L. J. 90 =  
A. I. R. 1926 Mad. 354.

**—S. 15—Difficult cases.**

—Where a Bench is of opinion that a case should be transferred from their file as it involves a difficult question, it should move the matter officially and not to leave it to the parties to move. (*Wallace, J.*) **GOPALA NAIR, In re.** 106 I. C. 715 =

29 Cr. L. J. 123 = A. I. R. 1929 Mad. 403.

Cases, which are likely to be keenly contested and intricate in nature, are, on the whole, likely to be more efficiently disposed of by stipendiary Magistrate than by Honorary Magistrates. (*Findlay, J. C.*) **PANDURANG KRISHNAJI v. EMPEROR.**

105 I. C. 226 = 10 N. L. J. 184 = 28 Cr. L. J. 898 =  
A. I. R. 1928 Nag. 21.

CR. D.—9

**CR. P. CODE (1898), S. 15—Powers.**

—*Obiter*.—It is extremely undesirable that cases involving difficult questions of fact or of law should be directed to be tried by a Bench of Honorary Magistrates. They cannot ordinarily be expected to deal satisfactorily with the questions that are involved in such cases. (*Venkatasubba Rao, J.*) **PUBLIC PROSECUTOR v. VARADARAJULU NAIDU.** 81 I. C. 894 =

47 Mad. 716 = 20 M. L. W. 573 =  
1924 M. W. N. 880 = 25 Cr. L. J. 1070 =  
A. I. R. 1925 Mad. 64 = 47 M. L. J. 470.

**—S. 15—Interpretation.**

A notification investing certain Magistrates with certain powers can hardly fall within the category of statutes or notifications which are to be strictly construed. (*Percival, J. C., Aston, Rupchand Bilaram, De Souza and Lobo, A. J. Cs.*) **EMPEROR v. NOOR MAHOMED.** 105 I. C. 433 =

22 S. L. R. 157 = 9 A. I. Cr. R. 66 =  
28 Cr. L. J. 913 = A. I. R. 1928 Sind 1 (F. B.).

**—S. 15—Judgment.**

—*Revising of*.

*Held*, that a Bench of Magistrates cannot set in revision upon its own completed and pronounced judgment and that if there is any miscarriage of justice the proper course is for the President to refer the matter to the District Magistrate who if so advised can act under S. 438, Cr. P. Code. (*Wallace and Jackson, J.J.*) **EKAMBARA MUDALI v. ALAMELAMMAL.**

53 M. 870 = 1930 M. W. N. 409 = 32 L. W. 152 =  
129 I. C. 628 = 32 Cr. L. J. 429 = 1930 Cr. C. 1055 =  
A. I. R. 1930 Mad. 1001 = 59 M. L. J. 708.

**—S. 15—Judgment signed by persons who did not hear evidence.**

—*Legality*.

Where only three Magistrates of Bench heard the evidence and tried the case but the judgment was signed by seven, *held*, that the judgment was illegal and must be set aside though it might have resulted in an acquittal. (*Sundaram Chetti, J.*) **PICHA KUDUMBAN v. SERVAIKARA THEVAN.** 1930 M. W. N. 770 =  
I. R. 1931 Mad. 692 = 133 I. C. 4 = 1931 Cr. C. 558 =  
A. I. R. 1931 Mad. 494.

**—S. 15—Powers.**

—*Bench clatching at jurisdiction*.

Where a complaint was made to a Bench of Magistrates for an offence which they had no jurisdiction to try but they tried the accused for a lesser offence for which they had jurisdiction, *held*, that the proceeding was not void. (*Sundaram Chetti, J.*) **PICHA KUDUMBAN v. SERVAIKARA THEVAN.** 1930 M. W. N. 770 =

I. R. 1931 Mad. 692 = 133 I. C. 4 =  
1931 Cr. C. 558 = A. I. R. 1931 Mad. 494.

A Bench of Magistrates individually invested with powers of Third Class Magistrates was invested by a notification with the ordinary powers of a Second Class Magistrate, but the notification did not say that the Bench shall try any cases whatsoever or that they shall not try cases other than those triable by each of the Magistrates individually.

*Held*, that the notification was defective and that the Bench was empowered to try second class magisterial cases. (*Percival, J. C., Aston, Rupchand Bilaram, De Souza and Lobo, A. J. Cs.*) **EMPEROR v. NOOR MAHOMED.** 105 I. C. 433 = 22 S. L. R. 157 =

9 A. I. Cr. R. 66 = 28 Cr. L. J. 913 =  
A. I. R. 1928 Sind 1 (F. B.).

The true meaning to be attached to the section is that it is open to Government to invest a Bench composed of Magistrates of a lower class with all the powers conferred on a Magistrate of a higher class, and

**CR. P. CODE (1898), S. 15—Powers.**

also, if thought fit, to invest such Bench with powers conferrable on a Magistrate of such higher class, that is to say, that a Bench exercising third class magisterial powers may be invested with ordinary or additional powers of a Second Class Magistrate. (*Percival, J. C., Aston, Rupchand Bilaram, DeSouza and Lobo, A. J. Cs.*) **EMPEROR v. NOOR MAHOMED.**

105 I. C. 433 = 22 S. L. R. 157 = 9 A. I. Cr. R. 66 = 28 Cr. L. J. 913 = A. I. R. 1928 Sind 1 (F. B.).

—“Any powers.”

“Any powers” in S. 15 refers to powers of any particular class of Magistrates either conferred or conferrable and does not mean any one of the powers conferred without the other. (*Percival, J. C., Aston, Rupchand Bilaram, DeSouza and Lobo, A. J. Cs.*) **EMPEROR v. NOOR MAHOMED.**

105 I. C. 433 = 22 S. L. R. 157 = 9 A. I. Cr. R. 66 = 28 Cr. L. J. 913 = A. I. R. 1928 Sind 1 (F. B.).

—*Inferior Courts—Express power.*

In inferior Courts and proceedings by Magistrates the maxim *omnia praesumuntur rite esse acta* does not apply to give jurisdiction. The old rule for jurisdiction is, that nothing shall be intended to be out of the jurisdiction of the superior Court but that which specially appears to be so; nothing is intended to be within the jurisdiction of an inferior Court but that which is expressly alleged. (*Percival, J. C., Aston, Rupchand Bilaram, DeSouza and Lobo, A. J. Cs.*) **EMPEROR v. NOOR MAHOMED.**

105 I. C. 433 = 22 S. L. R. 157 = 9 A. I. Cr. R. 66 = 28 Cr. L. J. 913 = A. I. R. 1928 Sind 1 (F. B.).

**—S. 16—Bench Magistrate.**

—*Constitution of.*

Where, out of three Magistrates constituting the Bench only one is present on all hearings throughout the trial, sitting sometimes with one, sometimes with the other, and sometimes with both, the trial is bad as it contravenes the provisions of S. 350 A even though the quorum consisted of two. A. I. R. 1926 Lah. 304, Foll. (*Stuart, J.*) **SURAJ BOLI v. EMPEROR.**

4 O.W.N. 1240 = 107 I.C. 875 = 9 A. I. Cr. R. 414 = 29 Cr. L. J. 310 = A.I.R. 1928 Oudh 212.

**—S. 16—Difference of opinions.**

—*Judgment—Writing of.*

In a case where the President of the Bench is in a minority as to conviction or acquittal, the judgment should be written by some member of the majority. (*Wallace, J.*) **LALAMMA v. EMPEROR.**

51 Mad. 338 = 1 M. Cr. C. 172 = 29 Cr. L.J. 207 = 1928 M.W.N. 31 = 27 M.L.W. 239 = 106 I. C. 799 = A.I.R. 1928 Mad. 197 = 54 M.L.J. 709.

**—S. 16—Powers.**

—There is nothing in the Criminal Procedure Code prescribing that any particular class of cases should be tried by Honorary Magistrates. (*Baker, J. C.*) **YAKUB v. APPASWAMI.**

81 I. C. 44 = 25 Cr. L.J. 556 = A.I.R. 1925 Nag. 40.

**—S. 16—Procedure.**

—*Person in minority voting for sentence.*

The giving of the vote by the President of the Bench on the question of the sentence of the accused found guilty by a majority, though he was one of the minority who thought the accused was not guilty, is not illegal. (*Curgencen, J.*) **MEENAKANTI ROSAYYA v. KING-EMPEROR.**

28 Cr. L. J. 310 = 100 I.C. 534 = A.I.R. 1927 Mad. 500.

—*Evidence in the absence of the whole bench.*

Where the rules as to the conduct of cases before a Bench provide that in order that there should be a

**CR. P. CODE (1898), S. 20—Jurisdiction.**

quorum, two Magistrates should be present, evidence recorded in the absence of one of them is not recorded in a Court, and, therefore, any Court is bound to disregard that evidence. A mere reading over to a Court of statements which are not evidence does not make such statements evidence. (*Kincaid, J. C. and Kennedy, A. J. C.*) **EMPEROR v. GULU.**

20 S.L.R. 134 = 27 Cr. L.J. 542 = 93 I.C. 1038 = A.I.R. 1926 Sind 192.

—*One Bench Magistrate alone competent to try.*

Where transfer of accused was made under S. 192 to the Bench Magistrates one of whom alone being invested with powers of a Magistrate of third class was empowered to hear and try the case under orders issued by the District Magistrate consonant to the provisions of S. 16 of the Criminal Procedure Code, and where he had jurisdiction to try the case sitting alone and he heard all the evidence and he was the Magistrate who pronounced judgment. *Held*, there was no irregularity nor one vitiating the trial. (*Dalal, J.*) **DEBI PRASAD v. EMPEROR.**

5 L. R. A. Cr 93 = A.I.R. 1924 All. 674.

**—S. 17—Revision**

—On application for revision against order of Asst. Collector instead of against that of Collector who was responsible for that of the Asst. Collector, High Court's inherent power could be exercised under S. 561 (a). (*Boys, J.*) **MT. RAM SRI v. SRI KISHUN.**

82 I. C. 170 = 22 A.L.J. 803 = 5 L. R. A. Cr. 129 = 25 Cr. L. J. 1242 = 46 All. 879 = A.I.R. 1924 All. 777.

**—S. 17—Scope.**

—The Code of Criminal Procedure strictly limits the powers of an Additional Sessions Judge to such as are conferred upon him directly by the Local Government or by the Sessions Judge of the division in which he exercises power. Power to grant or cancel bail could be conferred on him under S. 17. Where no such power is conferred, the order of an Additional Sessions Judge granting or cancelling bail is *ultra vires*. (*Doyle, J.*) **MAUNG BA MAUNG v. EMPEROR.**

A.I.R. 1930 Rang. 335.

**—S. 17—Stay of trial.**

—*Power of District Magistrate.*

There is no provision in the Cr. P. Code which would give the District Magistrate the power to stay proceedings in a Criminal Court subordinate to him and it would appear that the High Court's power to pass such an order can only be exercised under its general powers of superintendence. 23 Cal. 610; 30 M. 226, Ref. (*Ayling, J.*) **KRISHNA RAO v. SESHASUBRAMANIA**

76 I.C. 869 = 1923 M.W.N. 251 = 25 Cr. L. J. 277 = A.I.R. 1923 Mad. 688.

—*Power of District Magistrate.*

A District Magistrate has wide powers of superintendence over his subordinate Magistrates which might be considered to justify special directions being issued by him to stop or go on with particular proceedings pending before them. (*Spencer, J.*) **NAMBIA PILLAI v. SUDALAIMUTHU.**

76 I. C. 872 = 25 Cr. L.J. 280 = 17 M.L.W. 570 = 32 M.L.T. 191 = 1923 M.W.N. 276 = A.I.R. 1923 Mad. 595 = 44 M.L.J. 642.

**—S. 20—Jurisdiction.**

—*Presidency Magistrate.*

Presidency Magistrate has jurisdiction to try offences committed at any place within the limits of the town. (*Shah and Fawcett, J.J.*) **KHODABUX v. EMPEROR.**

28 Bom. L. R. 1066 = 27 Cr. L. J. 1213 = 97 I.O. 973 = A.I.R. 1926 Rom. 564.

**CR. P. CODE (1898), S. 21—Difference of opinions.****—S. 21—Difference of opinions.**

—Though under Rr. 9 and 10 of the Rules by the Government of Bombay the judgment of the chairman prevails, the dissenting judgment of the Honorary Magistrate even if the Bench consists of two members, should form part of the record. (*Patkar and Baker, J.J.*) **EMPEROR v. FARDUNCI C. CORA.**

29 Bom. L.R. 1470 = 28 Cr. L. J. 1025 =  
106 I. C. 209 = A.I.R. 1927 Bom. 630.

**—S. 21—Powers.****—Chief Presidency Magistrate of Bombay.**

The Chief Presidency Magistrate has power, in the event of any pressure of work occurring in other Courts, to give directions to bring up any particular class of cases arising in any division to his own Court, under R. 3 of the rules framed under S. 21, to regulate the conduct and distribution of business in the Courts of Magistrates of the town. (*Shah and Faruqett, J.J.*) **KHODABUX v. EMPEROR.**

28 Bom. L. R. 1066 =  
27 Cr. L. J. 1213 = 97 I.C. 973 =  
A.I.R. 1926 Bom. 564.

**—S. 26—Suspension.****—Interference by District Magistrate pending trial.**

In the course of an inquiry held under S. 176 by a mahalkari who was invested with powers of a 2nd Class Magistrate by name the District Superintendent of Police reported, imputing a cognizable offence to the Magistrate in the conduct of the enquiry, to the Collector and District Magistrate; the Collector started departmental enquiry and suspended the Magistrate and relieved him of his functions as mahalkari and Magistrate.

*Held*, that if the Collector was satisfied on perusal of the papers that there was an illegality or an irregularity in the proceedings, under S. 176 he could have reported to the High Court under S. 438, and the High Court would have passed such orders as it thought fit, but the action of Collector in interfering with the judicial enquiry and virtually putting an end to it was both illegal and improper and that the Magistrate continued to be a 2nd Class Magistrate though he was suspended as mahalkari, as the power of suspending the Magistrate was given only to Local Government by S. 26, (1887) Unrep. Cr. C. 322, Rel. on. (*Mirsa and Patkar, J.J.*) **In re LAXMINARAYAN SIMMANNA KARKI.**

112 I.C. 567 = 30 Bom. L. R. 1050 =  
29 Cr. L.J. 1063 = 11 A. I. Cr. R. 324 =  
A. I. R. 1928 Bom. 390.

**—S. 28—Revision.****—Clenching of jurisdiction.**

Under special circumstances, it is possible to agree with a contention that if the facts charged show the commission of a more serious offence which is triable only by higher tribunal the Magistrate with less powers has no right, in spite of objection raised, to grab jurisdiction by seeking to try the accused for the smaller offence. But even where a Magistrate tries the accused for an offence under a less serious section, when really the offence fell under a more serious section which was beyond his competency, his proceedings are not illegal, and therefore the High Court is not bound to interfere in such cases. A.I.R. 1922 Mad. 223, Rel. on. (*Srinivasa Ayyangar, J.*) **ABDUL SATHAR v. EMPEROR.**

1 M. Cr. C. 65 = 27 M.L.W. 683 =  
29 Cr. L.J. 635 = 109 I.C. 907 =  
A.I.R. 1928 Mad. 585 = 54 M.L.J. 456.

**—S. 28—Scope.**

—Sec. 30 must be read as qualifying or controlling the provisions of S. 28 which in its turn makes reference

**CR. P. CODE (1898), S. 33—Jurisdiction.**

to column 8 of the second schedule. (*Kinkhede, Offg. A.J.C.*) **DANAJI v. EMPEROR.**

95 I. C. 56 =  
27 Cr. L. J. 728 = A.I.R. 1926 Nag. 374.

**—S. 29-A—Claim.****—Trial as European British subject.**

The claim to be tried as a European British subject under S. 29-A, Cr. P. Code, must be made before the inquiry or trial actually begins so far as a case which falls within S. 528-A, Cr. P. Code, is concerned. Not having made this claim when a person is first brought before the Magistrate for the purpose of trial or inquiry, it is not open to revive or make it at any subsequent stage. (*Cuming and Graham, J.J.*) **CARMEN v. O'BRIEN.**

107 I.C. 353 = 54 Cal. 1041 =  
29 Cr. L.J. 245 = 9 A. I. Cr. R. 471 =  
A.I.R. 1928 Cal. 97.

**—S. 29 B—Jurisdiction.****—Railways Act, S. 130.**

In view of provisions of S. 29-B of Cr. P. Code a Magistrate other than a District Magistrate has no jurisdiction to try an offence under S. 130 of Railways Act, 43 Bom. 888, Diss. from. (*Dalip Singh, J.*) **EMPEROR v. MT. JANNAT.**

29 P.L.R. 536 =  
10 A. I. Cr.R. 499 = 29 Cr. L. J. 733 =  
110 I. C. 589 = A.I.R. 1928 Lah. 909.

**—S. 30—Scope.**

—Sec. 30 must be read as qualifying or controlling the provisions of S. 28 which in its turn makes reference to column 8 of the second schedule. (*Kinkhede, Offg. A. J. C.*) **DANAJI v. EMPEROR.**

27 Cr. L. J. 728 = 95 I. C. 56 =  
A.I.R. 1926 Nag. 374.

**—S. 32—Discretion.****—Sentence.**

The law vests a discretion in the trying Magistrate to pass adequate sentence in each case and it is for him to decide after taking into consideration all the pertinent circumstances of the case, what should be the adequate sentence. No rule of thumb can be laid down by a higher tribunal as a guide for the trying Magistrate in awarding an adequate sentence. *Regina v. Thornton*, (1909) Cr. App. Rep. 315, Ref. (*Rupchand and Barlee, A.J.Cs.*) **MURIDO v. EMPEROR.**

I. B. 1930 Sind 158 = 125 I. C. 46 =  
31 Cr. L. J. 763 = 1930 Cr. C. 122 =  
A. I. R. 1930 Sind 58.

**—S. 32—Punishment.****—Conduct of accused during trial.**

Magistrates when deciding on the question of sentence are justified in taking into consideration the conduct of an accused person in his own defence. Where an accused person is clearly guilty and instead of throwing himself on the mercy of the Court defends himself by throwing mud at witnesses who are persons of standing and honour, he really is deserving of very little consideration. (*Rupchand and Barlee, A. J. Cs.*) **SANWAL DAS v. EMPEROR.**

128 I. C. 44 = 31 Cr. L. J. 753 =  
I. R. 1930 Sind 156 = 1929 Cr. C. 682 =  
A. I. R. 1929 Sind 253.

**—S. 33—Jurisdiction.****—Trial for lesser offence than that charged—No jurisdiction—Time if void.**

Where the offence complained of was one under S. 430, I. P. C., but the Bench tried the accused for a lesser offence under S. 426, I.P.C. and it appeared that they had jurisdiction to try the former and not the latter offence,

*Held*, that the proceeding was not void. 24 M. 675, and 27 M. L. J. 594, Foll. (*Sundaram Chetty, J.*)

**CR. P. CODE (1898), S. 35—Appeal.**

PICHA KUDUMBAN *v.* SERVAIKARA THEVAN.

I. R. 1931 Mad. 692=133 I. C. 4=  
1931 Cr. C. 558=1930 M. W. N. 770=  
A. I. R. 1931 Mad. 494.

**—S. 35—Appeal.****—Concurrent sentence.**

Where the total term of imprisonment to which an appellant has been sentenced, either by an Assistant Sessions Judge or by a subordinate Magistrate does not exceed four years, the appeal undoubtedly lies to the Court of the Sessions Judge. 15 C. W. N. 734 and 17 C. W. N. 72, not Foll.; A. I. R. 1921 Cal. 152, Foll. The fact that other concurrent sentence of a lesser period has been passed against the appellant under provisions of the Penal Code does not preclude the Sessions Court from dealing with the appeal. A. I. R. 1921 Cal. 152, Foll. Further, appellate Court in such a matter is only concerned with the actual substantive sentence imposed, so far as the question of where the appeal lies is concerned, and the fact that the Magistrate, in determining the length of the sentence, took into account the length of time the appellant had been under trial, will not affect the question. (*Findlay, J. C.*) JAGADISH CHANDRA *v.* EMPEROR. 103 I. C. 208=28 Cr. L. J. 672=  
8 A. I. Cr. B. 295=10 N. L. J. 135=  
A. I. R. 1927 Nag. 255.

8 A. I. Cr. B. 295=10 N. L. J. 135=  
A. I. R. 1927 Nag. 255.

**—Several offences—Conviction for.**

An appeal does not lie to the Sessions Court when a Magistrate of the first class has convicted an accused person of more offences than one and has sentenced him for each offence to imprisonment for one month directing at the same time that the sentences should run concurrently. Case-law referred. (*Richardson and Shamsul Huda, J.J.*) ABDUL JUBBAR *v.* EMPEROR. 25 C. W. N. 613=66 I. C. 65=  
A. I. R. 1921 Cal. 152.

**—S. 35—Applicability.****—Fine.**

Sec. 35 (3) refers only to sentences of imprisonment and not of fines. (*Macleod, C. J. and Crump, J.*) SHIDLINGAPPA *v.* EMPEROR. 28 Bom. L. R. 668=  
96 I. C. 270=27 Cr. L. J. 926=  
A. I. R. 1926 Bom. 416.

**—Separate trials but concurrent sentences.**

In respect of three separate acts of offence there were three separate trials of the same accused, and three separate sentences of imprisonment, passed by the same Magistrate and on the same date; the Magistrate ordered in each case that the sentence was to run from the date of conviction. As a result the sentences were to run concurrently.

Held, that inasmuch as there had been three separate trials under S. 397, the sentences could only run consecutively and that S. 35 did not give the Court power to direct them to run concurrently inasmuch as S. 35 relates to sentences in cases of convictions of several offences at one trial. (*Tudball, J.*) HARAK NARAIN *v.* EMPEROR. 62 I. C. 408=19 A. L. J. 310=  
22 Cr. L. J. 520=A. I. R. 1921 All. 126.

**—S. 35—Default of fine.****—Concurrent sentences—Illegal.**

Section 35, which empowers a Court to direct that imprisonment imposed on a person convicted at one trial of two or more offences should be concurrent does not refer to sentence of imprisonment in default of payment of fine but refers only to substantive sentences. That being so the order that the sentences of imprisonment in default of fines should run concurrently is illegal. 5 S. L. R. 263, Rel. on. (*Barlow, J. C., and Kalumal*

**CR. P. CODE (1898), S. 35—Separate sentences.**

*Pahlumal, A. J. C.*) EMPEROR *v.* GHULAM AHMED. 1929 Cr. C. 452=118 I. C. 224=  
30 Cr. L. J. 907=A. I. R. 1929 Sind 179.  
—Concurrent sentence—Illegal.

The sentences of imprisonment in default of payment of the fine cannot run concurrently. 5 S. L. R. 263, Foll. (*Fawcett and Madgavkar, J.J.*) EMPEROR *v.* SUBRAO SESHARAO. 27 Bom. L. R. 1351=  
27 Cr. L. J. 111=91 I. C. 543=  
A. I. R. 1926 Bom. 62.

**—S. 35—Different trials.**

—Court can order two or more sentences to run concurrently only when they are passed in the same trial. (*Sulaiman, J.*) DULLI *v.* EMPEROR. 85 I. C. 714=47 All. 59=26 Cr. L. J. 570=  
6 L. R. A. Cr. 10=A. I. R. 1925 All. 305.

**—S. 35—Measure.**

—The principal object of punishment is the prevention of crime and the measure of punishment must consequently vary from time to time according to the prevalence of a particular form of crime and other circumstances. (*Tapp, J.*) OM PARKASH *v.* EMPEROR. I. R. 1930 Lah. 833=31 Cr. L. J. 1182=  
127 I. C. 209=1930 Cr. C. 911=  
A. I. R. 1930 Lah. 867.

**—S. 35—One sentence.****—Ss. 148 and 326, I. P. C.**

Separate sentences under Ss. 148 and 326 read with S. 149, I. P. C., are illegal. The amendment of S. 35, Cr. P. Code, has not effected any change in the law. 16 Cal. 442 (F. B.) and 3 Pat. L. J. 641, Foll.; 17 Bom. 260 (F. B.) and A. I. R. 1926 Bom. 64, not Foll. (*Courtney Terrell, C. J. and Allanson, J.*) BAJA SINGH *v.* EMPEROR. 8 Pat. 274=10 P. L. T. 353=  
31 Cr. L. J. 83=120 I. C. 311=  
1929 Cr. C. 23=A. I. R. 1929 Pat. 263.

**—Same transaction.**

Imposing separate sentences, where the acts constituting the two different offences form part of the same transaction against the same accused is not justified. (*Adami and Macpherson, J.J.*) MT. CHAMPA PASIN *v.* EMPEROR. 9 A. I. Cr. B. 545=108 I. C. 81=  
29 Cr. L. J. 325=A. I. R. 1928 Pat. 326.

**—Ss. 147 and 353, I. P. C.**

Separate sentences under Ss. 353 and 147, Penal Code, cannot be passed when the act which converts the accused into an unlawful assembly is the same as renders them liable to punishment under Penal Code, S. 353. (*Zafar Ali, J.*) MANAK CHAND *v.* EMPEROR. 27 Cr. L. J. 834=95 I. C. 754=  
A. I. R. 1926 Lah. 581.

—If a person abducts a woman with intent to rape her and does rape her, he cannot be awarded separate sentences under Ss. 363 and 376, I. P. C. (Cr. A. 101 of 1914, Appl.) (*Zafar Ali, J.*) IMAM ALI *v.* EMPEROR. 27 Cr. L. J. 338=92 I. C. 850=  
A. I. R. 1926 Lah. 212.

**—Manufacture and possession of excisable article.**

The offence of manufacture of an excisable article necessarily includes that of possession, and the two offences cannot be called "distinct" for the purposes of S. 35 of the Cr. P. Code. (1 Bom. L. R. 344, Foll.) (*Hallifax, A. J. C.*) SHEIKH MUNIR *v.* EMPEROR. 76 I. C. 19=25 Cr. L. J. 83=  
A. I. R. 1924 Nag. 32.

**—S. 35—Separate sentences.**

—Where the accused was convicted and sentenced under Ss. 366 and 376, I. P. Code, and it appeared that the sentence for each offence was less than four years but the aggregate of the two exceeded that term.

**CR. P. CODE (1898), S. 35—Separate sentences.**

*Held*, that the sentences should be treated as a single sentence under S. 35 (3) and that an appeal could be preferred to the High Court. (*Sulaiman, J.*) **EMPEROR v. HAMID.**

129 I. C. 731 =  
1930 A. I. J. 1206.

—*Ss. 148 and 326, I. P. Code—Practice.*

Since the amendment of S. 35 it is legal to pass separate sentences for charges under S. 148 and S. 325 or S. 326, although in practice it is undoubtedly better to give a single sentence for all the offences or order the sentences to run concurrently. 4 P. R. 1901 (Cr.), not Foll.; A. I. R. 1926 Bom. 64, Foll. (*Shemp, J.*) **ALI AKBAR v. EMPEROR.**

116 I. C. 216 =  
30 Cr. L. J. 575 = 1929 Cr. C. 210 =  
12 A. I. Cr. R. 433 = A. I. R. 1929 Lah. 670.

—*Rioting and hurt.*

Where on conviction for rioting and hurt, the accused had been sentenced to rigorous imprisonment for two months for the former, and to a fine of Rs. 25 for latter offence,

*Held*, that two separate sentences in such case were legal. A. I. R. 1926 All. 225; A. I. R. 1926 Lah. 521; A. I. R. 1924 Rang. 291 and 17 Bom. 260 (F.B.), Foll. (*Zafar Ali, J.*) **FAQIRIA v. EMPEROR.**

114 I. C. 331 = 30 Cr. L. J. 295 =  
12 A. I. Cr. R. 213.

—*Separate offences.*

Offence of forgery and that of using forged document as genuine are separate offences and separate sentences may be passed on an accused person who has been convicted at the same trial of both. 23 All. 84, not Appr. (*Waller and Jackson, JJ.*) **SRIRAMULU NAIDU v. EMPEROR.**

52 Mad. 532 =  
29 M. L. W. 559 = 1929 M. W. N. 279 =  
2 M. Cr. C. 87 = 30 Cr. L. J. 883 =  
119 I. C. 63 = A. I. R. 1929 Mad. 450 =  
56 M. L. J. 554.

—*Distinct offences.*

Under the present law it is not necessary that the offences should be distinct in order to enable a Magistrate to pass consecutive sentences subject to the provisions of S. 71, Penal Code. (*Fawcett and Mirza, JJ.*) **EMPEROR v. HANMA TIMMA BHANDIWADDAR.**

109 I. C. 368 = 30 Bom. L. R. 383 =  
10 A. I. Cr. R. 159 = 29 Cr. L. J. 544 =  
A. I. R. 1928 Bom. 145.

—*Ss. 411, and 414, I. P. C.*

Offence of receiving stolen property under S. 411, I. P. C., and that of assisting to conceal other stolen property under S. 414, I. P. C., are distinct. (*Fawcett and Mirza, JJ.*) **EMPEROR v. HANMA TIMMA BHANDIWADDAR.**

109 I. C. 368 =  
30 Bom. L. R. 383 = 10 A. I. Cr. R. 159 =  
29 Cr. L. J. 544 = A. I. R. 1928 Bom. 145.

—*Bombay Abkari Act (1879), S. 43 (1) (a) and (b).*

The offence of possessing illicit liquor is not necessarily covered by the offence of possessing the apparatus for manufacturing such liquor. The two offences are quite distinct. (1890) Rat. Unrep. Cr. C. 523, Foll. (*Fawcett and Mirza, JJ.*) **EMPEROR v. PANDU ANACHIT BHIL.**

52 Bom. 277 = 29 Cr. L. J. 412 =  
10 A. I. Cr. R. 114 = 30 Bom. L. R. 378 =  
108 I. C. 512 = A. I. R. 1928 Bom. 141.

—*S. 120-B with Ss. 396 and 412, I. P. C.*

The offence under S. 120-B with S. 396 is a separate offence from the offence of participation in a particular dacoity or the dishonest reception of property stolen in dacoity knowing it to be stolen. Separate sentence can be awarded to run consecutively for participation in separate dacoities and to these can also be added a

**CR. P. CODE (1898), S. 35—Separate sentences.**

consecutive sentence of participation in conspiracy. (*Stuart, C. J. and Raza, J.*) **HAZARI BERIA v. EMPEROR.**

5 O. W. N. 985 =  
12 A. I. Cr. R. 252 = 30 Cr. L. J. 473 =  
115 I. C. 276 = A. I. R. 1928 Oudh 507.

—*Ss. 323, 324 and 325, I. P. C.*

Separate sentence on charges under Ss. 323, 324 and 325, I. P. C., is not bad in law because the acts in respect of which such charges were made were included within the charge under S. 147. 3 C. W. N. 174 and 8 C. W. N. 483 held to be no more good law. (*Duval and Mitter, JJ.*) **FATIAH BOP v. EMPEROR.**

31 C. W. N. 691 = 103 I. C. 799 =  
28 Cr. L. J. 751 = 8 A. I. Cr. R. 380 =  
A. I. R. 1927 Cal. 575.

—*Ss. 148 and 326, I. P. C.*

Under S. 35 as amended, a Court can pass separate sentences for offences under Ss. 148 and 326, I. P. C., provided the aggregate of those sentences does not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court sentencing the offender [17 Bom. 260 (F.B.); 23 Bom. 706 (F.B.); A.I.R. 1924 Cal. 771, Foll.] (*Fawcett and Madgavkar, JJ.*) **EMPEROR v. PIRU RAMA HAVALDAR.**

49 Bom. 916 = 27 Bom. L. R. 1371 =  
27 Cr. L. J. 113 = 91 I. C. 689 =  
A. I. R. 1926 Bom. 64.

—*Ss. 147 and 332, I. P. C.*

Separate sentences under Ss. 147 and 332 of the Indian Penal Code are not illegal in view of amended S. 35. (A. I. R. 1926 Bom. 64 and 49 Bom. 916, Foll.) (*Dalip Singh, J.*) **RAHMAN v. EMPEROR.**

27 Cr. L. J. 824 = 95 I. C. 600 =  
A. I. R. 1926 Lah. 521.

—*Separate offences in the same transaction.*

If the three distinct offences are committed, the offenders are liable to punishment for each offence though all three are committed in the course of the same transaction. (*Zafar Ali, J.*) **PIRA v. EMPEROR.**

95 I. C. 594 = 8 L. L. J. 198 = 27 Cr. L. J. 818 =  
27 P. L. R. 347.

—*Ss. 149 and 325, I. P. C.*

Accused can be convicted both under S. 325 and S. 149, I. P. C., at one trial. 16 Cal. 442, Foll. (*Findlay, Offg. J. C.*) **DEOJI v. KING-EMPEROR.**

27 Cr. L. J. 830 = 95 I. C. 606 =  
A. I. R. 1926 Nag. 459.

—*Ss. 146 and 325, I. P. C.*

Separate sentences for the offence of rioting and hurt are legal when it is found that each person took an individual part in the assault 40 Cal. 511, Foll.; A.I.R. 1923 Cal. 408, Dist. (*Newbould and B. B. Ghose, JJ.*) **KAPIL MANDAL v. RABBANI SHEIKH.**

89 I. C. 241 = 41 C. L. J. 471 =  
26 Cr. L. J. 1297 = A. I. R. 1925 Cal. 1039.

—*Ss. 380 and 457, I. P. C.*

There is nothing in S. 71 of the Indian Penal Code that in any way restricts the power of Court under S. 35 of the Code of Criminal Procedure of 1923. Therefore separate sentences can be passed under S. 35 as amended for an offence of house-breaking at night with intent to commit theft under S. 457 of I. P. C. and of theft of ornaments from that house under S. 380 of I. P. C. and the sentences of imprisonment can be made to run one after another. (*Newbould and B. B. Ghose, JJ.*) **KANCHAN MOLLA v. EMPEROR.**

88 I. C. 997 = 41 C. L. J. 563 =  
26 Cr. L. J. 1253 = A. I. R. 1925 Cal. 1016.

**CR. P. CODE (1898), S. 35—Separate trials.****—S. 35—Separate trials.***Sentences cannot run concurrently.*

Where trials on two charges purported to have been separate,

*Held*, that the sentences could not be made to run concurrently. (*Scott Smith, J.*) **BATAN SINGH v. EMPEROR.**

7 L. L. J. 39 = 26 Cr. L. J. 731 = 86 I. C. 219 = A. I. R. 1925 Lah. 334.

**—S. 37—Jurisdiction.**

*Magistrate entertaining complaint beyond his powers.*

A Magistrate of the 2nd Class cannot take cognizance of a complaint that certain persons were guilty of murder. Where therefore he does entertain such a complaint and finding it to be false takes action under S. 190, though defect in conviction could be cured by S. 529, complainant cannot be prosecuted for false complaint. The powers of a 2nd Class Magistrate can be extended only to the extent specified in S. 37 and Sch. IV which provisions are to be read with S. 190 in such cases. (*Ross and Kulwant Sahay, J.J.*) **BENGALI GOPE v. EMPEROR.**

94 I. C. 896 = 5 Pat. 447 = 7 P. L. T. 335 = 27 Cr. L. J. 704 = A. I. R. 1926 Pat. 400.

**—S. 39—Special power.***Opium Act—Cases under.*

Notification of Government published in the *Fort St. George Gazette* under date 4th June, 1915, empowers the Second Class Magistrates mentioned in the list appended to the Notification to try cases under the Opium Act. This is a special empowering of the person within S. 39 of the Cr. P. Code. 16 Cr. L. J. 268, Ref. (*Ayling and Odgers, J.J.*) **ALAGA PILLAI v. EMPEROR.**

74 I. C. 958 = 24 Cr. L. J. 846 = A. I. R. 1924 Mad. 256.

**—S. 40—Leave.**

The grant of leave to a Magistrate who belongs to the Provincial Civil Service as an Extra Assistant Commissioner, does not cause the cessation of his criminal powers so as to take his case out of the category of the cases contemplated by S. 40. 2 B.L.R. 536, Ref.; A. I. R. 1923 Mad. 598, Dist. (*Jai Lal, J.*) **PRITAM SINGH v. EMPEROR.**

I. R. 1930 Lah. 745 = 126 I. C. 521 = 31 Cr. L. J. 1051 = 1930 Cr. C. 850 = A. I. R. 1930 Lah. 833.

**—S. 44—First information.***Hearsay—Inadmissible.*

As the first information report can only be used by the prosecution for the purpose of corroborating in the witness-box the person who supplied the information contained in the document, if the informant himself can only speak from hearsay, the report cannot be used to corroborate such inadmissible evidence of the witness. (*Abdul Raoof and Bforde, J.J.*) **SAJJAN SINGH v. CROWN.**

90 I. C. 145 = 6 Lah. 437 = 7 L. L. J. 259 = 26 P. L. R. 601 = 26 Cr. L. J. 1489 = A. I. R. 1925 Lah. 418.

**—S. 45—Contents.***Police report.*

Report made by any Police Officer is not "Police report" in technical sense. But "Report" in S. 45 must state facts which constitute offence. Mere assertion that offence had been committed is not enough. (*Mookerjee and Chatterjee, J.J.*) **NAGENDRA NATH CHAKRABARTHY v. EMPEROR.**

81 I. C. 220 = 51 Cal. 402 = 38 Cr. L. J. 388 = 25 Cr. L. J. 732 = A. I. R. 1924 Cal. 476.

*Rumour—Knowledge of informant.*

This section does not make it incumbent on the village chakikdar to communicate to the officer in charge

**CR. P. CODE (1898), S. 54—Applicability.**

of the Police Station any rumour of the occurrence prevailing in the village. It is only an information which he may himself possess that is to be communicated to the officer in charge of the Police Station. The word "possess" in place of the old word "obtain" in S. 45 requires only such information to be given which the informant may possess to his own knowledge as is fit to be communicated to the officer in charge of the Police Station. (*Kulwant Sahay, J.*) **LACHMI SINGH v. KING-EMPEROR.**

81 I. C. 620 = 5 P. L. T. 505 = 1924 P. H. C. C. 181 = 25 Cr. L. J. 972 = A. I. R. 1924 Pat. 691.

**—S. 45—Interpretation.***Owner of houses.*

The section is not intended to be punitive in itself, but to facilitate information as to the commission of an offence and thereby to facilitate steps being taken in the investigation of the same. The section speaks of the owner or occupier of land but not of a house. Where there are houses, it is expected that the place would be populous and the police would somehow get the information. In cases of land in the mofussil, it is necessary that the owner or occupier of the land should give such information to policeman. The section should not be extended so as to include owners or occupiers of houses, 12 Mad. 92, Foll. (*Mirza and Baker, J.J.*) **HIRU SATNA v. EMPEROR.**

113 I. C. 510 = 53 Bom. 184 = 30 Bom. L. E. 1570 = 30 Cr. L. J. 172 = 12 A. I. Cr. R. 67 = A. I. R. 1929 Bom. 12.

**—S. 46—Mode of arrest.**

In making an arrest the person authorized to make it shall actually touch the body of the person to be arrested, unless there be a submission to the custody by word or action. 6 W. R. 690, Rel. on. (*Heald and Maung Ba, J.J.*) **U THWE v. A KIM FEE.**

123 I. C. 127 = 7 Rang. 598 = A. I. R. 1930 Rang. 131.

*Mere oral declaration—Legality.*

An arrest by a mere oral declaration without the actual touch of the process server is not a legal arrest within the meaning of S. 46 (1) of the Cr. P. Code. (*Kinkhede, A. J. C.*) **HAR MOHAN LAL v. EMPEROR.**

113 I. C. 288 = 30 Cr. L. J. 128.

**—S. 46—Non-compliance.***S. 80, Cr. P. Code.*

A Police Officer, who has made an arrest without having observed the provisions of S. 80, may be able to justify his action under the provisions of S. 46 (2). (*Rankin, C. J. and Buckland, J.*) **SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. DARBESH ALI.**

116 I. C. 723 = 33 C. W. N. 284 = 49 Cr. L. J. 264 = 30 Cr. L. J. 703 = 56 Cal. 881 = 13 A. I. Cr. R. 129 = A. I. R. 1929 Cal. 174.

Every trial which is preceded by a police investigation in which the police have failed to comply with Ch. V of the Cr. P. Code need not necessarily be bad in its entirety. 25 Mad. 61 (P.C.), Dist. (*Baguley, J.*) **A. V. JOSEPH v. EMPEROR.**

85 I. C. 236 = 26 Cr. L. J. 492 = 3 Bur. L. J. 265 = 3 Rang. 11 = A. I. R. 1925 Rang. 122.

**—S. 54—Applicability.**

A complaint had been made by a certain girl that she had been raped by two persons named Mahesh and Ram Lal. The Sub-Inspector deputed certain police constables to arrest the accused. When these constables reached the place Mahesh and Ram Lal ran inside the house of Ujagar and when the constables wanted to enter that house to arrest them, they were stopped by the applicants who, armed with lathis,



**CR. P. CODE (1898), S. 54—Bail.**

threatened to attack the constables, if they moved further towards the house.

*Held*, that though the constables were not armed with a warrant of arrest and were not in their uniforms they had sufficient authority under S. 54, Cr. P. Code, to effect the arrest. (*Kanhaya Lal, J.*) MAHADEO RAI v. EMPEROR. 81 I. C. 140 = 21 A. L. J. 791 = 4 L. R. A. Cr. 251 = 25 Cr. L. J. 652 = A. I. R. 1924 All. 201.

**—S. 54—Bail.**

Magistrate has power to grant bail to an accused who has been arrested in pursuance of S. 54 (7) of the Cr. P. Code, whom he has been asked to retain in custody, by the District Magistrate of a Native State.

Per *Fawcett, J.*—As S. 54 (7) does not apply to arrest in Bombay, when the accused is arrested without warrant in Bombay, he must be deemed to have been arrested under S. 33 (g). But even in such a case, under S. 23 of the Extradition Act, the Magistrate has power to grant bail. (*Marten and Fawcett, J.J.*) SRIRAM SHAMBHUDAYAL, *In re*. 87 I. C. 100 = 26 Bom. L. R. 984 = 26 Cr. L. J. 948 = A. I. R. 1925 Bom. 104.

**—S. 54—Grounds.**

—'Credible and reasonable cause'—*Essentials of S. 54 (7).*

Per *Walmsley, J.*—The expressions "credible and reasonable" in cl. 7 of S. 54 must refer to the mind of the person by whom the information is received and mere assertions cannot form the material for the exercise of an independent judgment, by such person.

Per *Mukerji, J.*—There are two conditions necessary to satisfy the requirements of S. 54, cl. 7. The first is one which contemplates either the proof of a fact, *viz.*, the fact of the person having been involved in the act or a reasonable complaint or credible information or a reasonable suspicion of his being concerned therein. The second is that the person is liable for such act to be apprehended or detained in custody in British India under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise. Under the first requisite, the arresting police officer has to exercise his own judgment and form his own opinion as to whether he should or should not act and to enable him to do so he must have the necessary facts before him. Under the second requisite, what is necessary is the existence of the present liability for apprehension or detention and not a future contingent liability. Such liability would be created by the issue of some sort of process under the law, though the process may not arrive and may not be available for execution. It is the duty of the police when all the conditions necessary to fulfil the requirements of S. 54, cl. 7 are present and an arrest is validly and lawfully made, to forthwith produce the arrested person before a Magistrate. (*Walmsley and Mukerji, J.J.*) SUBHODH CHANDRA ROY CHOUDHURI v. EMPEROR.

85 I. C. 913 = 40 C. L. J. 489 = 29 C. W. N. 98 = 52 Cal. 319 = 26 Cr. L. J. 625 = A. I. R. 1925 Cal. 278.

**—S. 54—Immunity.**

—The mere fact there is an intention to act under Ch. 8 by the police does not grant to the accused persons immunity from preliminary arrest. (*Kincaid, J. C. and Kennedy, A. J. C.*) HARDAYAL SINGH v. EMPEROR.

94 I. C. 404 = 20 S. L. R. 85 = 27 Cr. L. J. 628 = A. I. R. 1926 Sind 190.

**—S. 54—Interpretation.**

—*Village chowkidar.*

A village chowkidar is not a "police officer" within the meaning of S. 54. The whole of the Code shows

**CR. P. CODE (1898), S. 54—Rightful resistance.**

that "Chowkidars" who have been given a distinctive name were not intended to be included under the term "police officer". (*Ser, J.*) BHAGWAN DIN v. EMPEROR. 120 I. C. 205 = 11 L. R. A. Cr. 8 = 31 Cr. L. J. 12 = 1930 A. L. J. 242 = 13 A. I. Cr. R. 126 = 1929 Cr. C. 663 = A. I. R. 1929 All. 935.

**—S. 54—Liability.**

—*Arrest—What should justify.*

The detention and arrest of members of the public are not matters of caprice, but are governed by and must be conducted upon certain rules and principles which the law clearly lays down. To arrest persons without any justification is one of the most serious encroachments upon the liberty of the subject which can well be contemplated. The fact that because a party of persons are in a certain place at a certain time it cannot be said simply from these circumstances that they are about to engage in a criminal act, and therefore there is no legal justification for the arrest of those persons by the police, and they are not guilty of rioting if they oppose their arrest. (*Bucknill, J.*) RAMPRIT AHIR v. EMPEROR. 7 P. L. T. 218 = 26 Cr. L. J. 1608 = 90 I. C. 712 = A. I. R. 1926 Pat. 560.

**—S. 54—Object.**

—*Prevention.*

The Code of Criminal Procedure is dealing rather with the arrest for crimes that had been committed than with the arrest for the prevention of crimes, although there are specific instances given permitting the arrest of persons suspected of crimes. (*Schwabe, C. J., Phillips, Devadoss, Venkatasubba Rao and Wallace, J.J.*) GOPAL NAIDU v. EMPEROR. 73 I. C. 343 = 46 Mad. 605 = 24 Cr. L. J. 599 = 17 M. L. W. 592 = 32 M. L. T. 352 = 1923 M. W. N. 425 = A. I. R. 1923 Mad. 523 = 44 M. L. J. 655 (F. B.).

**—S. 54—Procedure.**

—*Investigation.*

On a complaint of a limited company in Ahmedabad which charged its commission agents with breach of trust, the commission agent was arrested by C. I. D. Officer, Poona, under S. 61 of Cr. P. Code on 5th March, 1924. He produced him before the Chief Presidency Magistrate who granted the accused bail and asked him to appear in Ahmedabad Court on 16th March.

*Held*, that the mere statement of an investigating police officer was not sufficient for an action by the Magistrate who should have asked for the production of a warrant from Ahmedabad and who should have released the prisoner on bail, calling upon him to appear before himself when required. The precautions laid down in these sections seem to be designed to secure that within the 24 hours some Magistrate shall have seisin of what is going on and some knowledge of the nature of the charges against the accused, however incomplete the information may be. (*Greeves and Dwyer, J.J.*) DWARKADAS HARIDAS v. AMBA LAL GANPATRAM. 82 I. C. 131 = 28 C. W. N. 850 = 25 Cr. L. J. 1203 = A. I. R. 1924 Cal. 893.

**—S. 54—Rightful resistance.**

—*Essentials of an arrest.*

When a constable arrests a man and tells him expressly that he is doing so under a particular authority, which he claims to have, to arrest him and if such arrest is resisted, it will be for the prosecution afterwards to establish that the constable who arrested the man had power to act under the authority that he claimed to have. It is not sufficient for the prosecution afterwards to say that the constable had authority under some other provision of law. Any man who is being



**CR. P. CODE (1898), S. 55—Independent of.**

arrested has a right to ask the officer arresting him to show him what power he has to do so. If the arrest is under a warrant, the man arrested is entitled to ask that the warrant be shown to him to see that he is being properly arrested and when the warrant is not shown to him and the arrest is made, such an arrest will not be a legal arrest. A man is entitled to know when a constable is arresting him, under what power he is acting and if he (constable) states that he acts under certain power, which the man knows he has not got, he is entitled to object to arrest and to escape from custody when he is arrested. (*Krishnan, J.*) APPASWAMY MUDALI, *In re*.

81 I. C. 51=47 Mad. 442=  
19 M. L. W. 504=34 M. L. T. 95=  
25 Cr. L. J. 563=A. I. R. 1924 Mad. 555=  
46 M. L. J. 447.

**—S. 55—Independent of.**

—*Chap. VIII, I. P. C.*

Section 55, Cr. P. Code, is independent of Chap. VIII of the Code, which includes S. 110 although proceedings under that chapter might follow an arrest, under S. 55 as a natural sequence and a Police Officer can therefore arrest or cause to be arrested without warrant or an order of a Magistrate any person who comes within provisions of S. 55. (*Macpherson, J.*) RAMNANDAN SINGH v. EMPEROR. I.B. 1930 Pat. 446=124 I.C. 638=1930 Cr. C. 79=31 Cr.L.J. 717=A.I.R. 1930 Pat. 103.

**—S. 55—Habitual offender.**

—*Clause of S. 35 should be specified.*

If it is intended that the police officer should arrest a man with a view of taking proceedings under S. 110, it is strictly and specially necessary that he should specify one of the clauses given in S. 55, although it may be for the cause so stated that he intends to proceed under S. 110. (*Kincaid, J.C. and Kennedy, A.J.C.*) HARDYAL SINGH v. EMPEROR. 94 I. C. 404=20 S.L.R. 85=27 Cr.L.J. 628=A.I.R. 1926 Sind 190.

**—S. 55—Liability of surety.**

—Surety's liability to produce accused to answer one charge does not extend to producing the accused to answer charges for other offences. (*Martineau, J.*) MANA v. EMPEROR. 76 I.C. 227=25 Cr.L.J. 131=A. I. R. 1924 Lah. 622.

**—S. 55—Suspicion.**

—Arrest under S. 55 (c) is not justified by mere suspicion that the accused was concerned in several offences since the section refers to reputed habitual offenders. (*Krishnan, J.*) APPASWAMY MUDALI, *In re*. 81 I. C. 51=47 Mad. 442=19 M.L.W. 504=34 M.L.T. 95=25 Cr.L.J. 563=A.I.R. 1924 Mad. 555=46 M.L.J. 447.

**—S. 58—Omission to notify.**

—*Cases where the constable can arrest under S. 54.*  
Where a command certificate has been given to a constable under S. 56 for effecting the arrest of a person, but the constable arrests that person without notifying to him the substance thereof the arrest does not become illegal if facts of the case are such that the constable can arrest the person under S. 54 without a warrant, irrespective of a command certificate under S. 56. (*Ross and Kulwant Sahay, J.J.*) KISHUN MANDAR v. EMPEROR. 5 Pat. 533=27 Cr.L.J. 1310=8 P.L.T. 237=98 I.C. 254=A.I.R. 1926 Pat. 424.

—*Chaukidar.*

Section 56 (1) does not require a chaukidar on his own initiative to show to the accused an order given to him by the officer in charge of the Police Station.

**CR. P. CODE (1898), S. 61—Object.**

(*Ashworth, A.J.C.*) UMRAO v. EMPEROR.

26 Cr.L.J. 795=86 I.C. 427=  
A.I.R. 1925 Oudh 544.

**—S. 59—Interpretation.**

—*'In his view.'*

The words "in his view" in S. 59 mean "in presence of" or "within sight of" and not "in his opinion." (*Kulwant Sahay, J.*) GOKUL TATWA v. EMPEROR.

7 P.L.T. 65=26 Cr.L.J. 1462=89 I.C. 1030=  
A. I. R. 1926 Pat. 53.

—Where persons went to their cocoanut tope to see if any theft of toddy was going on and saw a man standing on the ground with a pot of toddy in his hands and two of his confederates climbing the trees, and arrested the man on the ground,

*Held*, the latter should be deemed to be committing theft "in the view of" his arrestor. The toddy should be regarded to be in process of being removed from the tope. 35 Cal. 361 and 64 I. C. 371, Dist. Failure to hand over the arrested person to a passing beat constable or taking the arrested person to a Chavadi on the way to the Police Station is not necessarily an unnecessary delay vitiating legality of arrest. (*Krishnan, J.*) ARUMUGA GOUNDAN v. EMPEROR.

81 I. C. 312=18 M. L. W. 818=25 Cr. L. J. 792=  
A. I. R. 1924 Mad. 384.

**—S. 59—Non-compliance.**

—Where accused suspecting the complainant to have committed an offence under S. 366, I. P. Code, arrested him but instead of taking him to Police Station took him to a Dharamsala where he happened to see a police inspector to whom the complainant was then handed over.

*Held*, that the accused was not protected by S. 59 and was thus guilty under S. 342, I. P. Code. (*Kulwant Sahay, J.*) ANANT PRASHAD RAY v. EMPEROR. 98 I. C. 594=27 Cr. L. J. 1378=8 P. L. T. 204.

**—S. 60—Procedure.**

—On a complaint of a limited company in Ahmedabad which charged its commission agents with breach of trust, the commission agent was arrested by C. I. D. Officer, Poona, under S. 61 of Cr. P. Code on 5th March, 1924. He produced him before the Chief Presidency Magistrate who granted the accused bail and asked him to appear in Ahmedabad Court on 16th March.

*Held*, that the mere statement of an investigating police officer was not sufficient for an action by the Magistrate who should have asked for the production of a warrant from Ahmedabad and who should have released the prisoner on bail, calling upon him to appear before himself when required. The precautions laid down in these sections seem to be designed to secure that within the 24 hours some magistrates shall have seisin of what is going on and some knowledge of the nature of the charges against the accused, however incomplete the information may be. (*Greaves and Duval, J.J.*) DWARKA DAS HARIDAS v. AMBALAL GANPATRAM. 82 I. C. 131=23 C. W. N. 850=25 Cr. L. J. 1203=A. I. R. 1924 Cal. 893.

**—S. 61—Applicability.**

—Section 61 does not apply to the Calcutta Police. A. I. R. 1925 Cal. 587, Foll. (*Suhrawardy and Duval, J.J.*) SRILAL AGARWALLA v. EMPEROR.

97 I. C. 945=44 C. L. J. 134=27 Cr. L. J. 1185.

**—S. 61—Object.**

—Intention of Legislature is that accused should be brought before Magistrate competent to try or commit, with least delay. (*Mookerjee and Chatterjee, J.J.*)

**CR. P. CODE (1898), S. 61—Procedure.**NAGENDRA NATH CHAKRAVARTY *v.* EMPEROR.81 I. C. 220 = 51 Cal. 402 = 38 C. L. J. 388 =  
25 Cr. L. J. 732 = A. I. R. 1924 Cal. 476.**—S. 61—Procedure.****—Expiry of 15 days.**

On the expiry of the period of 15 days allowed under Ss. 61 and 167, the police must either release the accused under S. 167, security being taken if required or the Magistrate must take cognizance on a report under S. 173 if the report according to the Magistrate makes out a *prima facie* case or the Magistrate must release him. (*Greaves and Panton, J.J.*) BHOLANATH DAS *v.* EMPEROR.

83 I. C. 628 = 26 Cr. L. J. 68 =  
28 C. W. N. 490 = A. I. R. 1924 Cal. 614.**—S. 68—Contents.****—Rule imperative.**

A summons issued by a Magisterial Court which does not contain in the form prescribed by the statute particulars of the place where, the time when, and the nature of the offence charged, may be disregarded by the person summoned, and proceedings taken thereon, if objected to, must necessarily be invalid. (*Walsh and Banerji, J.J.*) EMPEROR *v.* RANANJAI SINGH.

26 A. L. J. 331 = 9 A. I. Cr. R. 341 =  
9 L.R. A. Cr. 49 = 108 I. C. 230 = 29 Cr. L. J. 357 =  
A. I. R. 1928 All. 261.**—S. 68—Form.****—Motor Vehicles Act, Sch. V.**

The procedure of issuing summonses by the Magisterial Courts purporting to charge motorists, owners or drivers of offences under the Act without giving the slightest particulars of the offence alleged is not justified by law. S. 68, Cr. P. Code, incorporates the form of summons, which is a statutory form contained in Sch. V to the Code, which summons is to be issued to accused persons. (*Walsh and Banerji, J.J.*) EMPEROR *v.* KUNWAR RANANJAI. 108 I.C. 230 = 29 Cr. L. J. 357 =  
9 L.R.A. Cr. 49 = 9 A.I.Cr.R. 341 = 26 A.L.J. 331 =  
A. I. R. 1928 All. 261.

**—S. 68—Oral prayer.**

Under the law a verbal prayer for issue of summons to an accused is sufficient. (*Mukerji, J.*) MUHAMMAD GUL *v.* FAZLEY KARIM. 33 C. W. N. 446 =  
122 I. C. 205 = 31 Cr. L. J. 369 = 56 Cal. 1013 =  
A. I. R. 1929 Cal. 346.

**—S. 69—Interpretation.****—“Tender”.**

Personal service may be made either by delivering or tendering, but the tender must be real tender of a document which is understood by the person to be served, and he must have voluntarily waived actual delivery and indicated in some way that a tender was sufficient. (*Walsh, J.*) BUDHAN *v.* EMPEROR. 107 I. C. 563 = 9 A. I. Cr. R. 52 = 29 Cr. L. J. 263 =  
9 L. R. A. Cr. 1 = 26 A. L. J. 107 =  
A. I. R. 1928 All. 118.

**—S. 69—Substituted service.****—S. 71, Cr. P. Code.**

The procedure, which is provided by S. 71, cannot be made use of unless service in the manner mentioned in both Ss. 69 and 70 cannot be effected by the exercise of due diligence. (*Sanderson, C. J. and Rankin, J.*) BENI MADHAB SAPUI *v.* JADU NATH SAPUI. 43 C.L.J. 113 = 27 Cr. L. J. 715 = 31 C. W. N. 148 =  
94 I. C. 907 = A. I. R. 1926 Cal. 1208.

**—S. 70—Service.**

Issue of summons effected by serving upon the mother of the accused is not warranted by the Code. (*Fforde, J.*) SWAN SINGH *v.* EMPEROR.

**CR. P. CODE (1898), S. 77—Obstruction.**26 P. L. R. 291 = 26 Cr. L. J. 1393 =  
89 I. C. 705 = A. I. R. 1926 Lah. 50.**—S. 71—Applicability.**

The procedure, which is provided by S. 71, cannot be made use of unless service in the manner mentioned in both Ss. 69 and 70 cannot be effected by the exercise of due diligence. (*Sanderson, C. J. and Rankin, J.*) BENI MADHAB SAPUI *v.* JADU NATH SAPUI.

43 C. L. J. 113 = 27 Cr. L. J. 715 =  
31 C. W. N. 148 = 94 I. C. 907 =  
A. I. R. 1926 Cal. 1208.**—S. 72—Railway Police.**

Summons to a Sub-Inspector of Railway Police should be served through the Superintendent of Railway Police for the District. (*Kulwant Sahay, J.*) GOURI SHANKAR *v.* THE COLLECTOR OF MUZAFFERPUR.

87 I. C. 421 = 6 P.L.T. 215 =  
3 Pat. L.R. Cr. 127 = 26 Cr.L.J. 965 =  
A.I.R. 1925 Pat. 553.**—S. 75—Bail.****—No proper complaint.**

Where in a complaint under S. 124-A I.P.C. no original or translation of the alleged speech was attached although the Local Government sanction contained extracts, and on application to the Magistrate bail was refused.

*Held*, that there was no proper complaint and the Magistrate did not direct his mind to question of presence or absence of proper complaint and the order refusing bail was not passed on proper appreciation of the facts and non-bailable warrants should not have been issued. (*Dalip Singh, J.*) RAM CHAND *v.* EMPEROR. 120 I.C. 10 = 30 Cr.L.J. 1129 = A.I.R. 1929 Lah. 284.

**—S. 75—Service.****—After returnable date.**

Service of a warrant even after the passing of its returnable date is valid unless it is cancelled by the Court which issued it or until it is executed. (*Adami and Wort, J.J.*) EMPEROR *v.* BINDA AHIR.

7 Pat. 478 = 29 Cr.L.J. 1007 = 112 I. C. 223 =  
11 A.I. Cr. R. 240 = A.I.R. 1929 Pat. 466.**—S. 77—Legality.****—Conditions for entrusting warrants to stranger.**

First of all there must be the necessity to arrest and then there must be the necessity for immediate arrest and then there must be the third condition, that no police is immediately available. In the absence of these three conditions a Court is not justified in entrusting a warrant to a forest officer for execution and the endorsement of the warrant in favour of the watcher does not empower the watcher to arrest any person. (*Devadoss, J.*) PASUPATHIA PILLAI *v.* EMPEROR. 51 Mad. 873 = 1928 M.W.N. 310 = 28 M.L.W. 141 =  
29 Cr.L.J. 541 = 109 I.C. 365 = 1 M.Cr.C. 115 =  
A.I.R. 1928 Mad. 624 = 55 M.L.J. 220.

**—S. 77—Obstruction.****—Irregularity in search warrant.**

Where the legality of the warrant was not challenged at the time of the search or in the Magistrate's Court on the ground that the search warrant was directed to a certain Thana for execution without specifying name and designation of the Police Officer concerned which search warrant was endorsed by the Police Station Officer to a police constable.

*Held*, the conviction should not be set aside as the accused was not prejudiced by what was at most a clerical error. (*Baguley, J.*) MA KIN *v.* EMPEROR.

86 I.C. 669 = 3 Bur.L.J. 132 = 26 Cr.L.J. 845 =  
A.I.R. 1924 Rang. 383.

**CR. P. CODE (1898).****—S. 79—Applicability.****—Foresters.**

Sec. 79 has no application to forest officers and the endorsement of the warrant, even if it be legal, by the foresters in favour of the watcher can confer no power upon the watcher to arrest the person named in the warrant. (*Devadoss, J.*) PASUPATHIA PILLAI v. EMPEROR. 51 Mad. 873=1 Mad. Cr. C. 115=

109 I. C. 365=29 Cr. L. J. 541=28 M. L. W. 141=1928 M. W. N. 310=A. I. R. 1928 Mad. 624=55 M. L. J. 220.

**—S. 80—Non-compliance.**

A Police Officer who has made an arrest without having observed the provisions of S. 80, may be able to justify his action under the provisions of S. 46 (2). (*Rankin, C. J. and Buckland, J.*) SUPT. AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. DARBESH ALL. 33 C. W. N. 284=49 C. L. J. 264=

116 I. C. 723=30 Cr. L. J. 703=56 Cal. 831=13 A. I. Cr. R. 129=A. I. R. 1929 Cal. 174.

**—S. 83—Native State.****—Custody of.**

Political Agent of a Native State cannot be directed by High Court to produce a person in custody in the Native State, as he is not in the vicarious custody of the said person. A.I.R. 1926 Bom. 332, Dist. (*Dalal, J.*) SHIVA PRASAD v. EMPEROR. 119 I. C. 527=

1929 A. L. J. 520=10 L. E. A. Cr. 84=12 A.I. Cr. R. 1=30 Cr. L. J. 1083=A. I. R. 1929 All. 347.

**—S. 87—Attachment.****—Death of absconder.**

The property of an absconder against whom proceedings under Ss. 87 and 88 of the Cr. P. Code have been taken should be freed from attachment on the death of the absconder. With regard to the ancestral lands in the Punjab it has been settled that all that can be attached in proceeding under Ss. 87 and 88 of Cr. P. Code is the interest of the absconder and that on his death the land must be released in favour of his heirs. 18 P. R. 1908 (F.B.); 52 P. R. 1915 (Cr.) applied. (*Le Rossignol, J.*) SHAH MUHAMMAD v. EMPEROR. 88 I. C. 460=7 L. L. J. 540=26 Cr. L. J. 1148=

26 P. L. R. 395=26 P. L. R. 831=A. I. R. 1925 Lah. 629.

**—S. 88—Applicability.****—Lis pendens.**

The doctrine of *lis pendens* applies not merely to sales by private parties but also to sales through Civil Courts or by Government including revenue sales and sales under S. 88, Cr. P. Code. (*Madgavkar, J.*) NARAYAN KONDAJI TEMKAR v. GOVIND KRISHNA ABHYANKAR. 116 I. C. 271=31 Bom. L. R. 345=A. I. R. 1929 Bom. 200.

**—S. 88—Attachment of property.****—Rights of Government over the property.**

The position of the Government in relation to the property attached under S. 88 is not simply that of an attaching decree-holder. It is at least analogous to that of a receiver in possession and management. The Government has such an interest in the property as to entitle its being made a party to a suit on a mortgage of that property.

*Quære*: What is the precise nature of the rights derived by the Government under S. 88, Cl. (7)? Do the properties vest in the Government as owners? Or does the Government become the absolute owner of the income for these properties after the period fixed in that clause? (*Anantakrishna Ayyar and Sundaram Chetty,*

**CR. P. CODE (1898), S. 89—Restoration.****J.J.) ALAGAMMAL v. SADASIYA PADAYACHI.**

1930 M. W. N. 1021=A. I. R. 1930 Mad. 1017=32 L. W. 843=129 I. C. 47=60 M. L. J. 72.

**—S. 88—Interpretation.****—When the title of the Government commences.**

The words in S. 88, Cl. 7 "at the disposal of Government" do not imply that from the moment the absconder fails to appear on the date ordered, all his right, title and interest in the property immediately pass over to Government. It has that effect only from the date of attachment. (9 Cal. 861 and 6 L. B. R. 57, Rel. on.) (*Madgavkar, J.*) NARAYAN KONDAJI v. GOVIND KRISHNA ABHYANKAR. 116 I. C. 271=31 Bom. L. R. 345=A. I. R. 1929 Bom. 200.

**—S. 88—Legality.****—Frames of doorway embedded in the wall.**

The doors of a house have never been considered anything else but part of the furniture of the house and moveable property, but the frames, if embedded in the walls or floor, are to be considered immovable and accordingly the action of the police officers in digging the walls or floors to remove them does not seem to be technically correct and amounts to serious irregularity in connexion with a house search. 37 All. 353, Ref. (*Rowland, J.*) RAMJI AHIR v. EMPEROR. 125 I. C. 784=31 Cr. L. J. 937=1930 Cr. C. 800=

A. I. R. 1930 Pat. 387.

**—Jurisdiction**

An attachment of property is not authorised in a district other than that of the issuing Magistrate except when the order of attachment has been endorsed by the District Magistrate within whose District the property to be attached is situate, and an attachment made in contravention of this provision is illegal. (*Macpherson, J.*) GANU SHUKUL v. EMPEROR. 123 I. C. 397=

31 Cr. L. J. 494=11 P. L. T. 402=1930 Cr. C. 719=A. I. R. 1930 Pat. 347.

**—S. 88—Revision.**

An order under S. 88 is a proceeding within the meaning of S. 435 and is subject to the revisional jurisdiction of the High Court. (*Shadi Lal, C. J.*) SANTHA SINGH v. KING-EMPEROR. 76 I. C. 18=

25 Cr. L. J. 82=A. I. R. 1924 Lah. 617.

**—S. 89—Illegal attachment.**

Where land has been attached under S. 88 without a warrant, the High Court would interfere under inherent powers to set right the irregularity though not according to S. 89. (*Harrison, J.*) BUTTA SINGH v. EMPEROR. 27 Cr. L. J. 1025=8 L. L. J. 608=

27 P. L. R. 825=96 I. C. 977=A. I. R. 1926 Lah. 662.

**—S. 89—Necessary facts.**

It is only when the applicant for restoration of property shows both that he had not absconded and that he had not proper notice, that the property can be restored. (*Harrison, J.*) BUTTA SINGH v. EMPEROR. 8 L. L. J. 608=27 Cr. L. J. 1025=

27 P. L. R. 825=96 I. C. 977=A. I. R. 1926 Lah. 662.

**—Period.**

It is not only necessary to make the petition but also to prove the necessary facts within the period of two years. 15 Bom. L. R. 175, Rel. on. (*Harrison, J.*) BUTTA SINGH v. EMPEROR. 8 Lah. L. J. 608=27 Cr. L. J. 1025=27 P. L. R. 825=

96 I. C. 977=A. I. R. 1926 Lah. 662.

**—S. 89—Restoration.****—No civil remedy.**

A "proclaimed" person, whose immovable property has been attached and sold by a Criminal Court in

**CR. P. CODE (1898), S. 89—Restoration.**

proceeding under Ss. 87 and 88, Cr. P. Code, has no right to maintain an ordinary civil action for the restoration of the property sold, even though the procedure laid down for issuing the proclamation and attachment have not been strictly followed. 8 W.R. 207; 5 Pat. L. J. 321 and A. I. R. 1923 Bom. 198, Dist.; 27 All. 572, Diss. from and Dist.; 39 P. R. 1917; 32 P. R. 1919 and A. I. R. 1926 Lah. 662, Rel. on. A civil suit for the purpose of setting aside such a sale is impliedly barred by the provisions of Cr. P. Code. (*Tekchand and Bhide J.J.*) DEWA SINGH v. FAZAL DAD. 111 I. C. 508 = 10 Lah. 338 = A. I. R. 1928 Lah. 562.

—What can be restored under S. 89 is the nett proceeds of the sale and not the property. (*Campbell, J.*) EMPEROR v. FAZAL DAD. 73 I. C. 269 = 24 Cr. L. J. 573 = A. I. R. 1924 Lah. 420.

**—S. 90—Reasons.**

—*Legality of warrant issued without reasons—S. 555, Cr. P. Code—Scope of.*

*Per Curiam*—Where the warrant is good and valid on the face, of it and it is sufficient to inform the person against whom it is issued, of the reason for its issue the Magistrate is justified in issuing the warrant on the materials before him, and such a warrant would not be invalid merely by reason of the fact that the Magistrate did not record in writing on the order sheet of the case the reason for its issue which might be the same as that which he had stated in the warrant itself. 38 Cal. 789, Cons. S. 555 deals with the form of the warrant itself and nothing more, and the words of S. 555 are not intended to supersede the provisions of S. 90. The words "After recording his reasons in writing" in S. 90, are not imperative but directory. Magistrates should record their reasons specifically in writing before issuing a warrant and should not be satisfied with signing their names to warrants in the form given in the schedule.

*Chatterjee, J.*—The mere signing of the warrant which states that 'the Court has reason to believe,' is not sufficient compliance with the law. A warrant issued by a Court without recording its reasons in writing is an illegal process. The words "after recording its reasons in writing" show that it must be done before issuing the warrant. The Legislature had some object in making the provision. The objects are first to insure deliberation on the part of the Magistrate before issuing the warrant, and, secondly, that the person to whom the warrant is issued may know the reasons why it is issued so that such person may come before a higher Court and show that it has been wrongly issued. 36 Cal. 433, Ref. The question of inconvenience or consequences should be considered not only with reference to the person executing the process, but also with reference to the person who is to be affected by the process and for whose benefit the provision is made. In cases affecting the liberty of the subject there is weighty authority for holding, that even in matters of form, every form and every step in the process be followed with extreme precision. *Dale's Case*, 6 Q. B. D. 376, Foll. (*Sanderson, C. J., Chatterjee, Richardson, Buckland and Panton, J.J.*) THE GOVERNMENT OF ASSAM v. SAHEBULLAH. 27 C. W. N. 857 = 38 C. L. J. 77 = 75 I. C. 129 = 24 Cr. L. J. 881 = 51 Cal. 1 = A. I. R. 1924 Cal. 1 (F.B.).

**—S. 91—Forfeiture.**

—Surety's liability to produce accused to answer one charge does not extend to producing the accused to answer charges for other offences. (*Martineau, J.*) MANE v. KING-EMPEROR. 76 I. C. 227 = 25 Cr. L. J. 131 = A. I. R. 1924 Lah. 622.

**CR. P. CODE (1898), S. 96—Search warrants.****—S. 91—Surety bond.**

—*For production before police—Void.*

A surety bond for the production of any person before the Police taken by the Police Officer is void *ab initio*. (*Martineau, J.*) HAMID ALI v. EMPEROR. 25 Cr. L. J. 712 =

81 I. C. 200 = A. I. R. 1925 Lah. 152.

**—S. 94—Calling for inquest report.**

—In a murder case the accused has a right to a copy of the statement made by the witnesses at the inquest inquiry. Even if the inquest report is not in Court, S. 94 of the Cr. P. Code empowers the Magistrate to call for its production by the police. (*Spencer, Offg. C. J.*) CHANLET, *In re*. 85 I. C. 42 = 20 M. L. W. 745 = 26 Cr. L. J. 426 = A. I. R. 1925 Mad. 424.

**—S. 96—Inspection.**

—*Per Mukerji, J.*—Once articles are brought before the Court in execution of a search warrant, inspection thereof may be allowed to the complainant. 15 Cal. 109, Rel. on. (*Mukerji and Graham, J.J.*) AYOJ KRISHNA v. S. G. BOSE. 49 C. L. J. 164 = 33 C. W. N. 369 = 116 I. C. 721 =

30 Cr. L. J. 705 = A. I. R. 1929 Cal. 176.

**—S. 96—Legality.**

—Where a search warrant is issued upon an application in which certain offences are disclosed as having been committed by the accused after cognizance of those offences has been taken by the Magistrate, he is quite within his power in issuing search warrant under S. 96. (*Mukerji and Graham, J.J.*) AYOJ KRISHNA v. S. G. BOSE. 49 C. L. J. 164 = 33 C. W. N. 369 = 116 I. C. 721 = 30 Cr. L. J. 705 =

A. I. R. 1929 Cal. 176.

—If a Magistrate issues search-warrant proceeding merely on the suspicions as regards the nature of a person's business and the assurance given by the police that a general search is necessary, such order is illegal. 47 Cal. 597, Rel. on. (*Bhide, J.*) C. S. GHAI & CO. v. EMPEROR. 121 I. C. 499 = 1929 Cr. C. 565 = 31 Cr. L. J. 272 = A. I. R. 1929 Lah. 837.

**—S. 96—Resistance.**

—*Illegal warrant.*

Where the *sapurdar* of the attached property of a judgment-debtor failed to deliver it when called upon to do so, and the executing court, therefore issued a warrant of attachment of his moveable property and with this warrant the bailiff along with some seven men went to his residence and there attached his cattle, and the accused rescued the same, and caused slight injuries while so rescuing, *held*, that a *sapurdar* is not a receiver appointed by court and therefore, the provisions of the Code of Civil Procedure relating to a Receiver appointed by court do not apply to a *sapurdar*. Therefore, the warrant was illegal and the *sapurdar* and his partisans were competent to resist the removal of his cattle from his house, and were not guilty of any offence if in the exercise of that right they inflicted slight injuries to the companions of the bailiff. 11 C. W. N. 836, Foll. (*Zafar Ali, J.*) ALLAH DAD v. THE CROWN. 75 I. C. 731 = 25 Cr. L. J. 43 = A. I. R. 1924 Lah. 667.

**—S. 96—Search warrants.**

—*Search warrants—Conditions must be strictly adhered to.*

Search warrants are always open to very serious objections and very great particularity is justly required by law in cases where they are authorized, before the privacy of a man's premises is allowed to be invaded by

**CR. P. CODE (1898), S. 98—Special warrant.**

the minister of the law. (*C. C. Ghose and Chotsner, J.J.*) *WALVEKAR v. EMPEROR.* 53 Cal. 718 = 30 C.W.N. 713 = 27 Cr. L. J. 920 = 96 I.C. 264 = A.I.R. 1926 Cal. 966.

**—S. 98—Special warrant.**

*Endorsement illegal.*

The special warrant when issued authorizes the officer or officers named therein to do all the things that are detailed in the warrant. It cannot be endorsed over to any other police-officer of similar rank. The only person who can execute such a warrant is the officer who is named in the warrant. (*Mirza and Baker, J.J.*) *EMPEROR v. THAVARMAL RUPCHAND.* 116 I.C. 251 = 53 Bom. 367 = 31 Bom. L.R. 158 = 30 Cr. L.J. 595 = 12 A. I. Cr. R. 466 = A. I. R. 1929 Bom. 157.

**—S. 99 A—Advertisements.**

Document though advertisement can be forfeited under S. 99-A—However, advertisement of forthcoming book unless seditious by itself, cannot be forfeited because it is intimately associated with seditious book. (*Boys, Banerji and King, J.J.*) *R. SAIGAL v. EMPEROR.* 52 A. 775 = I. R. 1930 A. 678 = 125 I. C. 470 = 31 Cr. L. J. 840 = 1930 Cr. C. 625 = 1930 A.L.J. 713 = A.I.R. 1930 All. 401 (F.B.).

**—S. 99 A—Justification.**

In order to justify forfeiture under S. 99-A it is necessary for the Government to satisfy the Court that on the evidence produced by the prosecution a conviction could have been had under S. 153-A, I. P. C. (*Fforde, Addison and Coldstream, J.J.*) *LALPAT RAI v. EMPEROR.* 9 Lah. 663 = 29 P.L.R. 385 = 29 Cr. L.J. 899 = 111 I. C. 659 = 11 A.I.Cr.R. 120 = A.I.R. 1928 Lah. 245 (S.B.).

**—S. 99 B—Burden of proof.**

Where an application is made under S. 99, I. P. Code, to have an order of forfeiture set aside on the ground that the matter published does not fall within the mischief of S. 153-A, I. P. C., it is for the applicant to convince the Court that for the reasons he gives the order is a wrong order. (*Walsh, Ag. C. J. and Lindsay and Banerji, J.J.*) *KALI CHARAN SHARMA v. EMPEROR.* 112 I. C. 56 = 29 Cr. L. J. 968 = 49 All. 856 = A. I. R. 1927 All. 649 (S. B.).

**—S. 99 D—Burden of proof.**

It is manifestly most convenient that Government Advocate should begin and state the case in support of the Local Government. But where both parties have been heard fully the question of *onus* is of very little or no practical importance. A. I. R. 1925 All. 195, Rel. on. (*Boys, Banerji and King, J.J.*) *R. SAIGAL v. EMPEROR.* 52 A. 775 = I. R. 1930 A. 678 = 125 I. C. 470 = 31 Cr. L. J. 840 = 1930 Cr. C. 625 = 1930 A. L. J. 713 = A. I. R. 1930 All. 401 (F. B.).

**—S. 99 D—Meaning.**

The explanation of S. 99-D is that if the High Court is left in doubt after hearing the application it should set aside the order, which may be said to be contrary to the ordinary practice in an appeal in a civil suit. (*Walsh, Ag. C. J. Lindsay and Banerji, J.J.*) *KALI CHARAN SHARMA v. EMPEROR.* 112 I.C. 56 = 29 Cr. L. J. 968 = 49 All. 856 = A. I. R. 1927 All. 649 (S.B.).

**—S. 99 D—Point in issue.**

When an application is made to the High Court under S. 99-B in respect of a document, the High Court is precluded by S. 99-D from considering any other point than the question whether in fact the matters contained in the document were seditious or not, and come

**CR. P. CODE (1898), S. 101—Exercise of power.**

within the mischief aimed at by S. 124-A. (*Mears, C. J., Piggott and Mukerji, J.J.*) *BAIJNATH KEDIA v. EMPEROR.* 47 All. 298 = 23 A. L. J. 1 = 26 Cr. L. J. 679 = 6 L. R. A. Cr. 65 = 86 I.C. 55 = A.I.R. 1925 All. 195 (F.B.).

**—S. 99-D—Several books.**

Where the applicant is alleged to have published a series of books, the whole series must be looked to, to determine whether the passages contained therein are seditious. (*Mears, C. J. Piggott and Mukerji, J.J.*) *BAIJNATH KEDIA v. EMPEROR.* 47 All. 298 = 23 A. L. J. 1 = 26 Cr. L. J. 679 = 6 L. R. A. Cr. 65 = 86 I.C. 55 = A.I.R. 1925 All. 195 (F.B.).

**—S. 99-D—Two views.**

Where a document admits of two reasonably possible views the applicant must have the benefit of that which is most favourable to him. (*Boys, Banerji and King, J.J.*) *R. SAIGAL v. EMPEROR.* 52 A. 775 = I. R. 1930 A. 678 = 125 I.C. 470 = 31 Cr. L.J. 840 = 1930 Cr. C. 625 = 1930 A.L.J. 713 = A.I.R. 1930 All. 401 (F.B.).

**—S. 99-F—Procedure.**

*Costs.*

The proceedings under S. 99-F are *sui generis* but the particular exclusion by S. 99-F of the practice in suits and the very provisions for an order for the payment of costs suggest that regard is intended to be had to the practice in civil miscellaneous proceedings. It is therefore reasonable that the cost of the other side so far as it may be found to have been reasonably incurred should be paid by the person to whose action the incurring of those costs was due. (*Boys, Banerji and King, J.J.*) *R. SAIGAL v. EMPEROR.* 1930 A.L.J. 713 = 52 A. 775 = I.R. 1930 A. 678 = 125 I. C. 470 = 31 Cr. L. J. 840 = 1930 Cr. C. 625 = A. I. R. 1930 All. 401 (F. B.).

**—S. 100—Basis.**

A Magistrate can issue a warrant under S. 100 merely upon an application of a complainant. Otherwise it would necessitate the Magistrate almost in every case to try out a case before he could determine the question whether it was a *bona fide* application that was being made to him. (*Wort, J.*) *CHEPA MAHTON v. EMPEROR.* 30 Cr. L. J. 175 = 11 P.L.T. 31 = 12 A. I. Cr. R. 24 = 113 I.C. 578 = A.I.R. 1928 Pat. 550.

**—S. 100—Deputation.**

*Special warrant.*

An officer, to whom a search warrant was issued under S. 100 to search a house of a particular person to find out a woman alleged to be detained there, endorsed it on to another officer stating that the officer to whom he endorsed it might execute the warrant if the person was confined outside.

*Held*, that there was no justification for the police officer to do so. (*Wort, J.*) *CHEPA MAHTON v. EMPEROR.* 30 Cr. L. J. 175 = 11 P.L.T. 31 = 12 A. I. Cr. R. 24 = 113 I.C. 578 = A.I.R. 1928 Pat. 550.

**—S. 100—Place.**

*Obiter.*—It is not illegal for a Magistrate to issue a warrant under S. 100 without confining it to any particular place. (*Wort, J.*) *CHEPA MAHTON v. EMPEROR.* 30 Cr. L.J. 175 = 11 P.L.T. 31 = 12 A. I. Cr. R. 24 = 113 I.C. 578 = A. I. R. 1928 Pat. 550.

**—S. 101—Exercise of power.**

*Search Warrant.*

Search warrants are always open to very serious objections and very great particularity is justly required

**CR. P. CODE (1898), S. 102—Applicability.**

by law in cases where they are authorized before the privacy of a man's premises is allowed to be invaded by the minister of the law. (*C. C. Ghose and Chotzner, JJ.*) **B. WALVEKAR v. KING EMPEROR.**

53 Cal. 718 = 30 C.W.N. 713 = 27 Cr. L. J. 920 = 96 I.C. 264 = A. I. R. 1926 Cal. 966.

**—S. 102—Applicability.****—Bengal Excise Act.**

Ss. 102 and 103, Cr. P. Code, do not apply to the search made under the Bengal Excise Act. (*Suhrawardy and Mitter, JJ.*) **HARBHAJAN SOO v. EMPEROR.**

54 Cal. 601 = 31 C.W.N. 667 = 102 I.C. 547 = 28 Cr. L. J. 579 = 8 A. I. Cr. R. 114 = A. I. R. 1927 Cal. 527.

**—S. 103—Absence of accused.**

It is not necessary that the person whose premises are searched must be present at the search. View of *Beachcroft, J.*, in 41 Cal. 350, Diss. from. (*Buckland, Suhrawardy and Commiade, JJ.*) **HARI NARAYAN CHANDRA v. EMPEROR.**

46 C.L.J. 368 = 29 Cr. L. J. 49 = 106 I.C. 545 = 9 A. I. Cr. R. 228 = A.I.R. 1928 Cal. 27 (F. B.).

**—S. 103—Applicability.****—U. P. Gambling Act, S. 103.**

Where a warrant has been issued for search under S. 5, Gambling Act, S. 103, Cr. P. Code, is not applicable. A.I.R. 1922 Lah. 458, Foll. (*Sen, J.*) **RURE MAL v. EMPEROR.**

120 I.C. 266 = 31 Cr.L.J. 35 = 1930 A.L.J. 229 = 13 A.I.Cr. R. 138 = 11 L.R.A. Cr. 21 = 1929 Cr. C. 665 = A.I.R. 1929 All. 937.

**—Opium Act, Ss. 14, 15.**

The provisions of S. 103 of the Cr. P. Code are applicable to searches made under S. 14 of the Opium Act, but not to searches in an open place under the provisions of S. 15. (*Mya Bu, J.*) **KALI KUMAR DE v. EMPEROR.**

100 I.C. 980 = 7 A.I.Cr. R. 549 = 6 Bur. L.J. 11 = 28 Cr. L.J. 372 = A.I.R. 1927 Rang. 170.

**—S. 103—Evidence.****—Witnesses for search.**

It is not the duty of the prosecution to put every search witness into the witness box. The discretion is left to the Court to require or not the attendance of such witnesses. 9 C.W.N. 438, Diss. from. (*Buckland, Suhrawardy and Cammiade, JJ.*) **HARI NARAYAN CHANDRA v. EMPEROR.**

46 C. L. J. 368 = 29 Cr. L. J. 49 = 106 I.C. 545 = 9 A.I. Cr. R. 228 = A. I. R. 1928 Cal. 27 (F.B.).

**—Proof of search list.**

The fact that the inhabitants of the locality whose signatures appear on the list prepared by the police at the time of the search had not been examined in the case would not render the search itself illegal. 23 M.L. J. 445, Rel. on. If the list cannot be proved, the contents of the list can be proved by other evidence. 34 Mad. 349, Rel. on. (*Agha Haider, J.*) **BACHAN v. EMPEROR.**

28 Cr. L. J. 17 = 99 I.O. 49 = A. I. R. 1927 Lah. 149.

**—S. 103—Non-compliance.****—Evidence unsatisfactory—Effect of.**

Where the failure to comply with the provisions of S. 103 leave the evidence in an unsatisfactory condition, so that there is reasonable doubt as to whether the offending articles were really in the possession of the accused, the conviction ought not to be sustained. (*Mirza and Broomfield, JJ.*) **DINKAR NHANU v. EMPEROR.**

54 Bom. 471 = I.R. 1930 Bom. 377 = 31 Cr. L. J. 927 = 32 Bom. L.R. 344 = 125 I. C. 713 = A. I. R. 1930 Bom. 169.

**CR. P. CODE (1898), S. 103—Panchas.****—S. 103—Object.****—Compliance with provisions essential.**

The object of the section is presumably to obtain as reliable evidence as possible of the search and exclude the possibility of any concoction or malpractice of any kind. It is incumbent upon the police to try to comply with the provisions of the section. There is no harm in the police officer who makes the search being called as witness at the trial but such officer cannot be deemed to be an entirely satisfactory witness for the purposes of proving the search. (*Graham and Lort Williams, JJ.*) **EMPEROR v. BALAI GHOSE.**

I.R. 1930 Cal. 438 = 124 I. C. 486 = 31 Cr. L. J. 667 = 50 C. L. J. 518 = 1930 Cr. C. 141 = A. I. R. 1930 Cal. 141.

**—S. 103—Panchas.****—Should be present throughout the search.**

Both the letter and the spirit of S. 103, namely, the provisions that the panchas are to attend and witness the search, and that the search shall be made in their presence, require that the panchas should actually accompany the persons making the search and should be actual witnesses to the fact of the finding of the property. It is not a sufficient compliance with this section that the panchas should merely be summoned and kept present outside a building while the search is being carried on within it, and then called in to see what has been found. (*Mirza and Broomfield, JJ.*) **DINKAR NHANU v. EMPEROR.**

125 I. C. 713 = I.R. 1930 Bom. 377 = 54 Bom. 471 = 31 Cr.L.J. 927 = 32 Bom. L.R. 344 = A. I. R. 1930 Bom. 169.

**—Bombay Abkari Act, S. 43.**

The mere fact that the panchas are not present throughout a search under Bombay Abkari Act, S.43 (1) (a), and do not witness every detail of it is not sufficient in itself to vitiate the conviction, especially where the accused is himself present at the search, and it is open to the Court to find the fact of possession of an offending article proved, that on a consideration of all the evidence in the case it is satisfied that the fact has been proved beyond reasonable doubt. 4 Cr.L.J. 390; 20 Cr.L.J. 742, Dist.; 41 Cal. 350; A. I. R. 1925 All. 434 and A.I.R. 1926 All. 188, Foll. (*Mirza and Broomfield, JJ.*) **DINKAR NHANU v. EMPEROR.**

125 I. C. 713 = 54 Bom. 471 = 31 Cr. L. J. 927 = 32 Bom. L.R. 344 = A. I. R. 1930 Bom. 169.

**—U. P. Excise Act, S. 53—Formalities essential.**

Where the officer making the search does not record the grounds of his belief that the house of the accused contained prohibited liquor, as required by S. 53, Excise Act, and does not conduct the search in presence of two or more respectable inhabitants of the locality, the search is irregular. Any officer authorized by law to make a search ought to exercise the very greatest caution in fulfilling the formalities required by law for making a search and providing every possible safeguard so as not to allow any handle for adverse criticism. (*Sen, J.*) **FAQIRA v. EMPEROR.**

120 I.C. 204 = 31 Cr. L. J. 10 = 1929 Cr. C. 493 = 11 L.R.A. Cr. 18 = 13 A. I. Cr. R. 131 = A. I. R. 1929 All. 901.

**—Witnesses helping the search—Gambling Act, S. 7.**

The object of the section to ensure that searches are conducted fairly and squarely and that there is no "planting" of articles by the police. Therefore, where before entering, the witnesses are given an opportunity of satisfying themselves that the police had nothing on their persons, the mere fact that the witnesses actually helped the police in making the search will not make the search one in contravention of S. 103 so as to destroy the pre-



**CR. P. CODE (1898), S. 103—Panchas.**

sumption under S. 7, Gambling Act. *Obiter dictum* in S. L. R. 38, Diss. (*Maung Ba, J.*) **KING-EMPEROR v. WAN MA.** 103 I. C. 557 = 5 Rang. 291 =

28 Cr. L. J. 701 = 8 A. I. Cr. R. 391 = A. I. R. 1927 Rang. 241.

—Respectable persons not available at the time—Search conducted with persons available—Evidence to support conviction ample—Conviction is not bad. (*Kanhaiya Lal, J.*) **ABDUL HAFIZ v. EMPEROR.** 92 I. C. 441 = 24 A. L. J. 173 = 27 Cr. L. J. 265 =

6 L. R. A. Cr. 203 = A. I. R. 1926 All. 188.

—*Respectable witnesses not available.*

The failure to call respectable inhabitants of the locality to witness a search does not render it illegal, especially when a satisfactory explanation therefore is furnished. The object of the legislature in requiring the presence of witnesses is to guard against possible chicanery and unfair dealing. (*Shadi Lal, C. J.*) **ABDULLAH v. EMPEROR.** 91 I. C. 249 =

27 Cr. L. J. 73 (Lah.).

—*From whom to be selected.*

The provision that the witnesses of the search should be inhabitants of the locality is intended to operate in favour of the accused and in a densely populated town means persons in the immediate vicinity. (*Young, J.*) **MA HTWAY v. EMPEROR.** 86 I. C. 415 =

26 Cr. L. J. 827 = 4 Bur. L. J. 2 = A. I. R. 1925 Rang. 205.

**—Ch. VIII.—(Ss. 106 to 126)—Arrest.**

—The mere fact there is an intention to act under Ch. 8 by the police does not grant to the accused persons immunity from preliminary arrest. (*Kincaid, J. C. and Kennedy, A. J. C.*) **HURDAYAL SINGH v. EMPEROR.** 94 I. C. 404 = 20 S. L. R. 85 = 27 Cr. L. J. 628 =

A. I. R. 1926 Sind 190.

**—Ch. VIII. (Ss. 106 to 126)—Bail.**

—Refusal of bail is contrary to the spirit of the provision of Ch. 8. The object of this chapter is to prevent a suspect from committing offence and to allay public apprehensions, and that object is sufficiently attained by requiring him to find sureties. (*Rupchand Bilaram, A. J. C.*) **JATOI v. EMPEROR.** 96 I. C. 391 = 20 S. L. R. 122 =

27 Cr. L. J. 935 = A. I. R. 1928 Sind 288.

**—Ch. VIII (Ss. 106 to 126)—Cross-examination.**

—*Liberty to reserve.*

Per *Sukhravady, J.*—When an accused is proceeded against, appears and prays for information about the evidence which the Crown proposes to adduce against him, it should be supplied or so much of it as practicable. This may be done in two ways. He may be given sufficient information of the evidence to be called or he may be allowed to reserve cross-examination till he has full information about the case against him. Denial of either is to prejudice him materially notwithstanding S. 256. (*C. C. Ghose, J.*, on difference between *Sukhravady and Graham, J. J.*) **BHUT NATH v. EMPEROR.** 33 C. W. N. 852 = 1929 Cr. C. 387 =

A. I. R. 1929 Cal. 739.

**—Ch. VIII. (Ss. 106 to 126)—Evidence.**

—Inquiries under Chap. 8 are governed by the ordinary rules of evidence, and evidence which is not admissible under the Evidence Act cannot be admitted in proceedings under S. 110. 12 A. L. J. 937, Foll. (*Banerji, J.*) **RAJ NARAYAN PANDEY v. EMPEROR.** 101 I. C. 886 = 25 A. L. J. 393 = 8 L. R. A. Cr. 53 =

7 A. I. Cr. R. 353 = 26 Cr. L. J. 502 = A. I. R. 1927 All. 394.

**CR. P. CODE (1898), S. 106—Applicability.****—Ch. VIII (Ss. 106 to 126)—Measure.**

—The provisions of Chapter VIII are not intended to punish but to prevent crime and it is not permissible to limit the security or the amount of security to such description that it is perfectly impossible for the accused to furnish them, thus rendering it certain that they will be committed to jail. Demanding security having a certain pecuniary status is not unreasonable. (*Kennedy, J. C. and Aston, A. J. C.*) **ALLAH DAD v. THE CROWN.** 83 I. C. 883 = 17 S. L. R. 160 = 26 Cr. L. J. 179 =

A. I. R. 1924 Sind 120.

**—Ch. VIII, (Ss. 106 to 126)—Object.**

—Object of Chapter VIII is partially served even when an accused is on bail for a long time. (*Kennedy, J. C. and Aston, A. J. C.*) **ALLAH DAD v. THE CROWN.** 83 I. C. 883 = 17 S. L. R. 160 = 26 Cr. L. J. 179 =

A. I. R. 1924 Sind 120.

**—Ch. VIII, (Ss. 106 to 126)—Proceedings.**

—*Inquiries and not trials.*

A proceeding in which a person is called on to give security is not a trial but an "inquiry" which includes every inquiry other than a trial conducted by a Magistrate or Court under the Crim. Pro. Code. Proceedings under Chap. VIII are "inquiries" and not "trials". The person called on to give securities is not an accused person. The expression "accused" is nowhere defined in the Code, and nowhere in Chap. VIII is the person, called on to give securities either under Ss. 106—110, referred to as an accused person, 16 Bom. 661, Dissented from. (*C. C. Ghose and Cumming, J. J.*) **BINODE BEHARI NATH v. EMPEROR.** 81 I. C. 909 =

50 Cal. 985 = 25 Cr. L. J. 1085 = A. I. R. 1924 Cal. 392.

**—S. 106—Appellate Court.**

—*Powers of.*

The Court of appeal has powers to pass an order under S. 106, even where the trial Court had no such powers. 2 P. L. J. 21, Foll. (*Foster, J.*) **JAI SINGH v. KING-EMPEROR.** 97 I. C. 424 = 27 Cr. L. J. 1112 =

7 A. I. Cr. R. 136 = A. I. R. 1927 Pat. 37.

—An appellate Court cannot exercise the power given by S. 107 (3) where the conviction has not been by a Court specified in sub-section (1). (*Newbould and Sukhravady, J. J.*) **EUSAF ALI AHMAD KHAI RA v. EMPEROR.** 72 I. C. 68 = 24 Cr. L. J. 308 =

A. I. R. 1924 Cal. 540.

—The power conferred on an appellate Court by clause (3) of S. 106, Cr. P. Code is not limited by the fact that the Court whose decision is under appeal has no power to direct security to be taken. (*Prideaux, A. J. C.*) **HASAN BEG v. EMPEROR.** 81 I. C. 145 =

19 N. L. R. 154 = 25 Cr. L. J. 657 =

A. I. R. 1924 Nag. 49.

**—S. 106—Applicability.**

—*No breach of peace.*

Section 106, Cr. P. Code, can only be applied when the person concerned has been convicted of an offence involving a breach of the peace, i.e., the offence must be one of which a breach of the peace is in law a necessary ingredient. (2 Lah. 279, Ref.) It cannot be said that a breach of the peace is necessarily involved in the commission of the offence of wrongful confinement. (*Broadway, J.*) **MAHOMED AFZAL v. EMPEROR.** 71 I. C. 879 = 24 Cr. L. J. 271 =

A. I. R. 1924 Lah. 311.

—*No breach of peace apart from the offence.*

The section applies when the offence amounts to or constitutes a breach of the peace, the question to be answered in each case is, does the offence brought home to the individual necessarily include or imply a breach



**CR. P. CODE (1898), S. 106—Essentials.**

of the peace or does it constitute or amount to a breach of the peace. If it does, the section applies. Apart from the offence, there need not ensue a breach of the peace when breach of the peace is a component part or an ingredient of the offence. (*Venkatasubba Rao, J.*)  
 KUPPA REDDIAR, *In re.* 81 I. C. 920 =

47 Mad. 846 = 20 M. L. W. 481 =  
 25 Cr. L. J. 1096 = A. I. R. 1924 Mad. 808 =  
 47 M. L. J. 232.

**—S. 106—Essentials.****—Breach of peace.**

Unless the offence is one which necessarily involves a breach of the peace there must be an express finding by the Court that the offence committed did in fact involve a breach of the peace for proceedings under S. 106. (*Jack, J.*) *RAFATULLA PRAMANIC v. RAJAK SARDAR.*

I. R. 1931 Cal. 528 = 132 I. C. 96 =  
 32 Cr. L. J. 828 (1) = 1930 Cr. C. 1068 =  
 34 C. W. N. 988 = A. I. R. 1930 Cal. 646.

—In order to support an order under S. 106 the Court must, as a condition precedent, show some grounds for requiring the security. The fact that the accused have been convicted of an offence involving a breach of the peace is not alone sufficient to pass an order under S. 106. (*Foster, J.*) *JAI SINGH v. KING.* EMPEROR.

97 I. C. 424 = 27 Cr. L. J. 1112 =  
 7 A. I. Cr. R. 136 = A. I. R. 1927 Pat. 37.

—Breach of peace—Order of binding over is justified only if in the assault or hurt, breach of peace is involved.

Under S. 106 an order binding over an accused person can only be passed when in a case of causing simple hurt or assault a breach of the peace is involved. No hard and fast rules can be laid down; but in the absence of a finding that the assault which took place involved breach of the peace or public tranquillity, the Magistrate cannot merely on the ground that the parties were on bad terms bind the accused down. No one goes to assault his personal friends, so that the mere fact of the assault necessarily involves the finding directly or indirectly that the parties are on bad terms. A.I.R. 1923 Mad. 618, Dist. (*Banerji, J.*) *MUHAMMED RAHIM v. EMPEROR.*

89 I. C. 1025 =  
 23 A. L. J. 1053 = 26 Cr. L. J. 1457 =  
 A. I. R. 1926 All. 144.

—In the absence of a finding that there is a likelihood of a breach of the peace, an order under S. 106 cannot be passed. (*Kinkhede, A.J.C.*) *RAJARAM v. GOVINDA.*

81 I. C. 888 = 25 Cr. L. J. 1064 =  
 A. I. R. 1925 Nag. 36.

**—S. 106—Evidence.**

—Inquiries under Chap. VIII are governed by the ordinary rules of evidence, and evidence which is not admissible under the Evidence Act cannot be admitted in proceedings under S. 110. (12 A. L. J. 937, Foll.) (*Banerji, J.*) *RAJ NARAYAN PANDEY v. EMPEROR.*

101 I. C. 886 = 25 A. L. J. 393 =  
 8 L. R. A. Cr. 53 = 7 A. I. Cr. R. 353 =  
 28 Cr. L. J. 502 = A. I. R. 1927 All. 394.

**—S. 106—Express finding by Court.**

—Unless the offence is one which necessarily involves a breach of the peace there must be an express finding by the Court that the offence committed did in fact involve a breach of the peace for proceeding under S. 106. Where the conviction was one under S. 379, I. P. Code and there was an express finding that the offence involved a breach of the peace, *Held*, that the order under S. 106 was valid in law. (*Jaik, J.*) *RAFATULLA PRAMANIC v. RAJAK SARDAR.*

I. R. 1931 Cal. 528 = 132 I. C. 96 =

**CR. P. CODE (1898), S. 106—Grounds.**

32 Cr. L. J. 828 (1) = 34 C. W. N. 988 =  
 1930 Cr. C. 1068 = A. I. R. 1930 Cal. 646.

**—S. 106—Grounds.****—Offence involving breach of the peace.**

In all ordinary cases of conviction under S. 323, Penal Code, there is a conviction for an offence involving a breach of the peace, and the desirability of taking security must depend upon how far the circumstances indicate that if such a breach of the peace is likely to recur. (A. I. R. 1927 All. 157 and A. I. R. 1926 All. 144, Expi.) (*Boys, J.*) *MEWA LAL v. EMPEROR.*

116 I. C. 789 = 51 All. 540 = 1929 A. L. J. 340 =  
 10 L. R. A. Cr. 57 = 11 A. I. Cr. R. 402 =  
 30 Cr. L. J. 686 = A. I. R. 1929 All. 349.

**—Rioting.**

Where the accused were convicted of rioting, *held*, that it was right to have them bound over for a period of one year. (*Beasley and Cornish, J.J.*) *PEDDA HAMPAYYA v. EMPEROR.*

1929 M.W.N. 583.

**—Finding as to breach of the peace.**

Where a person has been convicted under S. 323, an order under S. 106 can only be passed when there is a finding that in causing the simple hurt a breach of the peace was involved. (*Banerji, J.*) *ATMA RAM v. EMPEROR.*

99 I. C. 120 = 49 All. 131 =  
 8 L. R. A. Cr. 9 = 28 Cr. L. J. 88 =  
 7 A. I. Cr. R. 127 = A. I. R. 1927 All. 157.

—No order under S. 106 can be passed upon conviction of an offence under S. 143 or S. 427, I.P. Code. (*Ashworth, J.*) *NANBAT v. EMPEROR.*

99 I. C. 348 = 8 L. R. A. Cr. 11 =  
 28 Cr. L. J. 140 = 7 A. I. Cr. R. 130 =  
 A. I. R. 1927 All. 136.

**—S. 452, I. P. Code.**

The offence under S. 452 is not one involving breach of the peace and security cannot be demanded for keeping the peace under S. 106. Cr. P. C. 2 Lah. 279, Rel. on. (*Martineau, J.*) *SANTOSH SINGH v. EMPEROR.*

94 I. C. 139 = 27 Cr. L. J. 571 =  
 A. I. R. 1926 Lah. 675.

—Trespassing in man's house for the purpose of causing him injury is such an offence as to involve breach of the peace within S. 106. Cr. P. Code and when conviction is made under S. 452, I. P. C. an order under S. 106, Cr. P. Code, can be properly passed against the accused. 42 All. 345, Foll. (*Martineau, J.*) *DULLAH v. EMPEROR.*

89 I. C. 1030 =  
 26 Cr. L. J. 1462 = A. I. R. 1925 Lah. 621.

**—Section of the I. P. Code read with S. 149—Change in the Law.**

The amendment to Section 106 by the Act XVIII of 1923 has made an order under Section 106 impossible where the only section under which the accused are convicted is a section of the Penal Code which is read with Section 149. The amendment is not very happily worded for it speaks of an offence punishable under Section 149. No offence is punishable under Section 149 alone; there must be some substantive offence charged to be read with Section 149. Where the accused were convicted under Section 325 read with Section 149,

*Held*, that under Section 106, as it now stands, an order cannot be passed against them. (*Adami and Bucknill, J.J.*) *CHHEDI SINGH v. EMPEROR.*

85 I. C. 42 = 3 Pat. 870 = 6 P. L. T. 330 =  
 26 Cr. L. J. 426 = A. I. R. 1925 Pat. 117.

**—No finding as to breach of peace.**

Where there was no express finding that there was an apprehension of a breach of the peace and the accused

**CR. P. CODE (1898), S. 106—Grounds.**

were convicted of an offence of assault but Magistrate had also expressed an opinion to the effect that the accused persons appeared to be very troublesome.

*Held*, that there was no legal flaw in the judgment and order under S. 106 was justified. (*Sulaiman, J.*)  
JAFAR HUSAIN v. EMPEROR. 81 I. C. 442=

46 AIL. 105=4 L.R. Cr. 259=25 Cr. L. J. 906=  
A. I. R. 1924 AIL. 306.

**—Wrongful confinement.**

Wrongful confinement does not *per se* import breach of the peace but if the offenders using violence seize another and tie his hands, it clearly involves breach of the peace and would come under S. 106. (*Venkatashubha Rao, J.*) KUPPA REDDIAR, *In re*. 81 I. C. 920=47 Mad. 846=20 M.L.W. 481=25 Cr. L. J. 1096=  
A. I. R. 1924 Mad. 808=47 M.L.J. 232.

**—Finding as to breach of peace—In futuro.**

To justify an order for security under section 106 there must be an express finding to the effect that the act involved a breach of the peace or an evident intention of committing the same or the evidence must be so clear as to satisfy the Court (without an express finding) that such was the case. The word 'involve' connotes the inclusion not only of a necessary but also of a probable future circumstance, antecedent condition or consequence. (26 C. 576; 33 A. 771, *Foll.*) (*Baker, Offg, J.C.*) NANHA v. KANHAYALAL. 75 I. C. 983=25 Cr. L. J. 71=A. I. R. 1924 Nag. 118.

**—S. 323, I.P. Code.**

Since an attack in a public place involves a breach of the peace, an order requiring security under S. 106 is proper against a person convicted under S. 323, Penal Code, for striking with a lathi and kicking and cuffing another in an open public place. (*Dalal and Simpson, A.J.Cs.*) EMPEROR v. SHEO RAM. 72 I. C. 79=24 Cr. L. J. 319=A.I.R. 1924 Oudh 233.

**—S. 106—Interpretation.****—“Offences involving breach of the peace.”**

The expression “offences involving a breach of the peace” in S. 106, Cr. P. Code means offences in which a breach of the peace is an ingredient and not offences provoking or likely to lead to a breach of the peace. *Held*, that S. 504, I.P. Code does not necessarily involve a breach of the peace and that an order under S. 106, Cr. P. Code, cannot follow a conviction under S. 504, I. P. Code. (*Cuming, J.*) ASOKE PRASANNA BAL v. EMPEROR. 129 I. C. 413=32 Cr. L. J. 359=1930 Cr. C. 1097=A.I.R. 1930 Cal. 802=34 C.W.N. 651.

**—“Other offences”, etc. S. 323, I.P. Code.**

The words “assault or other offences involving a breach of the peace” clearly include the offences of causing hurt under S. 323, I.P. Code, and a person convicted under that section can be ordered to find security for keeping the peace under S. 106. 8 O.L. J. 318, *Diss.* (*Stuart, C. J. and Raza, J.*) KING-EMPEROR v. RAMANUJ. 3 O.W.N. Sup. 311=99 I.C. 352=28 Cr. L. J. 144=A.I. R. 1927 Oudh 101.

**—“Other offence”.**

The offences intended by “other offence” are those *ejusdem generis* with the offences against public tranquillity and of assault which are mentioned in the section (*Venkatashubha Rao, J.*) KUPPA REDDIAR, *In re*. 81 I. C. 920=47 Mad. 846=20 M.L.W. 481=25 Cr. L. J. 1096=A. I. R. 1924 Mad. 808=47 M.L.J. 232.

**—“Other offences” finding as to breach of peace.**

The expression “Other offences involving a breach of the peace” would embrace offences *ejusdem generis*

**CR. P. CODE (1898), S. 106—Security order.**

with the offences of assault and rioting which are specified in the section. It is not necessary that the lower Court should record a finding that a breach of the peace was involved in order to invest itself with the power to make an order under S. 206 (1). Where the judge has recorded his opinion that it is necessary in a case to require the convicted persons to execute a bond for keeping the peace that is all that the section in terms demands. (*Spencer, J.*) RAMASWAMI THEVAN v. CROWN. 72 I. C. 615=24 Cr. L.J. 455=17 M.L.W. 499=1923 M.W.N. 314=32 M.L.T. 297=  
A. I. R. 1923 Mad. 618=44 M.L.J. 485.

**—S. 106—Notice.**

—To adopt proceedings under S. 106 without notice to parties is an incorrect procedure on general principles of justice. (*Foster, J.*) JAI SINGH v. KING-EMPEROR. 97 I. C. 424=27 Cr. L.J. 1112=7 A.I. Cr. R. 136=A.I.R. 1927 Pat. 37.

**—S. 106—Order under.**

—Order under S. 106, Cr. P. Code does not lie where accused is convicted under any section of I. P. Code read with S. 149. (*Adami and Bucknill, J.J.*) CHHEDI SINGH v. KING-EMPEROR. 85 I. C. 42=6 P.L.T. 330=3 Pat. 870=26 Cr. L.J. 426=  
A.I.R. 1925 Pat. 117.

—An order under S. 106 must be passed at the same time when there is a conviction and passing of sentence and not at a subsequent stage. (*Sulaiman, J.*) RAM ADHIN v. EMPEROR. 81 I. C. 613=21 A.L.J. 839=4 L.R.A. Cr. 240=25 Cr. L.J. 965=  
A.I.R. 1924 All. 230.

—Order under this section should be passed by the same Magistrate who tried the accused for the principal offence and not by another Magistrate. (*Daniels, J.*) DUKHI v. KING-EMPEROR. 74 I. C. 448=24 Cr. L. J. 784=A. I. R. 1924 All. 141.

**—S. 106—Powers of Court.****—Appellate Court.**

Sub-section (1) of S. 106 does not control or limit the powers conferred on an appellate Court or revisional court by sub-S. (3) of the same section, and, therefore, it has power to require bonds under S. 106, even although the actual order is not made at the time of passing sentence, or rather confirming the sentence that has been already passed by the Magistrate. 33 Bom. 33, *Rel. on*. There is nothing in sub S. (3), S. 106 to limit the time when the order can be made by the appellate Court. (*Fawcett and Mirea, J.J.*) HUSSAIN GHULAM NABI v. EMPEROR. 30 Bom. L.R. 373=10 A.I. Cr. R. 211=29 Cr. L. J. 502=109 I. C. 230=  
A. I. R. 1928 Bom. 134.

**—S. 106—Revision.**

—Where the Magistrate has exercised his discretion in the matter and passed an order under S. 106, the High Court will not interfere in revision. (*Das, J.*) RAMLAKHAN MAHTO v. KING-EMPEROR.  
A. I. R. 1921 Pat. 472.

**—S. 106—Security order.**

—No order under S. 106 can be passed upon conviction of an offence under S. 143 or S. 427, I. P. Code. (*Ashworth, J.*) NAUBAT v. EMPEROR. 99 I. C. 348=8 L.R.A. Cr. 11=28 Cr. L.J. 140=7 A.I. Cr. R. 130=  
A. I. R. 1927 All. 136.

**—S. 107.****Appeal.****Bail.****Both parties dangerous.****Consent of accused.****Dispute about land.**

**CR. P. CODE (1898), S. 107—Appeal.**

Evidence.  
 Fresh proceedings.  
 Grounds.  
 Joint trial.  
 Jurisdiction.  
 Lawful acts.  
 Nature of proceeding.  
 Procedure.  
 Reference.  
 Revision.  
 Scope.  
 Security.

**—S. 107—Appeal.****—Retrial.**

In the case of an appeal under S. 406 from the order under S. 107 the appeal is not one from conviction and therefore apart from the provisions of S. 423, appellate court can order re-trial. (*Walsh and Dalal, J.J.*) BHAGWAT SINGH v. EMPEROR. 48 All. 501 = 24 A.L.J. 566 = 7 L.R.A.Cr. 121 = 27 Cr. L. J. 945 = 96 I. C. 497 = A. I. R. 1926 All. 403.

**—Security for keeping peace.**

Order under S. 107 directing security for good behaviour to be given can be appealed from under S. 406. But no appeal will lie in proceedings instituted under S. 107 read with S. 118 for keeping the peace. (*Prideaux, A.J.C.*) SHAM RAO v. EMPEROR. 75 I. C. 979 = 19 N.L.B. 160 = 25 Cr. L. J. 67 = A. I. R. 1924 Nag. 60.

**—S. 107—Bail.**

—Can be refused only in certain cases under Cls. 3 and 4.

Where the proceedings have been instituted against a person under S. 107, it is only in the special circumstances referred to in sub-Ss. (3) and (4) of that section that the law empowers a Magistrate to detain a person in custody until the completion of the enquiry. The sub-section can only be put into operation when a Magistrate, who has no powers to proceed under sub-S. (1) of S. 107 is led to believe that a person is likely to commit a breach of the peace or to disturb the public tranquillity or to do any wrongful act which might possibly occasion a breach of the peace or disturbance and cannot, by any other means, prevent the possibility of such an occurrence, that he with his limited powers can arrest a person and send him then to another Magistrate who has got adequate powers for dealing with the case. 32 C. 80 and 31 M. 315, Ref. (*Bucknill, J.*) WAHARI MANDER v. EMPEROR.

74 I. C. 857 = 2 Pat. L. R. Cr. 77 = 5 P. L. T. 109 = 24 Cr. L. J. 825 = A. I. R. 1923 Pat. 527.

**—S. 107—Both parties dangerous.****—Provocation by unlawful acts of one party.**

When all the previous judicial proceedings show that all the lawful acts of one party, who was merely advising his own men not to pay rent to the other party and not to allow him to trespass and remove paddy from the lands, have been provoked by the unlawful acts of the other party, there is no justification for taking proceedings against both the parties under S. 107. A. I. R. 1925 Mad. 189, Ref. (*Ramasam, J.*) RANGASWAMI v. EMPEROR. 118 I. C. 504 = 30 Cr. L. J. 931 = 2 M. Cr. C. 287 = 1929 Cr. C. 610 = A. I. R. 1929 Mad. 842.

**—Both parties putting forward a right.**

Where there is a right put forward by both the parties, and where the right is in dispute, it is not fair to bind down only one of the parties. If the Magistrate thinks that in the interests of public peace he should resort to the provisions of S. 107, the proceedings should be

**CR. P. CODE (1898), S. 107—Dispute about land.**

drawn up against both parties so as not to give unfair advantage to one as against the others. (*Sen, J.*) MUSAHELE SOUDAGAR v. NIDHI RAM DA'TT. 102 I. C. 781 = 8 P. L. T. 645 = 8 A. I. Cr. R. 248 = 28 Cr. L. J. 605 = A. I. R. 1927 Pat. 314.

**—Procedure.**

Two opposing parties in a dispute cannot be proceeded against under S. 107 in one proceeding. (*Das, J.*) KISHORE AHIR v. EMPEROR. 88 I. C. 864 = 6 P. L. T. 768 = 26 Cr. L. J. 1248 = A. I. R. 1926 Pat. 32.

**—S. 107—Consent of accused.**

—Under S. 107, a Court is entitled to act upon a solemn and free consent amounting to a plea of guilty given before it by the person summoned. In such cases the person summoned might waive the formal production of evidence. A. I. R. 1924 All. 269, Appr. (*Walsh and Banerji, J.J.*) EMPEROR v. KISHAN NARAIN. 112 I. C. 774 = 50 All. 599 = 30 Cr. L. J. 6 = 9 L.R.A.Cr. 39 = 9 A. I. Cr. R. 291 = 26 A. L. J. 312 = A. I. R. 1928 All. 270.

—When an accused, called upon to give security for keeping the peace, says in terms that no prosecution evidence may be recorded and he is willing to give security, it is sufficient proof that it is necessary for keeping the peace that he should execute a bond. No further enquiry need be made by the Magistrate. A. I. R. 1924 All. 269, Foll.; 21 Cr. L. J. 59, Diss.; 30 Mad. 330, Diss.; 35 Cal. 674 and 27 P. R. Cr. 1917, Diss. from. (*Dalal, J.*) NASIR AHMAD v. EMPEROR.

102 I. C. 897 = 8 A. I. Cr. R. 18 = 8 L. R. A. Cr. 94 = 28 Cr. L. J. 609 = 25 A. L. J. 819 = A. I. R. 1927 All. 579.

**—Insufficient.**

Consent to furnish security is no ground to order security. In the absence of evidence indicating apprehension of breach of the peace or of some act likely to cause breach of the peace on the part of the person concerned order passed is illegal. (*Broadway, J.*) JOTI MALIK v. EMPEROR. 81 I. C. 198 = 25 Cr. L. J. 710 = A. I. R. 1925 Lah. 135.

—Certain persons were called upon to furnish security. They appeared and expressed their willingness to be bound over. The trial Court therefore took no evidence and passed an order against them.

Held, that the consent of accused amounted to a plea of guilty and the order was right. 54 I. C. 784, Not foll.; 37 All. 30 and 54 I. C. 411, Diss.; 34 Cal. 674, Dissented. (*Walsh, J.*) GHARIB v. EMPEROR.

81 I. C. 238 = 46 All. 109 = 21 A. L. J. 881 = 5 L. R. A. Cr. 21 = 25 Cr. L. J. 750 = A. I. R. 1924 All. 269.

**—Insufficient.**

The mere statement of a person that he is willing to give security is not sufficient ground for taking security from him for keeping the peace. 24 P. R. 1915; 27 P. R. 1917 (Cr.), Foll. (*Chevis, J.*) KARAM v. EMPEROR.

65 I. C. 639 = 23 Cr. L. J. 175 (Lah.)

**—S. 107—Dispute about land.**

—Where there is a dispute regarding possession of immovable property and there is imminent danger of breach of peace before a Magistrate proceeds against a party under S. 107, it is advisable in order to ascertain the fact of possession that the proceedings under S. 149 may conveniently be taken, (*James, J.*) SADDIQUE v. SHEIKH MOHID. 129 I. C. 85 = 32 Cr. L. J. 208 = 1930 Cr. C. 1100 = A. I. R. 1930 Pat. 556.

**—S. 145, Cr. P. Code—Option of magistrate.**

If the Magistrate is satisfied at any time that there is an apprehension of a breach of the peace arising out of

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a dispute with regard to certain land, the proper course for him would be to institute a proceeding under S. 145, or to proceed against both the parties under S. 107. (*Fazal Ali, J.*) **AMANAT ALI v. EMPEROR.**

115 I. C. 545 = 30 Cr. L. J. 492 = 10 P. L. T. 639 =  
12 A. I. Cr. R. 451 = A. I. R. 1929 Pat. 67.

**Breach of peace.**

The Magistrate under S. 145 is to decide the question of possession and not that of title which is to be decided by a Civil Court, and if it is probable that the parties to a land dispute will break the King's peace before the decision of the Civil Court can be given, that danger can be guarded against by an order under S. 107 in an appropriate case. (*Marten and Coyajee, J.J.*) **MALLAPPA, In re.**

95 I. C. 62 = 28 Bom. L. R. 488 =  
27 Cr. L. J. 734 = A. I. R. 1926 Bom. 313.

**—S. 107—Evidence.****Breach of peace pending investigation.**

In a criminal case, if the accused persons, seeing proceedings under S. 107 against them pending, attempt to commit a breach of the peace, such evidence would be the best evidence to prove their intention to commit a breach of the peace. (*Dalal, J.*) **EMPEROR v. JEWAN SINGH.**

52 All. 593 = I. R. 1930 All. 562 =  
124 I. C. 706 = 1930 A. L. J. 866 = 1930 Cr. C. 565 =  
31 Cr. L. J. 710 = A. I. R. 1930 All. 408.

**Method of recording.**

It is not necessary for the deposition to be read over to the witness in the presence of the accused in the case of an inquiry under S. 107. (*Newbould and B. B. Ghose, J.J.*) **LEGAL REMEMBRANCER v. JAFAR RAKI.**

89 I. C. 976 = 52 Cal. 668 = 26 Cr. L. J. 1456 =  
A. I. R. 1925 Cal. 940.

**Consent of accused.**

Certain persons were called upon to furnish security. They appeared and expressed their willingness to be bound over. The trial Court therefore took no evidence and passed an order against them.

*Held*, that the consent of accused amounted to a plea of guilty and the order was right. 54 I. C. 784, Not Foll.; 37 All. 30 and 54 I. C. 411, Dist.; 34 Cal. 674, Dissented. (*Walsh, J.*) **GHAIRIB v. EMPEROR.**

81 I. C. 238 = 46 All. 109 = 21 A. L. J. 881 =  
5 I. R. A. Cr. 21 = 25 Cr. L. J. 750 =  
A. I. R. 1924 All. 269.

**—S. 107—Fresh proceedings.**

To make the events that have been the subject of judicial pronouncement the ground of fresh proceedings under S. 107 is opposed to the settled principles of law. 41 Mad. 246, Foll.; 17 C. W. N. 238, Rel. on. (*Ramesam, J.*) **RANGASWAMI v. EMPEROR.**

118 I. C. 504 = 30 Cr. L. J. 931 = 2 M. Cr. C. 287 =  
1929 Cr. C. 610 = A. I. R. 1929 Mad. 842.

**—S. 107—Grounds.****Overt act—Necessity of.**

Section 107 is one appearing in a chapter devoted in the Criminal Procedure Code to the object of preventing a breach of the peace, and to prove the existence of circumstances which may lead a reasonable man to apprehend a breach of the peace. It need not always be necessary to prove also an overt act towards a breach of the peace on behalf of any of the accused. (*Dalal, J.*) **EMPEROR v. JIWAN SINGH.**

52 A. 593 = I. R. 1930 A. 562 = 31 Cr. L. J. 710 =  
1930 Cr. C. 565 = 124 I. C. 706 = 1930 A. L. J. 866 =  
A. I. R. 1930 All. 408.

Threatening to beat a person saying why he served a particular person and asking another to give up serving a particular person on pain of being involved in litigation are not threats of violence of such a nature

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as would in law justify the passing of an order under S. 107. (*Subhedar, A. J. C.*) **KASHIRAM HAZARI v. ASARAM.**

120 I. C. 215 = 1929 Cr. C. 532 =  
31 Cr. L. J. 20 = A. I. R. 1929 Nag. 328.

**Effect of the act of accused.**

If a person himself is likely to commit a breach of the peace he may be dealt with under S. 107. He would equally become amenable to the provisions of the section if, for any wrongful act on his part, other persons may do things which would probably occasion a breach of the peace or disturb the public tranquillity. (*Chotzner and Gregory, J.J.*) **SATINDRA NATH SEN v. EMPEROR.**

111 I. C. 396 = 47 C. L. J. 444 =  
32 C. W. N. 477 = 29 Cr. L. J. 844 =  
11 A. I. Cr. R. 100 = A. I. R. 1928 Cal. 438.

**Danger to public peace.**

The mere fact that two parties had taken different sides in Municipal politics is not sufficient for an order being passed on the members of those parties under S. 107 without stating the risk or reasons which exist for thinking that there was a danger of the breach of the peace between the two parties. (*Addison, J.*) **KURA MAL v. EMPEROR.**

110 I. C. 458 =  
10 A. I. Cr. R. 434 = 29 Cr. L. J. 714 =  
A. I. R. 1928 Lah. 863.

**Breach of peace.**

Mere existence of enmity between the persons of factions is no ground for instituting proceedings under S. 107 against one or both the parties. In order to bring a case within that section it must be established that a breach of the peace is imminent. (*Tek Chand, J.*) **PARMAN RAMI v. EMPEROR.**

108 I. C. 517 =  
10 L. L. J. 72 = 29 Cr. L. J. 417 =  
29 P. L. R. 434 = 10 A. I. Cr. R. 141 =  
A. I. R. 1928 Lah. 243.

**Allegation not happening.**

Where the persons against whom proceedings under S. 107 are started, were likely to commit a breach of the peace on a particular occasion and that occasion passed off without any disturbance, it cannot be inferred affecting the person against whom process is issued, and from their intention in the past that they are likely to do the same thing in future. Binding over such persons becomes in such a case unnecessary. 26 All. 190; 6 Bom. L. R. 662, Foll. 8 A. L. J. 1080, Ref. (*Das, J.*) **MIRZA ZULFAKAR BEG v. KING-EMPEROR.**

103 I. C. 607 = 8 P. L. T. 370 = 28 Cr. L. J. 719 =  
8 A. I. Cr. R. 376 = A. I. R. 1927 Pat. 231.

**Co-sharer—Lawful acts of.**

When a co-sharer exercises his lawful rights in improving the joint property in spite of the objection of his co-sharers, he cannot be bound over under S. 107 on the ground that his action is likely to cause a breach of the peace. 19 Cal. 253 (P. C.), Rel. on. (*Harrison, J.*) **THAKUR SINGH v. THE CROWN.**

97 I. C. 358 =  
8 Lah. 98 = 27 P. L. R. 599 = 27 Cr. L. J. 1094 =  
7 A. I. Cr. R. 129 = A. I. R. 1926 Lah. 695.

**Overt act.**

Where the accused is not shown to have committed any overt act, the mere expression of opinion by some witnesses that there is an apprehension of a breach of the peace and that the parties should be bound down is certainly insufficient to prove that there is really any danger of breach of the peace being committed by the accused. 1 P. L. T. 681 and 32 All. 571, Foll. (*Shadi Lal, C. J.*) **JOTI SARUP v. EMPEROR.**

96 I. C. 858 = 27 Cr. L. J. 1002 =  
A. I. R. 1926 Lah. 689.

Where the anticipated breach is to be committed by the other side, the only point to be seen is whether

**CR. P. CODE (1898), S. 107—Joint trial.**

the act which brings about that breach is wrongful in itself, 32 All. 571, Foll. (*Harrison, J.*) **KHAZAN CHAND v. EMPEROR.** 97 I. C. 39=

7 Lah. 482=27 Cr. L. J. 1063=  
27 P. L. R. 810=7 A. I. Cr. R. 92=  
A. I. R. 1926 Lah. 683.

**—S. 107—Joint trial.**

—Court should not treat the case of all the opposite parties in a lump but should find out the persons who could definitely be said to have contemplated a breach of the peace. (*Dalal J.*) **EMPEROR v. JIWAN SINGH.** 52 A. 593=I. B. 1930 A. 562=124 I. C. 706=1930 A. L. J. 866=1930 Cr. C. 565=31 Cr. L. J. 710=A. I. R. 1930 All. 408.

**—Individual finding.**

Where in a case under S. 107 several persons are bound over to keep the peace, there must be individual finding showing how each person against whom order is made deserves to be so treated. The mere fact that the persons were followers of one party or other will not justify making an order in lump against the whole body of men. (*Mukerji J.*) **DHANOO v. EMPEROR.** I. R. 1930 Cal. 631=125 I. C. 855=1930 Cr. C. 382=31 Cr. L. J. 944=34 C. W. N. 144=A. I. R. 1930 Cal. 294.

**—Common object.**

Accused formed one gang with one purpose, namely, that of harassing P. W. 1, and the act of each accused was directed towards this common end.

*Held*, that joint trial of all accused is not illegal. A. I. R. 1925 Mad. 189 and A. I. R. 1923 All. 35, Dist. (*Wallace, J.*) **TARANAGOWD v. EMPEROR.**

106 I. C. 589=1927 M. W. N. 185=  
29 Cr. L. J. 77=A. I. R. 1927 Mad. 542.

**—Leaders discharged—Party feuds.**

Where there were old standing feuds between two parties which in the course of events developed into a very serious and heavy litigation and the Magistrate finding no evidence against the masters discharged them but assuming a possibility of breach of peace ordered their servants to provide heavy securities,

*Held*, that the Magistrate's order was not justified. (*Walsh, J.*) **DIN DAYAL v. EMPEROR.**

87 I. C. 517=23 A. L. J. 300=  
26 Cr. L. J. 981=A. I. R. 1925 All. 443.

**—Members of a gang—Otherwise individual finding.**

There is no direct prohibition against trying a number of persons under S. 107 jointly. But unless it is apparent that the various persons against whom proceedings are taken form a gang, it is highly unfair and unjust that they should be proceeded against jointly. The effect of such a proceeding is that it is unnecessarily protracted and the parties thereby prejudiced. Furthermore if by any chance such a proceeding is conducted jointly, it is essential that the case of each accused should be considered separately and individually. (20 A. 881, Foll.). When an objection as to the impropriety of the joint proceeding was taken in the first Court and when the evidence has not been taken separately against each accused but has been lumped together and when it is impossible to discover from the judgments of the trial and appellate Courts how much of the evidence was believed and how much rejected.

*Held*, that the accused has been gravely prejudiced by the proceeding taken against him in conjunction with other accused persons. (*Sulaiman, J.*) **MAHOMED ISMAIL v. THE CROWN.** 81 I. C. 600=

21 A. L. J. 841=4 L. R. A. Cr. 241=  
25 Cr. L. J. 952=A. I. R. 1924 All. 195.

**CR. P. CODE (1898), S. 107—Procedure.****—S. 107—Jurisdiction.****—Objection as to.**

Where the place where the breach of the peace was apprehended was within the Magistrate's jurisdiction, but the accused resided outside it, and no question of jurisdiction was raised in the trial Court and the Magistrate passed order under S. 107, and no prejudice is caused to the accused.

*Held*, that the irregularity, if there was one, is cured by S. 531. (*Daniels, J.*) **RAM DEO SING v. EMPEROR.** 49 All. 228=25 A. L. J. 44=

27 Cr. L. J. 1132=7 L.R.A. Cr. 174=  
97 I. C. 652=A. I. R. 1926 All. 767.

**—S. 107—Lawful acts.****—Religious susceptibilities.**

The doing of a lawful act in a lawful manner, even if that injures the susceptibilities of persons of a different faith would not in itself be sufficient to warrant proceedings under S. 107. Certain Hindus participated in a Hindu funeral procession proceeding with music before a mosque in pursuance of an old custom. They also on another occasion were reciting Grantsaheb in their private houses quite adjoining a mosque. Proceedings were taken against them under S. 107 as it was likely to hurt the feelings of the Mahomedan community and would result in a breach of the peace.

*Held*, that the persons were within their rights in doing what they did and could not be proceeded against. (*Fforde, J.*) **LAL CHAND v. EMPEROR.**

120 I. C. 427=31 Cr. L. J. 75=  
A. I. R. 1929 Lah. 138.

**—S. 107—Nature of proceedings.**

—Ss. 202 and 203, Cr. P. Code, are applicable only to complaints and a proceeding under S. 107 cannot be regarded a complaint within the meaning of cl. (h), sub-S. (1), S. 4 of the Code. (*Shadi Lal, C. J.*) **HARI SINGH v. JAGTA.** 29 P. L. R. 666=

11 A. I. Cr. R. 183=29 Cr. L. J. 866=  
111 I. C. 450=A. I. R. 1928 Lah. 694.

—S. 250 does not apply to proceedings under S. 107. A. I. R. 1923 All. 332, Foll. The fact that the complaint is treated as one under S. 506 of the Penal Code does not make any difference. Further, where the opposite party agrees to give security, the complaint cannot be called false and frivolous. A. I. R. 1924 All. 269, Kel. on. (*Iqbal Ahmad, J.*) **BAIJ NATH v. KALI CHARAN.** 102 I. C. 780=25 A. L. J. 493=

7 A. I. Cr. R. 543=8 L. R. A. Cr. 87=  
28 Cr. L. J. 604=49 All. 750=A. I. R. 1927 All. 531.

**—Administrative rather than judicial.**

S. 107 is not intended to give any redress to the applicant because without injury there can be no redress while the section contemplates possible injury, therefore the order of a Magistrate refusing to take action cannot be interfered with by a superior court, as the power is administrative rather than judicial. The person complained against is not an accused person. (*Kendall, A. J. C.*) **RAM LAL v. BANKATESHAR RAWAN BAHADUR PAL SINGH.** 81 I. C. 973=110 L. J. 732=

25 Cr. L. J. 1149=23 O. C. 44=  
A. I. R. 1925 Oudh 138.

**—S. 107—Procedure.****—Transfer.**

Where in certain proceedings under S. 107 the Sub-divisional Magistrate passed a preliminary order under S. 112 and subsequently the District Magistrate transferred the case to the joint Magistrate who had no jurisdiction for disposal,

*Held*, that the transfer was valid and that the joint Magistrate could continue the proceeding. (*Pandatai,*

## CR. P. CODE (1898), S. 107—Procedure.

J.) KALIA GOUNDAN v. EMPEROR.

I. R. 1930 Mad. 1036 = 32 Cr. L. J. 27 (2) =  
 (1930) M. W. N. 698 = 32 M. L. W. 320 =  
 127 I. C. 652 = 1930 Cr. C. 1035 =  
 A. I. R. 1930 Mad. 859 = 59 M. L. J. 887.

## —Warning notice.

On the basis of a police report, warning notices had been issued to the parties concerned on 8th September, 1928. On 8th October, he drew up proceeding against one of the party under S. 107, Cr. P. Code.

Held, that as the order of 8th September 1928 was not a final order disposing of the police report, the Magistrate did not become *functus officio* and was competent to take proceedings under S. 107, Cr. P. Code. (Pearson and Mallik, J.J.) ABDUL MANNAF v. MAHAMMAD NARULLA. I. R. 1930 Cal. 32 = 31 Cr. L. J. 58 = 120 I. C. 256 = A. I. R. 1929 Cal. 506.

## —Contents of order.

A preliminary order under S. 112 on which proceedings under S. 107 were initiated must state the facts upon which the Magistrate charges the person proceeded with. A. I. R. 1925 Mad. 189, Ref. (Pandalai, J.) KALIA GOUNDAN v. EMPEROR.

I. R. 1930 Mad. 1036 = 127 I. C. 652 =  
 32 Cr. L. J. 27 (2) = 1930 M. W. N. 698 =  
 32 M. L. W. 320 = 1930 Cr. C. 1035 =  
 A. I. R. 1930 Mad. 859 = 59 M. L. J. 887.

## —Reasons for action under.

If a proceeding under S. 107 has only reproduced the language of the section without specifying in what way and with reference to what matter a person was likely to commit a breach of the peace and in what way he was likely to do a wrongful act which might occasion a breach of the peace, it cannot be supported. (Faiz Ali, J.) AMANAT ALI v. EMPEROR. 30 Cr. L. J. 492 = 115 I. C. 545 = 10 P. L. T. 639 = 12 A. I. Cr. B. 451 = A. I. R. 1929 Pat. 67.

## —Discharge.

Where in proceedings under S. 107 the Magistrate proceeds to enquire into the truth of the information under S. 117 (1) but the complainant and prosecution witnesses are found absent, it is proper for the Magistrate to pass an order under S. 119 discharging the person proceeded against. (Suhrawardy and Cammiade, J.J.) ASRAFALI SAIYAL v. NASUR SARKAR. 45 C. L. J. 211 = 31 C. W. N. 388 = 101 I. C. 607 = 28 Cr. L. J. 479 = A. I. R. 1927 Cal. 343.

—Per *Coutts-Trotter, C.J.* It will be well that the Code should be revised and that express provision should be made conferring power in terms upon Magistrate to refer petitions under S. 107 for investigation under S. 202. (Coutts Trotter, C. J. and Viswanatha Sastri, J.) SANJIVI REDDI v. KONERI REDDI. 49 Mad. 315 = 23 M. L. W. 327 = 93 I. C. 8 = A. I. R. 1926 Mad. 521 = 50 M. L. J. 460.

## —S. 202, Cr. P. Code—Investigation.

It is perfectly open to a Magistrate who is asked to set in motion S. 107 to avail himself of the help which is available to him under S. 202, when complaint of an offence of which he is authorized to take cognizance is made to him. Apart from S. 202 it is competent to a Magistrate to refer the matter to the police, and the Police are entitled to hold the investigation, and it is the duty of the complainant to assist in the investigation, and so any statement made by the complainant during the investigation is absolutely privileged. (Coutts-Trotter, C. J. and Viswanatha Sastri, J.) SANJIVI REDDI v. KONERI REDDI. 49 Mad. 315 = 23 M. L. W. 327 = 93 I. C. 8 = A. I. R. 1926 Mad. 521 = 50 M. L. J. 460.

## CR. P. CODE (1898), S. 107—Revision.

## —Trial as warrant case.

Trying a case under S. 107 as a warrant case is an irregularity vitiating the proceedings, especially where the punishment in default of security was rigorous. (Sulaiman, J.) UTTAM CHAND v. EMPEROR. 85 I. C. 46 = 5 L. R. A. Cr. 24 = 26 Cr. L. J. 430 = A. I. R. 1924 All. 695.

## —Drawing up of proceeding.

If the District Magistrate thinks it necessary in order to prevent a breach of the peace to take proceedings under S. 107, Cr. P. Code he should himself draw up such proceedings and he might then transfer the case to a Subordinate Magistrate for hearing. But he should not direct proceedings to be drawn up by a Subordinate Magistrate nor should the Subordinate Magistrate draw up proceedings merely because the District Magistrate has ordered him to do so. (Newbould and Suhrawardy, J.J.) HANIF SHEIK v. JABANI MANDAL. 72 I. C. 367 = 24 Cr. L. J. 367 = A. I. R. 1924 Cal. 540.

## —Rejection of application.

If a Magistrate is satisfied after making an enquiry himself or through some other agency that the apprehension of a breach of the peace complained of does not exist he need not make an order under S. 112 of the Code and must refuse the application. (Zafar Ali, J.) SHAMS-UD-DIN v. RAM DAYAL SINGH. 76 I. C. 25 = 25 Cr. L. J. 89 = A. I. R. 1924 Lah. 630.

## —S. 107—Reference.

—The Sessions Judge has jurisdiction to make reference in a proceeding under S. 107, even before the applicants have submitted the proceedings to the District Magistrate under S. 125 of the Code. (40 All. 140, Not foll.; 39 All. 469, Appr. and Foll.) The jurisdiction of the District Magistrate under S. 125 of the Code is neither appellate nor revisional. The Code has allowed an appeal expressly against an order of a Subordinate Magistrate directing a party to give security for good behaviour. As no such appeal is allowed in a case where security is ordered for keeping the peace, the District Magistrate's power is merely confined to examining the record to satisfy himself whether it was any longer necessary to keep the parties under the bond. The act is not a judicial act which the District Magistrate is called upon to exercise. (Dalal, A. J. C.) EMPEROR v. BALWANT SINGH. 73 I. C. 504 = 24 Cr. L. J. 616 = A. I. R. 1924 Oudh 241.

## —S. 107—Revision.

## —Should be within 30 days of the order.

Persons who come to High Court in revision against an order under S. 107 are expected to do so with the utmost promptitude and certainty within thirty days of the order against which they complain. (Daniels, J.) RAM DEO SINGH v. EMPEROR. 49 All. 228 = 25 A. L. J. 44 = 27 Cr. L. J. 1132 = 7 L. R. A. Cr. 174 = 97 I. C. 652 = A. I. R. 1926 All. 767.

## —Refusal to take action.

An order refusing to take action under Section 107 cannot be reversed by the Sessions Judge nor can he direct the Magistrate to draw up proceedings under the section. (Greaves and Pantou, J.J.) PHANI BHUSAN ROY v. KUNGA BEHARI BISWAS. 81 I. C. 167 = 25 Cr. L. J. 679 = A. I. R. 1925 Cal. 262.

## —Insufficient grounds.

The High Court seldom interferes in the preliminary stage with the discretion of the Magistrate taking action under the preventive sections of the Code of Cri-



**CR. P. CODE (1898). S. 107—Scope.**

minimal Procedure, but it would interfere when the materials on which the orders are based are clearly insufficient to support the orders passed therein. (*Newbould and C. C. Ghose, J.J.*) NAFAR CHANDRA PAL CHOWDHURY v. EMPEROR. 76 I. C. 429=

25 Cr. L. J. 189=38 C. L. J. 198=

28 C. W. N. 23=A. I. R. 1924 Cal. 114.—S. 107—Scope.

—Dispute about the cultivation of a bund and a proclamation forbidding people on payment of fine and shoe-beating from picking fruit from a Ber tree do not come within the purview of S. 107. (*Subhedar, A.J.C.*) KASHIRAM HAZARI v. ASARAM.

120 I. C. 215=31 Cr. L. J. 20=1929 Cr. C. 532=A. I. R. 1929 Nag. 328.

**—Right to worship.**

The right to perform the puja of an idol or to have a share of the offerings made to the idol cannot be said to be a right of user of any land as provided in S. 145. If there is such a dispute between the parties which the Magistrate considers may lead to any breach of the peace he may take such steps as he considers necessary under S. 107. (*Walsley and B. B. Ghose, J.J.*) SURENDRA NATH BANERJEE v. SHOSHI BHUSAN SARKAK. 52 Cal. 959=42 C. L. J. 127=92 I. C. 223=27 Cr. L. J. 239=A. I. R. 1926 Cal. 437.

**—Costs.**

S. 545 of the Cr. P. Code does not apply to a case under S. 107; consequently an order directing the accused to pay costs of the complainant is *ultra vires*. (*Sulaiman, J.*) SHEO PRASAD v. MAHANJOO NANIA.

77 I. C. 828=5 I. R. A. Cr. 12=25 Cr. L. J. 476=A. I. R. 1924 All. 694.

**—Attachment.**

No order of attachment of property can be passed in a proceeding under S. 107. (*Neave, A.J.C.*) RAM SARUP v. EMPEROR. 25 Cr. L. J. 350=

77 I. C. 238=A. I. R. 1924 Oudh 345.

**—S. 107—Security.****—Surety considerations.**

In proceedings under S. 107 the amount of the surety bonds was small and there was no question that the persons offered as sureties were financially sound for the amounts of the bonds and that they were of respectable station in life. Held, that the plainest considerations of justice and fairplay demanded that these sureties ought to have been accepted. (*C. C. Ghose and Garlick, J.J.*) SATINDRA NATH SEN v. EMPEROR.

111 I. C. 394=48 C. L. J. 143=29 Cr. L. J. 842=11 A. I. R. 202.

**—Appeal.**

A bond under S. 107 is not given to any particular person but to the Court and no private party is entitled to appeal against an order refusing to forfeit it though it is open to the Magistrate to take action in revision. (*Daniels, A.J.C.*) SARJU v. THAKURAIN JAI RAJKUMAR.

77 I. C. 733=25 Cr. L. J. 445=A. I. R. 1925 Oudh 51.

**—Time for.**

Persons against whom orders are passed under S. 107 must be given sufficient time to furnish security. (*Das, J.*) MAUNG TIN U v. EMPEROR.

92 I. C. 702=27 Cr. L. J. 318=4 Bur. L. J. 172=A. I. R. 1925 Rang. 353.

**—Rejection of.**

As long as the security is ample, the Court is bound to accept the same without enquiring into the politics of the person standing surety. (*Das, J.*) MAUNG TIN U v. EMPEROR. 92 I. C. 702=27 Cr. L. J. 318=4 Bur. L. J. 172=A. I. R. 1925 Rang. 353.

**CR. P. CODE (1898), S. 109—Applicability.****—Rejection of, time for.**

The Magistrate if he is not satisfied with the sureties tendered should reject them within a reasonable time so as to give the accused an opportunity of offering fresh sureties. (*Das, J.*) MAUNG TIN U v. EMPEROR.

92 I. C. 702=27 Cr. L. J. 318=4 Bur. L. J. 172=A. I. R. 1925 Rang. 353.

**—S. 108—Condition.**

—To take proceedings under S. 108, Cr. P. Code, there ought to be evidence that, if not prevented the person accused would continue to act in the way in which he had done. (*Dalal, J.*) CHIRANJ LAL v. EMPEROR.

50 All. 854=26 A. L. J. 813=30 Cr. L. J. 216=114 I. C. 48=A. I. R. 1928 All. 344.

**—S. 108—Grounds.****—Solitary Act.**

Where the accused has committed one single offence at one particular time under S. 153-A and there is no evidence whatsoever of his having done so before, or of his having an intention of doing so in the immediate future, the proceedings under S. 108, Cr. P. Code, are not legally justified. (*Dalal, J.*) CHIRANJ LAL v. EMPEROR.

50 All. 854=26 A. L. J. 813=30 Cr. L. J. 216=114 I. C. 48=A. I. R. 1928 All. 344.

**—Proceedings under S. 153-A, I. P. Code.**

Merely disseminating matter is not sufficient. Intention to promote feeling of enmity is necessary. Court's opinion as to the effect of disseminated matter is not sufficient. Real intention of the accused must be looked at. (*Rankin and Mukerji, J.J.*) P. K. CHAKRAVARTI v. EMPEROR.

54 Cal. 59=44 C. L. J. 172=30 C. W. N. 953=27 Cr. L. J. 1154=97 I. C. 738=A. I. R. 1926 Cal. 1133.

—Merely because a person does not plead guilty and insists upon putting his case before the Court and taking its decision, to infer that it is necessary after the decision has been given to bind him over in order to prevent him from doing the same thing again as unwarranted. (*Rankin and Mukerji, J.J.*) P. K. CHAKRAVARTI v. EMPEROR.

54 Cal. 59=44 C. L. J. 172=30 C. W. N. 953=27 Cr. L. J. 1154=97 I. C. 738=A. I. R. 1926 Cal. 1133.

**—S. 108—Procedure.****—Resorting to S. 108 to save trouble of prosecution under S. 153-A, I. P. Code.**

Where proceedings are taken under S. 108, Cr. P. Code, against an accused convicted under S. 153-A, Penal Code, to avoid the trouble and possible refusal of Government to prosecute under the provisions of S. 153 A, Penal Code, the procedure is not permissible because, when the law has provided certain sanctions, it cannot be permitted that the same action may be taken without sanction by adopting a different course. (*Dalal, J.*) CHIRANJ LAL v. EMPEROR.

50 All. 854=26 A. L. J. 813=30 Cr. L. J. 216=114 I. C. 48=A. I. R. 1928 All. 344.

**—S. 109—Abuse of power.**

—The fact that a man does not work or that he was convicted previously for bad livelihood does not justify a magistrate, without being satisfied from the evidence that since his release he has no ostensible means of livelihood, to order him to furnish securities for good behaviour. (*Cuming and Mukerji, J.J.*) SHEIKH PIRU v. EMPEROR.

86 I. C. 666=41 C. L. J. 142=26 Cr. L. J. 842=A. I. R. 1925 Cal. 616.

**—S. 109—Applicability.****—Concealment.**

It is an entire mistake to read Cl. (a). of S. 109 as applying to any person who takes a step to conceal.



**CR. P. CODE (1898), S. 109—Applicability.**

himself in the sense of concealing his presence in the way in which a criminal conceals his presence when he goes in the dark or by a deserted road, or by some other secret means to commit a crime in his neighbourhood. (A.I.R. 1927 All. 50, Foll.) (*Rankin, C. J. and Patterson, J.*) *GAGAN CHANDRA DE v. EMPEROR.*

123 I. C. 747=31 Cr. L. J. 569=57 Cal. 949=  
1929 Cr. C. 519=34 C. W. N. 194=  
A. I. R. 1929 Cal. 775.

**—'Concealment'.**

S. 109 (a) refers to the case of a continuous act and not the case of an insulated effort of concealment. (22 C. W. N. 163, Rel. on.) (*Pearson and Patterson, J.J.*) *GOBRA BADIA v. EMPEROR.*

50 C. L. J. 181=  
122 I. C. 295=31 Cr. L. J. 408=  
1929 Cr. C. 365=A. I. R. 1929 Cal. 729.

**—Person convicted under S. 411.**

Where a petitioner has already been tried and convicted of an offence under S. 411, Penal Code, in respect of any particular incident, he cannot be proceeded against for the same incident also under S. 109, Cr. P. Code. The person having already been punished for his act and there being no other evidence against him, proceedings under S. 109, Cr. P. Code, are not justified. (*Tekchand, J.*) *LAL v. EMPEROR.*

29 Cr. L. J. 1043=112 I. C. 467=  
11 A. I. Cr. R. 397=A. I. R. 1928 Lah. 928.

—A man who is deliberately preparing to commit a burglary, and when caught by the police admits his intention, cannot be dealt with under the provisions of S. 109. (*Walsh and Banerji, J.J.*) *EMPEROR v. HIMAYUTULLAH.* 49 All. 844=8 L. R. A. Cr. 106=  
102 I. C. 503=28 Cr. L. J. 567=25 A. L. J. 679=  
8 A. I. Cr. R. 102=A. I. R. 1927 All. 592.

**—Persons brought under arrest—'Concealment'—Meaning of.**

The application of clause (a) cannot be limited only to cases where a person has not been brought under arrest, nor is it necessary in all cases to prove that the accused has followed a continuous course of conduct in taking precautions to conceal his presence. 22 C. W. N. 163 and 41 C. L. J. 142, Diss. from.

A person, whether he be of good or bad character, who merely shows a disinclination for the society of the police and endeavours to avoid them by running away on their approach cannot be said to come within the mischief aimed at in Cl. (a).

It is certainly undesirable to lay down any general principles as to the conditions which would bring a case within the purview of the clause, for the circumstances which may arise are so multiple and various, but there must be some definite attempt at concealment by taking precautions with that object in view, whether it be by disguise or otherwise, indicating a desire to hide the fact that the accused is present within the local limits of the Magistrate's jurisdiction. The clause is one which should be used with proper discretion and was never intended to apply to a person merely found talking at night time with bad characters in a place which is open to the public. (*Dawson Miller, C. J. and Foster, J.*) *RAMBIRICH AHIR v. EMPEROR.* 8 P. L. T. 95=  
1926 P. H. C. C. 290=27 Cr. L. J. 1128=  
97 I. C. 648=A. I. R. 1926 Pat. 569.

**—S. 109—Breach.****—Commission of offence under S. 452, I. P. Code.**

According to S. 121, the commission or attempt to commit or abetment of any offence punishable with imprisonment wherever it may be committed is a breach of bond taken under S. 109 or S. 110 for good behaviour. Where therefore a person is convicted of an offence

**CR. P. CODE (1898), S. 109—Grounds.**

under S. 452, Penal Code, and sentenced to imprisonment, a breach of bond does take place and it is liable to forfeiture. 15 P. R. 1903 Cr., Dist. (*Zafar Ali, J.*) *INDAR SINGH v. EMPEROR.*

I. R. 1930 Lah. 109=120 I. C. 605=  
1930 Cr. C. 240=31 Cr. L. J. 130=  
A. I. R. 1930 Lah. 227.

**—S. 109—Essentials.****—Mere concealment.**

Cl. (a) of S. 109 refers to a continuous act and does not apply to a case where there is a momentary effort at concealment to avoid detection or arrest. Passing under a false name or taking precautions to conceal one's presence or identity at a place amounting to a continuous course of conduct is what is meant by the clause. Moreover, such precautions for the purpose of concealment must be taken with a view to commit offence.

Accused was loitering on a certain road at 3 A. M. and caught by a constable as he attempted to conceal himself. Accused was an old offender.

*Held*, that a mere attempt at concealment on the approach of a constable was nothing and an old offender could not be expected to face a constable if found at that hour of the night. The attempt to conceal himself to avoid observation did not bring the accused within the mischief of the section (39 Cal. 456, Foll.) (*Cuming and Mukerjee, J.J.*) *SHEIKH PIRU v. EMPEROR.*

86 I. C. 666=41 C. L. J. 142=26 Cr. L. J. 842=  
A. I. R. 1925 Cal. 616.

**—S. 109—Grounds.**

—Where the accused persons give correct names and addresses when questioned by the police, the mere fact that they did not give satisfactory account of what they were doing at the time of arrest cannot justify action under S. 109. A. I. R. 1925 Cal. 616, Ref. (*Pearson and Patterson, J.J.*) *GOBRA BADIA v. EMPEROR.*

122 I. C. 295=31 Cr. L. J. 408=50 C. L. J. 181=  
1929 Cr. C. 365=A. I. R. 1929 Cal. 729.

—The only evidence against the accused was that he was seen coming out of a sugar-cane field at 10 p.m. by two persons who challenged him. He tried to run away, but was caught by them. It was found that he was a resident of a village near the place where he was arrested.

*Held*, that on these facts he cannot be ordered to be bound over under S. 109. (*Sulaiman, Ag. C. J. Boys, Banerji, Kendall and Weir, J.J.*) *EMPEROR v. BISHRAMBHAR.* 111 I. C. 448=26 A. L. J. 896=  
10 A. I. Cr. R. 353=9 L. R. A. Cr. 128=  
29 Cr. L. J. 864=A. I. R. 1928 All. 476 (F. B.).

—High Courts are reluctant to place restrictions upon the discretion of a Magistrate in administering S. 109, but the statutory provisions of the section are so stringent that it may be made an engine of oppression unless care is taken by Magistrates to prevent its abuse. The object of the section is to enable Magistrates to take action against suspicious strangers lurking within their jurisdiction. Merely to be penniless or out of work is not an offence. If a person is unable to prove the source of his livelihood he ought not to be ordered to execute a bond under Ss. 109 and 118 unless there is reasonable ground for suspecting that he is sustaining himself by dishonest means, for such an order can be made only where it is necessary for keeping peace or good behaviour.

In such a case the prosecution must satisfy the Magistrate that suspicion that he is living dishonestly attaches to the accused because of his failure to give a satisfactory explanation when called upon to account for his

**CR. P. CODE (1898), S. 109—Grounds.**

presence in the place where he is found. (*Page and Mukerji, J.J.*) **VICTOR v. EMPEROR.**

93 I. C. 961=53 Cal. 345=43 C. L. J. 202=  
30 C. W. N. 380=27 Cr. L. J. 497=  
A. I. R. 1926 Cal. 648.

—An attempt to avoid a police patrol does not bring a person, resident and shopkeeper in a town, within the ambit of S. 109. (*Le Rossignol, J.*) **FANDOO v. EMPEROR.**

94 I. C. 141=27 Cr. L. J. 573=  
A. I. R. 1926 Lah. 368.

—*Satisfactory account.*

The whole object of the latter part of cl. (b) is to enable the Magistrate to take action against suspicious strangers lurking within their jurisdiction. The expression "give a satisfactory account of himself" does not mean that the person should satisfy the Magistrate how he spends his time, but it means that he has satisfactorily accounted for his presence within the limits of the Magistrate's jurisdiction. It means that if a person is present within such limits or is present at a place within such limits, to which place he does not belong, and there are circumstances justifying a suspicion that he is there not for an innocent purpose, he has got to explain his presence.

Where the accused's explanation was that he came to the city in question about a month and a half before and that he worked as a cooly but had no fixed abode.

*Held:* that if true it was a satisfactory explanation as to his presence and the accused must be taken to have given a satisfactory account of himself. A finding that the accused has no work and no place to live in did not mean that the accused had not come to the city as he stated to work as a cooly or that he did not work as such at any time within the period, but was in the city for some ulterior object (*Cuming and Mukerji, J.J.*) **SHEIKH PIRU v. EMPEROR.**

86 I. C. 666=  
41 C. L. J. 142=26 Cr. L. J. 842=  
A. I. R. 1925 Cal. 616.

—*Not engaged in any work at the time of arrest.*

The fact, that about the time when the accused was arrested he could show no work in which he was engaged, does not necessarily mean that he had no ostensible means of subsistence. (*Cuming and Mukerji, J.J.*) **SHEIKH PIRU v. EMPEROR.**

86 I. C. 666=  
41 C. L. J. 142=26 Cr. L. J. 842=  
A. I. R. 1925 Cal. 616.

—Neither refusal to give names, nor giving false name first and true name afterwards, nor a desire to conceal business amount to concealing presence. (*Sulaiman, J.*) **SHEO PRASAD v. EMPEROR.**

81 I. C. 598=21 A. L. J. 847=  
4 L. R. A. Cr. 237=25 Cr. L. J. 950=  
A. I. R. 1924 All. 202.

—*Give a satisfactory account.*

*Per Full Bench.*—If the words "give a satisfactory account of himself" are given the meaning "explain what he was doing" or "explain his conduct" at any particular time or place it would make the scope of S. 109 (b) too wide. The legislature did not contemplate such an extension of its scope. The expression is somewhat akin to the other expression used in the same clause, namely "who has no ostensible means of subsistence." If a man is unable to explain his course of conduct, as distinct from failure to explain a momentary behaviour, he may very well come under the clause, but a man's failure to explain his presence does not bring him within the section. 8 A.L.J. 1097; 17 A.L.J. 432; and 17 A. L. J. 891, Rel. on. *Boys and Banerji, J.J. contra.* (*Sulaiman, A.C.J., Boys, Banerji, Kendal and Weir, J.J.*) **EMPEROR v. PHUCHAI.** 113 I. C. 417=

**CR. P. CODE (1898), S. 109—Jurisdiction.**

50 All. 909=26 A. L. J. 1257=9 L. R. A. Cr. 149=  
10 A. I. Cr. R. 531=30 Cr. L. J. 145=  
A. I. R. 1929 All. 33 (F.B.).

—*"Within the local limits"*

The words "within the local limits of such Magistrate's jurisdiction" are part of the predicate "to conceal his presence" and are not words defining the tribunal which has jurisdiction. A. I. R. 1927 All. 50, Foll. (*Walsh and Banerji, J.J.*) **EMPEROR v. HIMAYAT-ULLAH.**

102 I. C. 503=49 All. 844=  
8 L. R. A. Cr. 106=28 Cr. L. J. 567=  
25 A. L. J. 679=8 A. I. Cr. R. 102=  
A. I. R. 1927 All. 592.

—*"Satisfactory account"*

The words "satisfactory account" as used in S. 109 mean satisfactory in accordance with the known facts that are consistent with the surrounding circumstances. (*Walsh and Banerji, J.J.*) **EMPEROR v. HIMAYAT-ULLAH.**

102 I. C. 503=49 All. 844=  
8 L. R. A. Cr. 106=28 Cr. L. J. 567=  
25 A. L. J. 679=8 A. I. Cr. R. 102=  
A. I. R. 1927 All. 592.

—*"Concealment."*

It is an entire mistake to read that clause as applying to any person who takes steps to conceal himself, in the sense of concealing his presence in the way in which a criminal conceals his presence when he goes in the dark or by a deserted road, or by some other secret means to commit a crime in his own neighbourhood. The section does not contemplate such a situation. (*Walsh, A. C. J. and Pullan, J.*) **EMPEROR v. BHAIRON.**

97 I. C. 428=49 All. 240=  
7 L. R. A. Cr. 183=27 Cr. L. J. 1116=  
25 A. L. J. 94=A. I. R. 1927 All. 50.

—*"Within the local limits of such Magistrate's jurisdiction" must be read with "conceal his presence"*

—*"Jurisdiction."*  
The passage "within the local limits of such Magistrate's jurisdiction" is part of the predicate "to conceal his presence," and the offence, contemplated is that of a person, probably, although not necessarily, coming from outside the jurisdiction, into the Magistrate's jurisdiction for some nefarious purpose and taking precautions to conceal the fact that he is present in that jurisdiction. 8 A. L. J. 1097; 17 A. L. J. 891 and 17 A. L. J. 432, Rel. on. (*Walsh, A. C. J. and Pullan, J.*) **EMPEROR v. BHAIRON.**

97 I. C. 428=  
49 All. 240=7 L. R. A. Cr. 183=27 Cr. L. J. 1116=  
25 A. L. J. 94=A. I. R. 1927 All. 50.

**—S. 109—Jurisdiction.**

—Magistrate within whose jurisdiction concealment is to be effected has jurisdiction and not one within whose jurisdiction precautions are taken that has power to demand security. (*Sulaiman, A. C. J. Boys, Banerji, Kendall and Weir, J.J.*) **EMPEROR v. PHUCHAI.**

113 I. C. 417=50 All. 909=  
26 A. L. J. 1257=9 L. R. A. Cr. 149=  
10 A. I. Cr. R. 531=30 Cr. L. J. 145=  
A. I. R. 1929 All. 33 (F.B.).

—*Concealment to be effected at a certain place.*

If a person is concealing his presence in a part of the territorial limits of the jurisdiction he is necessarily concealing his presence within that jurisdiction also. Therefore if a man is taking precautions anywhere in order to conceal his presence, and that concealing is to be effected within the jurisdiction of a Magistrate who receives the information, such Magistrate has power to demand security even though the residence of the person informed against within the jurisdiction is well-known. 49 All. 240; A. I. R. 1927 All. 50; 97 I. C. 428 and 49 All. 844; A. I. R. 1927 All. 592; 102 I. C. 503,

**CR. P. CODE (1898), S. 109—Time Limit.**

(Overruled.) (*Sulaiman, A. C. J., Boys, Banerji, Kendall and Weir, JJ.*) **EMPEROR v. PHUCHAI.**

113 I. C. 417 = 50 All. 909 = 26 A. L. J. 1257 =

9 L. R. A. Cr. 149 = 10 A. I. Cr. R. 531 =

30 Cr. L. J. 145 = A. I. R. 1929 All. 33 (F. B.).

**--S. 109—Time limit.****—Taking precautions.**

Sub-section (a) cannot be interpreted too literally so as to necessitate the continuance of taking precautions till the information is received by the Magistrate. No time limit can be put on the taking of precautions. In every case it would be a question of fact whether the circumstances justify the inference that he has been taking precautions to conceal his presence and that there was the intention to commit an offence. 27 Cr. L. J. 382 and A. I. R. 1925 Cal 616, Diss. from. (*Sulaiman, A. C. J., Boys, Banerji, Kendall, and Weir, JJ.*) **EMPEROR v. PHUCHAI.** 113 I. C. 417 = 50 All. 909 = 26 A. L. J. 1257 = 9 L. R. A. Cr. 149 = 10 A. I. Cr. R. 531 = 30 Cr. L. J. 145 = A. I. R. 1929 All. 33 (F. B.).

**—S. 110.****Admissibility of evidence.****Appeal.****Bail.****Detention in jail.****Evidence of good character.****Exercise of powers.****Fresh proceedings.****General reputation.****Habitual offender.****Insufficient evidence.****Intention.****Joint trial.****Jurisdiction.****Notice.****Procedure.****Reference.****Revision.****Scope.****Surety.****Suspicion.****Miscellaneous.****—S. 110—Admissibility of evidence.****—Testimony of police officer.**

The testimony of police officer that a person is by habit a thief is inadmissible in evidence against a person against whom proceedings are instituted under S. 110 when such evidence is only a matter of opinion and hearsay. This fact, however, is not sufficient to set aside the order passed against him under S. 110 when the latest incident is coupled with two previous convictions on charges of his belonging to, and associated with, a gang of habitual thieves and robbers, 43 Mad. 450, Rel. on. (*Subbendar, A. J. C.*) **KONDIA v. EMPEROR.** 120 I. C. 734 = 31 Cr. L. J. 165 = 1930 Cr. C. 504 = A. I. R. 1930 Nag. 148.

**—Evidence of Reputation—Specific crimes but not evidence to bring home guilt to accused.**

In a case under S. 110, the Court is not considering whether the accused person has or has not committed a specific offence but whether his general reputation is such that security should be taken for his good behaviour. When evidence is taken as to reputation of bad behaviour the Court cannot and should not exclude the reasons which induced the members of the community to form a bad opinion of the accused person, and if their opinion is based, wholly or partly on the belief that the accused person committed a crime which has not been brought home to him the Court cannot rule out as in-

**CR. P. CODE (1898), S. 110—Admissibility of evidence.**

admissible all evidence on which the belief of the witness is based. Hence instances of specific crimes are admissible in evidence in these proceedings although they are not supported by evidence of such amount and value as would secure a conviction for the substantive offence. (A. I. R. 1922 Oudh 26, Appr.; A. I. R. 1925 All. 694, Rel. on.) (*Wazir Hasan, C. J. and Pullan, J.*) **JAI SINGH v. EMPEROR.** 6 Luck 36 =

I. R. 1930 Oudh 373 = 7 O. W. N. 493 =

126 I. C. 501 = 31 Cr. L. J. 1020 =

A. I. R. 1930 Oudh 357.

**—Repudiation—Nature and character of.**

A witness should not be allowed to state merely that an accused person is a "bad character" if he does not explain more precisely what he means by that expression. But when a witness starts by saying that a person is a "bad character" and immediately follows this up by saying that the person habitually commits theft, then there is no ambiguity about his meaning and his deposition is then relevant and admissible as evidence of general repute. A. I. R. 1928 All. 357, Ref. (*Ashworth and King, JJ.*) **EMPEROR v. KUMERA.**

I. R. 1930 All. 643 = 125 I. C. 19 =

31 Cr. L. J. 755 = 51 All. 275 =

1929 Cr. C. 346 = A. I. R. 1929 All. 650.

**—Previous convictions.**

The existence of a number of previous convictions of offences such as theft is a matter which may and should be taken into consideration as indicating the character and disposition of the accused. (*Boys and Sen, JJ.*) **EMPEROR v. RAM LAL.**

116 I. C. 25 = 51 All. 663 = 1929 A. L. J. 361 =

10 L. R. A. Cr. 66 = 11 A. I. Cr. R. 486 =

30 Cr. L. J. 562 = A. I. R. 1929 All. 273.

**—Suspicion—General repute.**

There are only two kinds of evidence which are properly admissible. Ordinarily speaking the case will be governed by exactly the same rules of evidence as govern any other cases. (1) A witness cannot say what he suspects. If the prosecution knows that the witness does suspect the accused of having taken part in a theft, the prosecution can question that witness before he is put into the witness box and ask him what are his reasons for suspecting the accused. They can themselves ascertain from the witness that facts are within his knowledge, and then put him into the witness-box to give evidence as to those facts, and it will be for the Magistrate to determine whether those facts alone as supported by other evidence create such a conviction in his mind as to justify calling for security. But a witness's 'suspicions' and his 'allegations' that the accused is a thief, etc. are worth nothing and should not be admitted. (2) In addition to this, the witness may be asked about his special means of knowledge as to the reputation of the accused. (*Boys and Sen, JJ.*) **EMPEROR v. RAMLAL.** 161 I. C. 25 =

51 All. 663 = 1929 A. L. J. 361 =

10 L. R. A. Cr. 66 = 11 A. I. Cr. R. 486 =

30 Cr. L. J. 562 = A. I. R. 1929 All. 273.

—The evidence going to show that a substantive offence had been committed, or, which might form the basis of a charge of a substantive offence is not necessarily to be excluded in proceedings under S. 110. A. I. R. 1925 All. 694, Foll. (*Iqbal Ahmad, J.*) **LACHMAN v. EMPEROR.** 8 L. R. A. Cr. 70 =

7 A. I. Cr. R. 482 = 102 I. C. 211 =

28 Cr. L. J. 515 = A. I. R. 1927 All. 473.

—Inquiries under Chap. 8 are governed by the ordinary rules of evidence, and evidence which is not admissible under the Evidence Act cannot be admitted

**CR. P. CODE (1898), S. 110—Admissibility of evidence.**

in proceedings under S. 110. 12 A. L. J. 937, Foll. (*Banerji, J.*) *RAJNARAYAN PANDEY v. KING-EMPEROR*. 101 I. C. 886 = 25 A. L. J. 393 =

8 L. R. A. Cr. 53 = 7 A. I. Cr. R. 353 = 28 Cr. L. J. 502 = A. I. R. 1927 All. 394.

**—Suspicion.**

The evidence that a person was suspected of having committed murders is not a class of evidence which is admissible for the purpose of binding over that person under S. 110. 11 A. L. J. 461, Rel. on. (*Banerji, J.*) *DIN DAYAL v. EMPEROR*. 99 I. C. 46 =

28 Cr. L. J. 8 = A. I. R. 1927 All. 146.

**—Weight of evidence**

The mere fact that some of the witnesses are persons who have had commercial dealings with the appellants, and others are persons of the same class and position as the appellant, is not a sufficient ground to exclude their evidence in a case under S. 110 (*Fforde, J.*) *SOHNA v. EMPEROR*. 97 I. C. 43 =

7 A. I. Cr. R. 159 = 27 Cr. L. J. 1067.

**—Evidence of substantive offence.**

Evidence going to show that a substantive offence had been committed, or evidence which might possibly form the basis of a charge of a substantive offence need not necessarily be excluded in proceedings under S. 110 and can form the basis of an order under S. 112 and a finding under S. 118. (1925 All. 250, Expl.) (*Boys and Banerji, J.J.*) *BUDHAN v. EMPEROR*. 88 I. C. 362 = 47 All. 733 = 23 A. L. J. 507 =

26 Cr. L. J. 1130 = 6 L. R. A. Cr. 129 = A. I. R. 1925 All. 694.

**—Acquittal of a particular charge.**

The fact that the accused person has been acquitted of a particular charge may diminish in many cases, and may even destroy wholly, the value of the evidence as to the allegations made against the accused in the case in which he was acquitted, but does not render it inadmissible. (*Boys and Banerji, J.J.*) *BUDHAN v. EMPEROR*. 88 I. C. 362 = 47 All. 733 =

23 A. L. J. 507 = 26 Cr. L. J. 1130 = 6 L. R. A. Cr. 129 = A. I. R. 1925 All. 694.

—When the charge against the accused is that of being a habitual robber, the facts that the accused gathered bad characters at his house does not go far enough to be in itself relevant. It would be necessary to show that these bad characters were robbers, or were gathered there for the purpose of robbery or theft. (*Boys and Banerji, J.J.*) *BUDHAN v. EMPEROR*. 88 I. C. 362 = 47 All. 733 = 23 A. L. J. 507 =

26 Cr. L. J. 1130 = 6 L. R. A. Cr. 129 = A. I. R. 1925 All. 694.

**—Opinion.**

If a witness is asked what the man's character is, and he were to say that in the general opinion of the man's neighbours the man is an habitual thief, that statement is 'evidence of general repute' and if he were to say that he did not know what the neighbours in general thought of the man, but his opinion was that the man was an habitual thief, that also would be admissible as evidence of the man's character. Evidence of what is generally said of a man by his neighbours is a direct evidence of the fact in issue. 5 O. C. 203 and 10 O. C. 132, Foll. Admissibility of a witness's answer depends upon the substance of it, not upon its form. The real test is whether the answer shows what is the general reputation of the man in question, and the opinion given by the witness need not be the opinion of the entire community but it must at least give the opinion of a considerable number of persons and not be merely a 'repetition' of what one or two persons have said to the

**CR. P. CODE (1898), S. 110—Evidence of good character.**

witness. (*Gokaran Nath, A. J. C.*) *KEWAL KISHORE v. KING-EMPEROR*. 89 I. C. 147 = 12 O. L. J. 413 = 26 Cr. L. J. 1283 = 29 O. C. 44 = A. I. R. 1925 Oudh 478.

—It is not an absolute rule of law that the repute under S. 110 should only be proved by immediate neighbours. The meaning of the word 'place' necessarily varies with the circumstances of the case. But where the witnesses are living at a considerable distance from the accused the Court should satisfy itself that the evidence is true. Evidence of witnesses sufficiently near is admissible. (*Carr and Godfrey, J.J.*) *EMPEROR v. PO YIN*. 85 I. C. 368 = 26 Cr. L. J. 528 = 4 Bur. L. J. 6 = 2 Rang. 686 = A. I. R. 1925 Rang. 174.

**—S. 110—Appeal.****—Retrial.**

An order of retrial can be passed only in cases of appeal against a conviction. In an appeal from any other order the appellate Court can only alter or reverse such an order. A District Magistrate, therefore while setting aside, on appeal, an order requiring a person to furnish security under S. 110, cannot remand the case for a *de novo* trial, i.e., for fresh enquiry. (*Zafar Ali, J.*) *CHANDAN v. EMPEROR*. 115 I. C. 544 = 30 Cr. L. J. 491 = 30 P. L. R. 416 = 12 A. I. Cr. R. 273 = A. I. R. 1929 Lah. 28.

**—S. 110—Bail.**

—Refusal of bail is contrary to the spirit of the provisions of Ch. 8. The object of this Chapter is to prevent a suspect from committing offences and to allay public apprehensions, and that object is sufficiently attained by requiring him to find sureties. (*Rupchand Bilaram, A. J. C.*) *JATOI v. EMPEROR*. 96 I. C. 391 = 20 S. L. R. 122 = 27 Cr. L. J. 935 = A. I. R. 1926 Sind 288.

**—S. 110—Evidence of good character.**

—Where a large body of apparently respectable witnesses of the neighbourhood testify to the good character of the accused as against meagre prosecution evidence or the evidence of police officers, an order demanding security is not justifiable. 37 P. W. R. 1910 (Cr.), Foll. When as good witnesses come forward to state that a man's reputation is good as those who state the contrary it cannot be said that his reputation is bad, unless there is something to corroborate the witnesses against him. 2 P. R. 1898, Cr., Foll. (*Addison, J.*) *KUNDAN v. EMPEROR*. 9 Lah. 133 =

28 Cr. L. J. 813 = 104 I. C. 253 = 29 P. L. R. 368 = A. I. R. 1928 Lah. 49.

—Where a number of witnesses who are considered to be respectable and reliable by the Court have deposed that the accused are men of good character, this is quite sufficient to entitle them to an acquittal. (*Dalal, J. C.*) *BAHADUR v. EMPEROR*. 85 I. C. 370 = 26 Cr. L. J. 530 = 27 O. C. 327 = A. I. R. 1925 Oudh 501.

**—Rejection of.**

The Court ought to pay particular attention to evidence adduced on behalf of the accused who speak of his good character; without substantial reasons it should not disbelieve such evidence. (*Kulwarit Sahay, J.*) *RAMALOGAN v. EMPEROR*. 81 I. C. 633 =

5 P. L. T. 166 = 2 Pat. L. R. Cr. 98 = 25 Cr. L. J. 985 = A. I. R. 1924 Pat. 500.

—Where proceedings under S. 110 are taken against a person and he is able to produce witnesses on his behalf to speak of his good character, the Court ought to pay particular attention to such evidence. The Court should find substantial reason for not believing

**CR. P. CODE (1898), S. 110—Exercise of Powers.**

the evidence before it makes an order. Powers given by the Code under S. 110 should be exercised with extreme caution and with very great discretion. A person must be found upon evidence to have habitually committed or attempted to commit offences before he could be bound down to be of good behaviour. 31 I. C. 826, Foll. (*Kulwant Sahay, J.*) **SHAIKH AMJAD ALI v. KING-EMPEROR.** 75 I. C. 723=5 F. L. T. 129=

2 Pat. L. R. Cr. 79=25 Cr. L. J. 35=  
A. I. R. 1924 Pat. 498.

**—S. 110—Exercise of powers.****Evidence of substantive offence.**

The mere fact that there is an allegation of a substantive offence is no obstacle to the using of the evidence such as it is in regard to the commission of that offence in proceedings under S. 110. A. I. R. 1929 All. 813 and A. I. R. 1925 All. 250, Overruled; A. I. R. 1925 All. 694, Ref. (*Boys and Young, J.J.*) **CHANDAN v. EMPEROR.** 1930 A. L. J. 389=31 Cr. L. J. 627=1930 Cr. C. 442=124 I. C. 40=52 All. 448=

A. I. R. 1930 All. 274.

**Isolated instance.**

An isolated instance of violence of a young zamindar on which no report was made would not be a sufficient cause for taking action against him under S. 110. (*Wasir Hasan, C. J. and Pullan, J.*) **JAI SINGH v. EMPEROR.** 6 Luck. 36=I. R. 1930 Oudh 373=

126 I. C. 501=31 Cr. L. J. 1020=  
7 O. W. N. 493=A. I. R. 1930 Oudh 357.

**What must be considered.**

But the existence of such convictions is not by itself sufficient to justify ordering the accused to furnish security. Weight must be given to a consideration of the period that has elapsed subsequent to the last of two convictions in order to see whether during that period the accused has apparently shown a disposition to conduct himself properly or whether there are indications that he has during that period continued in his previous course, though he may not have actually brought himself within the clutches of the law. (*Boys and Sen, J.J.*) **EMPEROR v. RAM LAL.**

116 I. C. 25=51 All. 663=1929 A. L. J. 361=  
10 L. R. A. Cr. 66=11 A. I. Cr. R. 486=  
30 Cr. L. J. 562=A. I. R. 1929 All. 273.

**Person undergoing sentence under S. 109, Cr. P. Code.**

Where a person resided within the jurisdiction of a Magistrate and habitually committed thefts and disposed of stolen property within his jurisdiction, the mere fact that he absconded and was brought back to the jurisdiction of the Magistrate and that an order had meanwhile been passed by another Magistrate sentencing him to 12 months' rigorous imprisonment in default of giving security on proceedings initiated under S. 109 does not oust the jurisdiction of the former Magistrate to take action under S. 110. 46 Cal. 215 Ref. (*Barlee, J. C. and Aston, A. J. C.*) **EMPEROR v. FATEH.**

23 S. L. R. 438=117 I. C. 777=1929 Cr. C. 335=  
30 Cr. L. J. 849=A. I. R. 1929 Sind 166.

**Substantive offence.**

The legislature did not desire that the provisions of S. 110 should be applied to a person suspected of harbouring dacoits, the intention being that such a man should be dealt with under the substantive portion of the Penal Code, i.e., S. 216-A. (*Dalal, J.*) **MANNI LAL AWASTHI v. EMPEROR.** 51 All. 459=

11 A. I. Cr. R. 250=10 L. R. A. Cr. 34=  
30 Cr. L. J. 694=116 I. C. 804=1929 A. L. J. 93=  
A. I. R. 1928 All. 682.

**Consent of accused.****CR. P. CODE (1898), S. 110—Exercise of Powers.**

Under S. 107, a Court is entitled to act upon a solemn and free consent amounting to a plea of guilty given before it by the person summoned. In such cases the person summoned might waive the formal production of evidence. A. I. R. 1924 All. 269, Appi.

*Obiter.*—Under S. 110 the procedure is somewhat different, but the principles applicable are not necessarily different. 34 Mad. 139 and 54 I. C. 784, Cons. (*Walsh and Banerji, J.J.*) **EMPEROR v. KISHAN NARAIN.**

112 I. C. 774=30 Cr. L. J. 6=  
9 L. R. A. Cr. 39=9 A. I. Cr. R. 291=  
26 A. L. J. 312=50 All. 599=  
A. I. R. 1928 All. 270

**Should not be used as a weapon in case substantive offence failing.**

In cases where proceedings under S. 110 follow soon after a discharge or an acquittal, the Court, before passing an order binding over the person proceeded against, must be satisfied that the proceeding under S. 110 was not instituted with a view to get him punished when the police had failed to secure his conviction for a substantive offence and, as such in such cases the Courts are called upon to scrutinise the evidence with the greatest care. But if, notwithstanding such a scrutiny of evidence, the Court comes to the conclusion that there is sufficient evidence to warrant an order demanding security, the Court is bound to pass such an order. 6 A. L. J. 487, Foll. (*Iqbal Ahmed J.*) **LACHMAN v. EMPEROR.** 8 L. R. A. Cr. 70=7 A. I. Cr. R. 482=102 I. C. 211=28 Cr. L. J. 515=A. I. R. 1927 All. 473.

**Criminal tribes.**

Person registered as member of criminal tribe may be proceeded against under S. 110—Each case will depend on its own facts but as in such cases evidence of repute will chiefly be of the fact of his being a member of the criminal tribe, the evidence should be acted upon with great caution and scrutiny. (*Mukerji and G. M. Roy, J.J.*) **BADU MIR v. EMPEROR.** 54 Cal. 279=

31 C. W. N. 165=44 C. L. J. 314=99 I. C. 234=  
28 Cr. L. J. 106=7 A. I. Cr. R. 243=  
A. I. R. 1927 Cal. 213.

**Acquittal of substantive offence.**

Where in a case under S. 411, I. P. Code, the accused is acquitted and immediately an order was passed against him under S. 110 of the Cr. P. Code.

*Held*, that he should not have been restricted under S. 110, Cr. P. Code, immediately after without a very strong case being made out against him. (*Harrison, J.*) **ABDULLAH v. EMPEROR.** 26 P. L. R. 789=

27 Cr. L. J. 190=91 I. C. 1006=  
A. I. R. 1926 Lah. 190.

**Burma Opium Act, S. 3.**

A person who earns his living in whole or in part by unlawful sale of opium, can be placed on security under S. 3, but an order of restriction cannot be passed under S. 7 on those grounds. 2 Rang. 61, Diss. from. (*Carr and Duckworth, J.J.*) **EMPEROR v. NGA KYAW HLA.** 98 I. C. 714=4 Rang. 123=5 Bur. L. J. 78=

27 Cr. L. J. 1402=A. I. R. 1926 Rang. 182.

—It is hard on accused to put them on their trial under the Badmashi Chapter shortly after they are released from jail, since they have no sufficient opportunity to reform. (*Kennedy, J.C. and Rupchand Bilaram, A. J. C.*) **THANWOR v. EMPEROR.** 19 S. L. R. 176=

26 Cr. L. J. 1398=89 I. C. 710=  
A. I. R. 1926 Sind 69.

**Acquitted of substantive offence of dacoity.**

There is no legal bar to a prosecution for bad livelihood of men acquitted of the substantive offence of dacoity, but in weighing evidence such a matter is to be.

**CR. P. CODE (1898), S. 110—Exercise of powers.**

taken into consideration as indicating the desire of the Police to get rid of the presence of such men from villages whether satisfactory evidence of their bad character be available or not. (*Dalal, J. C.*) **BAHADUR v. EMPEROR.** 85 I. C. 370=27 O. C. 327=

26 Cr. L. J. 530=A.I.R. 1925 Oudh 501.

**—Discharge of substantive offence.**

Where a man has been arrested on a substantive charge but released for the reason that that charge could not be sustained, a prosecution under S. 110 on the same evidence on which the charge for the substantive offence was founded or on evidence which arose as a natural sequel to the charge of the substantive offence is not desirable. But if the evidence in support of the charge under S. 110 is antecedent to charge for the substantive offence and is wholly independent of it, the proceedings under S. 110 are not illegal. (*Wazir Hasan, A. J. C.*) **SITAL DIN v. THE KING-EMPEROR.**

77 I. C. 302=25 Cr. L. J. 366=  
A. I. R. 1925 Oudh 49.

**—Considerations as to vigilance of police.**

Though the Magistrate should take all precautions possible before ordering security to be furnished, if the evidence actually taken is sufficient to prove that the accused is a fit person to be placed on security, that is all that the law requires. The Magistrate should not consider whether the police and village authorities could not ensure good behaviour on the part of the accused if they exerted themselves more in executing their duties. (*Carr and Godfrey, J.J.*) **EMPEROR v. PO YIN.**

85 I. C. 368=26 Cr. L. J. 528=4 Bur. L. J. 6=  
2 Rang. 686=A. I. R. 1925 Rang. 174.

—The powers conferred by S. 110 ought not to be exercised unless the information is precise and the subsequent inquiry supports the information by evidence which is satisfactory. (*Rupchand Bilaram, A. J. C.*) **KHAIRO v. EMPEROR.** 83 I. C. 337=19 S. L. R. 96=25 Cr. L. J. 1377=A. I. R. 1925 Sind 204.

**—Burma Opium Act, S. 3.**

The effect of S. 3, Burma Opium Law Amendment Act is to introduce an additional ground on which S. 110 of the Code can be applied. (*May Oung, J.*) **EMPEROR v. NGA KYAUNG.** 2 Rang. 61=3 Bur. L. J. 17=81 I. C. 546=25 Cr. L. J. 930=A. I. R. 1924 Rang. 244.

**—S. 110—Fresh Proceedings.****—Fresh evidence.**

Where the accused was run in under S. 110 and was discharged on a finding that the prosecution had entirely broken down and proceedings were again started against him only seven months afterwards, under the same section,

*Held*, that under these circumstances it was obviously the duty of the Courts to be very careful to see that there was sufficient evidence of accused's conduct after the conclusion of the previous proceedings to justify fresh proceedings being started against him after so short an interval. (*Daniels, A.J.C.*) **SHAKUR v. KING-EMPEROR.** 26 O. C. 242=73 I. C. 261=

24 Cr. L. J. 565=A. I. R. 1924 Oudh 84.

**—S. 110—General reputation.****—Tangible facts.**

The object of S. 110 is to offer protection to the members of the public and is not intended to be an engine of oppression. The Courts below have got, in all cases coming up either under Ss. 108, 109 or 110, to pay strict regard to the question whether the evidence produced is legal evidence in the case on the question of repute. Nothing is more easy than to put forward a general charge against a certain person that he is a burglar and

**CR. P. CODE (1898), S. 110—General reputation.**

thief. The said statement has got to be tested in the light of tangible facts and particulars, if there are any such facts to support the story. If there are no such facts, the evidence loses its value (*Young and Sen, J.J.*) **EMPEROR v. KUDUA BARI** 121 I. C. 559=

1930 Cr. C. 53=31 Cr. L. J. 301=  
A. I. R. 1930 All. 37.

—In a case under S. 110, Cr. P. Code, the Court is not considering whether the accused person has or has not committed a specific offence but whether his general reputation is such that security should be taken for his good behaviour. When evidence is taken as to reputation of bad behaviour, the Court cannot and should not exclude the reasons which induced the members of the community to form a bad opinion of the accused person and if their opinion is based wholly or partly on the belief that the accused person committed a crime which had not been brought home, the court cannot rule out as inadmissible all evidence on which the belief of the witness is based. Meaning of general reputation indicated. (*Hasan, C.J. and Pullan, J.*) **JAI SINGH v. EMPEROR.** 6 Luck 36=I. R. 1930 Oudh 373=

126 I. C. 501=31 Cr. L. J. 1020=7 O.W.N. 493=  
A. I. R. 1930 Oudh 357.

**—Testing of evidence.**

The mere production of a string of witnesses, who say that an accused person's general repute is so and so, can carry very little weight unless some attempt has been made to show that he is a person in a position to know the general repute, and there has been some reasonable attempt by the counsel for the accused or by the Court to check the value of the evidence. (*Boys and Sen, J.J.*) **EMPEROR v. RAM LAL.** 116 I. C. 25=51 All. 663=1929 A.L.J. 361=10 L.R.A. Cr. 66=11 A. I. Cr. R. 486=30 Cr. L. J. 562=A. I. R. 1929 All. 273.

**—Evidence as to,**

A witness can come into Court and say "This man is by general repute an habitual thief." Whether this evidence is worth anything will depend upon his position, his partiality or impartiality and whether the defence have by cross-examination been able to show that the witness has no real grounds for saying that he has knowledge of the general reputation of the man in the dock. Such evidence of general repute does not offend against the rule against hearsay evidence. This is not hearsay. It is direct evidence given on the basis of the witness's own knowledge of a fact, the fact that people are talking about this man in a certain way, the fact that he has such a general reputation. (*Boys and Iqbal Ahmed, J.J.*) **EMPEROR v. BABU RAM.** 8 L.R.A. Cr. 163=8 A.I. Cr. R. 557=26 A.L.J. 99=29 Cr. L. J. 92=106 I.C. 684=A.I.R. 1928 All. 1.

**—Suspicion.**

The general reputation of a man is that which he bears among his fellow-townsmen and mere suspicion of complicity in this or that offence is not evidence of general reputation. A.I.R. 1928 Lah. 49, Foll. (*Addison, J.*) **GHULAM MAHOMMAD v. EMPEROR.**

113 I. C. 909=30 Cr. L. J. 220=12 A.I. Cr. R. 112.

—Mere suspicion of complicity in this or that isolated offence of general reputation. A man's general reputation is that which he bears amongst the fellow-townsmen or in the neighbourhood in which he lives. (*Addison, J.*) **KUNDAN v. EMPEROR.** 9 Lah. 133=28 Cr. L. J. 813=104 I. C. 253=29 P.L.B. 368=A. I. R. 1928 Lah. 49.

**—Good character.**

The general reputation of a man is that which he bears amongst his fellow townsmen or in the neighbour-



**CR. P. CODE (1898), S. 110—General reputation.**

hood in which he lives. Where such persons depose to good character of a man proceeded against under S. 110 and there is no other evidence worth the name coming forth against him, he cannot be bound over under S. 110. (*Addison, J.*) **RAHMAN v. EMPEROR.** 110 I. C. 674=10 A.I.Cr. R. 529=29 P. L. R. 539=29 Cr. L. J. 738.

**—Nature of evidence.**

In absence of strong evidence of repute which is of universal kind, order under S. 110 should not be passed. Evidence of an avowed enemy cannot be worth very much. (*Scott-Smith, J.*) **WALI MUHAMMAD KHAN v. EMPEROR.** 25 Cr. L. J. 808=81 I. C. 344=A.I.R. 1925 Lah. 166.

—"Evidence of general repute" means, with reference to a man's character, evidence as to his general character founded on the general opinion of the neighbourhood in which he lives. Such evidence need not show that such general opinion is based on the personal knowledge of the man by his neighbours generally nor that such general opinion has been publicly expressed by the neighbours. (*Gokaran Nath, A. J. C.*) **KEWAL KISHORE v. KING-EMPEROR.** 89 I. C. 147=12 O.L.J. 413=26 Cr. L. J. 1283=29 O.C. 44=A. I. R. 1925 Oudh 473.

—A man's general reputation is the reputation which he bears in the place in which he lives among the inhabitants of that place. Though this definition may be accepted as correct in the great majority of cases it can hardly be recognised as conclusive. (*Carr and Godfrey, J.J.*) **EMPEROR v. PO YIN.** 85 I. C. 368=26 Cr.L.J. 528=4 Bur.L.J. 6=2 Rang. 686=A. I. R. 1925 Rang. 174.

**—Nature of the evidence of.**

The rule, that in order to satisfy himself that an accused's general repute is that of an habitual offender of one of the types mentioned, a Magistrate should require more evidence than that of policemen and village authorities, is not a rule of law and a Magistrate must, in each case, weigh the evidence and decide as to its sufficiency. 2 L.B.K. 166, Ref. & Expl. (*May Oung, J.*) **NGA PAN YIN v. EMPEROR.** 76 I. C. 709=2 Bur. L. J. 153=1 Rang. 447=25 Cr. L. J. 245=A. I. R. 1924 Rang. 22

**—S. 110—Habitual offender.****—Previous order under S. 110, Cr.P. Code**

The fact that a person has been bound over previously under S. 110, may be stated and proved as one of the grounds on which the witnesses to general repute believe the accused to be a habitual offender. The value to be attached to the proof of a previous order under S. 110, is, of course, a question for the Court to consider. (*Ashworth, and King, J.J.*) **EMPEROR v. KUMERA.** 51 All. 275=1929 Cr. C. 346=125 I.C. 19=31 Cr. L. J. 755=A. I. R. 1929 All. 650.

**—Who is.**

Habit has to be proved by an aggregate of facts and it would be straining the provisions of S. 110, if it were to be held that a man being suspected mainly by the police in four thefts after he had been acquitted on a charge of theft amounted to sufficient evidence of habit. (*Broadway, J.*) **RAHMAN v. EMPEROR.** 109 I.C. 510=10 A.I.Cr.R. 355=10 L.L.J. 317=29 Cr.L.J. 574.

**—Meaning of.**

The word "habit" implies a tendency or capacity resulting from the frequent repetition of the same acts. The words "by habit" and "habitually" imply frequent practice or use. The words have been used in S. 110 in the sense of depravity of character as evidenced by the frequent repetition or commission of offences mentioned

**CR. P. CODE (1898), S. 110—Insufficient evidence.**

in the section. (*Jwala Prasad, J.*) **BHUBANESHWAR KUAR v. KING-EMPEROR.** 6 Pat. 1=28 Cr. L. J. 359=100 I. C. 967=8 P.L.T. 335=A.I.R. 1927 Pat. 126.

**—Dangerous to society.**

Where certain persons have executed an agreement between themselves and rightly or wrongly they believe that the agreement is a valid agreement and if in enforcing the same in an improper way they commit offences, they cannot be said to have acquired the habit of committing those offences or that they were habitually offenders so as to bring them within the purview of Cls. (a) to (e) of S. 110. But where the course of their conduct shows that they have become desperate and dangerous and therefore it is not safe to let them wander about at large, they can be bound down to be of good behaviour under Cl. (f). (*Jwala Prasad, J.*) **BHUBANESHWAR KUAR v. KING-EMPEROR.** 6 Pat. 1=28 Cr. L.J. 359=100 I. C. 967=8 P.L.T. 335=A.I.R. 1927 Pat. 126.

**—Guilty of substantive offence.**

Sec. 110 does not provide for any person being called upon to furnish security on the ground that he was by habit a dacoit and belonged to a gang of dacoits. Being a member of a gang of dacoits is a definite offence defined and punishable under the Penal Code and it cannot be permitted that instead of the specific charge being tried in a proper Court on a proper evidence, the person should be indirectly punished by proceedings under the preventive sections. (*Mukerji, J.*) **RAM PRASAD v. EMPEROR.** 23 A.L.J. 18=26 Cr. L.J. 746=6 L. R. A. Cr. 45=86 I. C. 282=A.I.R. 1925 All. 250.

**—Meaning of.**

The word "habit" means persistence in doing an act, a fact which is capable of proof by adducing evidence of the commission of a number of similar acts. "Habitually" must be taken to mean repeatedly or persistently. (*Kotval, A.J.C.*) **LOCAL GOVERNMENT v. HANMANT RAO.** 75 I. C. 764=25 Cr. L. J. 60=A.I.R. 1924 Nag. 19.

**—S. 110—Insufficient evidence.**

—Belief of prosecution witnesses of accused being man of desperate and dangerous character based upon suspicion that accused committed crime and certain acts of oppression—But Court holding suspicion not proved and acts of violence only youthful frolics—Many other persons including accused's tenants deposing to his being peaceful citizen and good landlord—Court should not demand security. (*Wazir Hasan, C.J. and Pullan, J.*) **JAI SINGH v. EMPEROR.** 6 Luck. 36=I. R. 1930 Oudh 373=7 O.W.N. 493=126 I.C. 501=31 Cr. L. J. 1020=A. I. R. 1930 Oudh 357.

—An order under S. 110 cannot be maintained unless the record upon which the order is passed is such that it proves conclusively the charge read out to the accused person under that section. (*Banerji, J.*) **DIN DAYAL v. EMPEROR.** 99 I. C. 40=23 Cr. L. J. 8=A.I.R. 1927 All. 146.

—S. 110 provides six categories of cases within one or more of which the offender's case must come in order that a penalty may be imposed in accordance with that section. When a person is sought to be proceeded against under this section it must be made clear as to which sub-section he is charged. It is not enough merely to assert that he is a person of criminal tendencies or that he is suspected of having committed certain crimes or to charge him generally with having committed an offence under S. 110. Moreover, the evidence must prove the accused person to come within one or more of the



**R. P. CODE (1898), S. 110—Insufficient evidence.**

descriptions set out in the section. General evidence of the accused's bad character and of his association with people of bad character does not bring his case within the provisions of S. 110. Evidence of general ill-repute is not sufficient to base an order under S. 110, nor can the accused person be condemned upon suspicion. (*Fforde, J.*) **SOHAN SINGH v. EMPEROR**

28 Cr. L. J. 1377 = 89 I. C. 513 =  
A. I. R. 1926 Lah. 45.

**—Prosecution witnesses enemies of accused.**

Where the prosecution witnesses were mostly enemies of the accused and they were men of influence so as to procure a large number of people to speak as to the general bad character of the accused.

*Held*, the accused should not be convicted on such evidence especially when there was a large number of persons who deposed to his good character. (*Dalal, A. J. C.*) **GUR DAVAL v. EMPEROR**. 83 I. C. 659 = 26 Cr. L. J. 99 = A. I. R. 1925 Oudh 277.

—Evidence to prove the charge against the accused under S. 110, Cls. (a) (d) and (f) should not be vague, general and of hearsay character. (*Jwala Prasad, J.*) **DEODHARI PANDEV v. EMPEROR**. 86 I. C. 274 = 6 P. L. T. 810 = 1925 P. H. C. C. 6 = 26 Cr. L. J. 738 = A. I. R. 1925 Pat. 131.

**—Private knowledge of Magistrate.**

Private knowledge of a Magistrate is not in itself substantive evidence which may be used against the accused, but it is a form of check which the trial Court may legitimately use in order to test the nature of the evidence with which it has to deal, and to negative, for example, a suggestion that the police investigation has been unfair. A finding for example that "inquiries about the accused satisfy me that he is a badmash," would be objectionable, but "the result of my inquiries in the neighbourhood, so far as they appear in the case of this accused tend to show that the case against him has not been got up without reason," would be quite legitimate. 23 All. 596, Expl. (*Walsh, J.*) **DARBARI SINGH v. EMPEROR**. 81 I. C. 269 = 45 All. 749 = 25 Cr. L. J. 781 = A. I. R. 1924 All. 451.

**—Offence for which accused was not charged.**

Evidence showing that the applicant took part in a dacoity, that he was actually arrested in connection with the dacoity but the police considered the evidence against him of so little value that he was released under S. 169 of Cr. P. C. without even being placed before the Court, is totally insufficient for binding the accused over on a charge of being a bad character. (*Daniels, J.*) **JHANDOO SINGH v. KING-EMPEROR**. 75 I. C. 733 = 4 L. R. A. Cr. 216 = 25 Cr. L. J. 45 = A. I. R. 1924 All. 142.

**—Vague.**

Where the only evidence against the applicant was that the applicant was a thief and the neighbourhood believed in such a rumour, but there was no evidence as to who the applicant's associates were, what were his means of subsistence or whether increase of thefts synchronised with his appearance in any particular locality.

*Held*, that an order against the applicant was not justified. (*Dalal, A. J. C.*) **RAGHU DETTA v. EMPEROR**. 74 I. C. 535 = 24 Cr. L. J. 791 = A. I. R. 1924 Oudh 187.

—Instances of mere suspicion are not sufficient in order to bind down a person to be of good behaviour under S. 110. The evidence in such a case must be evidence by which the petitioner is proved to have been concerned or some direct evidence to establish the complicity of the petitioner in such cases. The evidence

**CR. P. CODE (1898), S. 110—Joint trial.**

ought to be of such a nature as to lead to a reasonable and definite ground for coming to the conclusion that the petitioner is a habitual offender. (*Kulwant Sahay, J.*) **SHAIKH AMJAD ALI v. KING-EMPEROR**. 75 I. C. 723 = 5 P. L. T. 129 = 2 Pat. L. R. Cr. 79 = 25 Cr. L. J. 35 = A. I. R. 1924 Pat. 498.

**—S. 110—Intention.**

—Sec. 110 is intended to put a curb upon the activities of persons who set the ball of discord in motion and try to create or foment dissensions between man and man or between one community and another in matters which result in or have a tendency to result in breach of peace. (*Sen, J.*) **ALAVAR KHAN v. EMPEROR**.

I. R. 1930 All. 17 = 120 I. C. 193 = 31 Cr. L. J. 1 = 1930 Cr. C. 39 = 1930 A. I. J. 254 = A. I. R. 1930 All. 23.

—What S. 110 desires to guard against is the freedom of a dangerous man without security and not freedom entirely. (*Dalal, J.*) **BENI SING v. EMPEROR**. 117 I. C. 346 = 10 L. R. A. Cr. 99 = 30 Cr. L. J. 756 = 12 A. I. Cr. R. 72 = 1929 Cr. C. 174 = A. I. R. 1929 All. 608.

**—S. 110—Joint trial.**

—Joint inquiries under S. 117 are not illegal even where part of the inquiry is under Cl. (f), S. 110. The evidence of reputation admitted against the several persons should of course not be against each accused separately but against them all together. A. I. R. 1925 Mad. 189 and 27 Cal. 781, Not Foll.; A. I. R. 1923 Cal. 35, Rel. on. (*Pandalas, J.*) **APPASAMY MUDALI, In re**. 54 Mad. 334 = 128 I. C. 449 = 1930 M. W. N. 1045 = 1930 Cr. C. 1149 = 32 M. L. W. 743 = A. I. R. 1930 Mad. 878 = 59 M. L. J. 853.

**—Where action is also taken under cl. (f).**

Joint trial must be condemned as prejudicial to the accused, where proceedings are taken against the accused not only for conduct coming within S. 110, Cls. (d) and (e) but also under Cl. (f) for the reason that they are so desperate and dangerous as to make their being at large without security hazardous to the community, and where the accused are tried jointly and evidence pertaining exclusively to the nefarious acts of each of the accused is let in addition to the evidence as to the events in which it is alleged that they are associated together and the Magistrate passes an order against them on a consideration of the entire evidence thus introduced into the record against all the accused. (*Madhavan Nair, J.*) **KUTTI GOUNDAN, In re**. 86 I. C. 49 = 26 Cr. L. J. 673 = 47 M. L. J. 689 = 1925 M. W. N. 57 = A. I. R. 1925 Mad. 189.

**—Committing violence jointly.**

Where there is evidence of joint acts committed by the two accused and some of the evidence applies to one and some to the other, the joint trial of the two accused under S. 110 is not illegal. A. I. R. 1923 All. 35, Expl. (*Baker, J. C.*) **SHAMSUDDIN v. EMPEROR**.

88 I. C. 282 = 26 Cr. L. J. 1114 = A. I. R. 1925 Nag. 381.

**—When can be allowed.**

It is very hard, to any set of defendants to charge them together, unless the whole of the evidence against all of them is precisely the same and they are to be dealt with on the same facts, and compel them to fight each his own individual battle during a prolonged enquiry, a great deal of which concerns for the moment only one out of the general body. (*Walsh, J.*) **ANGNOO SINGH v. EMPEROR**. 71 I. C. 865 = 20 A. L. J. 881 = 45 All. 109 = 24 Cr. L. J. 257 = A. I. R. 1923 All. 35.

## CR. P. CODE (1898).

## —S. 110—Jurisdiction.

## —Date of report.

Person proceeded against under S. 110 at Barisal was in a jail in Calcutta on the date of the making of report against him by the police, on which report the inquiry was founded.

*Held*, that the persons proceeded against being outside the local limits of the jurisdiction of the Magistrate of Barisal he had no jurisdiction to hold the proceedings. (*C. C. Ghose and Garlick, J.J.*) SATINDRA NATH SEN v. EMPEROR. 111 I. C. 394 = 48 C. L. J. 143 = 29 Cr. L. J. 842 = 11 A. I. Cr. R. 202.

## —Permanent residence.

There is nothing in S. 110 to support the plea that the person complained against should be a permanent resident within the jurisdiction of the Magistrate in whose Court proceedings are taken. (36 Mad. 96, Foll.) (*Kincaid, J.C.*) GHULAM KADIR v. EMPEROR.

98 I. C. 109 = 20 S. L. R. 310 = 27 Cr. L. J. 1261 = A. I. R. 1927 Sind 59.

## —Convenience.

The fact that it would be inconvenient for the person against whom proceedings have been started under S. 110 to summon witnesses from the place of his residence is no ground for transferring the case to the Court within whose jurisdiction such a person resides. (14 A. L. J. 1074, Rel. on.) (*Kincaid, J.C.*) GHULAM KADIR v. EMPEROR. 98 I. C. 109 = 20 S. L. R. 310 = 27 Cr. L. J. 1261 = A. I. R. 1927 Sind 59.

## —S. 110—Notice.

## —Specific offence.

When charge in the notice under S. 110 amounts to definite and specific offence, preventive sections could not be used. A. I. R. 1925 All. 250, Foll.; A. I. R. 1925 All. 694, Ref. (*Young, J.*) RAM RUP BHAR v. EMPEROR.

119 I. C. 571 = 10 L. R. A. Cr. 127 = 1929 A. L. J. 981 = 30 Cr. L. J. 1086 = 12 A. I. Cr. R. 208 = 1929 Cr. C. 449 = A. I. R. 1929 All. 813.

—That "you possess a bad reputation in the vicinity of your village" is not a proper notice under S. 110 and cannot be said to be the basis of an order under this preventive section. (*Young, J.*) RAM RUP BHAR v. EMPEROR.

119 I. C. 571 = 10 L. R. A. Cr. 127 = 1929 A. L. J. 981 = 30 Cr. L. J. 1086 = 12 A. I. Cr. R. 208 = 1929 Cr. C. 449 = A. I. R. 1929 All. 813.

—That you "have only a nominal means of livelihood except the proceeds of theft and burglary" is not a proper notice under S. 110. (*Young, J.*) RAM RUP BHAR v. EMPEROR.

119 I. C. 571 = 10 L. R. A. Cr. 127 = 1929 A. L. J. 981 = 30 Cr. L. J. 1086 = 12 A. I. Cr. R. 208 = 1929 Cr. C. 449 = A. I. R. 1929 All. 813.

—That you "have been strongly suspected to have committed the following burglaries" cannot be the ground of proceedings under S. 110. A. I. R. 1928 All. 351, Foll. (*Young, J.*) RAM RUP BHAR v. EMPEROR.

119 I. C. 571 = 10 L. R. A. Cr. 127 = 1929 A. L. J. 981 = 30 Cr. L. J. 1086 = 12 A. I. Cr. R. 208 = 1929 Cr. C. 449 = A. I. R. 1929 All. 813.

—A joint notice to show cause to more than one person is undesirable. (*Boys and Young, J.J.*) EMPEROR v. RAM LAL.

116 I. C. 25 = 51 All. 663 = 1929 A. L. J. 361 = 10 L. R. A. Cr. 66 = 11 A. I. Cr. R. 486 = 30 Cr. L. J. 562 = A. I. R. 1929 All. 273.

## —Essentials of.

Merely informing an accused person that he was suspected to be a habitual thief is not sufficient notice

## CR. P. CODE (1898), S. 110—Procedure.

under S. 112 of the Code. There must be something in the nature of an indictment or charge containing substantial particulars indicating the grounds upon which the police have given information to the Magistrate. Accused were arrested as suspected habitual thieves. The Magistrate fixed a date for the production of evidence with the object of issuing a notice under S. 112. On the date fixed, after hearing prosecution evidence, he at once called upon the accused to enter upon their defence to a charge under S. 110, *held*, the procedure was bad and the proceedings must be set aside. It is only after the Magistrate has made the order required by S. 112 which is really a notice in writing that the actual hearing under S. 110 can by law take place at all. (*Walsh, J.*) RAJ RANSI v. EMPEROR.

60 I. C. 420 = 42 All. 646 = 18 A. L. J. 673 = 22 Cr. L. J. 228 = L. R. 1 All. 182 (Cr.).

## —S. 110—Procedure.

## —S. 256 applies to cases under S. 110.

S. 256 is applicable to inquiry into cases under S. 110, so far as practicable. (A. I. R. 1927 All. 660, Foll.) (*Boys and Young J.J.*) CHANDAN v. EMPEROR.

1930 A. L. J. 389 = 31 Cr. L. J. 627 = 124 I. C. 40 = 1930 Cr. C. 442 = 52 All. 448 = A. I. R. 1930 All. 274.

## —S. 254 and S. 256, Cr. P. Code.

There is no reason why Ss. 254 and 255 should not be applied to an enquiry under S. 117, except in so far as the framing of a charge and the reading of it to the accused is concerned; in other words, at any stage of the prosecution the Magistrate, if he is *prima facie* satisfied that there is a case against the accused, may interrupt the proceedings for the purpose of asking the accused whether he pleads guilty or whether he has any defence to make. When the stage is reached of asking the accused whether he wishes to plead guilty or to defend, the accused must be allowed an opportunity of cross-examining any witnesses whom he desires to cross-examine. (*Boys, J.*) TIRLOK v. EMPEROR.

104 I. C. 232 = 25 A. L. J. 749 = 8 A. I. Cr. R. 183 = 8 L. R. A. Cr. 122 = 28 Cr. L. J. 792 = A. I. R. 1927 All. 660.

## —Further cross-examination.

A person proceeded against under S. 110 has no right to further cross-examine the prosecution witnesses under S. 256. (1 P. R. 1916, Cr.; 35 Cal. 243, Foll.) (*Shadi Lal, C. J.*) RIJA v. EMPEROR.

99 I. C. 1039 = 8 Lah. 265 = 28 P. L. R. 438 = 28 Cr. L. J. 239 = A. I. R. 1927 Lah. 470.

## —What the notice should contain—Meagre information.

It is not necessary to state more than will show the person against whom proceedings are taken the particular sub-section on which the Court proposes to proceed against him. The order need not show the nature of the case against him. If, for example, a Magistrate receives information from a police-officer, that a certain person is an habitual thief, the Magistrate has a right to proceed to the next stage and issue a notice to him. He may be unwise in taking such action without carefully checking that information; but he has a legal right to take such an action; and if his information is meagre, the substance of his information would be meagre. Nevertheless, it is sufficient for him to state it to make an order under S. 112 legal. If he has taken action on insufficient information, the proceedings may, on the evidence, be found to have been without justification; no ill-results will follow from the adoption of this view, and irregularity, if any, is curable under S. 537. (A. I. R. 1926 All. 759 and 42 All. 646,

**CR. P. CODE (1898), S. 110—Procedure.**

Diss from.) (*Stuart, C. J. and Wazir Hasan, J.*)  
**EMPEROR v. RAM GHULAM.** 103 I. C. 792=  
 2 Luck. 157 = 28 Cr. L. J. 744 = 8 A. I. Cr. R. 394 =  
 6 O. W. N. 1202 = A. I. R. 1927 Oudh 306.

—The provisions of S. 190 do not apply to proceedings taken under S. 110 by a Magistrate upon information received from any person other than a police-officer. (27 All. 172, Foll.) (*Kincaid, J. C.*)  
**MAHOMEDALLY v. EMPEROR.** 98 I. C. 128 =  
 27 Cr. L. J. 1280 = 20 S. L. R. 291 =  
 A. I. R. 1927 Sind 77.

**—Enquiry.**

In principle there is no distinction between trials under S. 107 and trials under S. 110. In either case it is the duty of the Magistrate to hold an enquiry of the offence and not to bind an accused person merely because he agrees to furnish security. 37 All. 30; 54 I. C. 411 and 54 I. C. 784, Foll. (*Sulzman, J.*)  
**RAMCHARAN v. EMPEROR.** 92 I. C. 882 =  
 24 A. L. J. 317 = 7 L. R. A. Cr. 54 =  
 27 Cr. L. J. 370 = A. I. R. 1926 All. 614.

**—Issue of warrant.**

A Magistrate holding an inquiry under S. 110 derives jurisdiction to issue a warrant against a suspect only after he has passed an order under S. 112, and after he has satisfied himself that there is reason to fear the commission of a breach of the peace, and such breach of peace cannot be prevented otherwise than by the immediate arrest of the suspect. (*Rupchand Bilaram, A. J. C.*) **JATOI v. EMPEROR.** 96 I. C. 391 =  
 20 S. L. R. 122 = 27 Cr. L. J. 935 =  
 A. I. R. 1926 Sind 288.

**—Opportunity to defend.**

A suspect is as much, if not more, entitled as a matter of right as any other person accused of a substantive offence to have a reasonable opportunity afforded to him of defending himself. (*Rupchand Bilaram, A. J. C.*) **JATOI v. EMPEROR.** 96 I. C. 391 =  
 20 S. L. R. 122 = 27 Cr. L. J. 935 =  
 A. I. R. 1926 Sind 288.

**—Reasons for arrest.**

If it is intended that the police-officer should arrest a man with a view of taking proceedings under S. 110, it is strictly and specially necessary that he should specify one of the clauses given in S. 55, although it may be for the cause so stated that he intends to proceed under S. 110. (*Kincaid, J. C. and Kennedy, A. J. C.*)  
**HARDAVAL SINGH v. EMPEROR.** 94 I. C. 404 =  
 20 S. L. R. 85 = 27 Cr. L. J. 628 =  
 A. I. R. 1926 Sind 190.

**—Local enquiry.**

Though local inquiry is most appropriate where proceedings under S. 110 shall be instituted it is entirely out of place when the accused are brought before the Court. Once the accused are before the Court the case must be decided on the evidence alone. But where the Magistrate merely used his enquiries to confirm the result at which he had arrived on a consideration of the evidence.

*Held*, that though the course taken by the Magistrate was irregular, yet it was not sufficient ground for setting aside the whole proceedings and directing a retrial. (*Daniels, J. C.*) **RAM PARGAT v. EMPEROR.** 88 I. C. 461 = 12 O. L. J. 341 =  
 2 O. W. N. 350 = 26 Cr. L. J. 1149 =  
 A. I. R. 1925 Oudh 441.

**—Amount and terms of the bond.**

In so far as an order does not state the amount of the bond to be executed, or the term for which the bond is to be in force, as required under the provisions of S.

**CR. P. CODE (1898), S. 110—Revision.**

112 of the Cr. P. Code the order is not a proper one for the purpose of S. 110, Cl. (f) of the Cr. P. Code. (*Lentaigne, J.*) **PARSODAN v. EMPEROR.** 85 I. C. 33 =  
 26 Cr. L. J. 417 = 2 Rang. 524 =  
 A. I. R. 1925 Rang. 69.

**—First order and finding.**

Magistrate ought to do their best to see that the first order does actually contain the substance of the information received by them, no less and no more. The next thing is that the finding on enquiry should conform to the first order which in its turn should conform to the information received by the Magistrate. Deviation from this procedure is likely to gravely prejudice the position of the accused and the order passed against him calling on him to furnish security will be set aside if such prejudice has occurred. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) **SULTAN KHAN v. EMPEROR.** 86 I. C. 351 = 19 S. L. R. 332 =  
 26 Cr. L. J. 767 = A. I. R. 1925 Sind 236.

**—S. 342, Cr. P. Code.**

Where it was found that the omission to formally examine, after close of prosecution and before defence, the person called upon to furnish security had not prejudiced him, *held*, that the omission is only an irregularity curable under S. 537. 50 Cal. 223, not Foll. (*C. C. Ghose and Cumming, J. J.*) **BINODE BEHARI NATH v. EMPEROR.** 81 I. C. 909 = 50 Cal. 985 =  
 25 Cr. L. J. 1085 = A. I. R. 1924 Cal. 392.

**—S. 110—Revision.****—Considerations by High Court.**

The High Court is not a Court of appeal in cases under S. 110, and if it is satisfied that the Courts below have approached the consideration of the evidence in a fair way having regard to the interests not only of the prosecution but also of the accused, it is not called upon in revisions against orders passed under S. 110 to weigh the evidence given on behalf of one side or the other. A. I. R. 1922 Oudh 26, Foll. But at the same time before affirming an order demanding security, High Court is to be satisfied that the evidence in the case was of a character which made it imperative in the interests of public security to pass an order under S. 118. (6 A. L. J. 487, Foll.) (*Iqbal Ahmad, J.*) **LACHMAN v. EMPEROR.** 8 L. R. A. Cr. 70 = 7 A. I. Cr. R. 482 =  
 28 Cr. L. J. 515 = 102 I. C. 211 =  
 A. I. R. 1927 All. 473.

—Section ought to be administered with scrupulous care—High Court will look into the record only when there is something unusual. (*Banerji, J.*) **RAJ NARAYAN PANDEY v. EMPEROR.** 101 I. C. 886 =  
 25 A. L. J. 393 = 8 L. R. A. Cr. 53 =  
 7 A. I. Cr. R. 353 = 28 Cr. L. J. 502 =  
 A. I. R. 1927 All. 394.

**—Ss. 112 and 115 not complied with.**

An order passed against an accused in the proceedings under S. 110 cannot be set aside by High Court on the ground that the provisions of Ss. 112 and 115 were not strictly complied with, where it appears that the accused is sufficiently informed as to the allegation against him. (*Martineau, J.*) **DAYA RAM v. EMPEROR.** 27 Cr. L. J. 575 = 94 I. C. 143 =  
 A. I. R. 1926 Lah. 366.

**—Fair consideration of the case.**

The High Court is not a Court of appeal in cases under S. 110 and the duty of the High Court is not to weigh the evidence given, on behalf of one side or the other, but only to see whether the Court below had approached the consideration of the case in a fair way, having regard to the interest not only of the prosecution but also of the accused. 13 A. L. J. 1046 and 24 O. C.

**CR. P. CODE (1898), S. 110—Revision.**

225, Rel. on. (*Gokaran Noth, A. J. C.*) KEWAL KISHORE *v.* KING-EMPEROR. 89 I. C. 147 = 12 O. L. J. 413 = 26 Cr. L. J. 1283 = 29 O. C. 44 = A. I. R. 1925 Oudh 473.

**—What prosecution evidence should be.**

Although it is very difficult in revision to interfere in cases under S. 110 still the Court must be satisfied that the prosecution evidence is of such a character that it will reasonably support the inference that it is necessary in the interest of public security to send the person to prison or bind him down. (*Ryves, J.*) ALIM-UD-DIN *v.* EMPEROR. 82 I. C. 36 = 22 A. L. J. 678 = 5 L. R. A. Cr. 97 = 25 Cr. L. J. 1172 = A. I. R. 1924 All. 569.

**—Considerations which will induce the High Court to quash the order.**

The High Court is not in criminal cases a Court of appeal, but it is its duty to endeavour to weigh the evidence and to see whether the case has been fairly considered from the point of view of the defendant. *Secondly*, if the evidence for the defence is equally good as that for the prosecution, the High Court may quash the order in revision. *Thirdly*, witnesses, who voluntarily come forward whether as friends or associates of the accused to give them a good character, must not be brushed aside, unless they are discredited as regards their good faith and honesty, just as witnesses in any other proceeding must be discredited before they are rejected by the tribunal. *Fourthly*, evidence of general repute by persons who have no personal knowledge of the accused and know nothing of his business and circumstances, is not sufficient to justify an order and lastly vague repetition unaccompanied by direct evidence personally affecting each accused person or accompanied by direct evidence which breaks down, is not sufficient in itself to justify an order. (*Walsh, J.*) ANGNOO SINGH *v.* EMPEROR. 71 I. C. 865 = 20 A. L. J. 881 = 45 All. 109 = 24 Cr. L. J. 257 = A. I. R. 1923 All. 35.

**—S. 110—Scope.**

Solitary confinement cannot be awarded for failure to furnish security under S. 110, Cr. P. C. (*Sulaiman, J.*) EMPEROR *v.* PHAKKAR. 102 I. C. 342 = 8 L. R. A. Cr. 74 = 7 A. I. Cr. R. 516 = 28 Cr. L. J. 534 = A. I. R. 1927 All. 472.

**—S. 110—Surety.****—Two bonds executed.**

A bond to be of good behaviour can be forfeited on a conviction of the person bound down, under S. 323 or 325, Penal Code. (6 P. R. 1915 (Cr.) and 10 P. R. (Cr.) 1915, Foll.) But where two bonds have been executed one by the accused and the other by his surety, only one of the two can be forfeited and not both. (26 P. R. (Cr.) 1894, Foll.) (*Moti Sagar, J.*) EMPEROR *v.* ABDUL AZIZ. 81 I. C. 955 = 4 Lah. 462 = 25 Cr. L. J. 1131 = A. I. R. 1924 Lah. 262.

**—Acceptance of.**

Where a surety for good behaviour was not accepted on the ground that he had already stood surety for some other man, held that that ground is clearly insufficient. (*Kanhaiya Lal, J. C.*) GHISA *v.* EMPEROR. 73 I. C. 53 = 24 Cr. L. J. 517 = A. I. R. 1924 Oudh 132.

**—S. 110—Suspicion.****—When sufficient.**

Evidence as to mere suspicion on particular isolated occasions is not sufficient evidence at all for the purposes of a case under S. 110, Cr. P. Code. What is necessary is evidence to prove that the man is by habit a thief. Evidence can no doubt be led of his general reputation

**CR. P. CODE (1898), S. 110—Miscellaneous.**

about the matter and that he was suspected in a particular case by a particular person or the police, of having committed a theft. But there must be a large number of cases before it can be held to be proved on this evidence alone that he is by habit a thief. (*Dulip Singh, J.*) LILU *v.* EMPEROR. 1 R. 1930 Lah. 893 = 32 Cr. L. J. 62 = 127 I. C. 861 = 1930 Cr. C. 393 = A. I. R. 1930 Lah. 345.

—“Suspicion” is worthless and inadmissible to support an order under S. 110 unless supported by good reasons and then it is the reasons and the facts on which the suspicion is based, and not the suspicion, to which only weight can be given. (*Boys, J.*) DALLE SINGH *v.* EMPEROR. 116 I. C. 801 = 10 L. R. A. Cr. 106 = 1929 Cr. C. 174 = 30 Cr. L. J. 693 = 1929 A. L. J. 938 = 12 A. I. Cr. R. 114 = A. I. R. 1929 All. 599.

—The suspicions of a witness that a particular man committed, either singly or with others, a theft in his house is wholly inadmissible in a proceeding under S. 110. In this respect a police officer stands in no stronger position than any other witness. (*Boys and Sen, J.J.*) EMPEROR *v.* RAM LAL. 116 I. C. 25 = 51 All. 663 = 1929 A. L. J. 361 = 10 L. R. A. Cr. 66 = 11 A. I. Cr. R. 486 = 30 Cr. L. J. 662 = A. I. R. 1929 All. 273.

—Mere suspicion of complicity in any offence is no evidence of general reputation. (A. I. R. 1928 Lah. 49, Foll.) (*Addison, J.*) KEHR SINGH *v.* EMPEROR. 9 Lah. 586 = 10 A. I. Cr. R. 214 = 109 I. C. 127 = 29 P. L. R. 443 = 29 Cr. L. J. 479 = A. I. R. 1929 Lah. 41.

—Suspicion is not a legitimate basis for findings under S. 110. A witness may have suspicion against a person in respect of whom he is giving evidence, but if he has, he ought to be able to give the grounds for that suspicion, and the value of the facts stated can then be weighed by the Magistrate. The evidence which he can give of general repute is of a totally different matter. (*Boys and Iqbal Ahmad, J.J.*) EMPEROR *v.* BABU RAM. 8 L. R. A. Cr. 163 = 8 A. I. Cr. R. 557 = 26 A. L. J. 99 = 29 Cr. L. J. 92 = 106 I. C. 684 = A. I. R. 1928 All. 1.

—Mere suspicion is no evidence in a case. (21 O. C. 132; A. I. R. 1924 Oudh 112; 11 A. L. J. 461 and 23 O. C. 371, Rel. on.) (*Banerji, J.*) RAJ NARAYAN PANDEY *v.* EMPEROR. 25 A. L. J. 393 = 8 L. R. A. Cr. 53 = 7 A. I. Cr. R. 353 = 28 Cr. L. J. 502 = 101 I. C. 886 = A. I. R. 1927 All. 394.

—Mere suspicion, and mere allegations that a person is a man of ill-repute, is not sufficient to base an order under S. 110. (*Fforde, J.*) SOHNA *v.* EMPEROR. 97 I. C. 43 = 7 A. I. Cr. R. 159 = 27 Cr. L. J. 1067.

**—S. 110—Miscellaneous.**

—“Stolen property” does not mean property transferred by dacoity. (*Dalal, J.*) MANNI LAL AWASTHI *v.* EMPEROR. 51 All. 459 = 11 A. I. Cr. R. 250 = 10 L. R. A. Cr. 34 = 30 Cr. L. J. 694 = 116 I. C. 804 = 1929 A. L. J. 93 = A. I. R. 1928 All. 682.

**—Consent to give security when a plea of guilty.**

Whether the statement of the accused “I am prepared to give security for good behaviour” is in effect equivalent to a plea of guilty, can be decided upon an examination of the particular facts. In one case an expression of readiness on the part of the accused to give security may fairly be construed as a plea of guilty; in other cases it could not possibly fairly

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be so construed. Where the man has already flatly denied his guilt on every point, then his statement; "I am prepared to give security for good behaviour" cannot be equivalent to a plea of guilty. (*Boys and War, J.J.*) **EMPEROR v. KURWA.** 26 A. L. J. 519=

9 L. R. A. Cr. 75=9 A. I. Cr. R. 467=  
30 Cr. L. J. 122=113 I. C. 282=  
A. I. R. 1928 All. 357.

—Persons forming into a party claiming common rights and privileges can be said to become members of a community within Cl. (f). (*Jwala Prasad, J.*) **BHUBANESHWAR KUAR v. KING-EMPEROR.**

6 Pat. 1=28 Cr. L. J. 359=100 I. C. 967=  
8 P. L. T. 335=A. I. R. 1927 Pat. 126.

**—S. 112—Bond.****—Forfeiture.**

The bond that Ss. 112 and 118 have in contemplation is one bond for one amount and on forfeiture is discharged by the payment of the amount either by the principal or the surety. (26 P. R. Cr. 1894 and 12 Cr. L. J. 404, Foll. 36 Cal. 562, Not Foll.) (*Scott-Smith, Offg. C.J.*) **HARNAM v. KING-EMPEROR.**

5 Lah. 448=26 Cr. L. J. 322=84 I. C. 546=  
A. I. R. 1925 Lah. 228.

**—S. 112—Compliance.**

—An order under S. 112 is illegal in so far as it travels beyond the terms of S. 110. (*Boys and Banerji, J.J.*) **BUDHAN v. EMPEROR.**

47 All. 733=23 A. L. J. 507=26 Cr. L. J. 1130=  
6 L. R. A. Cr. 129=A. I. R. 1925 All. 694.

—Proceedings started on a *rubkar* based on a police report not on file and in absence of the substance of the information and the other particulars required by the section are irregular and must be set aside. The provisions of S. 112 must be strictly complied with. (*Sulaiman, J.*) **UTTAMCHAND v. EMPEROR.**

85 I. C. 46=5 L. R. A. Cr. 24=26 Cr. L. J. 430=  
A. I. R. 1924 All. 695.

**—S. 112—Contents.****—Offence.**

Ordinarily it is sufficient under S. 112 if that portion of the clause of S. 110 which is applicable to the particular case is specified in the notice that is given. But where the particular clause refers to two or more offences, the particular offence or offences which is appropriate to the particular case should also be mentioned in the notice. This applies more particularly to Cl. (d) A. I. R. 1927 Oadh 306, Appr. (*Boys and Young, J.J.*) **CHANDAN v. EMPEROR.**

1930 A. L. J. 389=31 Cr. L. J. 627=124 I. C. 40=  
1930 Cr. C. 442=52 A. 448=A. I. R. 1930 All. 274.

—In passing an order under S. 112 the Magistrate should give in substance an abstract of the facts upon which the Magistrate charges the persons proceeded against with being likely to commit a breach of the peace so as to give them notice of what they have to meet and be prepared to meet it. Non-compliance with this requirement is not a mere irregularity but an illegality vitiating the conviction. (*Pandalai, J.*) **KALIA GOUNDAN v. EMPEROR.**

I. R. 1930 Mad. 1036=32 Cr. L. J. 27=  
1930 M. W. N. 698=32 M. L. W. 320=

1930 Cr. C. 1035=127 I. C. 652=  
A. I. R. 1930 Mad. 859=59 M. L. J. 887.

**—Detailed information.**

Repetition of the words of the section should as far as possible be avoided and although there may be cases where it is possible to convey the substance of the information briefly, ordinarily details cannot be insisted upon, and omission to give more information where

**CR. P. CODE (1898), S. 112—Interpretation.**

possible does not vitiate the entire proceedings without proof of prejudice to the accused. (35 Cal. 243; 17 C. W. N. 238, Foll.; 43 Mad. 450 and A. I. R. 1926 All. 759, Diss. from.) (*C. C. Ghose, J.* on difference of opinion between *Suhrawardy and Graham, J.J.*) **BHUT NATH v. EMPEROR.**

57 Cal. 503=  
I. R. 1930 Cal. 391=124 I. C. 71=  
31 Cr. L. J. 614=33 C. W. N. 852=

1929 Cr. C. 387=A. I. R. 1929 Cal. 739.

—An order not setting forth the substance of the information received about the petitioner is illegal. (*Addison, J.*) **UJAGAR SINGH v. EMPEROR.**

117 I. C. 807=10 Lah. 155=30 Cr. L. J. 839=  
30 P. L. R. 694=1929 Cr. C. 61=

A. I. R. 1929 Lah. 504.

—*Mere statement that accused is a habitual thief.*

Even when the accused is represented by a mukhtar, it is undesirable that, where persons are arrested under S. 55, they should not be told the substance of the information against them. The procedure clearly requires something in the nature of an indictment or charge containing substantial particulars indicating the grounds upon which the police have given information to the Magistrate. Merely setting out in a notice under S. 112 that a man is an habitual thief or robber is not sufficient. (*Banerji, J.*) **NIHAL v. KING-EMPEROR.**

49 All. 5=24 A. L. J. 908=7 L. R. A. Cr. 165=  
28 Cr. L. J. 9=99 I. C. 41=

A. I. R. 1926 All. 759.

—The action of a Magistrate is not recording the substance of the information he had received does not amount to a mere irregularity which would be covered by S. 537. (*Banerji, J.*) **NIHAL v. KING-EMPEROR.**

49 All. 5=24 A. L. J. 908=7 L. R. A. Cr. 165=  
28 Cr. L. J. 9=99 I. C. 41=A. I. R. 1926 All. 759.

—Failure to incorporate substance of information does not vitiate proceedings unless accused is prejudiced.

—Reproducing S. 110 is not compliance with the section. (*Kennedy, J. C. and Rupchand Bilaram, A.J.C.*) **THANWOR v. EMPEROR.**

19 S. L. R. 176=

26 Cr. L. J. 1398=89 I. C. 710=

A. I. R. 1926 Sind 69.

—*Full details to enable accused to prepare for defence—Issue of notice judicial act.*

A notice served under S. 112, which is very meagre and does not contain sufficient details regarding the charges brought against the persons must be held not to comply with the provisions of the Code. Any explanation given by the Prosecuting Inspector at the commencement of the trial cannot have the effect of remedying the defect in the notice because the object of S. 112 is to enable the accused person to prepare for his defence and to summon witnesses on his side before actual commencement of trial. The issue of a preliminary notice under S. 112 of the Cr. P. Code, is not a formal matter; but it is a judicial act which must be exercised by the Magistrate after due consideration of the materials before him. (*Madhavan Nair, J.*) **KUTTI GOUNDAN, In re.**

86 I. C. 49=26 Cr. L. J. 673=

1925 M. W. N. 57=A. I. R. 1925 Mad. 189=

47 M. L. J. 689.

—Substance of information and amount of bond as laid down in S. 112 should be recorded. (*Das, J.*) **MAUNG TUN U v. EMPEROR.**

92 I. C. 702=

27 Cr. L. J. 318=4 Bur L. J. 172=

A. I. R. 1925 Rang. 353.

**—S. 112—Interpretation.**

—*Order is equivalent to a charge.*

The words "no charge need be framed" in S. 117 (2) can only mean that no occasion can arise for framing a charge because under S. 122 (1) every charge shall

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state the offence with which the accused is charged. In security proceedings the place of charge is taken by the "order in writing setting forth the substance of the information received" prescribed by S. 112. This order has to be read over to the person in respect of whom it is made, and although the Code does not provide that he should plead to it, it resembles a charge in that it must contain a statement in abstract of the prosecution case. (*Kumaraswamy Sastry, Curgenven and Walsh, J.J.*) **KARUTHASWAMI SERVAL, In re.**

124 I. C. 1=31 M. L. W. 243=3 M. Cr. C. 34=  
1930 M.W.N. 178=53 Mad. 178=  
31 Cr. L.J. 618=A.I.R. 1930 Mad. 331=  
58 M.L.J. 229 (F.B.).

**—"Substance of the information."**

The words "substance of information" mean such or so much of information as would enable the party to know under what clause of S. 110 he is charged or to what particular class of offenders he belongs. (*C. C. Ghose, J.* on difference between *Sukrawardy and Graham, J.J.*) **BHUT NATH v. EMPEROR.**

57 Cal. 503=124 I.C. 71=  
31 Cr. L.J. 44=33 C.W.N. 852=1929 Cr. C. 387=  
A. I. R. 1929 Cal. 739.

**—S. 112—Object.**

The object is to prevent future offences and not punishing past ones—Order as to sureties cannot be varied at the time of being made absolute—Sureties' want of influence on suspect is no disqualification. (*Kennedy and Rupchand Bilaram, A.J.Cs.*) **EMPEROR v. MANU ISMAIL.** 82 I. C. 154=18 S.L.R. 298=  
25 Cr.L.J. 1226=A. I. R. 1925 Sind 57 (2).

**—S. 112—Procedure.****—Transfer.**

Where a Magistrate having jurisdiction according to S. 107 has made an order under S. 112, District Magistrate has power to transfer the case as initiated to another Magistrate competent to try the case though not qualified under S. 107 as regards territorial jurisdiction. (*Pandalai, J.*) **KALIA GOUNDAN v. EMPEROR.**

I.R. 1930 Mad 1036=32 Cr.L.J. 27=  
1930 M. W. N. 698=32 M.L.W. 320=  
1930 Cr. C. 1035=127 I. C. 652=  
A. I. R. 1930 Mad. 859=59 M.L.J. 887.

**—Requiring more security after notice.**

Certain persons appeared before a Magistrate in pursuance of an order to show cause why they should not be required to furnish security in the sum of Rs. 2,000. On that day the Magistrate passed an entirely fresh order under S. 112 in which the amount of security demanded was Rs. 5,000. It was this latter order that was read out to them as required by S. 113.

*Held*, that in the circumstances the proceedings were not vitiated in any way by the procedure adopted by the Magistrate. (*Broadway, J.*) **MAHOMED ISHAR v. EMPEROR.** 28 Cr. L. J. 815=104 I. C. 255=  
A. I. R. 1927 Lah. 689.

**—Irregularity.**

Where the Magistrate wrote the order under S. 107 on the back of a Police report and instead of sending a copy of his order with the summons he gave the substance of the information in the summons itself.

*Held*, that irregularity is covered by the provisions of S. 537 (11 Bom. L.R. 740, Appl. (*Daniels, J.*) **RAM DEO SINGH v. EMPEROR.** 49 All. 228=  
25 A.L.J. 44=27 Cr. L. J. 1132=7 L.B.A. Cr. 174=  
97 I. C. 652=A.I.R. 1926 All. 767.

—If in a case a preliminary order is not served on an absent accused and then that accused appears and the order is read out to him, the requirements of the law

**CR. P. CODE (1898), S. 117—Contents of order.**

are substantially complied with. (*Prideaux, A. J. C.*) **BAJIRAO, In re.** 76 I.C. 228=25 Cr. L. J. 132=  
A. I. R. 1924 Nag. 166.

**—S. 112—Rights of accused to copy of written information.**

—The accused who is ordered to show cause under S. 112 is not entitled to a copy of the written information given by the Police on which the order is based. It is not a report under S.173 nor part of the record under S. 548. (*Pandalai, J.*) **ANANTAPADMANABHIAH v. EMPEROR.** 54 Mad. 422=129 I. C. 70=  
1930 M.W.N. 1100=32 M. L. W. 784=  
1930 Cr. C. 1191=A. I. R. 1930 Mad. 975=  
59 M.L.J. 914.

**—S. 112—Scope.**

—A Magistrate acting under S. 112 is a Court, 39 Cal. 953, Foll. (*Pandalai, J.*) **ANANTAPADMANABHIAH v. EMPEROR.** 54 Mad. 422=129 I.C. 70=  
1930 M.W.N. 1100=32 M.L.W. 784=  
1930 Cr. C. 1191=A. I. R. 1930 Mad. 975=  
59 M.L.J. 914.

**—S. 114—Arrest.**

The police can arrest a suspected criminal and then proceed against him either for substantive offence or under Chap. 8, and it is for that reason that S. 114 contemplates the serving of notice on the suspect while in custody. (*Kincaid, J. C. and Kennedy, A. J. C.*) **HARDAYAL SINGH v. EMPEROR.** 20 S. L. B. 85=  
27 Cr. L. J. 628=94 I. C. 404=  
A. I. R. 1926 Sind 190.

**—S. 114—Contents of order.****—Substance of information.**

The Magistrate must be convinced that the only way of preventing an imminent breach of the peace is to commit the persons concerned to custody and must put on record the substance of the Police or other report, by which he is influenced before taking action, otherwise the order is illegal. (*Foster, J.*) **MANIRUDDIN v. EMPEROR.** 74 I.C. 861=5 P. L. T. 93=  
2 Pat. L. R. Cr. 45=24 Cr. L. J. 829=  
A. I. R. 1924 Pat. 320.

**—S. 114—Proviso.****—Re-arrest after execution of bond.**

Proviso to S. 114 is a proviso to the section which relates to the circumstances set out in S. 114 and not a substantive provision standing by itself and it does not empower the Magistrate to re-arrest a person who has been discharged after executing surety bond. 32 Cal. 80, Dist. (*Wort, J.*) **NATHAN GOPI v. EMPEROR.**

1929 Cr. C. 382=117 I.C. 628=30 Cr. L. J. 809=  
10 P. L. T. 801=A.I.R. 1929 Pat. 654.

**—S. 117—Admission.****—Enquiry.**

Even where the accused persons do admit that they fall under the categories given in S. 112, enquiry should be made. (*Kennedy, A.J.C.*) **ALLAH DITTA v. EMPEROR.** 87 I. C. 961=19 S.L.B. 101=  
26 Cr. L.J. 1041=A.I.R. 1925 Sind. 321.

**—S. 117—Bail.**

The provisions of Ch. 39 relating to bail do not apply to an order made under S. 117 (3). (*Tapp, J.*) **JAGIR SINGH v. EMPEROR.** I. R. 1930 Lah. 594 (2)=  
125 I. C. 322=1930 Cr. C. 677=31 Cr. L. J. 812=  
A.I.R. 1930 Lah. 529.

**—S. 117—Contents of order.**

*Barlee, A J.C.*—It is incumbent on a Court to state reasons in writing for an order under S. 117 (3). Merely stating that it is passed "on account of emergency" is not sufficient. (*Kincaid, J. C. and Barlee, A. J. C.*) **SAHIB DINO v. EMPEROR.** 21 S.L.R. 93=



## CR. P. CODE (1898), S. 117—Evidence.

28 Cr. L.J. 173=99 I. C. 605=7 A.I.Cr. R. 326=  
A.I.R. 1927 Sind 148.

## —S. 117—Evidence.

## —General repute—Hearsay.

The fact that a person is a habitual offender may be proved by evidence of general repute or otherwise. That evidence of general repute must necessarily consist largely of "hearsay" evidence. The reputation of a person means what is generally said or believed about his character. A witness may depose "I believe the accused to be a habitual thief, and that is what persons of the neighbourhood generally say about him." Such evidence is admissible as evidence of general repute. So far as the witness gives the opinions or the statements of other persons his evidence must, in a sense, be "hearsay." (*Ashworth and King, J.J.*) EMPEROR v. KUMERA. 125 I. C. 19=31 Cr. L. J. 755=51 All. 275=1929 Cr. C. 346=A. I. R. 1929 All. 650.

—Suspicion—Opinion of witness.  
It is open to question, whether evidence that the accused has been suspected by persons other than the witness is inadmissible for all purposes in an inquiry under S. 117. It has no doubt been held in several cases that evidence of cases in which the accused is suspected is not evidence of general repute within the meaning of S. 117, but it does not necessarily follow that such evidence is not admissible for other purposes. When a witness gives evidence of general repute he is undoubtedly entitled to give his personal opinion of the person concerned. As his opinion is undoubtedly relevant then the grounds of his opinion must also be relevant. The value to be attached to such evidence is another matter. (*Ashworth and King, J.J.*) EMPEROR v. KUMERA. 125 I. C. 19=31 Cr. L. J. 755=51 All. 275=1929 Cr. C. 346=A.I.R. 1929 All. 650.

—Witness can depose that the accused has a general reputation as an habitual thief or robber as the case may be, but he should not be allowed to state that the accused is a bad character or has the reputation of being a bad character. (*Boys and Weir, J.J.*) EMPEROR v. KURWA. 26 A. L. J. 519=9 L.B.A. Cr. 75=9 A.I.Cr.R. 467=30 Cr. L.J. 122=113 I. C. 282=A. I. R. 1928 All. 357.

—Further evidence.  
It is not necessary for the Magistrate for passing an order under S 117 (3) to take further evidence. The only condition precedent laid down is that he must record his reasons in writing. (*Kincaid, J.C. and T'yabji, A.J.C.*) PIR SHAW MURAD SHAH v. EMPEROR. 20 S.L.E. 358=27 Cr.L.J. 1030=96 I.C. 982=A.I.R. 1926 Sind 276.

—Direct knowledge essential to prove repute.  
Prosecution must produce evidence of persons living in the neighbourhood provided they are acquainted with the accused and are aware of the accused's reputation. The basis of the knowledge of a witness cannot be a rumour heard in the village without specifying any particular person. Such evidence is inadmissible. Witness must be able to testify from specific cases coming to their knowledge. (*Kulwant Sahay, J.*) RAMALAGAN v. EMPEROR. 81 I.C. 633=5 P.L.T. 166=2 Pat. L.R. (Cr.) 98=25 Cr. L.J. 985=A.I.R. 1924 Pat. 500.

## —S. 117—Intention.

—When High Court interferes with order for interim security.  
S. 117 (3) has apparently been introduced for the purpose of preventing a breach of peace or disturbance of the public tranquillity or the commission of any offence or in the interest of public safety pending an enquiry

## CR. P. CODE (1898), S. 117—Procedure.

under Ss. 108, 109 and 110. It is not therefore open to High Court under provisions of S. 498 to reduce the security which the Magistrate orders to be furnished. But there is nothing to prevent the High Court in exercise of its inherent powers from considering whether the interim security which is ordered to be furnished is not too high. The order of the High Court, reducing interim security does not, however, fetter the discretion of the Magistrate as to the amount of security which may ultimately be demanded. (*Tapp, J.*) JAGIR SINGH v. EMPEROR. I.R. 1930 Lah. 594 (2)=125 I.C. 322=1930 Cr.C. 677=31 Cr. L.J. 812=A.I.R. 1930 Lah. 529.

—S. 117—Interpretation.  
—"No charge need be framed."  
The words "no charge need be framed" in S. 117 (2) can only mean that no occasion can arise for framing a charge because under S. 221 (1) every charge shall state the offence with which the accused is charged. In security proceedings the place of charge is taken by the "order in writing setting forth the substance of the information received" prescribed by S. 112. This order has to be read over to the person in respect of whom it is made, and although the Code does not provide that he should plead to it, it resembles a charge in that it must contain a statement in abstract of the prosecution case. (*Kumaraswami Sastri, Curgenven and Walsh, J.J.*) KARUTHASWAMI SERVAI, *In re*. 124 I. C. 1=31 M. L. W. 243=3 M. Cr. C. 34=1930 M. W. N. 178=53 Mad. 173=31 Cr. L. J. 618=A. I. R. 1930 Mad. 331=58 M. L. J. 229.

—S. 117—Joint trial.  
—S. 117, Cl. (5) does not make it a condition of such joint trial, that the suspects shall be shown to be associated together in the order itself. It is a permissive clause which permits an enquiry being held where such persons are, as a matter of fact, associated together. 25 Mad. 61 (P.C.), Dist.; 25 C.W.N. 334, Foll. (*Kennedy, J.C. and Rupchand Bilaram, A. J.C.*) THANWOR v. EMPEROR. 89 I. C. 710=19 S. L. R. 196=26 Cr. L. J. 1398=A. I. R. 1926 Sind 69.

—Association must be proved.  
Under clause (4), S. 117 two or more persons may be jointly tried where they have been associated together in the matter under inquiry, but there must be clear evidence to prove the association. (*Jwala Prasad, J.*) DEODHARI PANDEY v. EMPEROR. 86 I. C. 274=6 P. L. T. 810=1925 P. H. C. C. 6=26 Cr. L. J. 738=A. I. R. 1925 Pat. 131.

—S. 117—Procedure.  
—S. 247 is not applicable to proceedings under S. 117 (2). (*Suhrawardy and Cammiade, J.J.*) ASRAFALI SAIYAL v. NASUR SARKAR. 101 I. C. 607=45 C. L. J. 211=31 C. W. N. 388=28 Cr. L. J. 479=A.I.R. 1927 Cal. 343.

—The provisions of S. 360, Cr.P. Code, are applicable to proceedings under S. 117 when a person is called upon to show cause why he should not furnish security for good behaviour and failure to comply with the provisions of that section would vitiate the enquiry or trial which has resulted in an order under S. 118 of the Code. Per *B. R. Ghose, J.*—There is considerable doubt whether S. 360, Cr. P. Code, applies to proceedings under Chap. VIII of that Code. (*Newbould and B. B. Ghose, J.J.*) SANATAN BHATTACHARYA v. EMPEROR. 88 I. C. 856=41 C. L. J. 352=52 Cal. 682=26 Cr. L. J. 1240=A. I. R. 1925 Cal. 790.

**CR. P. CODE (1898), S. 117—Procedure.****—Individual finding against accused.**

The Magistrate is bound to consider the case of each suspect separately and individually on its own merits and to come to a separate finding in respect of each of the suspects, notwithstanding that under S. 117 (4) it is permitted to a Magistrate to hold a joint enquiry against several suspects associated together in the matter under enquiry. (*Rupchand Bilaram, A. J. C.*) **KHAIRO v. EMPEROR.** 83 I. C. 337=19 S. L. R. 96=25 Cr. L. J. 1377=A. I. R. 1925 Sind 204.

**—S. 117—Re-cross-examination.****—Ss. 256 and 254, Cr. P. Code.**

An accused person, who has been called upon to give security for good behaviour, has no absolute right to recall prosecution witnesses for cross-examination under S. 256, but he has a right under S. 257. Case-law discussed. (*Kumaraswamy Sastri, Curgenven and Walsh, J.J.*) **KARUTHASWAMI SERVAI, In re.** 31 M. L. W. 243=3 M. Cr. C. 34=53 Mad. 173=124 I. C. 1=31 Cr. L. J. 618=1930 M. W. N. 178=A. I. R. 1930 Mad. 331=58 M. L. J. 229.

**—S. 117—Reputation.**

Evidence as to cases in which the applicant was suspected cannot be said to fall within the meaning of general repute under S. 117. 20 I. C. 231, Foll. (*Kulwant Sahay, J.*) **SHAIKH AMJAD ALI v. KING-EMPEROR.** 75 I. C. 723=5 P. L. T. 129=2 Pat. L. R. Cr. 79=25 Cr. L. J. 35=A. I. R. 1924 Pat. 498.

**—S. 117—Surety.****—Interim order.**

Where a Court passes an interim order of security, that order should not be more onerous than the one issued under S. 112. (*Kincaid, J. C. and Tyabji, A. J. C.*) **PIR SHAH MURAD v. EMPEROR.** 96 I. C. 982=20 S. L. R. 358=27 Cr. L. J. 1030=A. I. R. 1926 Sind 276.

**—S. 117—Transfer.****—Application under S. 526—Power of Court to act under S. 117 (3).**

After an application is made to a Court under S. 526 for adjournment to enable an accused person to apply for transfer of the case, the Court does not become incompetent to make ancillary orders not affecting the merits of the case, such as requiring an accused to execute a bond under S. 117 (3). 3 S. L. R. 155 and 1 S. L. R. Cr. 35, Diss. from; 31 Cal. 715, Rel. on. (*Kincaid, J. C. and Barlee, A. J. C.*) **SAHIB DINO v. EMPEROR.** 99 I. C. 605=28 Cr. L. J. 173=7 A. I. Cr. B. 326=21 S. L. R. 93=A. I. R. 1927 Sind 148.

**—S. 118—Appeal.****—High Court can interfere on merits of orders under S. 118, if the lower Court under S. 406 has not really gone through evidence on record.**

It is true that the High Court will not ordinarily interfere on the merits of orders passed under S. 118 except in very exceptional circumstances provided that the Court under S. 406, shows in its judgment that it has really, and not merely nominally, gone through the evidence on the record, which it can do by stating clearly what it believes the evidence proves giving a short summary of that evidence, and making such criticisms as go to show that the evidence is reliable; but if the judgment does not satisfy these requirements and also fails to come up to the required standard of a legal judgment, and there is a clear misconception of such evidence as is considered, it is not only just but imperative on the High Court to see how far the judgment in appeal is, correct even on matters which it purports to decide expressly. **61 A. L. J. 487, Rel. on; 8 N. L. R.**

**CR. P. CODE (1898), S. 118—Legality.**

84, Ref. (*Subedar, A. J. C.*) **KASHIRAM HAZARI v. ASARAM.** 120 I. C. 215=1929 Cr. C. 532=31 Cr. L. J. 20=A. I. R. 1929 Nag. 328.

**—Order under S. 118 is not a "conviction" or "acquittal."**

The terms "conviction" and "acquittal" are nowhere applied throughout the Code to an order under S. 118 and they are, in fact, wholly inapplicable to the same. (1898) A. W. N. 127; 13 C. W. N. 420, and 9 Cal. 878, Rel. on. Therefore, no appeal lies on behalf of Government against an order of a Sessions Judge setting aside the order of a Magistrate calling upon a person to furnish security for good behaviour. (*Boys and Iqbal Ahmad, J.J.*) **EMPEROR v. BABU RAM.** 106 I. C. 684=8 L. B. A. Cr. 163=8 A. I. Cr. B. 557=26 A. L. J. 99=29 Cr. L. J. 92=A. I. R. 1928 All. 1.

**—S. 118—Imprisonment.**

Imprisonment for default of security under S. 118 stands on quite a different footing from a sentence of imprisonment passed on a conviction in respect of an offence. 1 Pat. L. J. 212, Rel. on. (*Macpherson and Dhavle, J.J.*) **CHARAN MATHO v. EMPEROR.** 125 I. C. 792=31 Cr. L. J. 958=9 Pat. 131=1930 Cr. C. 455=11 P. L. T. 261=A. I. R. 1930 Pat. 274.

**—S. 118—Inquiry.****—Inquiry under Chap. 8 is not trial—Person called upon to furnish security is not deemed to be convicted.**

A proceeding under Chap. 8 is an "inquiry" which under the definition of the term excludes a trial. No doubt S. 117 applies to such inquiry, the procedure prescribed for conducting trials, and the terms and expressions which occur in a trial come to be loosely applied in an inquiry also for the sake of convenience. But actually the person in respect of whom the inquiry is held is not an accused but a quasi-accused, and he is not "deemed" to be an accused, nor when an order under S. 118 is passed against him "deemed" to be convicted within the meaning of S. 426. A. I. R. 1924 Cal. 392; A. I. R. 1926 All. 403, Foll. (*Macpherson and Dhavle, J.J.*) **CHARAN MATHO v. EMPEROR.** 125 I. C. 792=31 Cr. L. J. 958=9 Pat. 131=1930 Cr. C. 455=11 P. L. T. 261=A. I. R. 1930 Pat. 274.

**—S. 118—Legality.**

L and B were given notice under S. 112, Cr. P. Code, to show cause as to why they were not to be bound down with bonds and securities. There was no joint trial nor was there any intention of having a joint trial. The Magistrate recorded the evidence against both in one case and then proceeded to consider it as evidence in the case against B.

Held, that the procedure in recording the evidence was illegal. B's case was never tried at all and the orders passed against him under S. 189, Cr. P. Code and S. 7, Habitual Offenders Act, should be set aside. (*Dalip Singh, J.*) **LILU v. EMPEROR.**

I. R. 1930 Lah. 893=32 Cr. L. J. 62=127 I. C. 861=1930 Cr. C. 393=A. I. R. 1930 Lah. 345.

**—Order without enquiry is illegal.**

It is the duty of the Magistrate to proceed to enquire into the truth of the information on which he takes action, and it is only if upon such enquiry it is proved that it is necessary to take the bond from the person in respect of whom the enquiry has been made, he can be ordered to execute a bond. Mere fact that the person was prepared to execute the bond does not make the order legal if it is made without any enquiry. 24 P. R. 1915 (Cr.) and 27 P. R. 1917 (Cr.), Rel. on. (*Addison, J.*)

**CR. P. CODE (1898), S. 118.—Legality.**

UJAGAR SINGH v. EMPEROR. 117 I. C. 807 =  
10 Lah. 125 = 30 Cr. L. J. 839 = 30 P. L. R. 694 =  
1929 Cr. C. 61 = A. I. R. 1929 Lah. 504.

—A report of a Police Officer and the evidence given by the same officer are not sufficient to justify an order binding down a person to keep the peace. 10 W. R. 55, Ref. (*Addison, J.*) UJAGAR SINGH v. EMPEROR. 117 I. C. 807 = 10 Lah. 125 = 30 Cr. L. J. 839 = 30 P. L. R. 694 = 1929 Cr. C. 61 = A. I. R. 1929 Lah. 504.

—Entries in the Thana Village Crime Note Book are not sufficient evidence to support an order under S. 118. (*Teunon and Ghosh, J.J.*) POCHAI RAI v. EMPEROR. 62 I. C. 182 = 22 Cr. L. J. 486 (Cal.).

**—S. 118—Surety.**

—Magistrate can accept security even after the accused has been sent to jail.

A man was ordered by a Magistrate of the first class under S. 118 to give security for his good behaviour under S. 110 for a period of three years. He failed to furnish security then and there and he accordingly was ordered to be detained in prison pending the orders of the Sessions Judge. A day or so later he offered security to the Magistrate who accepted it and he was released from jail.

Held, that the Magistrate can accept security. A reasonable view of the matter should be taken as there is nothing in the Act clearly indicating what should be done if security is offered to the Magistrate after he has referred the matter to the Sessions Judge and before the latter has heard the reference. The purpose of the security sections is not that the persons proceeded against should be sent to or kept in jail but that should only be done when they are unable to give security.

Held, further, that reference to the Sessions Judge automatically ends with the acceptance of security by the Magistrate. (*Addison, J.*) EMPEROR v. MUHAMMAD AKBAR. 107 I. C. 286 = 29 Cr. L. J. 236 = 9 A. I. Cr. R. 490 = A. I. R. 1928 Lah. 64.

—The fact that the sureties reside at a distance where they cannot reasonably be expected to exercise control over the accused becomes of less importance when the sureties are themselves relations and presumably persons of some standing and they offer to keep control over the accused. 43 Cal. 1024, Rel. on. 20 All. 206, Dist. (*Allanson, J.*) JUGAL SINGH v. EMPEROR. 112 I. C. 909 = 30 Cr. L. J. 45 = 10 P. L. T. 213 = A. I. R. 1928 Pat. 374.

—In the proceedings taken after the order for securities is made and after the accused persons bring certain sureties the Magistrate cannot introduce any new qualifications while deciding on the suitability of the sureties. (*Kennedy, A. J. C.*) ALLAHADITO v. EMPEROR. 87 I. C. 961 = 19 S. L. R. 101 = 26 Cr. L. J. 1041 = A. I. R. 1925 Sind 321.

—It is not competent to a magistrate who has passed an order under S. 118 to delegate to another, e. g., the Superintendent of Police, the duty of the enquiry into the sufficiency of the security tendered, but should make such inquiry himself. 18 P. R. 1906, Ref. (*Moti Sagar, J.*) KANWAL NABH v. THE CROWN. 76 I. C. 27 = 25 Cr. L. J. 91 = A. I. R. 1924 Lah. 672.

—Distant residence by itself is no ground for rejection unless that indicates absence of control.

Sureties should not be rejected merely because they are not close neighbours of the persons called upon to execute the bond, but this does not mean that sureties cannot be rejected when in the particular case the Magistrate finds that they live too far away to be able to

**CR. P. CODE (1898), S. 119—Re-enquiry.**

exercise any control over the conduct of the person called upon to execute the bond. Inability to control, whether owing to distance or any other reason, is a good reason for rejection, though mere distance is not. In the case of a bond for good behaviour and a bond to keep the peace, personal security is necessary. (*Ashworth, J.*) KING-EMPEROR v. MOHAMMAD BAKHSH. 81 I. C. 316 = 26 O. C. 284 = 25 Cr. L. J. 796 = A. I. R. 1924 Oudh 80.

**—S. 118—Suspect in jail.**

—When the suspect is in jail when the order under S. 123 is made, that order is not to be enforced after his release.

Order under S. 118 was made on 20th October and the order of imprisonment for one year in consequence of the failure of the accused to give security in pursuance of the order under S. 118 was made under S. 123 on 29th October. Between 20th October and 29th, the accused was convicted and sentenced to seven years' rigorous imprisonment and that sentence commenced between these two dates.

Held, that it was clear that on the expiry of the above sentence the accused was entitled to be set at liberty. (*Shah and Fawcett, J.J.*) EMPEROR v. ABA FARID. 103 I. C. 108 = 29 Bom. L. R. 700 = 28 Cr. L. J. 652 = A. I. R. 1927 Bom. 657.

—When suspect is in jail, when the order under S. 123 is passed, detention runs concurrently with imprisonment for substantive offence.

If on the date of the order passed under S. 118 the suspect is undergoing imprisonment for a substantive offence, the provisions of cl. (1) of S. 120 come into operation and the period of security does not commence till the suspect has served out his substantive sentence of imprisonment. The proper procedure under the circumstances would be not to pass the order for detention of the suspect under S. 123 at once but postpone further proceedings under that section till the suspect has served out the period of sentence for the substantive offence. A. I. R. 1926 Bom. 545, Rel. on. If on the date of order under S. 118 the suspect is not undergoing imprisonment for substantive offence his case does not fall within the purview of cl. (1) of S. 120. If on that date the suspect asks for time to furnish the required security, it is open to the Magistrate to inquire whether the suspect is undergoing a trial for a substantive offence, and, if so, it is open to him to refuse to grant any time for furnishing the required security and to take immediate action under S. 123. If, however, the Magistrate does not make the necessary enquiry, or on making the necessary enquiry he does not get any definite information, and in the exercise of his discretion he grants time to the suspect to furnish security, and before the expiry of that time the suspect is convicted of a substantive offence and sentenced to imprisonment, then neither cl. (1) nor cl. (2) of S. 120 applies. In that case, the Magistrate should proceed to pass an order under S. 123 which provides for immediate detention in prison of the suspect till he furnishes the required security. This detention would *ipso facto* run concurrently with the substantive sentences which the suspect is undergoing. A. I. R. 1926 Sind 273, Foll. (*Rupchand Bilaram and Lobo, A. J. Cs.*) EMPEROR v. SAIDU. 101 I. C. 463 = 28 Cr. L. J. 431 = 8 A. I. Cr. R. 31 = A. I. R. 1927 Sind 166.

**—S. 119—Re-enquiry.**

—A further enquiry after discharge under S. 119 is improper unless the order of discharge is manifestly perverse or foolish or is based on a record of evidence which was obviously incomplete. (*Wazir Hasnain, J. C.*)

**CR. P. CODE (1898), S. 119—Revision.****EMPEROR v. JAGDAMBA SINGH.**11 O. L. J. 334=25 Cr. L. J. 1026=81 I. C. 802=  
A. I. R. 1924 Oudh 368.**—S. 119—Revision.**

—Under S. 436 as amended in 1923 a District Magistrate has no jurisdiction to revise the case of a person who has been called upon to give security and is discharged. 24 All. 148 *held no good law*; 33 Mad. 85, Appr.; A. I. R. 1924 All. 592, Ref. (*Dalal, J.*)  
NEUR AHIR v. EMPEROR.

113 I. C. 79=9 L. R. A. Cr. 146=  
10 A. I. Cr. R. 488=30 Cr. L. J. 63=  
51 All. 408=1929 A. L. J. 146=  
A. I. R. 1928 All. 755.

**—S. 119—Validity.**

—Where in proceedings under S. 107 the Magistrate proceeds to enquire into the truth of the information under S. 117 (1) but the complainant and prosecution witnesses are found absent, it is proper for the Magistrate to pass an order under S. 119 discharging the person proceeded against. (*Suhrawardy and Cammiade, J.J.*) ASSAFALI SAIYAL v. NASUR SARKAR.

101 I. C. 607=45 C. L. J. 211=31 C. W. N. 388=  
28 Cr. L. J. 479=A. I. R. 1927 Cal. 343.

**—S. 120—Starting point.**

—*When suspect is in jail S. 120 applies.*

A person was sentenced by a Magistrate to 12 months' rigorous imprisonment on proceedings initiated under S. 109 on 8th August, 1927; and while undergoing that sentence he was sentenced to three years' rigorous imprisonment from 21st December, 1927, on proceedings instituted under S. 110.

*Held*, that in view of S. 120 the person should have been required to give security from 8th August, 1928 and as according to S. 123 the maximum punishment for failure to give security was three years, the person should be sentenced to two years' rigorous imprisonment from 8th August, 1928. (*Barlee, J. C. and Aston, A.J.C.*) EMPEROR v. FATEH.

23 S. L. R. 438=117 I. C. 777=1929 Cr. C. 335=  
30 Cr. L. J. 849=A. I. R. 1929 Sind 166

—The period of security is to be calculated from the date of final order and not from the date of preliminary order. (*Wallace, J.*) TARANAGOWD v. EMPEROR.

1927 M. W. N. 185=106 I. C. 589=  
29 Cr. L. J. 77=A. I. R. 1927 Mad. 542.

—Where during the time allowed to a suspect to furnish the security as required by the order passed under S. 118 of the Code, he is sentenced to imprisonment for an offence committed by him prior to the date of such order, it is not competent to the Magistrate to fix the date of the expiry of such sentence as the date for computing the period from which such security is to be furnished. (*Kennedy, Rupchand Bilaram and Lobo, A. J. Cs.*) EMPEROR v. AHMED.

20 S. L. R. 163=27 Cr. L. J. 865=96 I. C. 113=  
A. I. R. 1926 Sind 273 (F. B.).

**—S. 121—Breach.**

—*For forfeiture of surety bond a person bound need not be actually convicted.*

The contention that the provisions of S. 121 are not exhaustive cannot be supported. When the law definitely lays down what would constitute a breach of the bond given under an order passed under S. 118, the breach must be confined to those acts and cannot be extended to the commission of any other acts, but at the same time it is nowhere laid down in the Code that the persons giving the bond should actually be convicted before proceedings are taken against his surety. (*Dalal, J.*) SHEO JANGAL v. EMPEROR.

113 I. C. 740=30 Cr. L. J. 203=

**CR. P. CODE (1898), S. 123—Finding.**

9 A. I. Cr. R. 443=50 All. 666=  
9 L. R. A. Cr. 68=26 A. L. J. 443=  
A. I. R. 1928 All. 232.

—Subsequent conviction need not be for the same kind of offence for which the person is bound over. S. 121 makes no such reservation but lays down that a breach of the bond is committed as soon as a person bound over commits any offence punishable with imprisonment. 15 P. R. 48, Diss. from. (*Dalal, J.*)  
SHEO JANGAL PRASAD v. EMPEROR.

50 All. 666=9 A. I. Cr. R. 443=26 A. L. J. 443=  
113 I. C. 740=30 Cr. L. J. 203=  
9 L. R. A. Cr. 68=A. I. R. 1928 All. 232.

**—S. 122—Scope.**

—S. 122 prescribes the procedure for testing the fitness of the sureties by the Magistrate. There is no provision in the Code regulating the testing by a Sessions Judge and the fact that the order accepting or rejecting a surety is an appealable order indicates the Sessions Court has no such power. (*Adami and Scroope, J.J.*) EMPEROR v. BERAIR NARENDRA NATH SINGH.

9 Pat. 741=1930 Cr. C. 425=  
125 I. C. 156=31 Cr. L. J. 802=  
A. I. R. 1930 Pat. 217.

**—S. 123—Accused in jail.**

—*Accused asked to furnish security already in prison—Further orders should be postponed till expiry of imprisonment being undergone.*

Where the accused ordered to furnish security is already undergoing imprisonment an order of imprisonment on his failure to furnish security will be premature. In such a case no further order is required except on the point whether the imprisonment on failure to furnish security should be rigorous or simple, and on any questions that may arise as to the security tendered. Proper course would be to adjourn the case till after the sentence the accused is undergoing has expired, for further orders. (*Fawcett and Madgavkar, J.J.*) EMPEROR v. NANA RAMIJI.

28 Bom. L. R. 1038=  
27 Cr. L. J. 1163=97 I. C. 747=  
A. I. R. 1926 Bom. 545.

**—S. 123—Alternative imprisonment.**

—An order under S. 123 directing that petitioner should, in default of giving security, suffer simple imprisonment for one year, cannot be upheld. (*Wallace, J.*) IBRAYA ROTHAN v. KING-EMPEROR.

39 M. L. T. 658=26 M. L. W. 537=  
1927 M. W. N. 788=28 Cr. L. J. 1034=  
106 I. C. 218=9 A. I. Cr. R. 186=  
A. I. R. 1927 Mad. 976=53 M. L. J. 762.

**—S. 123—Detention.**

—It is by no means clear that an order directing on accused's failure to produce the required sureties, that the accused be detained in prison for a period to be specified hereafter is a legal order. (*Kennedy, J. C.*) ALLAH DITTO v. EMPEROR.

87 I. C. 961=  
19 S. L. R. 101=26 Cr. L. J. 1041=  
A. I. R. 1925 Sind 321.

**—S. 123—Finding.**

—*Sessions Judge must come to an independent finding.*

Where a case is submitted to a Sessions Judge under S. 123 (2), the Sessions Judge is bound to examine the evidence himself and come to an independent finding as to the propriety of the order demanding security, the amount and the period for which it is to be demanded. 15 P. R. 1900 (Cr.) and 25 All. 275, Rel. Where he merely confirms the order passed by the trial Magistrate without notice to the petitioner and without examining the record, it is irregular and must be set aside.

**CR. P. CODE (1898), S. 123—Imprisonment.**

35 Bom. 271 and A.I.R. 1925 Oudh 517, Rel. on. (*Tek Chand, J.*) **MANGAL SINGH v. CROWN.**

103 I. C. 193=28 Cr. L. J. 657=  
A. I. R. 1928 Lah. 189.

**—S. 123—Imprisonment.**

—According to S. 123 a person who is ordered to furnish security for good behaviour but fails to do so shall be detained in prison for the period for which security was demanded. The order of imprisonment for a shorter period is, therefore, bad in law. (*Zafar Ali, J.*) **EMPEROR v. KHUSHI MUHAMMAD.**

123 I. C. 835=1930 Cr. C. 1=31 Cr. L. J. 583=  
A. I. R. 1930 Lah. 49.

—In a case submitted to Sessions Judge, order of imprisonment in default is to be passed by the Sessions Judge.

Under S. 118 the Magistrate is empowered to make an order requiring the accused to execute a bond with or without sureties to maintain good behaviour for such period as he thinks fit to fix. If the period for which security is demanded exceeds one year, then the Magistrate is required by S. 123 (2) to submit the record to the Sessions Judge, and it is for the Sessions Judge after examining the record to pass such orders as he thinks fit. In such cases the order fixing the term of imprisonment which the accused is to undergo on default of furnishing security is to be fixed by the Sessions Judge and not by the Trial Magistrate. (*Tek Chand, J.*) **MANGAL SINGH v. CROWN.**

103 I. C. 193=28 Cr. L. J. 657=  
A. I. R. 1928 Lah. 189.

**—S. 123—Procedure.**

—Sessions Judge need not write full judgment in a case under S. 123 (2).

S. 123 (2) seems to contemplate more of administrative than judicial functions to be exercised by the Sessions Judge when a case is submitted to him under the section. He should, however, hear both the accused persons and the Crown, and see at any rate whether there are substantial grounds for demanding security. It is not, however, necessary to deal with such matter as if it were an appeal nor it is necessary to write a judgment as if it were an appeal. (*Kennedy, J. C. and Aston, A.J.C.*) **ALLAHADAD v. THE CROWN.**

83 I. C. 883=17 S.L.R. 160=26 Cr. L. J. 179=  
A. I. R. 1924 Sind 120.

**—S. 123—Proceedings, nature.**

—Proceedings under S. 123 are proceedings not in confirmation but for orders, and the Sessions Judge has to pass a definite order binding over and not confirm an order passed by a Magistrate. (*Dalal, J. C.*) **BAHA DUR v. EMPEROR.**

85 I. C. 944=26 Cr. L. J. 656=  
A. I. R. 1925 Oudh 517.

**—S. 123—Re-hearing.**

—S. 123 (3) does not empower Sessions Judge to order the re-hearing of a case, though the Judge can ask for further information or evidence. The Sessions Judge can consider the evidence on record and pass such orders as he thinks fit on the evidence without requiring further evidence. (*Newbould and B. B. Ghose, J.J.*) **NARAYAN SINGH v. EMPEROR.**

81 I. C. 936=  
25 Cr. L. J. 1112=A. I. R. 1925 Cal. 191.

**—S. 123—Seisin of case.**

—After a Magistrate has submitted the record to Sessions Court under S. 123 (2) the seisin of the case is thenceforward with that Court. (*Tek Chand, J.*) **MANGAL SINGH v. EMPEROR.**

103 I. C. 193=  
28 Cr. L. J. 657=A. I. R. 1928 Lah. 189.

**—S. 123—Starting point.**

—Period should ordinarily begin from date of Magistrate's order.

**CR. P. CODE (1898), S. 133—Bona fide claim.**

Where a Sessions Judge to whom a case was submitted under S. 123 (2) directed that the period for which the accused were to be bound should begin from the date of his order and not from the Magistrate's order.

Held, that the order in fact amounted to an enhancement of sentence, and that it was undesirable that the Court should do that even if it has the power without special reasons. (*Kennedy, J. C. and Aston, A. J. C.*) **ALLAHADAD v. THE CROWN.**

83 I. C. 883=  
17 S.L.R. 160=26 Cr. L. J. 179=  
A. I. R. 1924 Sind 120.

**—S. 123 (x)—Surety.**

—Sessions Court has no power to test sureties.

A Sessions Court before which proceedings are laid under S. 123 (2) has neither any duty cast upon it nor any power to test sureties offered by the person bound down. It is for the Magistrate to deal with the sureties under S. 122. 5 S. L. R. 87, not Foll. (*Adami and Scoope, J.J.*) **EMPEROR v. NARENDRA NATH SINGH.**

1930 Cr. C. 425=125 I. C. 156=31 Cr. L. J. 802=  
9 Pat. 741=A. I. R. 1930 Pat. 217.

—Until case is referred for final orders, proceedings in Magistrate's Court are not terminated so as to end the sureties' liability. (*Daniels, J.*) **MUSTAQIMUDDIN v. EMPEROR.**

92 I. C. 889=24 A.L.J. 327=  
27 Cr. L. J. 377=7 L.R.A. Cr. 78=7 L.R.A. Cr. 152=  
A. I. R. 1926 All. 297.

**S. 132.—Scope.**

—Police officer in charge of patrol boat has no power to disperse unlawful assembly by force.

The power to disperse an unlawful assembly by force is not given by the Code to any police officer below the rank of an officer-in-charge of a police station. An examination of the Police Manual shows that the powers of an officer-in-charge of a patrol boat are no higher than those of an officer-in-charge of an outpost. From such an officer the power to investigate cognizable cases has been withheld and this is a power which he would necessarily have under S. 156 if he were in charge of a police station. (*Newbould and Suhrwardy, J.J.*) **MAHOMMED YUNUS v. EMPEROR.**

77 I. C. 819=  
50 Cal. 318=25 Cr. L. J. 467=  
A. I. R. 1923 Cal. 517.

**—S. 133.**

**Bona fide claim.**

**Cancellation of order.**

**Costs.**

**Jury.**

**Nuisance.**

**Object and scope.**

**Obstruction.**

**Procedure.**

**Miscellaneous.**

**—S. 133—Bona fide claim.**

—Proceedings should be stayed until the existence of public right has been decided by a competent civil Court—In such a case order under S. 133 should not be made absolute.

A Magistrate has jurisdiction to take action under S. 133 even where a bona fide claim of right is raised by the defendant, but when the question whether the right rested in the public is seriously disputed, and its decision becomes a difficult matter of mixed fact and law, the proper procedure for a Magistrate to employ is under S. 139-A(2) to stay proceedings until the matter of the existence of such right has been decided by a competent civil Court and the existence of a genuine dispute as to title suitable for decision by the civil Court is a sufficient ground for not making an order absolute under S. 137. A. I. R. 1924 All. 1, Foll. ; A. I. R. 1923 Oudh

**CR. P. CODE (1898), S. 133—Bona fide claim.**

152; 42 Cal. 158 and 36 All. 209, Rel. on. (*Datal, J.*)  
 MANNA TIWARI v. CHANDARBALL. 50 All. 871 =  
 26 A. L. J. 1285 = 110 I. C. 213 = 29 Cr. L. J. 661 =  
 9 L.R.A.Cr. 118 = 10 A.I.Cr.R. 201 =  
 A. I. R. 1928 All. 627.

—Long user may put an end to both public and private rights.

A long user by person of what is claimed to be a part of the public way may be taken as a *bona fide* assertion of claim ousting the jurisdiction of the criminal Court to pass a summary order under S. 133 against him. *Vice versa* a long user by the public of a place as part of a public road or way raises a presumption of relinquishment by the owner thereof of his right over it. (*Jwala Prasad, J.*) JANKI RAM v. SANKHI PANJARA.

9 P.L.T. 587 = 108 I.C. 559 = 29 Cr. L. J. 422 =  
 10 A.I.Cr.R. 127 = A. I. R. 1928 Pat. 268.

—Only when denial of right is a pretence, Magistrate can make an order absolute.

When proceedings are taken under S. 133 against a person who denies the existence of public right and which denial is *bona fide*, the Magistrate's jurisdiction is ousted, but if the denial is mere pretence, the Magistrate can make his order final. It is sufficient if the evidence produced is not false. The Magistrate has no jurisdiction to weigh the evidence. (*Mullick and Ross, J.J.*) THAKURSAO v. ABDUL AZIZ. 4 Pat. 783 =

7 P. L. T. 136 = 27 Cr. L. J. 9. = 91 I. C. 41 =  
 A. I. R. 1928 Pat. 170.

—Bona fide claim should not be disregarded.

Where the dispute was as to the closing of an old drain, and the accused definitely asserted that the drain was not a public one but the Magistrate instead of proceeding under S. 139 (a) at once took evidence under S. 137 and where the Magistrate also did not find in clear words that the drain was a public one.

Held, that the trial was vitiated by wrong procedure. (*Piggott, J.*) RAGHUNATH UPADIA v. EMPEROR.

86 I. C. 809 = 23 A. L. J. 187 = 26 Cr. L. J. 873 =  
 A. I. R. 1925 All. 311.

—When civil dispute is involved, the Magistrate has jurisdiction to refuse to interfere.

The Magistrate must deal with an alleged "public" way even though it is disputed. These summary powers were primarily intended to be exercised in cases where there was no question that the way was one vested in the public, and when that question is seriously disputed, and its decision becomes a difficult matter of mixed fact and law, a Magistrate clearly has jurisdiction to exercise his discretion by declining to decide it and sending the parties to a civil Court. 28 All. 98, Diss. A. I. R. 1922 Cal. 59 (F.B.), Ref. Private property cannot be converted into public merely because it looks as though it ought to be and because to do so would be convenient to a section of the public who have enjoyed permissible user over it. (*Walsh, J.* on difference between *Lindsay and Daniels, J.J.*) ABDUL WAHID KHAN v. ABDULLAH KHAN. 74 I. C. 849 = 45 All. 656 =

21 A. L. J. 529 = 4 L. R. A. Cr. 106 =  
 24 Cr. L. J. 817 = A. I. R. 1924 All. 1.

—A bona fide claim, and not a mere pretence, ousts jurisdiction.

There is no jurisdiction to make an order under the section, where a *bona fide* question as to the way being public is raised and the question should be left for determination by the civil Court. To have this effect however the claim must be *bona fide* and not a mere pretence to oust jurisdiction and it is for the Magistrate to say whether the claim is *bona fide* or not. A Magis-

**CR. P. CODE (1898), S. 133—Nuisance.**

trate who issues a conditional rule under S. 133 can make the Rule absolute upon the evidence recorded and report submitted to him by another Magistrate to whom he had referred the matter, under the last paragraph of clause (1) of S. 133. (*Bucknill, J.*) CHANDRIKA KOERI v. BUDHU DUSADH. 73 I. C. 802 =

2 Pat. L. R. Cr. 21 = 24 Cr. L. J. 690 =  
 A. I. R. 1924 Pat. 418.

**—S. 133—Cancellation of order.**

—Magistrate cannot cancel an order made under S. 133 merely on the written statement by opposite party without taking evidence.

On application by a petitioner, a Magistrate made a conditional order requiring the opposite party to remove the obstruction, or to appear before him and to show cause against the order. The opposite party filed a written statement showing cause against the aforesaid order and alleging that there had been litigation between the parties and ultimately a passage five feet wide had been left for the public. The Magistrate, who succeeded the previous Magistrate, on perusing the statements of the parties, but without taking any evidence, cancelled the order under S. 133, Cr. P. C.

Held, that the Magistrate had not followed the provisions of Part 4, Ch. 10 and that the order could not, therefore, be allowed to stand. (*C. C. Ghose and Jack, J.J.*) GANGA PRASAD v. KHITISH CHANDRA.

118 I.C. 863 = 30 Cr. L. J. 973 =  
 A.I.R. 1929 Cal. 21.

—Non-service of notice in a proceeding under S.133 is not a ground giving the Magistrate jurisdiction to cancel his previous order for removal of obstruction. The procedure to be followed is as under S. 140 (2). (*Mukerji and G. N. Roy, J.J.*) SHAHABUDDIN AHMAD v. ABDUL KADIR. 44 C.L.J. 211 =

31 C.W.N. 530 = 28 Cr. L. J. 30 =  
 7 A.I. Cr. R. 218 = 99 I.C. 62 =  
 A.I.R. 1927 Cal. 70.

**—S. 133—Costs.**

—It is unjust to recover costs from a party who is not served with notice. (*Mukerji and G. N. Roy, J.J.*) SHAHABUDDIN AHMAD v. ABDUL KADIR.

44 C. L. J. 211 = 31 C.W.N. 530 =  
 7 A.I. Cr. R. 218 = 99 I.C. 62 = 28 Cr. L.J. 30 =  
 A.I.R. 1927 Cal. 70.

—There is no provision in Chapter X for the payment of costs by any party to the proceeding. (*Sanderson, C. J. and Chotzner, J.*) RAHIMADDI JAMADAR v. SHER ALI. 85 I.C. 357 = 40 C.L.J. 597 =

26 Cr. L. J. 517 = A.I.R. 1925 Cal. 399.

**—S. 133—Jury.**

—A Magistrate should not accept only a part of the verdict of jury and base his order thereon. (*Sanderson, C. J. and Chotzner, J.*) RAHIMADDI JAMADAR v. SHER ALI. 85 I.C. 357 = 40 C.L.J. 597 =

26 Cr. L.J. 517 = A.I.R. 1925 Cal. 399.

**—S. 133—Nuisance.**

—S. 133 deals only with occupations or trades which are in themselves injurious to health and has nothing whatever to do with trades which in themselves are harmless but in course of which a public nuisance might be committed. There was rivalry between two steamer companies who vied with each other in attracting passengers. It was alleged that their practices of taking up passengers from the boats and of taking passengers from places other than the recognized jetties caused backwash and involved danger to the public.

Held, that S. 133 did not apply.

Per *S. K. Ghose, J.*—S. 133 is not confined to trades which are injurious in themselves. It applies on the



**CR. P. CODE (1898), S. 133—Nuisance.**

contrary to the cases of trades which become injurious by reason of conduct of them. (*Graham and S. K. Ghose, J.J.*) CALCUTTA STEAM NAVIGATION CO., LTD. v. EMPEROR. 35 C.W.N. 115=

129 I.C. 106=32 Cr.L.J. 235=1930 Cr. C. 1157= A.I.R. 1930 Cal. 757.

—Construction of a latrine on one's land is not a nuisance.

The construction of a latrine by a person on his own land cannot be considered a nuisance. There would be a nuisance if on its construction its use was made in such a way as to lead to a nuisance to neighbours. 25 Cal. 425, Foll. (*Dalal, J.*) GAURI SHANKAR v. SHRI KRISHNA.

26 A.L.J. 86=9 A.I. Cr. R. 12=8 L.R.A. Cr. 172= 107 I.C. 242=29 Cr. L.J. 233= A.I.R. 1928 All. 128.

—Encroachment on public way is itself nuisance.

Encroachment upon a public road is an obstruction to the public path, and it is a nuisance in itself under S. 268 of the Penal Code. No length of user can justify an encroachment upon a public way. The question of a sufficient width of the road being left in support of the encroachment, for public use is no ground for allowing the encroachment or obstruction to continue. It is the duty of the Magistrate to come to a finding, whether the claim of the person complained of, to such encroachment is *bona fide* or not, and question of possession is relevant for this purpose. (*Jwala Prasad, J.*) JAGROSHAN BHARTHI v. MADAN PANDE.

6 Pat. 428=8 P. L. T. 452=8 A.I.Cr.R. 306= 28 Cr.L.J. 910=105 I.C. 238= A.I.R. 1927 Pat. 265.

—Discharge into river of an effluent from a factory is covered—There must be definite, scientific and convincing evidence against the accused.

The second paragraph of Sub-S. (1) of S. 133 gives ample power to make an order prohibiting the discharge from a factory into a river of an effluent which might be injurious to the health of the community which has rights to the use of the water in such stream. It would be necessary to prove substantially, before an order could be made against any of the parties that the effluent from its factory was noxious. That sources of public water supply polluted by industrial factories, must be convincingly proved, by means of scientific enquiry against a wrong-doer before any order can be passed against him. (*Mullick and Bucknill, J.J.*) DESHI SUGAR MILL v. TUPRI KAHAR.

8 P. L. T. 302=28 Cr. L. J. 317=100 I. C. 541= A. I. R. 1926 Pat. 506.

**—S. 133—Object and scope.**

—There is nothing in law to prevent a Magistrate drawing up fresh proceedings under S. 133 based on proper materials. (*Suhrawardy and Costello, J.J.*) SATISH CHANDRA SEN v. KRISHNA KUMAR DAS.

34 C. W. N. 957=128 I. C. 810= 32 Cr. L. J. 189=1931 Cr. C. 34= A. I. R. 1931 Cal. 2.

—Section 133 is not intended for long-standing obstructions, but for an unlawful obstruction lately built in a public place. A. I. R. 1926 All. 157 (1), Foll. (*Addison, J.*) BAISAKHI RAM v. EMPEROR.

120 I. C. 796=31 Cr. L. J. 167= 1930 Cr. C. 965=A. I. R. 1930 Lah. 361.

—“Remove” does not include restoring status quo. It would be manifestly straining the meaning of the word “remove” in para. (2), S. 133, to hold that removal of the trade or occupation includes ordering the person carrying on the trade, to restore the status quo.

CR. D.—14

**CR. P. CODE (1898), S. 133—Obstruction.**

A bought some land for the purposes of brick kilns just outside the municipal limits of a town and proceeded to dig pits in the ordinary course of the trade or occupation of brick-making. It was complained that those pits constituted a breeding ground for mosquitoes; and further that the smoke and the sparks from the chimneys constituted a nuisance and a danger. The Magistrate ordered the making of the bricks to cease and the pits to be filled up.

Held, that the portion of the order requiring A to fill up the pits ought to be set aside. (*Boys and Banerji, J.J.*) BHAGAT RAM v. EMPEROR.

116 I. C. 21=51 All. 489=1929 A. L. J. 177= 10 L. R. A. Cr. 44=11 A. I. Cr. R. 296= 30 Cr. L. J. 561=A.I.R. 1929 All. 114.

—Sec. 133 is not intended to be employed to avoid the necessity of filing a civil suit in regard to a construction which has been in existence for a number of years. (*Daniels, J.*) GHURAHU DAS v. SHAKALRAJ DAS.

24 A. L. J. 112=6 L. R. A. Cr. 190= 27 Cr. L. J. 27=91 I. C. 59= A. I. R. 1926 All. 157.

—Sec. 133 clearly contemplates that in suitable cases the order initially made may be modified and the modified order may be allowed to stand. (*Mukerji, J.*) JHAN LAL v. EMPEROR. 86 I. C. 219=23 A. L. J. 43= 26 Cr. L. J. 731=6 L. R. A. Cr. 86= A. I. R. 1925 All. 310.

—Under S. 133, Cl. (2) it is only the power to order the removal of an obstruction which is given to a Magistrate. There is no provision for re-construction of an obstruction which has once been removed under this section. (*Sanderson, C. J. and Chotzner, J.*) RAHIMADDI JAMADAR v. SHER ALI.

85 I. C. 357=40 C.L.J. 597=26 Cr. L. J. 517= A.I.R. 1925 Cal. 399.

—Sec. 133 deals with only public nuisances and not with private nuisances. So an application for removal of obstruction of a private path-way does not lie under the section. (*Kendall, A. J. C.*) BHAIYA GAURI SHANKAR v. BHAGALA PANDE.

11 O. L. J. 659=25 Cr. L. J. 1118= A. I. R. 1925 Oudh 130.

—Danger must be at the time of injury and not at future indefinite time.

The section deals with the condition of things at the time when the enquiry is held. If at such a time a house or branch of a tree is likely to fall and thereby endanger the life of passers-by, action under the section is justified. The section is not meant to apply to what may happen at some indefinite time in the future or under quite abnormal circumstances. (*Ryves, J.*) GOKUL v. EMPEROR. 83 I. C. 664=22 A. L. J. 436=

5 L. R. A. Cr. 84=26 Cr. L. J. 104= A. I. R. 1924 All. 667.

**—S. 133—Obstruction.**

—When there is a chabutra obstructing a public way the fact that in a particular case the public may have lot of room to go along the road, without needing to walk upon that particular site of the chabutra, has nothing to do with the case, and the public road authorities can secure its removal. (*Boys, J.*) SALLU MAL v. EMPEROR. 128 I. C. 604=32 Cr. L. J. 160=

1930 Cr. C. 1007=A. I. R. 1930 All. 751.

—Obstruction must be of public use of a public river, way or channel. 22 Bom. 988, Rel. on. (*Dalal, J.*) MUNNA TIWARI v. CHANDARBALI.

110 I. C. 213=50 All. 871=26 A. L. J. 1285= 29 Cr. L. J. 661=9 L. R. A. Cr. 118= 10 A. I. Cr. R. 201=A. I. R. 1928 All. 627.

**CR. P. CODE (1898). S. 133—Obstruction.**

—An obstruction at 15½ feet over country road, having regard to the normal traffic was held to be not an unlawful obstruction within the meaning of the section. (*Ryoes, J.*) **GOKUL v. EMPEROR.** 83 I. C. 664 = 22 A. L. J. 436 = 5 L. R. A. Cr. 84 = 26 Cr. L. J. 104 = A. I. R. 1924 All. 667.

**—S. 133—Procedure.**

—*In the absence of any specific opportunity to adduce evidence under S. 137, order must be set aside.*

A conditional order was made under S. 133. The opposite party denied the claim. He was asked to adduce evidence.

*Held*, that the contention that the party understood that he was to adduce evidence in support of his case relevant to an enquiry under S. 139-A, had force and inasmuch as no specific opportunity was given to him to adduce evidence under S. 137, the order complained of should be set aside. (*C. C. Ghose and Jack, J.J.*) **ETRAJ MANDAL v. EMPEROR.** 116 I. C. 384 = 49 Cr. L. J. 49 = 30 Cr. L. J. 622 = 13 A. I. Cr. R. 69 = 33 C. W. N. 201 = A. I. R. 1928 Cal. 879.

—*Order without giving party opportunity to prove his claim is bad.*

Where an order under S. 133 was made without the first party being required to adduce evidence in support of their claim, but the second party was called upon to show cause and they were required to adduce evidence in support of their denial of the right claimed by the first party.

*Held*, that the order was made without the first party being called upon to give evidence to prove their claim, and it cannot stand. (*C. C. Ghose and Cammiade, J.J.*) **AKHOV SARDAR v. LALCHAND SARDAR.** 104 I. C. 635 = 31 C. W. N. 963 = 28 Cr. L. J. 859 = 9 A. I. Cr. R. 41 = A. I. R. 1928 Cal. 96.

—*The Magistrate's order must specify the obstructions raised by each person.*

When, in proceedings under S. 133 instituted against a number of persons, it is alleged that various unlawful obstructions have been caused upon a public way, but it is not alleged that all the persons had jointly raised those obstructions, it is essential that the order should state accurately, with regard to each person, the specific obstructions made by him which he is required to remove. 44 Cal. 61, Foll. (*Dalip Singh, J.*) **KHEM CHAND v. EMPEROR.** 106 I. C. 220 = 9 A. I. Cr. R. 202 = 28 Cr. L. J. 1036 = A. I. R. 1928 Lah. 187.

—When a Magistrate commences proceedings under S. 133, he is not at liberty to proceed otherwise than in conformity with the rule laid down in Ch. 10. 8 W. R. 37 Cr., Foll. (*Shadi Lal, C. J.*) **BRAHMAN WATER MILLS CO. v. MANGLADHA MAL.**

109 I. C. 354 = 9 L. J. 522 = 29 Cr. L. J. 530 = A. I. R. 1928 Lah. 95.

—Where proceedings are taken against a person who sets up a title to land which he is required to vacate, the Court cannot pass a summary order but must proceed in accordance with S. 137. (*Banerji, J.*) **ABDUL KARIM v. EMPEROR.** 100 I. C. 374 = 49 All. 453 = 25 A. L. J. 424 = 8 L. R. A. Cr. 58 = 28 Cr. L. J. 294 = 7 A. I. Cr. R. 389 = A. I. R. 1927 All. 384.

—A Magistrate cannot make an order under S. 133 absolute without recording evidence and simply on the basis of a local inspection made by him. A. I. R. 1922 All. 265; 44 Cal. 61, Foll. (*Iqbal Ahmad, J.*) **TIRKHA v. NANAK.** 100 I. C. 371 =

**CR. P. CODE (1898), S. 133—Miscellaneous.**

49 All. 475 = 25 A. L. J. 377 =

28 Cr. L. J. 291 = 8 L. R. A. Cr. 59 =

7 A. I. Cr. R. 391 = A. I. R. 1927 All. 350.

—*Enquiry under S. 133 should be like that in a summons case.*

Where on a complaint, notice under S. 133 has been served and the person complained against appears and shows cause against the order passed to remove the obstruction, the Magistrate should take evidence as in a summons case. Referring the matter to a Naib Tahsildar for enquiry and deciding it on his report is an irregularity vitiating the order. (*Stuart, C. J.*) **RAN BAHADUR SINGH v. BHAGWATI PRASAD.**

98 I. C. 102 = 3 O. W. N. 844 =

27 Cr. L. J. 1254 = 7 A. I. Cr. R. 34 =

A. I. R. 1927 Oudh 26.

—The Magistrate making conditional rule can refer the matter for disposal to another Magistrate subordinate to him except when jury is demanded under S. 135. 42 Cal. 158, 17 Cal. 562 and 25 Cal. 278, Rel. on. (*Jwala Prasad, J.*) **JAGROSHAN BHARTI v. MADAN PANDE.**

105 I. C. 238 =

6 Pat. 428 = 8 P. L. T. 452 =

8 A. I. Cr. R. 306 = 28 Cr. L. J. 910 =

A. I. R. 1927 Pat. 265.

—When proceedings are taken under S. 133 relating to the obstruction of and encroachment over a public drain, the Magistrate ought to stay the proceedings under S. 139-A (2) and relegate the parties to the remedies open to them in the Civil Court, in a case where the person against whom the proceedings under S. 133 are taken produces the settlement record evidencing his title to the land in dispute. (*Greaves and Panton, J.J.*) **DEBENDRA NATH CHOWDHURY v. CHAIRMAN, LOCAL BOARD, ASANSOL.** 81 I. C. 904 = 25 Cr. L. J. 1080 = A. I. R. 1925 Cal. 268.

—*Evidence must be recorded in a proceeding under the section.*

Where the accused was served with a notice under S. 133 to remove a shed and the Magistrate without recording any evidence for the prosecution made the order absolute and directed the shed to be removed,

*Held*, that the procedure to be followed in such cases is as in a summons case and that evidence must be recorded. 32 P. R. 917 Cr.; 31 A. 453; 24 C. 395, Ref. (*Moti Sagar, J.*) **MAN CHAND v. EMPEROR.** 73 I. C. 503 = 24 Cr. L. J. 615 = A. I. R. 1924 Lah. 392.

—*Evidence of previous conviction of petitioner under S. 341, Penal Code is not sufficient.*

Where to pass an order for the removal of a building on the ground that it obstructed a village street, the fact that the petitioner had been previously convicted under S. 341, Penal Code, in respect of the same building by a Magistrate of the third class and the conviction had been upheld by the Dt. Magistrate had been relied on.

*Held*, the Magistrate should have proceeded *de novo* as in summons cases. 32 P. R. 1917 Cr., Ref. (*Zafar Ali, J.*) **BHEDU v. THE CROWN.**

5 L. L. J. 81 = A. I. R. 1924 Lah. 128.

**—S. 133—Miscellaneous.**

—Jurisdiction of Civil Court is barred only when the order is conditional but not when order is absolute.

The procedure adopted by Magistrate under S. 133 is more or less summary and his decision goes so far as to fix upon the party who must go to the Civil Court to get a civil dispute decided. (*Dalal, J.*) **DULI CHAND v. EMPEROR.** 121 I. C. 560 = 1929 Cr. C. 358 =

10 L. R. A. Cr. 136 = 51 All. 1025 =

12 A. I. Cr. R. 292 = A. I. R. 1929 All. 833.

**CR. P. CODE (1898), S. 133—Miscellaneous.**

—*Catchment area—Channel may include a catchment area with a water course in the centre.*

The word "channel" is not defined in the Code but the word is quite wide enough to include a catchment area in the centre of which there is a water course. Where such water course is obstructed and the water which flows into the water course is attempted to be carried away by certain persons to their own village tank by building a bund and cutting a new channel and by cutting down a new portion of the old bund of the catchment area to make the water run away in a direction different to that of the water course and to prevent it falling into the *Urani*.

*Held*, that their act can be held to be an obstruction to the water course. (*Krishnan, J.*) RAMASWAMI CHETTIAR *v.* RAMANATHAN CHETTIAR.

91 I. C. 537 = 22 M. L. W. 470 =  
1925 M. W. N. 663 = 27 Cr. L. J. 105 =  
A. I. R. 1926 Mad. 165.

**—S. 134—Substituted service.**

If service of the notice of conditional order under S. 133 is effected in the manner provided by S. 71, regardless of the question whether it could be served in the manner provided by S. 69 or by S. 70 service of notice is defective. (*Sanderson, C. J. and Rankin, J.*) BENI MADHAB SAPNI *v.* JADUNATH SAPNI. 94 I. C. 907 =

43 C. L. J. 113 = 27 Cr. L. J. 715 =  
31 C. W. N. 148 = A. I. R. 1926 Cal. 1208.

**—S. 136—Effect of amendment.**

—In view of the amendment of S. 497 of the Cr. P. Code, Courts will be less fettered than before. (*Mookerjee and Chatterjee, J.J.*) NAGENDRA NATH CHAKRABARTHY *v.* EMPEROR. 81 I. C. 220 =

51 Cal. 402 = 38 C. L. J. 388 = 25 Cr. L. J. 732 =  
A. I. R. 1924 Cal. 476.

**—S. 137—Finality of order.**

—The High Court which has power to confirm the order under S. 137 has also power to modify that order to such extent as may seem fit. (*Boys, J.*) MANOHAR SINGH *v.* EMPEROR. 116 I. C. 786 =

1929 A. L. J. 385 = 10 L. R. A. (Cr.) 49 =  
11 A. I. Cr. R. 350 = 30 Cr. L. J. 670 =  
A. I. R. 1929 All. 220.

**—S. 137—Procedure.**

—Where the accused is alleged to have obstructed a public pathway, and on receipt of notice of the proceedings under S. 133, he appears in Court, the first duty of the Magistrate is to question him whether he denied the existence of public right in the pathway. If instead of doing so the Magistrate proceeds to enquire into the matter whether there was any obstruction, the procedure is wrong in law. (*Pearson and Mallik, J.J.*) MATABBAR MOLLA *v.* GOLAM PANJATON.

I. R. 1930 Cal. 890 = 32 Cr. L. J. 33 = 127 I. C. 762 =  
1930 Cr. C. 798 = 57 Cal. 368 =  
A. I. R. 1930 Cal. 486.

—The provisions of S. 137 (1) are mandatory and before making the conditional order absolute, it is imperative that evidence should be taken in the case as in a summons case. The Magistrate cannot, without recording evidence, act on his own opinion. 31 All. 453, Foll. (*Iqbal Ahmad, J.*) JAGAN NATH *v.* EMPEROR.

101 I. C. 897 = 7 A. I. Cr. R. 439 =  
8 L. R. A. Cr. 68 = 28 Cr. L. J. 510 =  
A. I. R. 1927 All. 825.

—*Failure to follow procedure under S. 137 (1) is not a mere irregularity.*

Section 537 applies only to mere errors of procedure arising out of mere inadvertence, and not to substantive

**CR. P. CODE (1898), S. 137—Recording evidence.**

errors of law, and that section does not apply to cases of disregard or disobedience of mandatory provisions of the Code. The section has not the effect of curing material irregularities and absolute illegalities.

The failure of a Magistrate to follow the procedure enjoined by S. 137 (1) vitiates his order, and is not a mere irregularity of the nature contemplated by S. 537 (a); 25 Mad. 61, Foll. (*Iqbal Ahmad, J.*) TIRKHA *v.* NANAK. 100 I. C. 371 = 49 All. 475 =

25 A. L. J. 377 = 28 Cr. L. J. 291 = 8 L. R. A. Cr. 59 =  
7 A. I. Cr. R. 391 = A. I. R. 1927 All. 350.

—*The provisions of S. 137 are mandatory.*

The provisions of S. 137 are imperative and failure to comply with them vitiates the order. When the opposite party appears before the Magistrate, shows cause and alleges that what was claimed as a public pathway was not so, the Magistrate should record evidence on the matter of the complaint as in a summons case. He is not justified in consenting to act, so to say, as an arbitrator and to decide the matter simply after a local inspection. Consent of the parties or waiver does not vest him with a jurisdiction to proceed in such a manner. 21 C. W. N. 926, Rel. on. (*Iqbal Ahmad, J.*) BHOORA *v.* TARA SINGH. 99 I. C. 415 =

49 All. 270 = 55 A. L. J. 155 = 8 L. R. A. Cr. 25 =  
28 Cr. L. J. 159 = 7 A. I. Cr. R. 198 =  
A. I. R. 1927 All. 267.

—Sec. 137 is imperative and a Magistrate in a case of public nuisance must record evidence as in a summons case. 32 P. R. Cr. 1917 and 42 Cal. 702, Foll. (*Harrison, J.*) ATTAR SINGH *v.* HARI SINGH.

99 I. C. 92 = 8 L. L. J. 557 = 27 P. L. R. 764 =  
28 Cr. L. J. 60.

**—S. 137—Recording evidence.**

—The provisions of S. 137 are imperative. The complainant has to start proceedings by adducing evidence and then the party showing cause may produce his own evidence if so advised. Hence, where a Magistrate makes his conditional order under S. 133 final without recording statement of the complainant or taking prosecution evidence in the presence of the accused, the whole trial will be vitiated by material irregularity. (*Broadway, J.*) ACHHRU *v.* EMPEROR.

11 Lah. 247 = 31 P. L. R. 503 = I. R. 1930 Lah. 629 =  
125 I. C. 613 = 31 Cr. L. J. 880 = 1930 Cr. C. 806 =  
A. I. R. 1930 Lah. 662.

—When the accused person appears and shows cause why no order should be made against him, the Magistrate should hear evidence in support of the order against him before calling on him for his defence. Where on the day fixed for the production of evidence, neither party produced any evidence and the Magistrate made the order absolute,

*Held*, that the order must be quashed. (*Daniels, J.*) BECHAN TELI *v.* EMPEROR. 86 I. C. 969 =  
47 All. 341 = 26 Cr. L. J. 905 = 6 L. R. A. Cr. 183 =  
6 L. R. A. Cr. 8 = A. I. R. 1925 All. 614.

—*Under S. 137, judicial decision is necessary.*

Where it was complained that the applicants had built a wall and had thereby obstructed a public road and the Court passed the following order:—"The Tahsildar has inspected the spot and reports that the wall built is the cause of the trouble. Notice to issue under S. 140."

*Held*, that the order was not legal and valid order, inasmuch as the provisions of S. 137 (1) of the Cr. P. Code were not complied with. Under that section, it was thus clearly intended by the Legislature that the Court should itself go into evidence before making the preliminary order final and should give a judicial deci-

**CR. P. CODE (1898), S. 138—Appointment of jury.**

sion in the matter. (*Stuart, J.*) ISMAL *alias* CHOTIYA v. BUNDA. 95 I. C. 944=20 A. L. J. 657=27 Cr. L. J. 864=A. I. R. 1922 All. 265.

**—S. 138—Appointment of jury.**

—A Magistrate must exercise his own discretion in nominating a proportion of the jury. He cannot accept the names suggested by the original complainant without exercising his own discretion in the matter; otherwise it is an illegality. 23 Cal. 499 and 26 Cal. 869, Foll. 37 All. 26, Dist. (*Mirza and Baker, J.J.*) KOTHARI, *In re*. 117 I. C. 333=31 Bom. L. R. 79=30 Cr. L. J. 785=A. I. R. 1929 Bom. 79.

—When the Magistrate appoints only the nominees of the two parties, with a foreman appointed by himself, the jury is not constituted legally and is incapable of making a legally binding award. 23 Cal. 499, Foll. (*Dalip Singh, J.*) KHEM CHAND v. EMPEROR. 9 A. I. Cr. R. 202=28 Cr. L. J. 1036=106 I. C. 220=A. I. R. 1928 Lah. 187.

**—S. 138—Error.**

—The nomination of a Jury is a nomination of the Court which has to try the case and irregularity with regard to that matter is an irregularity which goes to the root of the proceedings. It is doubtful whether in any event the provisions of S. 537, could cure the irregularity in this respect. 3 Cal. 499, Ref. (*Wort, J.*) MAHADEO LAL v. HOSSAINI PANDEY. I. R. 1930 Pat. 1=120 I. C. 289=31 Cr. L. J. 53=1930 Cr. C. 335 (2)=A. I. R. 1930 Pat. 199.

**—S. 138—"Forthwith."**

—The word 'forthwith' merely means that the Magistrate shall appoint a jury as soon as he reasonably can, (*Scott-Smith and Fforde, J.J.*) KHUSHI RAM v. THE CROWN. 72 I. C. 617=24 Cr. L. J. 457=4 Lah. 224=5 L. L. J. 420=A. I. R. 1923 Lah. 525.

**—S. 139—Powers under.**

—Magistrate cannot compel a party to go to Civil Court and specially party in whose favour he is inclined.

The provisions of S. 140 (1) do not apply to a stay under S. 139 (2) and the Magistrate cannot compel either party to go to the civil Court. If the defendant denies the claim and the denial is proved, the Criminal Court holds its hand and it will be the business of the plaintiff to bring a civil suit if he likes. If he does not, the denial is maintained. If he does bring a suit and succeeds, the Magistrate may proceed to pass an order absolute under S. 140 (1). (*Dalal, J.*) RAZAN v. EMPEROR. 1930 A. L. J. 815=125 I. C. 452=1930 Cr. C. 907=31 Cr. L. J. 839 (1)=A. I. R. 1930 All. 658.

—S. 139-A—Applicability.

—Omission in exercise of discretion by Magistrate in following the direction of law does not vitiate the entire proceeding.

Where a Magistrate issued a notice under S. 133 on a person to show cause why he should not remove an obstruction on a public river and the person filed a written statement, admitting the public character of the river but claiming that the obstruction was on his zamindar's khas land and not on the river and the Magistrate proceeding under S. 137 and having come to the conclusion that the obstruction was on the bed of the river, made the order absolute and passed orders for removal of the obstruction.

*Held*, that S. 139-A ought not to apply to such a case, but the language of the section is so general that even in such a case the Magistrate should exercise a good discretion in following the direction of the law and

**CR. P. CODE (1898), S. 139-A—Dismissal of application.**

omission to do it does not vitiate the proceeding but is an irregularity covered by S. 537. (*Sukrawardy and Graham, J.J.*) RAJANI KANTA ROY v. IBRAHIM SARKAR. 57 Cal. 252=126 I. C. 205=31 Cr. L. J. 973=33 C. W. N. 748=A. I. R. 1929 Cal. 507.

—The section applies only in a case where a party wants determination of the public character of the river or way obstructed. The object with which the section was enacted seems to be that where the existence of the public right is denied, the Magistrate has to make an enquiry. If it is not denied, then the section hardly seems to apply. (*Sukrawardy and Graham, J.J.*) RAJANI KANTA ROY v. IBRAHIM SARKAR. 57 Cal. 252=I. R. 1930 Cal. 701=126 I. C. 205=31 Cr. L. J. 973=33 C. W. N. 748=A. I. R. 1929 Cal. 507.

—When the public right of way is limited the case falls under S. 139 A.

Where a right of way over an uncultivated field was in dispute between villagers and the owner closed that way on bringing the field under cultivation, relying on the revenue records which made no mention of any public path,

*Held*, in proceedings against the owner under S. 133, Cr. P. Code, that this case was exactly one which S. 139-A, was designed to meet. Rights of way are obviously matters to be decided by the Civil Courts. It is in the interest of public policy that Criminal Courts should not deal with matters which it is compulsory to leave to Civil Courts. (*Campbell, J.*) NUR ALI SHAH v. NATHA. 28 Cr. L. J. 247=100 I. C. 119=A. I. R. 1927 Lah. 745.

**—S. 139-A—Delegation.**

—Sec. 139-A contemplates an enquiry by Magistrate himself and he cannot depute another Magistrate to make the enquiry and report. (*Pearson and Patterson, J.J.*) MASADDAR ALI v. ISIMULLA. I. R. 1930 Cal. 443=124 I. C. 491=31 Cr. L. J. 673=50 C. L. J. 291=34 C. W. N. 228=57 C. 666=1929 Cr. C. 600=A. I. R. 1929 Cal. 813.

—A Magistrate in proceedings under S. 133 has no jurisdiction to make over the enquiry under S. 139-A to any Magistrate subordinate to him, and omission to conduct it himself is an irregularity incurable by S. 537. The reason for the above proposition is that the Magistrate has to decide upon either staying the proceedings or further proceedings under S. 137 or 138 and this decision necessitates his considering the reliability of the evidence and proper valuation of it, which he is better fitted to do if he himself undertakes it. Mere reading of the enquiry as made by a Subordinate Magistrate and acting upon it does not enable him to do this work efficiently. (*Pearson and Patterson, J.J.*) MASADDAR ALI v. ISIMULLA. I. R. 1930 Cal. 443=124 I. C. 491=31 Cr. L. J. 673=50 C. L. J. 291=34 C. W. N. 228=1929 Cr. C. 600=57 Cal. 666=A. I. R. 1929 Cal. 813.

—S. 139-A—Dismissal of application.

—Where in proceedings under S. 133 there is evidence to support the plea that the road is a private road, the most that the Magistrate can do is to stay proceedings under the provisions of S. 139-A of the Code and, if the Magistrate dismisses the application and refers the complainant to Civil Court, the course taken by the Magistrate would be correct. 42 Cal. 158, Rel. on. (*Stuart, C. J.*) RAM CHETAN DASS v. JASBIR SINGH. 5 O. W. N. 1131=30 Cr. L. J. 360=114 I. C. 782=A. I. R. 1929 Oudh 85.

**CR. P. CODE (1898), S. 139-A—Dismissal of application.**

—Where there is a question of the existence of public right to the place over which nuisance is sought, the best method in the case to follow is that under the provisions of S. 139 A (2); the proceedings should be stayed until the matter of existence of the right has been decided by a competent Civil Court. (*Stuart, C. J.*) *DEBI DAYAL v. MANOO*. 107 I. C. 333 (1)= 29 Cr. L. J. 244 (1)=9 A. I. Cr. R. 532= 5 O. W. N. 78=A. I. R. 1927 Oudh 632.

**—139-A—Evidence.**

—The Court has not to consider whether a denial is *bona fide* or not but only whether there is reliable evidence in support of it. (*Boys, J.*) *MANOHAR SINGH v. EMPEROR*. 116 I. C. 786=

30 Cr. L. J. 670=1929 A. L. J. 385= 10 L. R. A. Cr. 49=11 A. I. Cr. R. 350= A. I. R. 1929 All. 220.

**—S. 139-A—Inquiry.**

—What the Magistrate is required to do under S. 139-A is to ask the party required to show cause as to whether he admitted the existence of any public right. On his denying the existence of such right he has to enquire and if he is satisfied that there is any reliable evidence in support of such denial he will stay proceedings. The record-of-rights is a very valuable piece of evidence which raises the presumption of correctness of the entries therein: and if it happens to be in favour of the second party the Magistrate is perfectly justified in considering it as "reliable evidence" in support of the denial. (*Suhrawardy and Costello, J.J.*) *SATISCHANDRA SEN v. KRISHNA KUMAR DAS*. 34 C. W. N. 957= 128 I. C. 810=32 Cr. L. J. 189= 1931 Cr. C. 34=A. I. R. 1931 Cal. 2.

—*The Magistrate is not to see the sufficiency but reliability of evidence in support of the denial.*

Where an order under S. 133 is made and the person proceeded against denies the existence of any public right, the Magistrate must first look to a finding under S. 139-A, whether there was any reliable evidence in support of such denial. Where there is any reliable evidence the Magistrate must stay proceedings. If he finds, however, that there is no such evidence he can then proceed under S. 137. It is not the duty of the Magistrate to come to a finding whether the evidence is in his opinion sufficient to support the case. All he has to see is whether there is any reliable evidence in support of the denial of any public right. If there is, the Magistrate must stay his hand till the other side has gone to a Civil Court. (*Addison, J.*) *UDE SINGH v. MOHAMED*. 10 A. I. Cr. R. 398=

110 I. C. 330=29 Cr. L. J. 698= 30 P. L. R. 687=10 Lah. 151= A. I. R. 1928 Lah. 856.

—*The Magistrate should only find whether the evidence is reliable or it stands.*

Where a right of public way is denied and the person denying as well as the person complaining produce evidence, the Magistrate should take the evidence as it stands and see whether, on the face of it, he could come to the conclusion that the evidence was false and was, therefore, unreliable. It is not a correct procedure that he should weigh the evidence produced by both sides and then come to the conclusion which he believes or which he prefers. A. I. R. 1926 Pat. 170, Rel. on. (*Dalip Singh, J.*) *HARI KISHAN v. MALIK KANSHI*. 9 A. I. Cr. R. 540=29 Cr. L. J. 254= 107 I. C. 485=A. I. R. 1928 Lah. 664.

—The intent of S. 139-A (2) is that the Magistrate should neither encroach on the jurisdiction of the Civil Court which alone can determine the existence of such

**CR. P. CODE (1898), S. 139-A—Procedure.**

a public right as is referred to, nor fail to exercise his own jurisdiction. The criterion is that he should find evidence to support the denial which he can pronounce reliable. That is necessary and it is sufficient to oust his jurisdiction. (*Mullick and Ross, J.J.*) *THAKUR SAO v. ABDUL AZIZ*. 4 Pat. 783=

7 P. L. T. 136=27 Cr. L. J. 9=91 I. C. 41= A. I. R. 1926 Pat. 170.

—When there is a denial of the existence of the public right, it is the duty of the Magistrate to inquire into the matter and come to a conclusion under the provisions of S. 139-A and on the result of this conclusion would depend the question whether he should stay proceedings or should proceed under S. 137 or 138. (*Suhrawardy and Mukerji, J.J.*) *RAHANADDY PATWARY v. HASAN ALI JAMADAR*. 96 I. C. 126=

30 C. W. N. 648=27 Cr. L. J. 878.

—*The Magistrate must proceed according to the section without waiting for objection.*

It is the duty of a Magistrate to proceed in accordance with the provisions of S. 139-A without waiting for the objection to be raised by one of the parties to the proceeding. Under that section on the appearance before him of the person against whom the order is made, the Magistrate is bound to question him as to whether he denies the existence of any public right in respect of the way, river, channel or place and if he does so the Magistrate shall before proceeding under S. 137 or S. 138 inquire into the matter. The Magistrate cannot refuse to inquire into the matter because the objection was not taken until a late stage of the case. (*Newbould and Ghose, J.J.*) *SHEIKH SADIR v. SABARALI*. 88 I. C. 528=29 C. W. N. 649=

26 Cr. L. J. 1168=A. I. R. 1925 Cal. 736.

**—S. 139-A—Object.**

—The object with which S. 139-A is enacted is to prevent the Magistrate in enquiring into matters under Chapter X arrogating to himself the functions of a Civil Court and instituting an elaborate enquiry with regard to the rights of the parties. (*Suhrawardy and Costello, J.J.*) *SATISH CHANDRA SEN v. KRISHNA KUMAR DAS*. 128 I. C. 810=32 Cr. L. J. 189=

1931 Cr. C. 34=34 C. W. N. 957= A. I. R. 1931 Cal. 2.

**—S. 139-A—Powers under.**

—A Magistrate has absolute discretion to decide whether materials are sufficient for not deciding question in Criminal Court. (*Boys, J.*) *MANOHAR SINGH v. EMPEROR*. 116 I. C. 786=1929 A. L. J. 385=

10 L. R. A. Cr. 49=11 A. I. Cr. R. 350= 30 Cr. L. J. 670=A. I. R. 1929 All. 220.

—If under S. 139-A (i) the Magistrate stays his proceedings, those proceedings remain stayed until there is a decision by a competent Civil Court, and there is nothing in the new section which entitles the Magistrate to say which party should file suit. (*Campbell, J.*) *HARI CHAND v. DURGA DATT*. 28 Cr. L. J. 363=100 I. C. 971=

7 A. I. Cr. R. 561=A. I. R. 1927 Lah. 227.

**S. 139-A—Procedure.**

—Where accused is alleged to have obstructed a public pathway and there is some evidence on record indicating that the path was private, it is incumbent on a Magistrate under S. 139-A to stay his hands immediately until the matter of the existence of the public right was decided by a competent Civil Court. (*Pearson and Mallik, J.J.*) *MATABBAR MOLLA v. GOLAM PANJATON*. 57 Cal. 368=I. R. 1930 Cal. 890=

127 I. C. 782=32 Cr. L. J. 83= 1930 Cr. C. 798=A. I. R. 1930 Cal. 486.

**CR. P. CODE (1898), S. 139-A—Procedure.**

—In enquiry under S. 137 provisions of S. 139-A ought to be complied with. The Magistrate's duty is to find whether there is reliable evidence in support of the denial. When the Magistrate does not apply his mind to the question and does not come to any finding on the point, he does not follow the correct course. (*Rankin, C. J. and Patterson, J.*) **DHANANJOY PAL v. NOGENDRA SHANKER ROY.** I. R. 1930 Cal. 480 = 1930 Cr. C. 144 = 124 I. C. 832 = 31 Cr. L. J. 767 = A. I. R. 1930 Cal. 144.

—Section 139-A contemplates an enquiry by the Magistrate himself. It is not open to him to delegate an enquiry such as regarding the existence of a public way to a subordinate Magistrate. Where the Magistrate so delegates the procedure is not merely irregular but illegal. (*Pearson and Patterson, J.J.*) **MASADDAR ALI v. ISAMULLA.** I. R. 1930 Cal. 443 = 124 I. C. 491 = 31 Cr. L. J. 673 = 34 C. W. N. 228 = 50 C. L. J. 291 = 57 Cal. 666 = 1929 Cr. C. 600 = A. I. R. 1929 Cal. 813.

—The section does not say who is to have existence of right decided by Civil Court or what order Magistrate has to pass or ought to have the power of dismissing the application on the right not being decided by a Civil Court on motion by a particular party within a certain time. (*Dalal, J.*) **CH. RESAL SINGH v. BALJIT SINGH.** 10 L. R. A. Cr. 104 = 1929 Cr. C. 293 = 12 A. I. Cr. R. 102 = 51 All. 890 = A. I. R. 1929 All. 709.

**—S. 139 A—Questions of title.**

—Section 139-A is imperative. It does not authorize a Magistrate to look into the question of title and decide for himself whether the accused's case is or is not true. All that the Magistrate is to see is whether there is any reliable evidence in support of such denial. If there is some reliable evidence in support of the denial then the proceedings under the Code have to be stayed. In such a case no order under S. 140 can be passed without first proceeding under S. 139-A. (*Sulaiman, J.*) **MANNA LAL v. EMPEROR.**

24 A. L. J. 361 = 7 L. R. A. Cr. 73 = 27 Cr. L. J. 473 = 93 I. C. 697 = A. I. R. 1926 All. 390.

**—S. 139-A—Waiver.**

—Whether there can be a waiver of mandatory provision such as is contained in S. 139-A. (*Wort, J.*) **MAHADEO LAL v. HOSSAINI PANDAY.**

I. R. 1930 Pat. 1 = 1930 Cr. C. 335 = 120 I. C. 289 = 31 Cr. L. J. 53 = A. I. R. 1930 Pat. 199.

**—S. 140—Effect of death.**

—As soon as a person against whom an order has been made under Ch. X, Cr. P. Code, dies, the order ceases to have further effect and a Magistrate is not entitled to act under S. 140 (2). (*Ashworth, J.*) **JUGAL KISHORE v. EMPEROR.**

26 A. L. J. 405 = 9 L. R. A. Cr. 64 = 108 I. C. 565 = 29 Cr. L. J. 445 = 9 A. I. Cr. B. 434 = A. I. R. 1928 All. 300.

**—S. 140—Procedure.**

—Magistrate is not authorised to decide question of title.

Section 139-A is imperative. It does not authorize a Magistrate to look into the question of title and decide for himself whether the accused's case is or is not true. All that the Magistrate is to see is whether there is any reliable evidence in support of such denial. If there is some reliable evidence in support of the denial then the proceedings under the Code have to be stayed. In such a case no order under S. 140 can be passed without first

**CR. P. CODE (1898), S. 144—Dispute about land.**

proceeding under S. 139-A. (*Sulaiman, J.*) **MUNNA LAL v. EMPEROR.**

24 A. L. J. 361 = 7 L. R. A. Cr. 73 = 27 Cr. L. J. 473 = 93 I. C. 697 = A. I. R. 1926 All. 390.

**—S. 141—Verdict, omission of.**

—A jury was appointed at the instance of defendant, but jury failed to return a verdict as required by S. 139. The Court then inspected the locality and fixed a date for parties, to adduce evidence, who however, adduced no evidence on the date, and the Court made the order against the defendant absolute.

*Held*, the procedure not illegal. 6 A. L. J. 685 ; 20 A. L. J. 657, Not foll. (*Daniels, J.*) **SHIAM SUNDAR v. KING-EMPEROR.**

24 A. L. J. 165 = 7 L. R. A. Cr. 5 = 27 Cr. L. J. 981 = 96 I. C. 645 = A. I. R. 1926 All. 658.

**—S. 144.**

Dispute about land.

Duty of Magistrate.

Ex parte order.

Nature of proceedings.

Procedure.

Rescission and extension.

Revision.

Scope and object.

Temporary order.

Validity of order.

Miscellaneous.

**—S. 144—Dispute about land.**

—Where a person simply wants to enforce his right to possession of property, the criminal Courts ought not to lend him their aid under S. 144. (*Devadoss, J.*) **VYTHILINGA MUDALIAR v. RAMANUJA MUDALIAR.**

119 I. C. 166 = 2 M. Cr. C. 302 = 30 Cr. L. J. 1010 = 1929 Cr. C. 613 = A. I. R. 1929 Mad. 845.

—Procedure under S. 144 warrants sufficient ground.

To give the Magistrate jurisdiction under S. 144, all that is required is that there is sufficient ground to proceed under S. 144 and immediate prevention or speedy remedy is desirable. In such circumstances private rights must give way whatever be the subject-matter of dispute ; in particular it is immaterial that the dispute relates to land. Given the necessary conditions an order cannot be impugned as without jurisdiction merely because it was arbitrary. (*Macpherson, J.*) **RADHE DAS v. JAIRAM MAHTO.** 123 I. C. 73 = 31 Cr. L. J. 466 = 1929 Cr. C. 586 = A. I. R. 1929 Pat. 714.

—Where a Magistrate on the materials before him finds that there was no *bona fide* dispute as to actual possession, but the opponent was merely trying to get into possession, order under S. 144 is warranted and is the best means of preventing the imminent breach of the peace. (*Macpherson, J.*) **LUCHMAN DAS v. RAMCHHABILAL MISSIR.**

115 I. C. 688 = 30 Cr. L. J. 510 = 10 P. L. T. 542 = 12 A. I. Cr. B. 309 = 1929 Cr. C. 198 = A. I. R. 1929 Pat. 415

—Even in *bona fide* dispute as to possession of land S. 144 may be legally and properly utilized. (*Obiter.*) (*Macpherson, J.*) **LACHMAN DAS v. RAMCHHABILAL MISSIR.**

115 I. C. 683 = 30 Cr. L. J. 510 = 10 P. L. T. 542 = 12 A. I. Cr. B. 309 = 1929 Cr. C. 198 = A. I. R. 1929 Pat. 415.

—The District Magistrate has power to rescind the order passed by Sub-Divisional Magistrate.

An order was passed by the Sub-Divisional Magistrate under S. 144. On appeal by the other party, the District Magistrate passed the following order : "In view



**CR. P. CODE (1898), S. 144—Dispute about land.**

of all the circumstances of the case, the shape of the lands and the admission of the Chamars, I am inclined to think that the masters of the 1st party are in present possession of the lands in dispute. I, therefore, rescind the order passed by the learned Sub-Divisional Magistrate." It was contended that the District Magistrate had no power to pass such an order, as it was a substitution of an order of his own.

*Held*, that there was no attempt to substitute an order of his own but was merely rescinding an order of Sub-Divisional Magistrate under S. 144, which quite clearly he had power to do. 3 P. L. J. 287, Rel. on. (*Wort, J.*) RAMKRISHNAN v. QAMRUDDIN. 109 I. C. 126 = 10 A. I. Cr. R. 166 = 29 Cr. L. J. 478.

—Where a Magistrate while making an order under S. 144 makes an incidental observation to possession of the property, the observation cannot have the force of an order under S. 145. (*Bucknill and Kulwant Sahay, J.J.*) MUNNI LAL v. GATTI AHIR.

88 I. C. 845 = 6 P. L. T. 746 = 3 Pat. L. R. Cr. 70 = 26 Cr. L. J. 1229 = A. I. R. 1925 Pat. 514.

—Questions of title, fraud, etc., cannot be tried in proceedings under S. 145 or 144. (*Adami and Bucknill, J.J.*) H. V. LOW AND CO., LTD. v. MAHARAJA SIR MANINDRA CHANDRA NANDY. 84 I. C. 332 = 3 Pat. 809 = 26 Cr. L. J. 268 = A. I. R. 1925 Pat. 33.

—Order under S. 144 is not evidence of possession.

An order under S. 144, should not be treated as substantive evidence of possession in a case of rioting. No importance should be attached to a temporary injunction under S. 144, which is intended for emergencies. The judgment in such a case is certainly not admissible as a judgment. The fact of the order may be admissible under S. 13 of the Indian Evidence Act but having regard to the peculiar jurisdiction conferred by S. 144, no inference can be drawn from it as to the possession. (*Mullick and Bucknill, J.J.*) GITA PRASAD SINGH v. KING-EMPEROR. 81 I. C. 535 = 3 Pat. L. R. Cr. 27 = 5 P. L. T. 656 = 1924 P. H. C. C. 29 = 25 Cr. L. J. 919 = A. I. R. 1925 Pat. 17.

—S. 144—Duty of Magistrate.

—The preservation of the public peace is a function of the Government and in the performance of that function, it may be necessary for them to override temporarily private rights. Where there is a conflict between the public interest and a private right, the former must prevail. 6 Mad. 203, Rel. on. (*Coutts-Trotter, C. J., Devadoss, Beasley, Waller and Jackson, J.J.*) VISWANADHA RAO v. EMPEROR.

11 A. I. Cr. R. 385 = 112 I. C. 863 = 51 Mad. 1006 = 1 M. Cr. C. 50 = 30 Cr. L. J. 31 = 1928 M. W. N. 615 = 28 M. L. W. 406 = A. I. R. 1928 Mad. 1049 = 55 M. L. J. 442 (F.B.)

—It is the duty of the executive to uphold the civil rights declared by Civil Courts by all means available before resorting to S. 144. (*Wallace, J.*) GUDDAM VENKATASUBBA REDDI v. KING-EMPEROR.

100 I. C. 709 = 25 M. L. W. 375 = 28 Cr. L. J. 325 = 7 A. I. Cr. R. 53 = A. I. R. 1927 Mad. 368 = 52 M. L. J. 298.

—S. 144—Ex parte order.

—When an *ex parte* order under S. 144 is called in question under cl. (4) of that section, the normal procedure should be for evidence to be recorded in the usual way by examination and cross-examination of witnesses in open Court. The proceeding being a judicial one it is desirable whenever possible to adopt the normal procedure. (*Krishnan Pandalai, J.*)

**CR. P. CODE (1898), S. 144—Procedure.**

SATYANARAYANA CHOUDARI v. EMPEROR.

1930 M. W. N. 841 = 33 L. W. 632 = 131 I. C. 449 = 32 Cr. L. J. 744 = 1931 Cr. C. 332 = A. I. R. 1931 Mad. 236 = 60 M. L. J. 378.

—Sec. 144 provides speedy remedy in cases of emergency and under Sub-S. 2, a Magistrate can pass an *ex parte* order immediately on receiving a police report that he is satisfied that immediate action is necessary. Rescission or alteration of the said order can be sought by the aggrieved party under Sub-S. 4. (*Wazir Hasan, A. J. C.*) JANG BAHADUR v. EMPEROR.

77 I. C. 721 = 11 O. E. J. 54 = 25 Cr. L. J. 433 = A. I. R. 1924 Oudh 338.

—S. 144—Nature of proceedings.

—Proceedings under S. 144.

A Magistrate directed a notice to be issued under S. 144 and called upon the parties to show cause, if any. The parties showed cause, produced documents and argued upon it and the judgment was reserved. The Magistrate then examined some witnesses on the spot *ex parte* behind the back of the parties and without giving any notice to them of the local inspection passed an order based solely on the statements made by these witnesses without referring to documentary evidence and arguments submitted by the parties.

*Held*, that the Magistrate was bound to consider the evidence and arguments submitted under S. 144 (5) and the order based on the *ex parte* evidence is illegal as a proceeding under S. 144 is judicial proceeding. A. I. R. 1927 Pat. 301, Foll. (*Jwala Prasad, J.*) GOBIND RAM v. BASANTI LAL. 114 I. C. 466 = 7 Pat. 269 = 30 Cr. L. J. 302 = 11 P. L. T. 134 = A. I. R. 1929 Pat. 46.

—Order of the Magistrates acting under S. 146 is not the order of a Court. No revision, therefore, lies against such order under S. 435, in spite of omission of Cl. 3 from the Code of 1898. A. I. R. 1923 Mad. 473, Foll.

Magistrates are not always Courts. S. 6 is not inconsistent with the idea that Magistrates may sometimes act in executive and administrative capacity and not as Courts. 39 Cal. 953 (P.C.), Dist. A. I. R. 1924 Pat. 703, Not Appr. (*Ramesam, J.*) VEDAPPAN SERVAI v. PERIANAN SERVAI. 113 I. C. 279 = 30 Cr. L. J. 119 = 12 A. I. Cr. R. 17 = 52 Mad. 69 = 1 M. Cr. C. 304 = 28 M. L. W. 506 = 1928 M. W. N. 779 = A. I. R. 1928 Mad. 1108 = 55 M. L. J. 621.

—Magistrate passing order under S. 144 is not a Court.

A Magistrate passing an order under S. 144, is not acting as a "Court" and Sub-S. (7) of S. 195 is inapplicable to such a case. 6 M. 208 (F. B.); 14 W. R. Cr. 46, Foll. and 35 M. L. J. 454, Diss.

*Obiter*.—It is impossible that while securing orders under S. 144 from interference except by the successor of the Magistrate passing them or by some superior Magistrate, the Sessions Judge should have been given the power to render the order practically nugatory by declining to allow a prosecution for disobedience to it. (*Ayling and Ramesam, J.J.*) NATARAJA PILLAI v. RANGASWAMI PILLAI. 72 I. C. 536 = 24 Cr. L. J. 424 = 47 Mad. 56 = 17 M. L. W. 409 = 1923 M. W. N. 240 = 32 M. L. T. 214 = A. I. R. 1923 Mad. 473 = 44 M. L. J. 328.

—S. 144—Procedure.

—Proceedings under S. 144 being judicial the accused has a right to know what the information was on which the Magistrate acted in order to show that it was unfounded or insufficient. (*Pandalai, J.*) SRIRAMAMURTHI v. EMPEROR. 1930 M. W. N. 849 =

## CR. P. CODE (1898), S. 144—Procedure.

131 I. C. 649 = 32 Cr. L. J. 763 = 33 L. W. 640 =  
1931 Cr. C. 362 = A. I. R. 1931 Mad. 242 =  
60 M. L. J. 370.

—Ordinarily unless the facts are on the face of them quite clear, a proceeding should be drawn up under S. 145 for the purpose of investigating the question of actual possession to land. (*Mullick, J.*) KISHORI JHA v. ANAND KISHORE JHA.

1930 Cr. C. 258 = 126 I. C. 293 = 31 Cr. L. J. 1005 =  
I. E. 1930 Pat. 597 = 10 P. L. T. 862 =  
A. I. R. 1930 Pat. 162.

—When setting aside the order made by the Magistrate under S. 144, the District Magistrate cannot direct him to draw proceedings under S. 145.

The Sub-Divisional Magistrate on a police report drew up proceedings under S. 144. The District Magistrate set them aside holding they were wrongly drawn up and directed the Sub-Divisional Magistrate to draw up proceedings under S. 145.

Held, that though under S. 144 (4) he was entitled to set aside an order of the Sub-Divisional Magistrate there was no provision in law whereby he could direct the Sub-Divisional Magistrate to draw up proceedings under any other section. The proper course for District Magistrate in such case was to make a reference to the High Court under S. 438. 24 Cal. 391, Foll. (*Suhrawardy and Graham, J.J.*) KEDARNATH SIKDUR v. BIJOYMANDAL. 33 C. W. N. 723 = 123 I. C. 647 =

31 Cr. L. J. 544 = 1929 Cr. C. 385 =  
A. I. R. 1929 Cal. 751.

—A case in which it would have been better to draw up proceedings under S. 145 should not be proceeded with under S. 144. (*Allanson, J.*) LATIFAU v. MOHAMMAD IBRAHIM. 106 I. C. 223 =

28 Cr. L. J. 1039 = A. I. R. 1927 Pat. 432.

—Under S. 144 something more is necessary to be done than a mere recital of the fact that in the opinion of the District Magistrate there was sufficient ground for proceeding under S. 144. An order issued under the section must state the material facts of the case justifying the issue of the order. (*Kulwant Sahay, J.*) R. E. BLONG v. KING-EMPEROR.

82 I. C. 42 = 1924 P. H. C. C. 262 =  
25 Cr. L. J. 1178 = 6 P. L. T. 130 =  
3 Pat. L. R. Cr. 41 = A. I. R. 1924 Pat. 767.

—Order based on private and in absence of petitioner is liable to be set aside.

If Magistrate comes to the conclusion that there is no likelihood of a breach of the peace and therefore no action need be taken either under S. 144 or under S. 147, Cr. P. Code, he would be justified in doing so. Where a Magistrate disposes of the matter by taking evidence *ex parte*, by going over to the office of the second party and making enquiries in the absence of the petitioners and without giving them an opportunity of adducing their own evidence and examining witnesses and coming to a distinct finding as to the alleged right of easement set up by the petitioners and comes to the conclusion that the right is with the second party and that if the petitioners go upon the land they do so at their own risk.

Held, in effect he makes an order in favour of the second party under S. 147 and prevents the petitioners from going upon the land. Such a procedure is wholly unjustifiable and the order must be set aside. (*Kulwant Sahay, J.*) NARENDRA NATH SARKAR v. EAST INDIAN RAILWAY. 77 I. C. 807 =

5 P. L. T. 419 = 2 Pat. L. R. Cr. 209 =  
25 Cr. L. J. 455 = A. I. R. 1924 Pat. 717.

## CR. P. CODE (1898), S. 144—Revision.

## S. 144—Rescission and extension.

—Second order same as first—Additional parties in second one—Total period exceeding two months—Order is illegal.

The period during which an order under S. 144 remains in force is two months only and it cannot be extended beyond that period by the Magistrate. To draw up the same order once more merely adding to the parties affected is an attempt to evade the provisions of cl. (6) of S. 144 and is illegal if the total period exceeds two months. (*Newbould and Mukerji, J.J.*) ASHTOSH ROY v. HARIS CHANDRA CHAT-  
TOPADHYA. 86 I. C. 810 = 26 Cr. L. J. 874 =

29 C. W. N. 411 = A. I. R. 1925 Cal. 625.

—An order under S. 144 being operative only for two months need not be set aside after the period of 2 months is over. (*Bucknill and Kulwant Sahay, J.J.*) MUNNI LAL v. GATTI AHIR. 88 I. C. 845 =

6 P. L. T. 746 = 3 Pat. L. R. Cr. 70 =  
26 Cr. L. J. 1229 = A. I. R. 1925 Pat. 514.

## —S. 144—Revision.

—The High Court has power to interfere when the order passed by the Magistrate is vitiated.

Where the elements essential to action under S. 144 are shown to exist upon materials before the Court, the High Court will in exercising its powers respect the opinion of the local authorities both as to the gravity of the danger and as to the steps necessary for the maintenance of peace. But if the grounds for action as stated in the order are either unfounded in fact or insufficient in law or if it is shown that the order against the public as framed violates the conditions laid down by S. 144 then it is the duty of the High Court to interfere in revision. (*Pandalai, J.*) SRIRAMAMURTHI v. EMPEROR. 1930 M. W. N. 849 =

131 I. C. 649 = 32 Cr. L. J. 763 =

33 L. W. 640 = 1931 Cr. C. 362 =  
A. I. R. 1931 Mad. 242 = 60 M. L. J. 370.

—Facts not peculiarly within knowledge of Magistrate—High Court's power to interfere.

Where there are special facts relating to a particular locality as to which the local authority is the best judge, the opinion of that authority will not easily be disturbed, but where there are no special circumstances and the matter is one of general impression the absence of any near or reasonable connection between the prohibited act and the supposed danger to public tranquillity will be a ground upon which the High Court is bound to act. Order under S. 144 prohibiting wearing of Gandhi caps set aside. (*Krishnan Pandalai, J.*) SATYANARAYANA CHOUDARI v. EMPEROR. 1930 M. W. N. 841 = 131 I. C. 449 =

32 Cr. L. J. 744 = 33 L. W. 632 =

1931 Cr. C. 332 = A. I. R. 1931 Mad. 236 =  
60 M. L. J. 378.

—Where the High Court finds that the trying Magistrate has jurisdiction to pass an order under S. 144; it will not send back the matter to the Magistrate notwithstanding that the order has expired, so that he may begin the proceedings again, as regards the accused's showing cause against the order. 13 C. W. N. 195; 20 C. W. N. 758; 20 C. W. N. 981; 23 C. W. N. 145 and A. I. R. 1928 Cal. 446, Ref. (*Rankin, C. J. and Patterson, J.*) DABIRUDDIN MOHAMMAD v. EMPEROR. I. R. 1930 Cal. 497 = 125 I. C. 273 =

31 Cr. L. J. 804 = 1930 Cr. C. 131 =

A. I. R. 1930 Cal. 131.

—High Court can revise order under S. 144 provided revisional jurisdiction is exercised within 2 months of order. (*Beasley, C. J. and Cornish, J.*) MUTHU SWAMI SERVAIGARAM v. THANGAMMAL AYAR.

**CR. P. CODE (1898), S. 144—Revision.**

121 I. C. 833 = 31 Cr. L. J. 324 =  
31 M. L. W. 16 = 1930 M. W. N. 82 =  
2 M. Cr. C. 277 = 53 Mad. 320 =  
A. I. R. 1930 Mad. 242 = 58 M. L. J. 148.

—The section empowers the High Court, with a view to secure the ends of justice, to direct a party to re-deliver goods to the proper person who is wrongly ordered to deliver them to another under S. 144. 3 M. L. W. 498 and 28 C. L. J. 483, Foll. (*Iqbal Ahmad, J.*) (HAFIZ) HAFIZUDDIN v. LABORDE.

105 I. C. 815 = 8 A. I. Cr. R. 362 =  
8 L. R. A. Cr. 149 = 28 Cr. L. J. 991 =  
26 A. L. J. 83 = 50 All. 414 = A. I. R. 1928 All. 14.

—Orders under S. 144 are not judicial orders that could be interfered with in exercise of the revisional powers of the High Court. A. I. R. 1928 Mad. 1108 and A. I. R. 1925 Mad. 473, Foll. (*Reilly, J.*) SUTHADI ALAGA THEWAR v. G. A. BAKER.

116 I. C. 137 = 30 Cr. L. J. 629 =  
1929 M. W. N. 694 = 2 M. Cr. C. 200 =  
13 A. I. Cr. R. 48 = 55 M. L. J. 621.

—Patna High Court does not generally interfere with orders under S. 144, the operation of which has expired.

An order was passed under S. 144 restraining the petitioners from interfering with the possession of the other side. On the last day on which the order could operate, the Magistrate complained against the petitioners under S. 188, Penal Code, in respect of a breach of his above order. Next day the petitioners applied to the District Magistrate to set aside the order under S. 144, and on his rejecting the application, they applied to the High Court for considering the order under S. 144.

Held that the general practice of most of the Judges of the Patna High Court is against interfering with orders under S. 144, the operation of which has expired and the fact that the petitioner was concerned with the validity of the order in view of the prosecution under S. 188, Penal Code, was not a special circumstance, for interference. 20 C. W. N. 981, Dist. (*Macpherson, J.*) KARAN SINGH v. RAM KISHUN LAL.  
10 A. I. Cr. R. 200 = 29 Cr. L. J. 465 =  
109 I. C. 113 = A. I. R. 1928 Pat. 480.

—When an order under S. 144 has expired by efflux of time of the High Court will not revise it nor will it adjudicate upon the merits thereof. (42 M. L. J. 352, Diss.) (*Spencer, J.*) KUPPU ODAYAR v. POOMALAI GOUNDAN.  
82 I. C. 472 =

1924 M. W. N. 675 = 25 Cr. L. J. 1304 =  
A. I. R. 1924 Mad. 896 = 47 M. L. J. 439.

—High Court will interfere where the order is wholly without jurisdiction.

Although under Clause (4) of S. 144 it is incumbent on the petitioners to go in the first instance before the District Magistrate before coming up in revision to the High Court and ordinarily that is the practice in the High Court still the High Court will interfere where the order of the Sub-divisional Magistrate is wholly without jurisdiction. A. I. R. 1922 Pat. 435 (F. B.), Foll. (*Kulwant Sahay, J.*) AKAL MAHTON v. MAHABIR MAHTON.  
75 I. C. 531 = 5 P. L. T. 90 =

1 Pat. L. R. Cr. 223 = 24 Cr. L. J. 947 =  
A. I. R. 1924 Pat. 145.

**—S. 144—Scope and object.**

—Necessary to pass order—Apprehended breach of public peace—Order prohibiting wearing of Gandhi caps—Legality.

The test to see whether the order under S. 144 was justified or not is to find out whether the act, be it lawful

**CR. P. CODE (1898), S. 144—Scope and object.**

or unlawful, was likely to lead to a breach of public tranquillity. The likelihood or tendency must be a reasonable or prominent one.

Held, that the prohibition of the use of Gandhi caps in a particular locality was not, on the facts disclosed, necessary in the interests of peace and that the order under S. 144 should consequently be quashed. (*Krishnan Pandalai, J.*) SATYANARAYANA CHOUDARI v. EMPEROR.  
1930 M. W. N. 841 = 131 I. C. 449 =  
32 Cr. L. J. 744 = 1931 Cr. C. 332 =  
A. I. R. 1931 Mad. 236 = 33 M. L. W. 632 =  
60 M. L. J. 378.

—No order can be passed against the public without the limitation as to place. The place must be open to the public as such. The public cannot be prohibited from putting up flags in private houses and in such a case the house owners cannot be called members of the public for purposes of the section. (*Pandalai, J.*) SRIRAMAMURTHI v. EMPEROR. 1930 M. W. N. 849 =  
131 I. C. 649 = 32 Cr. L. J. 763 = 33 M. L. W. 640 =  
1931 Cr. C. 362 = A. I. R. 1931 Mad. 242 =  
60 M. L. J. 370.

—The section does not apply to disputes of a civil nature of private individuals.

The applicant was for some time an agent of the Asiatic Petroleum Co., but his agency was terminated. Notwithstanding the termination of his agency, he refused to deliver back the register and goods of the company. The opposite party then filed an application, under S. 144 praying that the applicant be directed to deliver to the opposite party the register and goods in his possession. The Magistrate, after following the necessary procedure, ordered the applicant to deliver all things belonging to the company to it. The applicant challenged the decision.

Held, that the Magistrate's order was illegal as proceedings under the section may be taken only in urgent cases of nuisance or apprehended danger, and the existence of these circumstances of a condition precedent to an action under the section. The section is not intended to vest a Magistrate to decide disputes of a civil nature between private individuals and to usurp the functions of a civil court. (*Iqbal Ahmad, J.*) HAFIZUDDIN v. C. LABORDE.  
105 I. C. 815 = 50 All. 414 =  
26 A. L. J. 83 = 28 Cr. L. J. 991 =  
8 L. R. A. Cr. 149 = 8 A. I. Cr. R. 362 =  
A. I. R. 1928 All. 14.

—Court must make enquiry in the circumstances likely to cause breach of peace.

Section 144 is not intended to restrict the liberty of an individual if there is no apprehension of a breach of the peace on account of any act to be done by him. Its object is to enable a Magistrate in cases of emergency to make an immediate order for the purpose of preventing an imminent breach of the peace; but it is not intended to relieve him of the duty of making a proper enquiry into the circumstance which make it likely that such breach of the peace will occur. If it is found that a man is doing that which he is legally entitled to do and that his neighbour chooses to take offence and threatened to create a disturbance in consequence, it is clear that the duty of the Magistrate is not to continue to deprive the first of the exercise of his legal right but to restrain the second from illegally interfering with that exercise of legal right. 5 Cal. 132, Foll. (*Kulwant Sahay, J.*) R. E. BLONG v. KING-EMPEROR. 82 I. C. 42 =  
1924 P. H. C. C. 262 = 25 Cr. L. J. 1178 =  
6 P. L. T. 130 = 3 Pat. L. R. Cr. 41 =  
A. I. R. 1924 Pat. 767.

—Section 144 is applicable only to temporary orders in urgent cases of nuisance or apprehended danger; it is

**CR. P. CODE (1888), S. 144—Temporary order.**

not applicable in cases where there is a dispute as to land for the settlement of which S. 145 provides the proper remedy. 32 C. 936 and 48 I. C. 342, Ref. (*Kulwant Sahay, J.*) AKAL MAHTON v. MAHABIR MAHTON.

75 I. C. 531 = 5 P.L.T. 90 = 1 Pat. L.R. Cr. 223 = 24 Cr. L. J. 947 = A. I. R. 1924 Pat. 145.

**—S. 144—Temporary order.**

Section 144 makes provision for a contingency that local and temporary orders may, at times, be made without there being a real danger of breach of the peace or other reason justifying it. Accordingly under that section it has to be proved that the accused not merely disobeyed the lawful order but that the act of disobedience was such as caused or involved the risk of a breach of the peace or other danger or trouble. (*Rankin, C. J. and Patterson, J.*) DABRUDDIN MOHAMMAD v. EMPEROR.

I. R. 1930 Cal. 497 = 125 I. C. 273 = 31 Cr. L. J. 804 = 1930 Cr. C. 131 = A. I. R. 1930 Cal. 131.

**—Justification.**

Though a person has an absolute right to use his property as he pleases, yet, if the mode of enjoyment of his property, innocent and lawful though it might be, results or tends to result, in a series of acts which are likely to lead to a breach of the peace, an order under S. 144, restraining the person temporarily from enjoying the property in that way is amply justified. 10 B. L. R. 434 (F.B.), Rel. on. 11 C. W. N. 79, Dist. (*Chotanar and Gregory, J.J.*) RAM GOPAL v. NARAYAN DAS.

108 I. C. 590 = 32 C. W. N. 613 = 55 Cal. 1077 = 47 C. L. J. 452 = 29 Cr. L. J. 423 = 10 A. I. Cr. R. 82 = A. I. R. 1928 Cal. 446.

**—S. 144—Validity of order.**

An order under S. 144 cannot be passed by a Magistrate when in effect there are no materials before him justifying the order (*Macpherson, J.*) RADHE DAS v. JAIRAM MAHTO. 123 I. C. 73 = 31 Cr. L. J. 466 = 1929 Cr. C. 586 = A. I. R. 1929 Pat. 714.

*The interpretation of the Sessions Judge of the order directing a party not to obstruct the water by bandh is an order directing the removal of a bandh already erected is wrong.*

A small river flowed by the east side of two villages K and S, whose lands were irrigated by the river. In August 1927 the people of K and certain adjoining villages raised a bandh in the bed of the river in village K, whereupon on 2nd September the tenants of S filed a petition before the Sub-Divisional Officer denying the right of the people of K to erect a bandh and alleged that the bandh caused great damage to the crops of S and asked the Court to take action under S. 144 against the people of K directing them to remove the bandh. On 8th September the Magistrate passed the following order: "The report shows that the villagers of K have erected a new bandh at point A of this map. Issue notice S. 144. Cr. P. Code, restraining the second party from obstructing the flow of water into the canal by erecting a bandh at point A... Send a copy of the order to the police who will see that there is no breach of the peace." The people of S as also the Inspector of Police and the Sessions Judge construed the order to mean that the bandh was to be removed.

Held, that there was nothing in that order to justify the assumption that the Magistrate had given any direction to the Sub-Inspector to remove the bandh erected by the people of K. It was beyond the jurisdiction of the Magistrate to pass an order like this under S. 144. All that it purported to do was to restrain the people of K from obstructing the flow of water into the canal by erecting a bandh. This obviously could not apply to a bandh which had been admittedly erected before this

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order was passed, and that it could not be held that the people of K were acting in defiance of the order of the Magistrate. (*Courtney Terrell, C. J. and Faal Ali, J.*) TILAK KOHAR v. EMPEROR. I. R. 1930 Pat. 585 = 126 I. C. 153 = 31 Cr. L. J. 967 = 1929 Cr. C. 283 = A. I. R. 1919 Pat. 523.

When a breach of the peace is anticipated, action is to be taken against the potential law breakers and not against the peaceful citizens whom, it is expected, that the law-breakers will molest. A.I.R. 1922 Cal. 483 and A. I. R. 1924 Pat. 767, Foll. (*Harrison, J.*) KAZAN CHAND v. THE CROWN. 28 Cr. L. J. 345 = 100 I. C. 825 = A. I. R. 1927 Lah. 430.

*Restraining a right to take a procession, obtained by a decree is not valid.*

Where Hindus of a certain place, in accordance with a decree obtained in their favour, applied for leave to take procession along the streets and the Magistrate passed an order under S. 144, forbidding the Hindus to conduct that procession, holding that the likelihood of rioting and bloodshed was too great to allow them to exercise their lawful rights.

Held, that this was a confession of importance on the part of the authorities. The District Magistrate is the person who is to look after the peace of his district and naturally in case of sudden emergency it may be necessary to restrict a person from exercising a perfectly lawful right. But it should not be necessary to prevent that person not only in a particular occasion in the near future but for all time from exercising that right because it would be too much trouble to render him adequate protection against persons who intend to disobey the law.

Orders under S. 144 are not intended to be used as a means of depriving the citizens of lawful rights which have been declared by competent Courts. (*Phillips, J.*) SIVAPURAM VENKATA SUBBAYA v. MUHAMMAD FALAUDDIN KHAJI. 101 I.C. 893 = 28 Cr. L. J. 509 = 8 A. I. Cr. R. 146 = A. I. R. 1927 Mad. 611 = 52 M. L. J. 651.

*Other means to avert danger being available, proceeding should not be taken under S. 144.*

An action should be taken under S. 144 only in urgent cases of nuisance or apprehended danger. It is not proper that Criminal Courts should take upon themselves a jurisdiction to decide what are really civil disputes.

Where the complaint was that a person by closing a drain and obstructing the flow of the rain water of another house endangered the safety of the house but where its owner could drain off the water in some other way.

Held, that the proper remedy was in the Civil Court. (*Mukherji, J.*) HAJI ALI v. EMPEROR. 85 I. C. 656 = 26 Cr. L. J. 560 = A. I. R. 1925 All. 678.

An order can only be issued to the public generally when frequenting or visiting a particular place. An order which directs the public in general to abstain from attending *Hat* is bad since it is not until the public attends the *Hat* that the order can be binding on them. (*Newbould and Mukerji, J.J.*) ASHUTOSH ROY v. HARIS CHANDRA CHATTOPADHAYA.

86 I. C. 810 = 26 Cr. L. J. 874 = 29 C. W. N. 411 = A. I. R. 1925 Cal. 625.

*When an order was passed under S. 144 which amounted to an order to cut the bandh the assembly resisting that is not unlawful.*

A compromise decree to which the Secretary of State was a party was passed providing that if the work of excavation and of bunding the eastern bank of a certain stream was not completed by a certain time the injunction issued for the maintenance of the western bank

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would be cancelled and the respondents (that is, the plaintiffs in the suit for injunction) would raise no objection to the defendants or any other person cutting the western *bandh* and bunding the eastern bank after the period allowed had expired; the eastern bank was damaged and one of the defendants in the suit for injunction applied to the Collector for permission to remove the western *bandh*. The Collector as District Magistrate issued order under section 144 to the public generally to abstain from interfering when the western *bandh* was cut as conditions had arisen when it was necessary to cut the western *bandh*. In the result at the time of cutting the *bandh* a riot took place and some of the villagers who had taken part in preventing the cutting of *bandh* were convicted under S. 147, I. P. C. and the common unlawful object was stated to be resisting the cutting of the *bandh*.

*Held*, that in effect the order really amounted to an order to cut the *bandh*. The District Magistrate who in his capacity as Collector represented the Secretary of State in the civil suit and who was in effect a party thereto was taking upon himself to construe the consent decree of the Civil Court and to say that the circumstances had arisen which justified the dissolving of the injunction of the Civil Court and the cutting of the western *bandh*. The District Magistrate had no right to usurp the functions of the Civil Court in this way; the injunction was still subsisting and could only be dissolved by the Court which granted it and it was the High Court alone which could construe its own decree and say whether the circumstances had arisen which would justify the dissolution of the injunction and the cutting of the *bandh*.

*Held*, further in the result there was no order in express terms to cut the *bandh* and no one was entitled to cut the *bandh* in view of the Civil Court's injunction which was still subsisting and this being so the common objects set out in the charge had not been established and therefore the conviction of and sentence passed on the petitioners must be set aside. (*Greaves and Pantom, J.J.*) **ABDUL JALIL v. EMPEROR.** 84 I. C. 343=

28 C. W. N. 732=26 Cr. L. J. 279=  
A. I. R. 1924 Cal. 996.

—*Order passed under S. 144 without preliminary notice or inquiry is bad.*

Where the opposite party were not parties to the proceedings under S. 145 started between the petitioners and one H, nor had any report been received from the police as to their possession of the two plots or as to a likelihood of a breach of the peace and the opposite party had merely said that their possession was being interfered with.

*Held*, that an order passed by the Magistrate under S. 144 was wrong especially when he passed the order without issuing any preliminary notice to the petitioners and without hearing them on the point; it was open to him either to direct that the opposite party should be made parties to the proceedings then pending under S. 145 or a notice should have been issued on the petitioners to show cause. (*Adami, J.*) **DHANRAJ BHAGAT v. BHARAT NARAIN SINGH.** 84 I. C. 324=

2 Pat. L. R. Cr. 198=6 P. L. T. 253=  
26 Cr. L. J. 260=A. I. R. 1924 Pat. 703.

**—S. 144—Miscellaneous.**

—*Duty of Magistrate.*

A definite order, or an order refusing to take action or rescinding an order under S. 144 must be ignored when evidence regarding possession is being taken under S. 145. 27 Cal. 785, Rel. on.; A. I. R. 1925 Pat. 610, Ref. (*James, J.*) **SADDIQUE v. SHEIKH MOHIND.**

**CR. P. CODE (1898), S. 145—Applicability.**

129 I. C. 85=32 Cr. L. J. 208=  
1930 Cr. C. 1100=A. I. R. 1930 Pat. 556.

—*Remedy.*

If a Magistrate abuses his power under S. 144 the remedy is probably to invoke the power of S. 107, Government of India Act. (*Ramesam, J.*) **VEDAPPAN SERVAI v. PERIANAN SERVAI.** 113 I. C. 279=

30 Cr. L. J. 119=12 A. I. Cr. R. 17=

52 Mad. 69=1928 M. W. N. 779=

28 M. L. W. 506=1 M. Cr. C. 304=

A. I. R. 1928 Mad. 1108=55 M. L. J. 621.

—S. 145.

Applicability.

Arbitration.

Attachment.

Breach of Peace.

Burden of proof.

Compromise.

Costs.

Decision of Revenue Court.

Decree of Civil Court.

Defects in Procedure.

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Easement.

Effect of order.

Evidentiary value of order.

Forum

Foundation of jurisdiction.

Fresh proceedings.

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Immovable property.

Information.

Joint possession.

Large Area.

Local inquiry.

Meaning of words.

Nature of proceedings.

Object of.

Order without jurisdiction.

Order without Notice.

Party.

Pendency of Civil Suit.

Period of possession.

Police Report.

Possession.

Power of Magistrate.

Receiver.

Relevancy of Title.

Revision.

Security for keeping peace.

Symbolical possession.

Transfer of case

—S. 145—Applicability.

—*Section cannot apply to disputes between persons having joint rights.*

Seeing that S. 145 merely contains the words "a dispute likely to cause a breach of the peace concerning any land or water or the boundaries thereof, and seeing that neither in S. 145 nor in S. 146 is there any provision which clearly limits the dispute, which can be dealt with under Ch. 12 to a dispute by "two opposing parties having adverse rights to its exclusive possession it cannot be said that because the dispute was not one between two opposing parties having adverse rights to exclusive possession of the land but was a dispute between two parties having joint rights to the land in dispute, each of which was claiming exclusive possession, S. 145 cannot apply. 11 C. W. N. 512, Diss. from. (*Mirza and Broomfield, J.J.*) *In re* **VENKATRAMAN RAMA HEDGE v. EMPEROR.** 32 Bom. L. R. 340= 1930 Cr. C. 548=125 I. C. 718=31 Cr. L. J. 933= A. I. R. 1930 Bom. 172.

**CR. P. CODE (1898), S. 145—Applicability.**

—Whether proceedings can be initiated on basis of old police report.

*Held*, that proceedings under S. 145 cannot be started on the basis of a police report more than three months old there being no likelihood of a breach of the peace when the Magistrate actually drew up the proceedings. 2 P. L. T. 650, Appr. (*Suhrawardy and Costello, J.J.*) ANADI LAL MUKERJEE v. SUKHCHAND MANDAL. 58 Cal. 388 =

129 I. C. 610 = 32 Cr. L. J. 398 =  
34 C. W. N. 899 = 1930 Cr. C. 1115 =  
A. I. R. 1930 Cal. 715.

—Where the subject-matter of dispute is possession of a complete and existing bund and not a right to erect a bund, the case falls within S. 145. 15 C. L. J. 267 and 4 C. W. N. 779, Dist. (*Suhrawardy and Graham, J.J.*) SASHI BHUSAN CHOWDHURY v. DEBENDRA GATI RAM. I. R. 1930 Cal. 633 =

33 C. W. N. 1004 = 125 I. C. 857 =  
31 Cr. L. J. 944 = 1930 Cr. C. 11 =  
A. I. R. 1930 Cal. 59.

—Section 145 applies only to disputes about actual physical possession and not to disputes about joint possession. (*Addison, J.*) WALI MUHAMMAD v. RAHMAT ALI. 110 I. C. 807 = 29 Cr. L. J. 775 =

11 A. I. Cr. R. 44 = A. I. R. 1928 Lah. 818.

—Dispute as to right of worship only—S. 147 and not S. 145, is proper.

Where the real dispute between the parties was as to the right to worship in the temple and not as regards the possession of the temple.

*Held*, that the proper section under which action should be taken by the Magistrate to prevent a breach of peace is S. 147 and not S. 145. 16 M. L. T. 427, 29 Mad. 237 and 11 Mad. 323, Rel. on. 17 Cr. L. J. 235, Dist. (*Krishnan, J.*) SINNASWAMI CHETTI v. PANNADI PALANI GOUNDAN. 88 I. C. 2 =

26 Cr. L. J. 1057 = A. I. R. 1925 Mad. 779 =  
48 M. L. J. 528.

—Where the joint owners of a lease of the right to collect rent of certain lands are actually in separate possession of certain shares, of the right but there is a dispute as to the possession of a certain other share of which each party claims exclusive possession, S. 145 is applicable. The criterion in such cases is whether the parties claim exclusive possession. 5 All. 607, 23 Cal. 80, 10 C. W. N. 1088 and 36 Cal. 986, Dist. 27 Cal. 259, 17 M. L. T. 225, 1 P. L. T. 594 and 1923 Pat. 369, Foll. (*Macpherson, J.*) BASUDEO SINGH v. MAHADEO LAL. 88 I. C. 707 = 6 P. L. T. 454 =

26 Cr. L. J. 1187 = 1926 P. H. C. C. 142 =  
A. I. R. 1925 Pat. 618.

—When there is ample time for the obtaining of a civil remedy criminal action is not justified. (*Dalal, J. C.*) CHOTE LAL v. EMPEROR. 76 I. C. 691 =  
25 Cr. L. J. 227 = A. I. R. 1924 Oudh 341.

**—S. 145—Arbitration.**

—Award can be used to drop proceedings but not to declare possession of any party.

A compromise can only be taken by the Magistrate as evidence for an order to be passed under cl. (5) of S. 145 and cannot possibly be made the basis of an order passed under cl. (6). The rule governs also a case in which an arbitration award is before the Court and where that arbitration refers not to existing and past possession but to future possession after division of the property or alteration of the existing condition. (*Adami and Foster, J.J.*) UTTIM SINGH v. JOBHAN RAI. 92 I. C. 172 = 3 Pat. 288 =

7 P. L. T. 288 = 27 Cr. L. J. 220 =  
A. I. R. 1924 Pat. 589.

**CR. P. CODE (1898), S. 145—Attachment.****—S. 145—Attachment.**

—When once the Magistrate raises the attachment and drops further proceedings in the case he has no jurisdiction to direct the delivery of possession of the disputed property to any person. (*Sundaram Chetty, J.*) PARANDHAMAYYA v. VIRAYYA.

1930 M. W. N. 771.

—S. 10—Effect of S. 10 of Bengal Alluvial Lands Act is to stay earlier proceedings under S. 145.

Some char lands became the subject-matter of proceedings under S. 145, and at the time when proceedings were initiated an attachment order was made against the lands. Various steps were taken in those proceedings and subsequently the Magistrate after reviewing the situation passed an order directing that the lands be released from attachment under S. 145 and decided to replace those proceedings with others under the Bengal Alluvial Lands Act, 1920. It was contended that S. 10 of that Act was intended to apply to proceedings under S. 145 so far as their institution or carrying on was concerned and not to the attachment order made under that section and that once an attachment was made, S. 10 conferred no right on the Collector to make a further attachment under that Act.

*Held*, that, if the contention were sound, it would result in nullifying the provisions of the Bengal Alluvial Lands Act of 1920. The provisions of S. 10 were wide enough to apply to all proceedings, including an attachment that may have been had under S. 145. The effect of S. 10, Bengal Alluvial Lands Act, would, therefore, be to stay the earlier proceedings under S. 145, Cr. P. C. 13 C. W. N. 125 ; A. I. R. 1921 Cal. 631, Dist. (*Pearson and Mullick, J.J.*) DIGENDRA BEHARI ROY v. JANAKI NATH ROY. 33 C. W. N. 1115 = 1929 Cr. C. 326 =  
A. I. R. 1926 Cal. 646.

—Where the Magistrate is unable to satisfy himself as to which of the parties was in possession at the date of the preliminary order, it is quite open to him to continue the attachment already made till a competent Court has determined the rights of the parties or the person entitled to possession. (*Kolhatkar, A. J. C.*) JAN MAHOMED v. JIVAN KHAN.

11 A. I. Cr. R. 194 = 111 I. C. 445 =  
29 Cr. L. J. 861 = A. I. R. 1928 Nag. 325.

—The object of proceedings under S. 145, being to determine which party was in possession at the date of the proceedings and to declare such party to be entitled to retain possession the possession of the Court during attachment in the course of those proceedings should enure for the benefit of such party in whose favour such a declaration is made. (Case-law discussed.) (*Suhrawardy and Mukerji, J.J.*) ABINASH V. TARINI CHARN. 30 C. W. N. 541 = 95 I. C. 117 =  
A. I. R. 1926 Cal. 782.

—Power of Magistrate to attach disputed land is limited.

The jurisdiction of a Magistrate to deal with disputes concerning land is strictly limited. A very exceptional jurisdiction in that regard has been conferred upon him by S. 145. Power under S. 145 is given to the Magistrate for the purpose of preserving the peace and it is only for that purpose that he may, where a breach of the peace is imminent, attach disputed property. (*Fforde, J.*) ATMA SINGH v. HARNAM SINGH. 7 Lah. 134 =

95 I. C. 281 = 27 Cr. L. J. 761 = 8 L. L. J. 358 =  
27 P. L. R. 341 = A. I. R. 1926 Lah. 205.

—Magistrate cannot order delivery of attached property to one party after filing the proceedings.

Where a Magistrate attaches in cases of emergency the property which is the subject of dispute under S. 145 and after recording evidence adduced by the parties to



**CR. P. CODE (1898), S. 145—Attachment.**

the proceeding comes to the conclusion that there is no danger of a breach of the peace and on that ground files the proceedings he has no jurisdiction to direct that the attached property should be delivered to one of the parties to the proceeding. In such a case the proper order is to direct that the property should remain in his custody and management pending decision of a Civil Court on the question of title. 48 Cal. 522 (S.B.) and 1 L. W. 103, Foll. (*Wadegaonkar, A. J. C.*) DASHARATH v. TARACHAND. 89 I. C. 514 = 8 N. L. J. 69 = 26 Cr. L. J. 1378 = 21 N. L. R. 191 = A. I. R. 1925 Nag. 297.

—A Magistrate's order that neither party should work the land is incorrect. Under S. 145 (4), if he thinks the case is emergent he can attach the land. (*Carr, J.*) MG PO LON v. MG BA ON. 84 I. C. 548 = 26 Cr. L. J. 324 = 3 Bur. L. J. 256 = A. I. R. 1925 Rang. 111.

—Magistrate should collect information and sift evidence thoroughly before passing order under S. 146.

It should be held as a very important principle in cases under S. 145 that a Magistrate should be extremely reluctant to attach the property in dispute. It is quite intelligible that he might be in a position to say with confidence that he was unable to satisfy himself as to the possession of the parties in cases where the land is jungle or waste. But where there is land admittedly subject year by year and season by season to cultivation, the Magistrate will be only admitting his own weakness if he states that he cannot come to a decision. He has before him two parties quite ready with information. The information may be true or false but it is his duty to collect information and sift it. After all the order under S. 146 is almost the same as an act of confiscation and therefore the Magistrate should naturally be reluctant to make use of that section. (*Foster, J.*) RAM BAHAL SINGH v. RANG BAHADUR SING. 82 I. C. 367 = 25 Cr. L. J. 1295 = 5 P. L. T. 589 = A. I. R. 1924 Pat. 804.

**—S. 145—Breach of peace.**

—It is necessary for making an order under S. 145 that the Magistrate should be satisfied at the time of drawing up the proceedings that there is then existing a likelihood of breach of the peace arising from the disputes between the parties with regard to the land in question. The making of an order, therefore, some months after the report on which it was purported to be passed, cannot be supported. (*Sukrawady and Costello, J.J.*) ANANDI LAL MUKHERJEE v. LUKH CHAND MUNDAL. 58 Cal. 388 = 129 I. C. 610 = 32 Cr. L. J. 398 = 34 C. W. N. 899 = 1930 Cr. C. 1115 = A. I. R. 1930 Cal. 715.

—Magistrate has no jurisdiction to initiate proceedings under S. 145 where the dispute between the parties is likely to cause breach of peace not at the time but only at some future date (*e.g.* 2 months hence). 33 Cal. 33; 33 Cal. 352 (F.B.), Ref; 7 C. L. R. 352; 7 Cal. 385; 4 W. R. 26; 8 C. W. N. 590; 11 C. W. N. 198 and 11 C. W. N. 835, Rel. on. (*Sukrawady and Graham, J.J.*) W. STEWART v. HUBERT HUGHES. 33 C. W. N. 509 = 49 C. L. J. 394 = 118 I. C. 892 = 30 Cr. L. J. 977 = A. I. R. 1929 Cal. 341.

—If the Magistrate is satisfied at any time that there is an apprehension of a breach of the peace arising out of a dispute with regard to certain land the proper course for him would be to institute a proceeding under S. 145, or to proceed against both the parties, under S. 107. (*Fazl Ali, J.*) AMANAT ALI v. EMFEROR. 115 I. C. 545 = 30 Cr. L. J. 492 = 10 P. L. T. 639 = 12 A. I. Cr. R. 451 = A. I. R. 1929 Pat. 67.

**CR. P. CODE (1898), S. 145—Costs.**

—The law does not require the Magistrate to record an express finding in his judgment that a breach of the peace was imminent. Such a finding in respect of the existence of a dispute likely to cause a breach of the peace is a matter to be considered in relation to the preliminary order. (*Wazir Hasan, A. J. C.*) MT. MAQIM-UN NISSA v. MT. AHMAD-UN-NISSA. 90 I. C. 541 = 2 O. W. N. 704 = 26 Cr. L. J. 1581 = A. I. R. 1925 Oudh 605.

—An order under S. 145 can only be passed when there is a present danger of a breach of peace. In the absence of any finding that there is a likelihood of a breach of peace an order under S. 145 cannot be sustained. It is not enough for the Magistrate to merely say that the parties are "in a contesting mood." (*Daniels, J. C.*) MANNU LAL v. HARDE RAM. 86 I. C. 1008 = 12 O. L. J. 256 = 2 O. W. N. 220 = 26 Cr. L. J. 944 = 29 O. C. 23 = A. I. R. 1925 Oudh 416.

**—S. 145—Burden of proof.**

—Onus lies on plaintiff to prove nature of defendant's possession.

Where plaintiff failed to prove possession both in proceedings under S. 145 and also in survey proceedings, Held, the onus thus lay heavily on the plaintiffs to show that the defendant was not in possession of the properties by virtue of the title he alleged in the previous proceedings. (*Mr. Ameer Ali.*) (RAJA) INDRAJIT PRATAB BAHADUR SAHI v. AMAR SINGH. 74 I. C. 747 = 21 A. L. J. 554 = 4 Pat. L. T. 447 = 1 P. L. R. 345 = 2 Pat. 676 = 50 I. A. 183 = 25 Bom. L. R. 1259 = 28 C. W. N. 277 = 33 M. L. T. 233 = 18 M. L. W. 728 = 4 L. R. P. C. 123 = 5 L. R. P. C. 8 = 39 C. L. J. 318 = 3 P. L. R. 1924 = A. I. R. 1923 P. C. 128 = 45 M. L. J. 578 (P.C.).

**—S. 145—Compromise.**

—Proceedings under S. 145 cannot be compromised nor can they be referred to arbitration.

Proceedings under S. 145 cannot be compromised, nor can they be submitted to arbitration; all that can be done is that there may be an agreement as to the mode of taking evidence as regards actual possession on the date of the preliminary order either by a Commissioner or by arbitrators. Such a Commissioner or arbitrators have no power to decide the case, but can only submit a report, and the Magistrate would then be bound to take that report into consideration before passing an order. It has, however, always to be borne in mind that if the parties come to any agreement with regard to a dispute even an agreement as regards the mode of ascertaining actual possession it at once becomes doubtful whether there is any likelihood of a breach of the peace, and if the Magistrate is satisfied that no likelihood of a breach of the peace exists he should cancel his preliminary order under S. 145 (5). A. I. R. 1924 Pat. 589; 32 Cal. 552; 2 Pat. L. J. 86; 15 C. W. N. 568 and A. I. R. 1921 Cal. 637, Ref; A. I. R. 1923 All. 77 and 7 C. W. N. 461. Dist. (*Staples, A. J. C.*) GAN-GADHU v. BALKRISHNA. 121 I. C. 47 = 31 Cr. L. J. 191 = 1929 Cr. C. 459 = A. I. R. 1929 Nag. 285.

**—S. 145—Costs.**

—Costs may be awarded where Magistrate permits the withdrawal of the proceedings.

Any order permitting the withdrawal of proceedings, and more so a final irrevocable order staying proceedings instituted under S. 145, after the Magistrate has assumed jurisdiction under that section, is an order falling within the purview of sub-S. 5 of that section, and as

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such a decision under that section within the meaning of S. 148. It is a decision by him that no such dispute has existed or exists, as to give him jurisdiction to continue the proceedings. There is nothing in sub-S. (5) to prevent a Magistrate in arriving at that decision without recording any evidence whatsoever; and it is equally within his competence to rely upon information recorded by him from any source whatsoever including that contained in a statement made by any party to the proceedings. 9 M. L. T. 324, Diss. from. 30 Cal. 112 and 20 Cal. 867, Rel. on. Where therefore a Magistrate has permitted the withdrawal of the proceedings or has made an order staying proceedings altogether, it may fairly be assumed that he has acted on such implied admission and has decided under sub-S. (5) of S. 145 that no dispute exists which would give him jurisdiction to continue the proceedings and that he is, therefore, competent to award costs. (*Rupchand Bilaram and Desouza, A. J. Cs.*) RELUMAL v. PHERUMAL. 111 I. C. 441 = 22 S. L. R. 386 = 29 Cr. L. J. 857 = A. I. R. 1928 Sind 193.

It is competent to the High Court, in its criminal revisional jurisdiction, to award costs of a revisional proceeding under S. 145. (*Fawcett and Madgavkar, J.J.*) BAI JIBA v. CHANDULAL. 94 I. C. 709 = 27 Bom. L. R. 1353 = 27 Cr. L. J. 661 = A. I. R. 1926 Bom. 91.

The High Court has no power to award costs incurred before it on the hearing of a Criminal Revision against an order passed under Chapter XII (Ss. 145-148). A.I.R. 1922 Mad 502 (F.B.). Foll. (*Spencer, Offg. C.J., Kumaraswami Sastri and Krishnan, J.J.*) VEERAPPA v. AVUDAYAMMAL. 86 I. C. 147 = 48 Mad. 262 = 26 Cr. L. J. 707 = 21 M. L. W. 688 = A. I. R. 1925 Mad. 438 = 48 M. L. J. 106 (F.B.).

**—S. 145—Decision of Revenue Court.**

Taking possession under S. 87, Bengal Tenancy Act, is not forcible and the person so taking possession cannot be ousted under Cl. (4). (*Chotner and Duval, J.J.*) NEKUNJA BEHARI v. USOBATE DEVI. 100 I. C. 117 = 7 A. I. C. R. 357 = 31 C. W. N. 242 = 23 Cr. L. J. 245 = A. I. R. 1927 Cal 944.

The order either under S. 145 or under S. 146 does not interfere with the subsequent order under S. 40 of the Land Revenue Act, by which possession has been made over to the party in whose favour mutation has been effected. (*Datal, J. C.*) EMPEROR v. NISAR ALI KHAN. 90 I. C. 399 = 26 Cr. L. J. 1551 = A. I. R. 1926 Oudh 179.

**—S. 145—Decree of Civil Court.**

Where in a suit for recovery of possession, possession is decreed, although the decree may be *ex parte*, as between judgment-debtor and decree holder for purposes of S. 145, the presumption is that the decree-holder entered into possession on the date of the decree and continued till his possession was disturbed by the judgment-debtor, and the onus is on the judgment-debtor to prove his entry subsequent to date of decree. (*Mullick, J.*) KISHORI JHA v. ANAND KISHORE JHA. I. B. 1930 Pat. 597 = 10 P. L. T. 862 = 1930 Cr. C. 258 = 126 I. C. 293 = 31 Cr. L. J. 1005 = A. I. R. 1930 Pat. 162.

Decision of a civil Court as to proprietorship does not bar Magistrate from deciding question of possession. 2 A. L. J. 274, Foll. (*Kolhatkar, A. J. C.*) SHIRIRAM v. SAMIRMAL. 111 I. C. 662 = 24 N. L. R. 148 = 29 Cr. L. J. 902 = 11 A. I. R. 166 = A. I. R. 1928 Nag. 284.

**CR. P. CODE (1898), S. 145—Defect in procedure—Notice.**

Once a decree for possession in respect of a land has been passed in favour of a person, the magistrate cannot again refer him to civil Court to have his title cleared. He is only to give effect to the decree of the civil Court. (*Simpson, A. J. C.*) LACHMI KUER v. PARTAB NARAIN. 91 I. C. 75 = 27 Cr. L. J. 43 (Oudh).

The existence of a decision incidentally arrived at by a Criminal Court for the matter of that, even by a Civil Court does not *per se* cause a cessation of the dispute between the parties as to possession. (*Jwalid Prasad, J.*) ABDUL SHAKUR v. ABU SAYEED. 86 I. C. 806 = 6 P. L. T. 710 = 26 Cr. L. J. 870 = A. I. R. 1925 Pat. 593.

The decision of civil or criminal Courts is not conclusively binding upon the Magistrate. No hard and fast rule can be laid down in this respect. (*Kulwant Sahay, J.*) BHULAN RAIT v. KUMARI RAI. 75 I. C. 535 = 5 P. L. T. 69 = 2 Pat. L. R. Cr. 104 = A. I. R. 1924 Pat. 509.

**—S. 145—Defect in procedure—Absence of evidence.**

Magistrate passing order without recording any evidence is irregular.

In a case regarding possession of the property in dispute the counter-petitioner was absent at the final hearing of the case. The trying Magistrate passed order in favour of the petitioner without recording any evidence at all, upon the question of possession.

Held, that the Magistrate had no jurisdiction to found an order upon the mere absence of a party.

Held further, that the irregularity is material enough for the counter-petitioner to be entitled to have it set right. 6 C. W. N. 925 and 12 C. W. N. 771, Rel. on. (*Curgenven, J.*) CHINNAPAREDDIGARU v. DASARI ADIGADU. 120 I. C. 895 = 31 M. L. W. 104 = 1929 M. W. N. 708 = 2 M. Cr. C. 321 = 1929 Cr. C. 615 = 31 Cr. L. J. 190 = A. I. R. 1929 Mad. 844.

Where in a proceeding under S. 145 there is a total lack of evidence or even of circumstances from which a presumption can reasonably be drawn that a party had knowledge of the proceedings the Magistrate's procedure in going on with the case *ex parte* amounts to much more than a technical irregularity and it is impossible to hold that the party was, or may not have been prejudiced thereby. A. I. R. 1924 Nag. 171; 33 Cal. 68, (F. B.), Dist. (*Findlay, J. C.*) SEGO PATTEL v. PARASHRAM. 101 I. C. 450 = 28 Cr. L. J. 418 = A. I. R. 1927 Nag. 234.

**—S. 145—Defect in procedure—Absence of order.**

Where the Magistrate did not make an order in writing as required by S. 145 (1).

Held, that S. 537 is sufficient to cure this defect. (*Carr, J.*) MG. PO LON v. MG. RA ON.

84 I. C. 548 = 3 Bur. L. J. 256 = 26 Cr. L. J. 324 = A. I. R. 1925 Bang. 111.

**—S. 145—Defect in procedure—Evidence not read.**

Omission to read over the evidence to the witness does not vitiate the order under S. 145. (*Foster, J.*) SONDI SINGH v. SRI GOVIND SINGH. 76 I. C. 25 = 5 P. L. T. 237 = 2 Pat. L. R. (Cr.) 108 = 25 Cr. L. J. 89 = A. I. R. 1924 Pat. 786.

**—S. 145—Defect in procedure—Notice.**

Omission to publish the notice under sub-section (3) is not fatal to the Magistrate's jurisdiction, under the section. Nor does a notice without the grounds or without specifying the land in dispute, though irregular, vitiate the proceedings particularly where the parties

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perfectly knew the property in dispute. (*Kendall, A.J.C.*) *PARBHU DAYAL v. EMPEROR.* 81 I.C. 963=25 Cr. L. J. 1139=A.I.R. 1925 Oudh 152.

—Where the Magistrate failed to serve a copy of the preliminary order under S. 145, cl. 1 and to post the order on the land.

*Held*, that these were irregularities curable by S. 537. (*Carr, J.*) *MAUNG MAUK v. MAUNG PO YIN.* 94 I.C. 708=27 Cr. L. J. 660=3 Rang. 169=A.I.R. 1925 Rang. 270.

—Where the parties concerned had full knowledge of the proceedings from start to finish, an omission to serve notice on them and to affix a copy of the Court's order as required by the sub-S. (3) is an irregularity curable by S. 537. (*Hallifax, A.J.C.*) *BHURE KHAN v. FAKIRA.* 76 I.C. 303=25 Cr. L. J. 159=A.I.R. 1924 Nag. 171.

**—S. 145—Defect in procedure—Parties.**

—Although a person is not one of the parties to the dispute but is in possession of part of the land he is a necessary party to the proceedings and should be asked to file a written statement. Where this is not done and where the Magistrate's order does not specifically state that there is a danger of breach of the peace, the High Court on revision will interfere. (*Dalal, J.C.*) *RAM BHUSHAN DAS v. RAM LAKHAN SAHU.* 85 I.C. 918=26 Cr. L. J. 630=A.I.R. 1925 Oudh 484.

**—S. 145—Defect in procedure—Vitiating proceedings.**

—Procedural errors and omissions do not destroy jurisdiction where party is prejudiced. (*Kennedy, J.C. and Rupchand Bilaram, A.J.Cs.*) *MAHOMED MAHDI-SHAH OF FIR JHANDO v. WAHDALSHAH.* 26 Cr. L. J. 1292=89 I.C. 156=A.I.R. 1926 Sind 53.

—*Proceedings are not ultra vires because some parties in possession are unlikely to cause breach of peace—Some parties filing compromise can be put into possession—Not every error vitiates proceedings—Mutation order does not affect order under S. 145.*

In S. 145 the words "parties concerned in such disputes" include all persons claiming to be in possession and merely because some of those parties are unlikely to cause a breach of the peace, the proceedings under the section are not without jurisdiction. The result of the proceedings will not be invalidated by any and every error and a radical defect must be established corrupting the whole proceedings before their jurisdiction can be questioned. The mere fact that some of the parties file a compromise does not prevent the Magistrate from putting such parties into possession although had the compromise been filed by all the parties and had there been no longer any dispute, it might be held that the Magistrate's jurisdiction had ceased and that he was only empowered to cancel the proceedings under cl. 5 of section 145. In so far as a Magistrate's order in proceedings under S. 145 limits the period within which a civil suit may be brought by any of the parties, an order in mutation proceedings does not affect the Magistrate's order under section 145 because an order in mutation proceedings is not a final decision as to ownership. (*Kendall and Pullan, A.J.Cs.*) (*RANI*) *ABADI BEGAM v. MIRZA AHMUD MIRZA BEG.* 82 I.C. 601=11 O.L.J. 757=A.I.R. 1925 Oudh 190.

**—S. 145—Duty of Magistrate—Absence of evidence.**

—*Order declaring right of one party to be in possession and forbidding others from interfering with the possession is one under S. 145.*

**CR. P. CODE (1898), S. 145—Duty of Magistrate—Points for decision.**

Where a Magistrate, on a police report being received that there was a dispute regarding a piece of land and breach of peace was apprehended, called for documentary evidence from the parties, heard arguments and passed an order declaring one party in possession and directing that if the other were to obstruct him, proceedings under S. 118 would be started and referred the parties to civil Court.

*Held*, that the Magistrate acted judicially and passed without jurisdiction an order which he could only pass under S. 145 and therefore it should be vacated. (*Macpherson, J.*) *HARBANS NARAIN SINGH v. MOHAMMAD SAYEED.* 90 I.C. 295=26 Cr. L. J. 1511=A.I.R. 1926 Pat. 51.

**—S. 145—Duty of Magistrate—Bona fide dispute.**

—Where the Magistrate finds that there is a bona fide dispute between the parties, he ought to initiate proceedings under S. 145. A.I.R. 1922 Pat. 435 (F.B.) and 4 Pat. L.W. 354. Foll.

Where the presumption of the record of rights and of the partition papers was in favour of petitioners, and the Police report was in favour of the opposite party.

*Held*, that there was clearly a case in which there was a bona fide dispute between the parties as regards possession. (*Bucknill and Kulwant Sahay, J.J.*) *MUNNI LAL v. GATTI AHIR.* 88 I.C. 845=6 P.L.T. 746=3 Pat. L.R. Cr. 70=26 Cr. L. J. 1229=A.I.R. 1925 Pat. 514.

**—S. 145—Duty of Magistrate—Civil dispute.**

—*Magistrate should carefully scrutinize the evidence in cases under S. 145 and discourage private individuals from misusing the law.*

There is far too great a tendency amongst private individuals to file applications under S. 145 simply as a first move which they imagine may put them in an advantageous position in the subsequent civil litigation as against the party with whom they are at logger-heads. This misuse of these provisions of law requires to be discouraged, and therefore though the Magistrate can rely on the police report, ordinarily it would be well for Magistrates to carefully scrutinize the evidence in this connexion in this class of cases. 33 Cal. 352, Rel. on. (*Findlay, O.J.C.*) *NAGO v. ATMARAM.* 91 I.C. 244=27 Cr. L. J. 68=A.I.R. 1926 Nag. 371.

**—S. 145—Duty of Magistrate—Parties.**

—Duty of Magistrate under S. 145 is to determine what parties are concerned in the dispute and who are in actual possession—He is not deprived of the jurisdiction under S. 145 though some parties only are in possession. 5 C.W.N. 900 and 30 Cal. 155. (*Findlay, O.J.C.*) *NARAYAN v. CHANDRABAGA.* 89 I.C. 153=26 Cr. L. J. 1289=A.I.R. 1925 Nag. 457.

**—S. 145—Duty of Magistrate—Points for decision.**

—*Possession defined.*

*Cuming and Cammiade, J.J.*—In a case under S. 145, what the Magistrate has to determine is who is in actual possession at the time or within two months of the proceeding and to declare him to be entitled to possession.

Actual possession means actual physical possession. Actual possession is not necessarily lawful possession. It may be the possession of a trespasser without any title whatever. The person who has obtained what is known as symbolical possession though a Civil Court is not necessarily in actual possession.

*Graham, J.*—Possession means lawful possession and not possession taken by force in defiance of law. No

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Court ought to recognize such possession. (*Graham and Cammude, J.J.* on difference *Cunning, J.*) AMBAR ALI v. PIRAN ALI. 109 I. C. 231 = 55 Cal. 826 = 47 C.L.J. 233 = 32 C.W.N. 275 = 10 A. I. Cr. R. 160 = 29 Cr. L. J. 503 = A.I.R. 1928 Cal. 344.

—A failure to record an express finding as to possession and the consequent disregard of the express provisions of Cl. (1), S. 146, are very much to be deprecated (*Kolhatkar, A.J.C.*) JAN MAHOMED v. JIVAN KHAN. 111 I. C. 445 = 29 Cr. L. J. 861 = 11 A. I. Cr. R. 194 = A.I.R. 1928 Nag. 325.

—Magistrate is incompetent to base final order on the merits of the claims of parties to a right to possess but should confine himself to the question of actual possession even if the possession is that of a trespasser, provided it is peaceable. (*Kolhatkar, A.J.C.*) SHRIRAM v. SAMIRMAL. 111 I. C. 662 = 24 N.L.R. 148 = 29 Cr. L. J. 902 = 11 A.I.Cr. R. 166 = A.I.R. 1928 Nag. 284.

—Under sub-S. 4, S. 145, the Magistrate has to decide the question of possession without reference to the merits of the claim of any party and a proper judgment under the section should state the case of both parties and then leave alone the question of title. If there is oral evidence on either side, there should be some discussion of it. (*Allanson, J.*) HAZARI GOPE v. MT. BIBI AMNA. 110 I.C. 580 = 10 P.L.T. 47 = 29 Cr. L.J. 724.

**—S. 145—Duty of Magistrate—Preliminary and final order.**

—The provisions of S. 145 (1) are mandatory and a disregard of those provisions vitiates the entire proceedings in the case. The Magistrate who has to draw up the order under S. 145 (1) is the Magistrate who after drawing up the order proceeds to decide the case. (*Iqbal Ahmed, J.*) BANKA SINGH v. GOKUL. 99 I.C. 1031 = 49 All. 325 = 25 A.L.J. 246 = 8 L.R.A. Cr. 39 = 28 Cr. L. J. 231 = 7 A.I. Cr. R. 267 = A.I.R. 1927 All. 286.

—The existence of dispute likely to cause breach of peace is absolutely necessary to give the Magistrate jurisdiction.

The powers conferred upon criminal courts by S. 145 are somewhat of an exceptional character because they enable the Magistrate mentioned in the section to partially deal with a matter over which civil courts have jurisdiction. Therefore the requirements of the section should be strictly followed. A Magistrate would have no jurisdiction unless he was satisfied that there existed a dispute concerning land, etc., and which dispute is likely to induce a breach of the peace. A formal order to this effect under sub-S. (1) is absolutely necessary to give the Magistrate jurisdiction. A. I. R. 1924 Lah. 91, Foll. (*Abdul Raouf, J.*) DHANI RAM v. KALI RAM. 26 P. L. R. 712 = 105 I. C. 685 = 28 Cr. L. J. 973 = A.I.R. 1927 Lah. 805.

—Failure to make initial order vitiates proceedings.

Under S. 145 (1) it is first of all essential that the Magistrate should be satisfied that a dispute likely to cause a breach of the peace exists and that he should make an order in writing stating the grounds of his being satisfied. Omission to pass an order under sub-S. 1 is not a mere technical defect. Where the Magistrate has not made the initial order prescribed by that sub-section, and has also not made at any subsequent stage of the proceedings an order which essentially complies with the requirements of that sub-section the proceedings are without jurisdiction and cannot be re-

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garded as proceedings under S. 145. (*Martineau, J.*) HAKAM v. RALIA RAM. 74 I. C. 79 = 4 Lah. 66 = 24 Cr. L. J. 751 = A. I. R. 1924 Lah. 91.

**—S. 145—Duty of Magistrate—Quick disposal.**

—Original application should not be sent to police —Magistrate must himself be satisfied as to likelihood of breach—Proceedings should not be dilatory.

The Magistrate must be alert, active and prompt. The Magistrate must himself be satisfied, and he must form his own judgment and not proceed automatically upon a mere opinion of the police or the direction of some other officer. 33 Cal. 33, Foll. His decision that there is a dispute likely to cause breach of the peace is the very foundation of all subsequent investigation and without it the latter is void and inoperative. The object of S. 145 being the prevention of a breach of the peace the foundation of jurisdiction is its likelihood. 21 Cal. 29 and 30 All. 41, Foll. Both the fact that he is satisfied and the grounds thereof must appear in the first order directing the issue of notice. Where a party being wrongfully dispossessed moved the Magistrate to initiate proceedings under S. 145 and the Magistrate thinking fit to invite police report sent the application itself in original for enquiry and report to the police, and the police report reached the Magistrate after a considerable delay and he passed an order which did not fulfil the requirements of S. 145, Cr. P. Code.

Held, that the Magistrate failed to appreciate the true and proper scope of the application, and to pass orders according to law, but by his dilatory procedure, deprived the party dispossessed of the valuable right to claim benefit of the presumption of continuance of his possession for a space of two months next prior to the date of his preliminary order, and thus defeated the very object with which the legislature enacted Prov. 1, sub-S. 4. (*Kincaid, A. J. C.*) EMPEROR v. GANIKHAN. 28 Cr. L. J. 929 = 105 I. C. 449 = 9 A. I. Cr. R. 374 = A. I. R. 1928 Nag. 81.

—It is highly desirable that once the hearing of a case under S. 145 is commenced and witnesses are examined, the hearing should go on from day to day until all the evidence is taken and argument is heard; then order should be passed as soon as possible. (*Kulwant Sahay, J.*) SASTU SAHU v. MATTUN THAKUR. 83 I.C. 665 = 1924 P. H. C. C. 231 = 26 Cr. L. J. 105 = 3 Pat. L. R. Cr. 145 = 6 P. L. T. 258 = A. I. R. 1924 Pat. 689.

**—S. 145—Duty of Magistrate—Reasons for findings.**

—Where a Sub-Divisional Magistrate makes an order under S. 145 (1) and fills up form 22 in Sch. 5, it is necessary to send the proceedings back to him in order that he may write proper judgment. There is nothing in S. 145 to absolve a Magistrate from his ordinary duty of giving reasons for his decision. (*Reilly, J.*) CHELLAPATHI NAIDU v. SUBBA NAIDU. 114 I. C. 625 = 52 Mad. 241 = 30 Cr. L. J. 340 = 28 M. L. W. 664 = 1928 M. W. N. 921 = 1 M. Cr. C. 320 = A.I.R. 1928 Mad. 1230 = 55 M. L. J. 693.

—Where an order only contains a very brief statement of some of the facts of the case, does not discuss the evidence adduced by the parties, and states no reasons as to why the claim of actual possession by any particular person is true, such an order is not a decision as required by the law and must be set aside. (*Mohiuddin, A. J. C.*) EMPEROR v. RAGHUNATH. 107 I. C. 907 = 10 A. I. Cr. R. 2 = 29 Cr. L. J. 312 = A. I. R. 1928 Nag. 255.

**CR. P. CODE (1898), S. 145—Duty of Magistrate—Reasons for findings.**

—*Magistrate must give reasons for his decision.*

Per *Buckland, J.*—Whether Ss. 366 and 367 do or do not apply to proceedings under S. 145, Magistrate must give a statement of the reasons for the decision sufficient to determine whether he has or has not complied with sub-S. (4) of S. 145 and directed his mind to the consideration of the effect of the evidence adduced before him. To what extent a Magistrate should state the reasons cannot be laid down by a general rule, but provided he states the reasons so as to enable the High Court to appreciate and deal with the case in revision, a degree of brevity which would be out of place in a judgment to which S. 337 applies would not necessarily be open to objection.

Per *Cuming, J.*—The law does not require that the Court should give reasons for the decisions in a proceedings under Chap. 12. (*Sukhravard, Cuming and Buckland, J.J.*) *ISHAM CHANDRA SAMANTA v. HRI-DOY KRISHNA BOSE.* 86 I. C. 979 =

41 C. L. J. 357 = 29 C. W. N. 475 =

26 Cr. L. J. 915 = A. I. R. 1925 Cal. 1040.

—*Striking of a case under S. 145 with a remark, that there was no likelihood of breach of peace, without any material before the Court for such order, is illegal.*

Where after several adjournments and long after the evidence and arguments on both sides were heard the Court struck off the case with a remark "I find I passed of final order in this case. As so long as elapsed, I do not think any breach of the peace is likely. I therefore strike the case off," though there was no material before the Court for concluding against such likelihood. *Held*, that the order was wholly illegal. It may be that if the Magistrate gets information from any source whatsoever that there is no longer any apprehension of a breach of the peace he would be entitled to drop the proceeding. (*Kulwant Sahay, J.J.*) *SASTU SAHU v. MATHINI THAKUR.* 83 I. C. 665 =

1924 P. H. C. C. 231 = 26 Cr. L. J. 105 =

3 Pat. L. R. Cr. 145 = 6 P. L. T. 258 =

A. I. R. 1924 Pat. 689.

—*Magistrate must give reasons.*

Where Magistrate without stating any grounds said that he was satisfied that there was a dispute likely to cause a breach of the peace,

*Held*, he failed to comply with the provisions of the law and his subsequent proceedings were without jurisdiction. Litigants often resort to S. 145 as an easy way of getting possession without the expense, delay and trouble of a Civil suit and Courts should be on guard against an abuse of legal powers. (*May Oung, J.*) *MA MA GYI v. EMPEROR.* 81 I. C. 985 =

2 Bur. L. J. 295 = 25 Cr. L. J. 1161 =

A. I. R. 1924 Rang. 178.

**—S. 145—Duty of Magistrate—Summoning witnesses.**

—The direction to receive evidence implies a duty on the Court to summon such witnesses as may be mentioned to the Court by either party. 32 Cal. 1093, Dist. (*Dalal, J.*) *CHAKRAPAN v. EMPEROR.*

1930 Cr. C. 432 = 1930 A. L. J. 484 = 52 All. 91 = 125 I. C. 463 = 31 Cr. L. J. 839 = A. I. R. 1930 All. 319.

**—S. 145—Duty of Magistrate—Miscellaneous.**

—The Court is bound in the absence of one party to satisfy itself by examining the evidence tendered by the other that other party is entitled to an order. (*Curgenven, J.*) *CHINNAPAREDDIGARI v. DESARI ADIGADU.* 120 I. C. 895 = 31 M. L. W. 104 =

1929 M. W. N. 708 = 2 M. Cr. C. 321 =

1929 Cr. C. 615 = 31 Cr. L. J. 190 =

A. I. R. 1929 Mad. 847.

**CR. P. CODE (1898), S. 145—Effect of order.**

—*When a site claimed to be burial ground, Court should see whether the right to bury was exercised at previous occasion when it arose.*

In a case where certain persons claim to have a right to bury their dead in a burial ground the Magistrate should address himself to the question whether the persons claiming the right exercised that right when occasion arose. The fact that a portion of the ground was ploughed and sown is no ground for thinking that is not a burial ground. Vacant portions of a burial ground may be improperly used for raising crops; but that would not take away the right of persons entitled to bury their dead when occasion arises. S. 147 which relates to the exercise of any right of use of any land or water covers cases of this description. (*Devadoss, J.*) *MD. ABDUL KUDDUS SAHIB v. MD. ASHROOF SAHIB.* 110 I. C. 100 = 51 Mad. 522 =

28 M. L. W. 75 = 10 A. I. Cr. R. 368 =

1 M. Cr. C. 186 = 29 Cr. L. J. 644 =

A. I. R. 1928 Mad. 598 = 55 M. L. J. 40.

—Where a person claims to be in possession of land and complains that another person, in collusion with a Magistrate, is disturbing his possession and that there is danger of breach of peace, the proper procedure is to proceed under S. 145 and not to give the applicant a warning not to go to the land on reports by police or other officers. (*Jwala Prasad, J.*) *AMEER ALI v. DUKHAN MONIR.* 109 I. C. 805 =

10 A. I. Cr. R. 320 = 29 Cr. L. J. 613 =

A. I. R. 1928 Pat. 574.

—A Court should not place the disputed property in the actual possession of persons who are parties to the proceedings and who are found not to have been in possession of the disputed property irrespective of any prejudice or not to any party to the proceedings. (*Dar and James, J.J.*) *MT. LACHMI KUAR v. GAJADHAN PROSHAD.* 104 I. C. 104 = 7 Pat. 1 =

9 A. I. Cr. R. 8 = 28 Cr. L. J. 776 = 9 P. L. T. 109 =

A. I. R. 1927 Pat. 393.

**—S. 145—Easement.**

—On a proceeding under S. 145 a Magistrate can not only award possession of the land in dispute, but also grant a right of way over it to one of the parties before him. (*Macleod, C.J. and Shah, J.*) *AMARSANG SHIVASANGJI, In re.* 86 I. C. 404 = 48 Bom. 512 =

26 Bom. L. R. 436 = 26 Cr. L. J. 772 =

A. I. R. 1924 Bom. 452.

**—S. 145—Effect of order.**

—*Order of Magistrate has reference to subject-matter of dispute than to parties concerned.*

Intention of the legislature in enacting this provision is that the order made by the Magistrate should have reference rather to the subject-matter of the dispute than to the persons who are engaged therein, that is to say, that once the declaration has been made as regards possession of the land it is without using the word in strict technical sense binding upon all persons interested therein. 1 Pat. L. W. 642; A. I. R. 1922 Pat. 210, Rel. on. (*Wort, J.*) *JAINATH PATI v. RAMLAKHAN.*

117 I. C. 643 = 10 P. L. T. 689 = 1929 Cr. C. 265 =

30 Cr. L. J. 840 = A. I. R. 1929 Pat. 505.

—Failure to file suit under O. 21, R. 103 or within three years of criminal Court's order refusing right to present possession and S. 145 does not bar the suit for redemption. (*Macnair, A.J.C.*) *LINGANNA NAGANNA v. AHAMAD SHAH.* 105 I. C. 427 =

23 N. L. R. 164 = A. I. R. 1928 Nag. 97.

—Magistrate can direct possession to party in peaceful possession until eviction by Court. Notwithstanding injunction in favour of party in forcible posses-

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sion. by Civil Court after Magistrate, findings, the High Court in revision will not allow party in forcible possession to get advantage of his forcible possession. (*Fawcett and Madgavkar, J.J.*) **BAI JIBA v. CHANDULAL.**

94 I. C. 709 = 27 Bom. L. R. 1353 =  
27 Cr. L. J. 661 = A. I. R. 1926 Bom. 91.

—The proposition cannot be comprehensively laid down that in every case where an order under S. 145, has been made, the necessary consequence is the actual dispossession of the unsuccessful party. (*Wazir Hasan, J. C.*) **MAHESH SINGH v. EMPEROR.**

84 I. C. 942 = 11 O. L. J. 743 = 26 Cr. L. J. 398 =  
A. I. R. 1925 Oudh 251.

—Unsuccessful lessee can sue for mesne profits without suing in ejectment.

An order under S. 145 (6) declares the party found to have been in possession of the property at the date of the notice to be entitled to possession thereof until evicted therefrom in due course of law. This does not mean that the successful party is thereby entitled as of right, to the property in defeasance of whatever legal title there may be existing in favour of the rightful owner. The party who was unsuccessful can therefore sue for mesne profits without suing in ejectment. (*Spencer and Devadoss, J.J.*) **MD. SHARUSGOYA ROWTHER v. OMANDU PILLAI.**

76 I. C. 76 =  
18 M. L. W. 649 = 1923 M. W. N. 779 =  
A. I. R. 1924 Mad. 224.

**—S. 145—Evidentiary value of order.**

—The order under S. 145 is only a piece of evidence to be taken into consideration in determining who is in possession. It would go no doubt to show that the party in whose favour the order is made was in possession on the date when it was made. But it is open to the other party to show in a subsequent proceeding that in spite of the order, they were actually in possession or regained possession after the order. (*Cuming and Graham, J.J.*) **RAKHAL DOLIN v. MAHAM LAL.**

104 I. C. 443 = 31 C. W. N. 964 = 28 Cr. L. J. 827 =  
A. I. R. 1927 Cal. 701.

—A Magistrate in deciding the question of possession under S. 145, is precluded by a previous order of a criminal Court relating to the subject of the dispute, unless he finds that there has been a change of possession since the previous order of the criminal Court was passed. 33 Cal. 33 and A. I. R. 1922 Cal. 364; 49 Cal. 174, Dist. (*Addison, J.*) **JAGAT SINGH v. SUNDER SINGH.**

95 I. C. 479 = 27 P. L. R. 630 =  
27 Cr. L. J. 815 = A. I. R. 1926 Lah. 479.

**—S. 145—Foundation of jurisdiction.**

—Where there is no likelihood of breach of the peace occurring, proceedings under S. 145 are incompetent. (*Chotener and Duval, J.J.*) **NIKUNJA BEHARI v. USBAH DEVI.**

100 I. C. 117 = 7 A. I. C. R. 357 =  
31 C. W. N. 242 = 28 Cr. L. J. 245 =  
A. I. R. 1927 Cal. 944.

—The Magistrate is only justified in applying S. 145 when he anticipates that unless he interferes there will be breach of the peace. He may so anticipate by reason of general information or by a particular representation by a person whose possession is likely to be forcibly disturbed; then such person is in a position similar to a person who makes a complaint. But such a person is not a complainant and his petition is not a complaint. (*Kennedy, J. C. and DeSouza, A. J. C.*) **MOOLYAMAL TAPANDAS v. ALI MAHOMED JADOW.**

26 Cr. L. J. 1333 = 89 I. C. 309 =  
18 S. L. R. 278 = A. I. R. 1926 Sind 85.

—The only two essential conditions which not only confer jurisdiction on the Magistrate, but make it

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imperative on him to take the preventive proceedings contemplated by S. 145 are firstly that there should be a dispute over land or water, and secondly, that such dispute is likely to cause a breach of the peace. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) **MAHOMED MAHDI SHAH OF PIR JHANDO v. WAHDALSHAH.**

89 I. C. 156 = 26 Cr. L. J. 1292 =  
A. I. R. 1926 Sind 53.

—Positive evidence as to likelihood of breach must exist—Religious nature of dispute leads to no inference—Past conduct of parties is good evidence.

The object of S. 145 is to bring to an end by a summary process, disputes relating to land, etc., which are in their nature likely, if not suppressed, to end in breaches of the peace. But the mere circumstance that the dispute is one of a religious nature is not enough. There must be positive evidence on the record that the breach of the peace is likely to occur if proceedings under this section are not taken. Where it appears that the land which in 1880 was shown as a part of the Mahomedan graveyard has been gradually brought under cultivation to the prejudice of the Muhammadan community by the owners who were Brahmins and no breach of the peace has occurred during the last 40 years, held that it was hardly likely that any such untoward result should now ensue if the property is not attached under S. 146. (*Moti Sagur, J.*) **BHAGWAN DAS v. MAULA DAD KHAN.**

75 I. C. 990 =  
25 Cr. L. J. 78 = A. I. R. 1924 Lah. 678.

—The apprehension of a breach of the peace is the first condition necessary to give the Magistrate jurisdiction under this section, and if it is found that there is no longer any such apprehension the Magistrate's jurisdiction ceases. (*Newbould and Sukrawardy, J.J.*) **MAHOMMAD KHANDU SARKAR v. SADAKALI SHEIKH.**

76 I. C. 963 = 38 C. L. J. 284 =  
25 Cr. L. J. 291 = A. I. R. 1923 Cal. 577.

—Non filing of written statement does not take away jurisdiction of Magistrate to try case—Case ready for trial can be transferred—Proceedings against parties claiming exclusive plots are maintainable.

In order to give jurisdiction to a magistrate to proceed under S. 145 all that is necessary is that he should be satisfied of there being likelihood of a breach and he should make a note stating his grounds of his so being satisfied and require the parties to attend and to put in written statements of their claims. If a party fails to put in written statement, that would not take away the jurisdiction of the Magistrate to proceed with the case; 11 W. R. Cr. Rulings, p. 9 Ref. It is not illegal for a Magistrate to transfer the case when the parties are ready for trial and some have even filed, written statements, 2 P. L. T. 186, Dist. Where each party claims exclusive possession of half of the plot in dispute and not joint possession of the whole together proceedings under S. 145 are maintainable. 1 P. L. T. 594, Dist. (*Kulwant Sahay, J.*) **RAMJARIA v. PIAR KOERI.**

73 I. C. 173 = 4 P. L. T. 308 = 2 Pat. L. R. Cr. 6 =  
24 Cr. L. J. 557 = A. I. R. 1923 Pat. 369.

—A Court has no jurisdiction to take any action under the section without recording a preliminary finding as to dispute or to ignore the procedure under the section. The enquiry under the section is strictly limited to the actual fact of possession. An adjudication on the merits is opposed to the express provisions of the section and is without jurisdiction. (*Pratt, J.*) **NGA PO TIN v. NGA PO SOUNG.**

74 I. C. 68 =  
1 Rang. 53 = 2 Bur. L. J. 32 = 24 Cr. L. J. 740 =  
A. I. R. 1923 Rang. 211.



**CR. P. CODE (1898), S. 145—Government of India Act, S. 107.**

—When proceedings are instituted without jurisdiction under S. 145, the High Court has inherent power to set aside proceedings and pass consequential orders.

It is now well-settled that a High Court is competent, in the exercise of the power of superintendence vested in it under S. 107 of the Government of India Act, 1915 (which replaced S. 15 of the Indian High Courts Act, 1861), to set aside proceedings instituted without jurisdiction by a subordinate Court under S. 145; such power of superintendence can be exercised notwithstanding S. 435 (3), which lays down that proceedings under Chapter XII (which comprises Ss. 145-148) are not proceedings within the meaning of that section. The High Court can, when it sets aside the proceedings, proceed to give such consequential directions as may be founded necessary in the interests of justice in the circumstances of the particular case. Although the Cr. P. Code does not contain a provision corresponding to S. 151 of the C. P. Code, yet the inherent power of Courts is in no sense restricted in application to civil cases; it is equally applicable to criminal matters. The power is not capriciously or arbitrarily exercised; it is exercised *ex debito justitiæ* to do that real and substantial justice for the administration of which alone Courts exist; but the Court, in the exercise of such inherent power, must be careful to see that its decision is based on sound general principles and is not in conflict with them or with the intentions of the Legislature as indicated in statutory provisions. Where in a dispute as to *lac* between tenants and zamindars it was manifestly impossible to restore the physical condition of things as they existed when the proceedings under S. 145 were instituted and where the title was in dispute and the Court was not in a position to make an assumption as to possession in favour of either party.

*Held*, that in such circumstances, the best course to adopt was to keep the property in the custody of the Court pending decision by a Civil Court on the question of title. 1 M. L. W. 1032; *Hood's Barrs v. Heriot*, (1896) A. C. 174 and *Peruvian Guano Co. v. Dreyfus Bros.*, (1892) A. C. 166, *Ref. (Mookerjee, Ag. C. J., Fletcher, Chatterjee, Richardson and Ghose, J.)* PIGOT v. ALI MUHAMMAD MANDAL. 60 I. C. 325 = 48 Cal. 522 = 22 Cr. L. J. 213 =

A. I. R. 1921 Cal. 30 (S. B.).

**—S. 145—Immovable property.**

—Standing crops are immovable property within the meaning of Cl. (2) of S. 145. But crops that have been severed from the land are not immovable property at all and therefore a dispute relating to the crops which have had been already cut and stored before issue of notice under S. 145 is not covered by S. 145. (*Banerji, J.*) SITU DAS v. JAIRI DAS.

7 L. R. A. Cr. 193 = 27 Cr. L. J. 1363 = 98 I. C. 483 = A. I. R. 1927 All. 99.

—The right to perform the *pūja* of idol or to have a share of the offerings made to the idol cannot be said to be a right of user of any land as provided in S. 145. If there is such a dispute between the parties, which the Magistrate considers may lead to any breach of the peace he may take such step as he consider necessary under S. 107. (*Walmsley and B. B. Ghose, J.J.*) SURENERA NATH v. SHOSHI BHUSAN. 52 Cal. 959 = 42 C. L. J. 127 = 27 Cr. L. J. 239 = 92 I. C. 223 = A. I. R. 1926 Cal. 437.

**—S. 145—Information.**

—Omission to mention source of information in preliminary order though known does not oust jurisdiction.

**CR. P. CODE (1898), S. 115—Local inquiry.**

tion. (*Dalal, J. C.*) SHER BAHADUR SINGH v. FAZAL ALI. 75 I. C. 736 = 25 Cr. L. J. 48 = A. I. R. 1925 Oudh 46.

—A Magistrate is entitled to initiate proceedings, if he receives information from any source whatever that there is likelihood of a breach of the peace relating to possession of immovable property. (*Kulwant Sahay, J.*) GOURI SHANKAR v. THE COLLECTOR OF MUZAFFERPUR. 87 I. C. 421 = 6 P. L. T. 215 = 3 Pat. L. R. Cr. 127 = 26 Cr. L. J. 965 = A. I. R. 1925 Pat. 553.

**—S. 145—Joint possession.**

—Two things essential for proceedings under S. 145 are dispute and possession.

In proceedings under S. 145 the first thing to be decided is whether there is a dispute likely to lead to a breach of peace and secondly which party of the disputants is in actual possession. Previously both parties were in the joint possession. But after the dispute the property was kept under attachment by order of Court till the parties established their exclusive right to it. Afterwards one of the parties produced the partition *chitthi* which allotted the disputed property to him, while the other offered no evidence as to possession. The Magistrate put the former in possession.

*Held*, that the order should not be set aside. (*Pul-lan, J.*) BALBHADDAR SINGH v. ADITYA PRASAD. 6 O. W. N. 17 = 30 Cr. L. J. 381 = 114 I. C. 810 = A. I. R. 1929 Oudh 82.

**—S. 145—Large area.**

—Trial of numerous claims held together is not illegal, if the subject-matters are linked together.

Proceedings were initiated between two sets of persons both of whom claimed a large area of somewhat over 300 bighas situated in the domain of the Maharaja of Darbhanga. The first party claimed to be in possession as tenants of the Raj from long past, the second party claimed to have recently been settled on the land by the Raj and to be in possession thereof. The lands were not co-terminus, but they were divided into some 23 different plots. They were not claimed jointly or as a whole by all of the eight parties of the first party, but each party claimed to be in possession of certain of these plots.

*Held*, there is nothing to prevent a Magistrate from joining numerous claims of this description together and in dealing with the matter at one hearing. The only objection which can really be taken to such a course is, if it can be shown, that the objector is adversely prejudiced by such proceeding, and the fact, that the Magistrate does not in his judgment state which of the first party is actually according to his finding, in possession of which part of the property in dispute, does not concern the second party at all. (*Buckmill, J.*) GAJADHAR MULL v. THAKUR SINGH. 85 I. C. 40 = 1 Pat. L. R. Cr. 135 = 26 Cr. L. J. 424 =

A. I. R. 1923 Pat. 545.

**—S. 145—Local inquiry.**

—Order under S. 145, Cr. P. Code, must be passed after discussion of the evidence. Prominent mention of Magistrate's inspection and also of the fact that in the course of his inspection he found hundreds of people in the place, who were all in favour of the second party, is no ground upon which possession may be found in favour of the second party. (*Sen, J.*) In the matter of ABDUD MISSER L. K. JHA AND P. JHA v. SATRUHAN DAS. 28 Cr. L. J. 603 = 102 I. C. 779 =

8 A. I. Cr. B. 251 = 8 P. L. T. 755 = A. I. R. 1927 Pat. 801.

## CR. P. CODE (1898), S. 145—Meaning of Words.

—*Molasses form produce of land and being subject to decay can be ordered to be sold.*

Molasses can be treated as the produce of the factory within the meaning of S. 145 (8) where the land about which there is dispute consists of factory building including vats. A sugar mill produces molasses. The word "produce" is not necessarily confined to what is grown on the ground. It refers also to a finished article or semi-finished article made from raw material. Where, therefore, the produce is subject to speedy and natural decay, the Magistrate's order for its sale is justified and the Magistrate has jurisdiction to pass such order. The sale proceeds should be made over to persons in possession of molasses, only if they give reasonable security. Security need not be in cash. Recognized Government securities as War Bonds are sufficient. (*Stuart, C.J.*) NIHAL CHAND v. JAI RAM.

1930 Cr. O. 257 = 6 O. W. N. 1070 =

124 I. C. 441 = 31 Cr. L. J. 688 = 5 Luck. 462 =

A. I. R. 1930 Oudh 165.

—*Word "shall" in S. 145 is mandatory—When police report discloses case under S. 145 Magistrate is bound to apply S. 145.*

Where the Magistrate started proceeding under S. 144 upon a police report disclosing a *bona fide* dispute as to the possession of a property likely to cause a breach of the peace,

*Held*, that the Magistrate was bound to proceed under S. 145 when the police report clearly showed that proceedings under S. 145 should be started as the word "shall" in S. 145 is mandatory. A. I. R. 1922 Pat. 435 (F. B.), Ref. (*Jwala Prasad, J.*) GOBIND RAM v. BASANTILAL.

114 I. C. 466 = 7 Pat. 269 =

30 Cr. L. J. 302 = 11 P. L. T. 134 =

A. I. R. 1929 Pat. 46.

—*"Actual possession" means actual physical possession though wrongful—"Dispute" means actual disagreement at the time though the question is previously decided by Civil Court* (Mukherji, J., differing).

Per *Full Bench*.—The words "actual possession" in sub-S. (1), S. 145, mean actual physical possession even though wrongful, e.g., that of a recent trespasser in actual physical possession at the time of the proceedings under S. 145, and the word "dispute" in the same subsection means actual disagreement existing between the parties at the time of the proceedings under S. 145 even though the question as to the right to possession has already been decided by a Civil Court. 6 W. R. Cr. 10; 16 W. R. Cr. 24; 23 W. R. Cr. 17; 5 C. L. R. 200; 6 Cal. 835; 26 Cal. 625; 29 Cal. 208; 5 C. W. N. 563; 20 C. W. N. 796 and *Graham, J.* in A. I. R. 1928 Cal. 344, Disappr. *Cuming, J.*, in A. I. R. 1928 Cal. 344, Appr.

Per *Mukherji, J.*—The word "dispute" in sub-S. (1), S. 145, means actual disagreement existing between the parties at the time of the proceedings under S. 145 even though the question as to right to possession has already been decided by a Civil Court if the decision of the Civil Court amounts only to a determination of the right to possession, except in cases where such right and a consequent claim to possession have been negatived by a decree which is either *inter partes* or may be treated as such, as also in cases in which *khas* or actual possession has been delivered by the Civil Court either *inter partes* or between parties who may, in effect, be regarded as parties to the proceedings. The words "actual possession" in sub-S. (1), S. 145, mean actual physical possession even though wrongful, i.e., that of a recent trespasser in actual physical possession at the

## CR. P. CODE (1898), S. 145—Meaning of Words.

time of the proceedings under S. 145, provided the dispute as to possession has not been determined by a Civil Court as explained above. (*Rankin, C.J., Sukrawardy, B. B. Ghose, Mukerji and Cammiade, J.J.*) AGNI KUMAR DAS v. MANTAZUDDIN.

113 I. C. 181 = 48 C. L. J. 193 = 32 O. W. N. 1173 =

56 Cal. 290 = 11 A. I. Cr. R. 433 = 30 Cr. L. J. 69 =

A. I. R. 1928 Cal. 610 (F. B.).

—Crops which have been cut and gathered on the threshing floor are not crops or other produce of land within the meaning of sub-S. (2) of S. 145. 30 Cal. 110. Rel. on. (*Rupchand Bilaram and DeSouza, A. J. Cs.*) RELUMAL v. PHERUMAL.

111 I. C. 441 =

22 S. L. R. 386 = 29 Cr. L. J. 857 =

A. I. R. 1928 Sind 193.

—The word "crops" in S. 145, cl. (2), includes cut and stored crops about which there is a dispute likely to cause a breach of the peace and is not restricted to standing crops. 30 Cal. 110; 28 All. 266; A. I. R. 1927 All. 99; A. I. R. 1922 Oudh 199, Diss.; 2 Weir 108 and 13 Cr. L. J. 295, Rel. on. (*Percival, J. C. and Aston, A. J. Cs.*) RAHIMDINO v. EMPEROR.

105 I. C. 813 = 22 S. L. R. 151 =

9 A. I. Cr. R. 165 = 22 Cr. L. J. 989 =

A. I. R. 1928 Sind 68.

—*Offerings made to shrines in temples are not "profits" within S. 145.*

Offerings made by pilgrims at the shrine do not come within the definition of "profits" in S. 145. Where the dispute relates merely to offerings made, then the dispute is about movable property, and a declaration under S. 145, that one of the parties is in possession of such offerings is an order made without jurisdiction. 37 Cal. 578 and 38 Cal. 387, Ref. (*Prideaux, A. J. C.*) RAOSOBHAG SINGH v. BAKTWAR SINGH.

103 I. C. 415 = 23 N. L. R. 84 =

28 Cr. L. J. 687 = A. I. R. 1927 Nag. 833.

—*The word "wrongful", in S. 145, Cr. P. Code, does not imply absence of legal right—Entry by force even by one having legal right to possession is wrongful.*

Per *Marten, J.*—The word "wrongful" does not involve the idea that the dispossessor has no legal right to the possession of the property. Even a rightful owner, for instance, a landlord who is entitled to possession in a case where is tenant is wrongfully holding over, can only take possession peaceably. If his possession is opposed, however wrongfully, then the landlord has no right to break down the doors, to assault the inmates and to turn them *vi et armis* out of the building. He must go to the Civil Court and get the necessary warrants or ejectment orders to enable, if necessary, the proper authorities to effect a forcible entry or a forcible ejectment according to law. There is clear distinction between forcible entries which are rightful and forcible entries which are wrongful, and that depends on whether the person entering was entitled to use force, and not merely on whether he had a legal right to possession. If, for instance, a landlord came armed with a writ or a warrant in his favour to eject his former tenant then although force might in the end be used, it would not be a wrongful dispossession. If, on the other hand, he took the law into his own hands and used force without any such legal sanction by means of warrant, then that would be an instance where he would have forcibly and wrongfully dispossessed his former tenant.

Per *Pratt, J.*—The phrase "forcibly and wrongfully" has the same meaning as forcible entry without due warrant of law under the English statute. A forcible entry must be wrongful unless it is in execution of a legal process. The word "wrongfully," therefore, means

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no more than "otherwise than in due course of law" in S. 9 of the Specific Relief Act. (*Fawcett and Madgavkar, JJ.*) *BAI JIBA v. CHANDULAL*. 94 I. C. 709 = 27 Bom. L. R. 1353 = 27 Cr. L. J. 661 = A. I. R. 1926 Bom. 91.

—An order under S. 145 does not bar a suit for ejectment under the Agra Tenancy Act. The expression "ejection in due course of law" in S. 145 is equally applicable to ejectment proceedings under Chapter V, Agra Tenancy Act, and to ejectment under a Civil Court decree. (*Daniels, J.*) *IQBAL AHMAD v. SURAJ BALI*. 82 I. C. 651 = A. I. R. 1925 All. 210.

—The word "actual" in S. 145 used in relation to possession, must be interpreted in the sense of only such actual possession as the nature of the property is susceptible of. (*Wazir Hasan, J. C.*) *MAHESH SINGH v. EMPEROR*. 84 I. C. 942 = 11 O. L. J. 743 = 26 Cr. L. J. 398 = A. I. R. 1925 Oudh 251.

—Channel not used for irrigation is not land or water but when used there can be "dispute concerning water." (*Dalal, J. C.*) *CHOTE LAL v. EMPEROR*. 76 I. C. 691 = 25 Cr. L. J. 227 = A. I. R. 1924 Oudh 341.

**—S. 145—Nature of proceedings.**

—*Parties should be given sufficient time to adduce evidence, proceedings under S. 145, being of quasi-civil nature.*

At the moment the case was called on the muktear engaged by the first party was absent; the first party went to fetch him. The Court waited for full 20 minutes and then proceeded to take evidence on behalf of the second party.

*Held*, that the first party should be given an opportunity of adducing evidence in support of his claim, the proceeding under S. 145 being quasi-civil proceeding. (*C. C. Ghose and Cuming, JJ.*) *BANDE ALI v. RAJAULLAH*. 76 I. C. 975 = 25 Cr. L. J. 303 = A. I. R. 1925 Cal. 263.

—Proceedings under S. 145 take place on behalf of the Crown on a report made to the Magistrate. The proceedings are against all other parties concerned and processes should issue at Government expense. The parties originally mentioned and any others who may come in later should be ranged on one side as the first party, the second party and so forth. (*Hallifax, A. J. C.*) *EMPEROR v. MT. FHUTANJA*. 81 I. C. 933 = 25 Cr. L. J. 1109 = A. I. R. 1925 Nag. 142.

**—S. 145—Object of.**

—The provisions of S. 145 are directed to enable a Magistrate to pass orders as to retention of possession with the object of preventing a breach of the peace. These orders have no effect as to title, but a special exception is made in favour of persons who have been very recently dispossessed. (*Stuart, C. J.*) *EMPEROR v. BAIJNATH*. 5 Luck. 440 = I. R. 1930 Oudh 219 = 124 I. C. 363 = 31 Cr. L. J. 678 = 6 O. W. N. 957 = 1929 Cr. C. 641 = A. I. R. 1929 Oudh 526.

—*Cases, besides the one under S. 145, relating to same subject-matter pending—S. 145 case must be finished first.*

The idea of S. 145 is that it is a short and summary manner of awarding possession until other cases connected with the subject-matter of the proceedings under S. 145 are decided so that there may not be breach of the peace. A. I. R. 1923 Rang. 211, Ref. (*Baguley, J.*) *MA MYAIN MYA v. MAUNG PO HTAIC*. 114 I. C. 677 = 30 Cr. L. J. 344 = A. I. R. 1928 Rang. 314.

—In proceedings under S. 145 it does matter that the Magistrate's order should be passed quickly and it

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does not matter if the finding in regard to possession is wrong. (*Hallifax, A. J. C.*) *GANPAT KUNBI v. DEWAJI*. 110 I. C. 228 = 29 Cr. L. J. 676 = 10 A. I. Cr. R. 411.

—It is not one of the objects of S. 145 to protect or maintain any body's possession. The sole object of the proceeding is to prevent an imminent breach of the peace and the decision in regard to it must be made at once. (*Hallifax, A. J. C.*) *EMPEROR v. MT. FHUTANJA*. 81 I. C. 933 = 25 Cr. L. J. 1109 = A. I. R. 1925 Nag. 142.

—The object of S. 145 is to finally terminate the dispute between the parties so far as the Criminal Court is concerned so as to effectively put a stop to any breach of the peace. It is with this object that the decision of the Magistrate under S. 145 is declared to be final and conclusive until it is set aside by a competent Civil Court which determines the right of the parties. (*Jwala Prasad, J.*) *ABDUL SHAKUR v. ABU SAYEED*. 86 I. C. 806 = 6 P. L. T. 710 = 26 Cr. L. J. 870 = A. I. R. 1925 Pat. 593.

—*Magistrate's decision under S. 145 will not be binding on the parties whose written statement Magistrate had refused to admit as it tends by defeat the object of the section.*

The very object of the proceeding under Section 145 of the Code is to put an end to disputes as to possession of immovable properties so as to prevent a breach of the peace. This object cannot be gained until all the contending parties are on the record and an opportunity is given to them to put forward their respective claims. The effect of an order rejecting the written statement of certain parties is that his decision under S. 145 will not be binding upon them. (*Jwala Prasad, J.*) *RAGHUNATH KUER v. RAJKISHORE KUER*. 81 I. C. 442 = 5 P. L. T. 458 = 25 Cr. L. J. 906 = A. I. R. 1924 Pat. 783.

**—S. 145—Order without jurisdiction.**

—*Magistrate attaching whole property under S. 145 at the instance of the Collector is without jurisdiction and must be quashed.*

The Civil Court decreed joint possession to the petitioners and the opposite party, an appeal against which decree was pending before the Privy Council. The opposite party applied for partition which was made by a revenue officer and possession of portion of the land was given to the opposite party. The partition proceedings were subsequently quashed by the Financial Commissioner who directed that the *status quo ante* be restored. The Collector, however, did not wish to do so and at his instance the Magistrate attached the whole of the land appointed a receiver under S. 145, holding that there was a dispute about the whole area.

*Held*, that the proceedings taken by the Magistrate were without jurisdiction and must be quashed. (*Addison, J.*) *WALI MUHAMMAD v. RAHMAT ALI*. 110 I. C. 807 = 11 A. I. Cr. R. 44 = 29 Cr. L. J. 775 = A. I. R. 1928 Lah. 818.

—*The Magistrate cannot take proceedings under the section when land in dispute not within his jurisdiction.*

Application was made to the District Magistrate praying for action to be taken under S. 145. The District Magistrate took the petition on file and without himself taking action under S. 145 (1) transferred it to Sub-Divisional Magistrate under him for disposal. The Sub-Divisional Magistrate made an order under S. 145 (1). But the land concerned was not within the local limits of his jurisdiction.

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*Held*, that the District Magistrate was wrong in transferring the case to a Sub-Divisional Magistrate who had no jurisdiction over the land concerned. The District Magistrate had no power to alter the boundaries of any sub-division of his District permanently, temporarily, or for the purpose of any particular case. The Sub-Divisional Magistrate's order therefore was without jurisdiction. 26 Mad. 188 and 22 Cal. 898, Dist.; 41 Mad. 246, Appr. (*Reilly, J.*) *CHELLAPATHI NAIDU v. SUBBA NAIDU*. 52 Mad. 241=114 I. C. 625=

30 Cr. L. J. 340=28 M. L. W. 664=  
1928 M. W. N. 921=1 M. Cr. C. 320=  
A. I. R. 1928 Mad. 1230=55 M. L. J. 693.

—Under S. 145 a Magistrate has jurisdiction to find possession but not the mode of possession or how the possession is to be exercised, and any order so determining the mode of possession is without jurisdiction. (*Sukhrwardy and Graham, JJs.*) *RAHINI NANDAN CHAUDHURY v. JADUNANDAN CHAUDHURI*. 30 C. W. N. 873=97 I. C. 73=

A. I. R. 1926 Cal. 1022.

**—Order under S. 145.**

Where a Magistrate passes an order as to the mode of possession, his order does not give a cause of action for a suit which, if not brought within the statutory period, makes that portion of the order binding between the parties, the order being without jurisdiction. The intention of the law of limitation is that if no suit is brought within the statutory period the remedy is lost and in case of an order of a competent Court it remains binding between the parties. (*Sukhrwardy and Graham, JJs.*) *RAHINI NANDAN CHAUDHURY v. JADUNANDAN CHAUDHURI*. 30 C. W. N. 873=97 I. C. 73=

A. I. R. 1926 Cal. 1022.

—S. 145 (1) requires that a Magistrate has to satisfy himself "that a dispute likely to cause a breach of peace exists concerning any land" and has then to "make an order in writing, stating the grounds of his being so satisfied." Failure to comply with the provision makes the Magistrate's order without jurisdiction. (*Broadway, J.*) *SHER KHAN v. DR. FAZAL ILLAHI*. 88 I. C. 601=7 L. L. J. 173=26 Cr. L. J. 1177=

26 P. L. E. 187=A. I. R. 1925 Lah. 368.

—An order based upon a written statement of one of the parties supported by his own evidence is not without jurisdiction, nor is it without jurisdiction, merely because the Magistrate does not accept the decision in previous case of rioting as to possession. (*Kulwant Sahay, J.*) *BHULAN RAUT v. KUMMARI RAI*. 75 I. C. 535=5 P. L. T. 69=

2 Pat. L. R. Cr. 104=A. I. R. 1924 Pat. 509.

**—S. 145—Order without notice.**

—The provisions of S. 145 (1) are mandatory and consequently if no notice is issued as required and there is no finding that there was a danger of breach of peace, the order under S. 145 becomes *ultra vires*. A. I. R. 1924 Lah. 91, Rel. on. (*Bhide, J.*) *EMPEROR v. SIS RAM*. 12 Lah. L. J. 147=1930 Cr. C. 991=

A. I. R. 1930 Lah. 895.

—Where one of the members of one of the parties is not served with a notice the proceedings are bad so far as that member is concerned but the invalidity of the proceedings against one member does not necessarily invalidate the whole proceeding. (*Macpherson, J.*) *NANDAN SINGH v. SIARAM SINGH*. 7 P. L. T. 156=26 Cr. L. J. 1287=

89 I. C. 151=A. I. R. 1926 Pat. 67.

—Where no preliminary order, as required by S. 145, sub-S (1) is served on a party, nor is he given an opportunity to prove his possession over the subject

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of the dispute, he cannot be subjected to the final order passed by the Magistrate. Admission of a dispute by both the parties concerned is certainly evidence of the existence of that dispute. (*Wazir Hasan, A. J. C.*) *MT. MAQUIM-UN-NISSA v. MT. AHMAD-UN-NISSA*. 90 I. C. 541=2 O. W. N. 704=

26 Cr. L. J. 1581=A. I. R. 1925 Oudh 605.

**—S. 145—Party.**

—The binding character of an order passed under S. 145 is not under all circumstances to be confined to persons who were actually made parties to the proceedings but may under certain circumstances extend to persons other than the parties themselves. 11 Bom. L. R. 377, Rel. on. (*Pearson and Mallik, JJs.*) *SATYA CHARAN DE v. EMPEROR*. I. R. 1930 Cal. 634=

33 C. W. N. 1002=125 I. C. 858=  
31 Cr. L. J. 945=1930 Cr. C. 15=

A. I. R. 1930 Cal. 63.

—Where a person was not only aware of proceedings under S. 145 but has acted in collusion with one party in order to deprive the other party of the fruits of their success in S. 145 case,

*Held*, that the order under S. 145 was binding on such person and any resistance to execution of the order will justify conviction under S. 188. (*Pearson and Mallik, JJs.*) *SATYA CHARAN DE v. EMPEROR*. I. R. 1930 Cal. 634=125 I. C. 858=

31 Cr. L. J. 945=33 C. W. N. 1002=  
1930 Cr. C. 15=A. I. R. 1930 Cal. 63.

—In proceedings taken under S. 145 an adverse order passed against a Hindu father in possession of the property brought on behalf of the joint Hindu family is binding on his undivided sons though they were not parties to the proceedings. A suit, therefore, by such undivided sons for possession of the properties—subject-matter of the proceedings—brought more than three years on such order is barred under Art. 47. (*Odgers and Wallace, JJs.*) (*ALLURI*) *VENKATASOMARAJU v. (ALLURI) VARAHARAJU*. 122 I. C. 171=

30 M. L. W. 201=1929 M. W. N. 518=  
2 M. Cr. C. 183=52 Mad. 787=

A. I. R. 1930 Mad. 48=57 M. L. J. 228.

—When one party is declared to be in possession the right of the tenants to be in possession was not disturbed.

Where a proceeding under S. 145 was drawn in respect of certain land, a portion of which was in possession of tenants who had attorned to some of the second party and where the Magistrate had declared the possession of the first party in respect of the whole of the disputed property.

*Held*, that in a summary proceeding of this kind the right of the tenants to be maintained in possession of the land of which they were in occupation was not affected and the order of the Magistrate was modified inasmuch as the lands in possession of the tenants were concerned the possession of the first party was declared through those tenants. (*Sukhrwardy and Graham, JJs.*) *SURUJ MAIN v. TULLOCK*. 33 C. W. N. 574=

30 Cr. L. J. 982=119 I. C. 31=1929 Cr. C. 344=  
A. I. R. 1929 Cal. 632.

—A party's son having no possession or title is not bound by order against his father. (*Pass and Ross, JJs.*) *SATYA NIRANJAN CHAKRAVARTY v. SUSHILA BALA DASI*. 4 Pat. 799=90 I. C. 513=

A. I. R. 1926 Pat. 103.

—The question of misjoinder of parties does not ordinarily affect jurisdiction. It is a question of procedure by which jurisdiction is not affected, whether a party has been wrongly included or excluded. (*Mac-*

**CR. P. CODE (1898), S. 145—Party.**

*pherson, J.) NANDAN SINGH v. SIARAM SINGH.*  
 7 P. L. T. 156 = 26 Cr. L. J. 1287 = 89 I. C. 151 =  
 A. I. R. 1925 Pat. 67.  
 —Where a minor was made party to the order which was drawn up under sub S. (1) but no notice was served on him,  
*Held*, though the minor was a proper party being interested in the dispute, he was not a necessary party especially as he would not be a party likely to cause a breach of the peace. (*Macpherson, J.) NANDAN SINGH v. SIARAM SINGH.*  
 7 P. L. T. 156 =  
 26 Cr. L. J. 1287 = 89 I. C. 151 =  
 A. I. R. 1926 Pat. 67.

—Persons not parties to the proceedings are not bound by order under S. 145, which is not against them, and their remedy is not by application in revision against the order. (*Baker, J. C.) RAMCHANDRA v. GANPAT.*  
 87 I. C. 923 = 26 Cr. L. J. 1035 =  
 A. I. R. 1925 Nag. 448.

—Order passed against the father is binding on the sons.

An order under S. 145 was passed against A, the manager of the family of the plaintiffs, in favour of the defendants. A died, and the plaintiffs dispossessed the defendants forcibly. They were convicted and the defendants were put back in possession by the Criminal Court. The plaintiffs thereupon sued for a declaration that they were the owners in possession, *held*, that whether the order under S. 145 was passed against A in his personal capacity or as manager of the family, the plaintiffs are bound thereby and the suit is governed by Art. 47 of the Limitation Act; *held* further that the plaintiffs cannot claim to enlarge the time by framing the suit as one for declaration. (*Royes and Gokul Prasad, JJ.) RAM SAHAI v. BINODE BEHARI GHOSE.*  
 71 I. C. 402 = 45 All. 306 = 21 A. L. J. 102 =  
 4 L. R. A. Civ. 113 = A. I. R. 1923 All. 151.

**—S. 145—Period of possession**

—*Opposite party being admittedly in possession at date of order—S. 146 is inapplicable.*

N applied under S. 145 for an order restoring him to possession of a house from which he had been dispossessed by G, five days before the date of the petition. G replied that he had been in possession of the house for many years and that there was no such dispute as was likely to bring about a breach of the peace. The Magistrate holding that the evidence of either party was untrustworthy held that it was impossible to decide on the evidence whether any or which of the parties was at the date of his preliminary order in possession of the house. He, however, took action under S. 146.

*Held*, that the portion of the order of the Magistrate where he stated that it was impossible to decide which party was in possession on the date of the preliminary order was wrong as admittedly G had been in possession since at least five days before the application by N. There was no necessity to decide as to who was in possession on the date of his order.

*Held*, further that it could have been competent for the Magistrate to take action under S. 146 had none of the parties been in possession at the date of the preliminary order if it could not be decided as to which of them was in possession at the date. But as G was in possession then S. 146 did not apply. The Magistrate could have also restored possession under S. 145 (6) to N if he could have held that he was in possession within two months next before the date of the preliminary order. (*Addison, J.) GURDAS v. NARAIN DAS.*  
 I. R. 1930 Lah. 769 = 126 I. C. 577 =  
 31 Cr. L. J. 1075 = 1930 Cr. C. 491(2) =  
 A. I. R. 1930 Lah. 422.

**CR. P. CODE (1898), S. 145—Period of possession.**

—A Magistrate cannot take into consideration the effect of an alleged dispossession more than two months prior to the date of his order; he is required to decide which of the parties between whom a dispute exists is in possession of the subject of the dispute at the time when the Magistrate decides the question of possession. 15 Bom. 152, Foll.; 4 Cal. 417, Doubtful. (*Percival, J. C. and Aston, A. J. C.) MAJI v. EMPEROR.*  
 120 I. C. 90 = 1930 Cr. C. 68 = 30 Cr. L. J. 1124 =  
 A. I. R. 1930 Sind 52.

—Magistrate delaying preliminary order beyond two months, though bona fide—Complainant is still entitled to benefit of S. 145.

Where a person who is entitled to complain of forcible dispossession goes before a Magistrate and complains of forcible dispossession, if for no reason or any fault of his, the Magistrate does not pass a preliminary order at once, but delays the passing of the order though it may be bona fide, the person who complained to him of forcible dispossession should not be deprived of the benefit of S. 145 by reason of the delay caused in the Magistrate's Court. A. I. R. 1927 Mad. 316, Foll. (*Devadoss, J.) SRINIVASA REDDY v. DASARATHA RAMA REDDY.*  
 52 Mad. 66 = 28 M. L. W. 504 = 113 I. C. 336 =  
 2 M. Cr. C. 28 = 30 Cr. L. J. 144 =  
 11 A. I. Cr. R. 551 = A. I. R. 1929 Mad. 198 =  
 56 M. L. J. 33.

—“Two months” from the date of the order mean two months from the date of the order and not two months from the date of the complaint. A. I. R. 1929 Mad. 198, Diss. from. (*Stuart, C. J.) EMPEROR v. BAIJNATH.* 5 Luck. 440 = I. R. 1930 Oudh 219 =  
 124 I. C. 363 = 31 Cr. L. J. 678 = 6 O. W. N. 957 =  
 1929 Cr. C. 641 = A. I. R. 1929 Oudh 526.

—The mere ouster of people with no title to the land without using any physical violence and removing of things which had no right to be on the land cannot be said to be an unlawful entry on the land, and if person so taking possession is dispossessed by force from the land within two months of the order under sub-S. (2), he is entitled to be restored to possession. (*Chotanner and Duval, JJ.) COLLECTOR OF HOWRAH v. SANTOK DAS.*  
 44 C. L. J. 593 = 99 I. C. 1010 =  
 28 Cr. L. J. 210 = 7 A. I. Cr. R. 383 =  
 A. I. R. 1927 Cal. 261.

—When the party dispossessed moves Court to take action and a delay of over two months occurs before Court makes order, the party dispossessing cannot be retained in possession on the ground. (*Wallace, J.) KRISHNAM RAJU v. CHINTALASWAMI NAIDU.*  
 8 A. I. Cr. R. 574 = 104 I. C. 110 = 28 Cr. L. J. 782 =  
 A. I. R. 1927 Mad 816.

—It is not necessary for the plaintiff in whose favour an order under S. 145 has been passed to bring a suit within three years for recovery of possession of the property which was the subject-matter of the proceedings before the Magistrate as the possession of the forcible dispossessor is deemed to be the possession of the person forcibly dispossessed provided the forcible dispossession was within two months of the date of the preliminary order. (*Devadoss, J.) ISMALSA ROWTHER v. SADASIVA ASARI.* 1927 M. W. N. 35 = 99 I. C. 532 =  
 38 M. L. T. 217 = A. I. R. 1927 Mad. 304.

—Sub-section (4) makes it incumbent on the Magistrate to decide which of the parties was in possession on the day the preliminary order was passed and the proviso only applies if any other party had been forcibly dispossessed within two months thereof. 11 A. L. J. 305, Dist. (*Findlay, Offg. J. C.) NAGO v. ATMARAM.*  
 27 Cr. L. J. 68 = 91 I. C. 244 =  
 A. I. R. 1926 Nag. 371.

**CR. P. CODE (1898), S. 145—Police report.**

—Court is not confined to police report in starting proceedings, nor bound to rely on the whole of it.

Though it is the imminence of a breach of the peace as disclosed in the police report which creates jurisdiction under S. 145, it cannot be held that the Magistrate is confined within the four corners of the report. It is his duty from all the material before him to decide whether proceedings under S. 145 are necessary or not. And even if the Magistrate relies on the police report for starting proceedings under S. 145, he need not rely on the whole of it. The Magistrate is not bound to accept the version given by the police beyond what he requires for the support of his order under S. 145. A. I. R. 1929 Cal. 341, Dist.; 3 P.L.J. 287; 28 All. 406, Ref. (*Suhrawardy and Graham, J.J.*) AHMED ALI v. SABED SARDAR.

49 C. L. J. 428 = 33 C. W. N. 858 =  
30 Cr. L. J. 1027 = 119 I. C. 372 = 1929 Cr. C. 95 =  
A. I. R. 1929 Cal. 468.

—Report of police and sketch submitted with it showing lands in possession of parties. these two alone cannot be used to found possession.

Where the Magistrate based his conclusions about possession on the police report and a sketch submitted with it showing the lands in possession of different parties

Held that the use made of these documents was not a proper one. The only legitimate use to which the sketch and the report could be put was to treat them as the basis of the proceedings and as affording materials for determining the question of likelihood of a breach of the peace and of the identity of the subject-matter of the dispute and of the disputing parties. (*Mukerjee and Roy, J.J.*) SHASHI MUKHI CHOUDRANI v. SARAT CHANDRA.

45 C. L. J. 537 = 31 C. W. N. 310 =  
28 Cr. L. J. 329 = 100 I. C. 713 =  
A. I. R. 1927 Cal. 327.

—Magistrate can refuse to take action except on a report from the police.

A Magistrate as a general rule may refuse to take action at all under S. 145 except when a report from the police is sent to him on the matter. Even when such report is sent to the Magistrate it should not be a mere forwarding of a report made to the police by one of the parties even though accompanied by a record of the inquiry made by a police officer in the same matter. But it must be a definite statement of opinion by a responsible police officer to the effect that he apprehends that there will be a disturbance of the peace which is beyond his powers to prevent and that he therefore desires the exercise of the higher powers of the Magistrate to prevent it. When such report is not sent to the Magistrate the fact will almost be conclusive as an indication of the absence of any likelihood of the breach of the peace. (*Hallifax, A. J. C.*) EMPEROR v. MT. PHUTANIA.

81 I. C. 933 = 25 Cr. L. J. 1109 =  
A. I. R. 1925 Nag. 142.

—Where there is no police report, the statements of interested parties ought to be received with great caution but if the Magistrate has reason to believe such statements, he does not act without jurisdiction in taking proceedings under this section. (*Newbold and Suhrawardy, J.J.*) JOYAMAL SINGH v. KANTA GOPE.

72 I. C. 32 = 24 Cr. L. J. 304 =  
A. I. R. 1924 Cal. 444.

—Magistrate can make his own independent decision contrary to police report.

The Magistrate, in order so assume jurisdiction under S. 145 has to satisfy himself about the likelihood of a breach of the peace. He is to exercise his own judgment

**CR. P. CODE (1898), S. 145—Possession.**

upon the materials placed before him, and to arrive at a conclusion as to whether upon the materials placed before him, there is a likelihood of a breach of the peace. He would not be justified in acting merely upon the expression of an opinion by the police. If in the proceeding so drawn up in the office a reference is made to the police report and to the petition of the second party, dated the 27th March, 1923, which documents stated that there was no likelihood of a breach of the peace that will not by itself take away the jurisdiction of the Magistrate to initiate proceedings under S. 145, if he was satisfied that there was a likelihood of a breach of the peace. Although the police might have reported that in their opinion there was no likelihood of a breach of the peace the Magistrate on considering the report is entitled to come to a different conclusion of his own to initiate proceedings if he thought it necessary to do so. 33 Cal. 33, Appr.; 1 P. L. T. 387, Dist. (*Kulwant Sahay, J.*) GANGA BHISHUN SINGH v. RAJO CHAUDHURI.

83 I. C. 693 =  
5 P. L. T. 252 = 1924 P. H. C. C. 83 =  
26 Cr. L. J. 133 = A. I. R. 1924 Pat. 787.

**—S. 145—Possession.**

—Continuous possession does not mean possession exercised every day of the year.

The possession claimed by persons other than the landlords having been disbelieved, possession is presumed to be with parties who have title to the land. This possession may not be actual possession. Possession under S. 145 must be absolute and continuous and not occasional. But it is not intended that possession must be such as should be exercised continuously or every day of the year. "By continuous possession" is meant such possession which a party in possession may have occasion to exercise and has exercised and exercises whenever he likes. Continuity of possession should be understood with reference to the object over which it is exercised.

Where the land not capable of yielding much profit on the bank of a river and used to get covered with water at certain seasons of the year and it was found that sometimes bricks were stacked on it, sometimes people were allowed to dry jute on the land, and bastu puja was held on it,

Held, it cannot be said that the landlords were not in actual possession. (*Suhrawardy and Cammiade, J.J.*) LOKE NATH ROY v. BOYALGANI. 100 I. C. 823 =  
31 C. W. N. 334 = 28 Cr. L. J. 343 =  
7 A. I. Cr. R. 556 = A. I. R. 1927 Cal. 313.

—The possession of an agent or a servant which is permissive cannot give him a *locus standi* as against his principal or master. The possession that can be pleaded in a proceeding under S. 145 must be possession based on a claim of right to possession. 10 C. W. N. 1088, Foll. (*Findlay, Off. J. C.*) BAJIRAO v. DADIBAI. 92 I. C. 164 = 27 Cr. L. J. 212 =  
A. I. R. 1926 Nag. 286.

—Dispossession should be wrongful as well as forcible. (*Adami and Bucknill, J.J.*) H. V. LOW & CO., LTD. v. MANINDRA CHANDRA.

84 I. C. 332 = 3 Pat. 809 = 26 Cr. L. J. 268 =  
A. I. R. 1925 Pat. 33.

**—Trial.**

A person in formal possession of a property in execution of a decree shall be deemed to be in possession of the property. (*Neave, A. J. C.*) BALKU v. KING-EMPEROR. 81 I. C. 533 = 25 Cr. L. J. 917 =

A. I. R. 1925 Oudh 183.

—S. 145 is not meant to be used to protect the possession of a servant against the master. (*Ramesam, J.*)



**CR. P. CODE (1898), S. 145—Power of Magistrate—Absence of evidence.**

THYALYEE v. SRIRANGARAJU. 71 I. C. 228 =  
1922 M. W. N. 629 = 16 M. L. W. 497 =  
31 M. L. T. 202 = 24 Cr. L. J. 100 =  
A. I. R. 1923 Mad. 60 = 43 M. L. J. 624.

**—S. 145—Power of Magistrate—Absence of evidence.**

—A Magistrate has no jurisdiction to make an order under this section without any evidence being adduced before him. (*C. C. Ghose and Cuming, J.J.*)  
HATEMALI CHAPRASI v. OSIMUDDI. 73 I. C. 814 =  
24 Cr. L. J. 702 = A. I. R. 1924 Cal. 544.

**—S. 145—Power of Magistrate—Admission of evidence.**

—In proceedings under S. 145 it is in the discretion of the Magistrate to refuse to examine all the witnesses produced by any party, but the discretion is one which must be exercised with due care and caution and with careful regard to the circumstances of each particular case. The admission of a document without its being duly proved but without any objection may be an illegality but it does not affect the jurisdiction of the Magistrate to pass the final order in the case. 2 P. L. T. 330, Dist. (*Kuwant Sahay, J.*) MT. WAHID-UN-NISSA v. PICHIT LAL MISIR. 75 I. C. 538 =  
24 Cr. L. J. 954 = A. I. R. 1924 Pat. 534.

**—S. 145—Power of Magistrate—Consolidation.**

—Single proceeding under S. 145 is not without jurisdiction because some of the parties are concerned only with possession of a portion of land in dispute. 30 C. 155; 6 C. W. N. 737 (F.B.), Foll. (*Newbould and Suhrawardy, J.J.*) SAJANI KANTA ROY v. SHAMSHER ALI SHEIKH. 71 I. C. 699 = 24 Cr. L. J. 235 =  
A. I. R. 1924 Cal. 539.

**—S. 145—Power of Magistrate—Conversion of proceedings.**

—Where proceedings are instituted under S. 145 on the basis of a police report which states that there is an imminent risk of a breach of the peace, but the Magistrate afterwards discovers that the question at issue is not one of possession under S. 145, but is one as to rights falling under S. 147, he can convert the proceedings into proceedings under S. 147. (*Greaves and Panton, J.J.*) ANATH BANDHU NUNDY v. WAHID ALI PRAMANIC. 85 I. C. 654 =  
26 Cr. L. J. 558 = A. I. R. 1925 Cal. 1022.

**—S. 145—Power of Magistrate—Co-owners.**

—Merely because the parties are brothers and presumably members of a joint Hindu family the Court is not precluded from giving possession to one as against the other. If the Court finds from the evidence that one brother is already in possession and that if no order is passed continuing him in possession there is likely to be a breach of the peace, the Court is perfectly right in passing an order under S. 145 without any regard to the merits of the other brother's claim to have a share in the land. (*Pullan, J.*) JEOLAL v. CHHANGA LAL. 1 I. C. 201 = 9 A. I. Cr. R. 43 = 28 Cr. L. J. 877 =  
104 I. C. 717 = A. I. R. 1927 Oudh 316.

—Where according to the settlement papers, the land in dispute is a joint property in which the petitioners were co-sharers; but the Magistrate finds that one co-sharer was in sole possession of this land, held the Court had jurisdiction to make an order under S. 145. (*Newbould and Suhrawardy, J.J.*) JAYAMANGAL SINGH v. KANTA GOPE. 72 I. C. 32 =  
24 Cr. L. J. 304 = A. I. R. 1924 Cal. 444.

**—S. 145—Power of Magistrate—Excess area.**

—A Magistrate has no jurisdiction to pass order in respect of land which was not referred to in the initia-

**CR. P. CODE (1898), S. 145—Power of Magistrate—Initiation of proceedings.**

tory proceeding. (*Adam and Foster, J.J.*) UTTIM SINGH v. JODHAN RAJA. 92 I. C. 172 =  
3 Pat. 288 = 7 P. L. T. 288 = 27 Cr. L. J. 220 =  
A. I. R. 1924 Pat. 589.

**—S. 145—Power of Magistrate—Excess land.**

—A Magistrate has no jurisdiction to pass an order in respect of a larger area of land than was included in the proceedings. A. I. R. 1924 Pat. 589, Foll. (*Kinkhede, A. J. C.*) EMPEROR v. GANIKHAN. 28 Cr. L. J. 929 = 105 I. C. 449 = 9 A. I. Cr. R. 374 =  
A. I. R. 1928 Nag. 81.

**—S. 145—Power of Magistrate—Functus officio.**

—The order passed under S. 145 is a final order and it is not open either to the Magistrate who passed it or to his successor to review it, or to set it aside in any way. If a Court does so act, its action is without jurisdiction. (*Daniels, J.*) LALLAN MISIR v. RAM RICHCHA. 48 All. 258 = 24 A. L. J. 227 =  
7 L. R. A. Cr. 29 = 27 Cr. L. J. 466 =  
93 I. C. 690 = A. I. R. 1926 All. 242.

—Where proceedings instituted under S. 145 are dropped with the consent of both parties on the ground that there is no likelihood of breach of the peace, the Magistrate has no jurisdiction to decide as to the title to the sale proceeds of the crop attached during the pendency of the proceedings. (*Beasley, J.*) NATESA NAICKEN v. RAGHAVACHARI. 85 I. C. 256 = 26 Cr. L. J. 512 = 20 M. L. W. 924 =  
A. I. R. 1925 Mad. 327.

**—S. 145—Power of Magistrate—Future possession.**

—Sec. 145 relates simply to the fact of actual possession at the date of the preliminary order. No question of title can be taken into consideration, nor can any order be passed as regards future possession with reference to the actual possession at the date of the preliminary order. Where a Magistrate, in proceedings under S. 145 passed an order according to an agreement between the parties, for future possession.

*Held*, that the order regarding future possession on the strength of the agreement was wrong. (*Staples, A. J. C.*) GANGADHAR v. BALAKRISHNA. 121 I. C. 47 = 1929 Cr. C. 459 = 31 Cr. L. J. 191 =  
A. I. R. 1929 Nag. 285.

**—S. 145—Power of Magistrate—Initiation of proceedings.**

—Whether proceedings should be taken or not is matter within Magistrate's own discretion.

The District Magistrate has no authority in law to direct a subordinate to institute proceedings under S. 145. Whether such proceedings should or should not be taken is entirely a matter within the Magistrate's own discretion. Where the terms in which the District Magistrate's order is expressed, clearly indicate that the order was intended to leave the Magistrate free to exercise his own discretion in the matter, and he had ample materials before him on which S. 145 proceedings in respect of the whole land in question might be properly based, it cannot be said that the Magistrate failed to exercise his discretion vested in him by law, when he passed an order requiring certain additional land to be included in the proceedings. A. I. R. 1929 Cal. 751 and 24 Cal. 391, Ref. (*Pearson and Patterson, J.J.*) NIRPEN-DRA CHANDRA v. SASADHAR SAHA. 125 I. C. 750 =  
31 Cr. L. J. 923 = 1929 Cr. C. 574 = 50 C. L. J. 287 =  
34 C. W. N. 82 = A. I. R. 1929 Cal. 805.

**CR. P. CODE (1898), S. 145—Power of Magistrate—Initiation of proceedings.**

—Where a District Magistrate setting aside the proceedings of a Sub-Divisional Magistrate under S. 144 (4), directed him to draw up proceedings under S. 145 and he so drew them up,

*Held*, that he was not acting without jurisdiction where he had sufficient material whereon to base his order under S. 145. 24 Cal. 391, Dist. (*Suhrawardy and Graham, J.J.*) **KEDARNATH SIKDAR v. BIJOY MANDAL.** 33 C. W. N. 723=1929 Cr. C. 335=123 I. C. 647=31 Cr. L. J. 544=A. I. R. 1929 Cal. 751.

—Although the Sub-Divisional Magistrate has refused to take action under S. 145, District Magistrate can take proceedings under that section on the same materials even though no application is made to him for taking such proceedings. 29 Cal. 242, Rel. on. (*Duval and Graham, J.J.*) **BENOY CHANDRA v. KALA CHAND.** 43 C. L. J. 586=27 Cr. L. J. 1083=97 I. C. 59=A. I. R. 1926 Cal. 1049.

**—S. 145—Power of Magistrate—Parties.**

—*In communal dispute the Magistrate may choose representatives.*

In Cr. P. Code, there is no rule of procedure like the one contained in O. 1, R. 8 of the C.P. Code by which a representative suit may be brought or a representative defence may be set up in a case under S. 145, and therefore, in a dispute between two communities the Magistrate would be justified in choosing out who should be the right people to represent each community and after hearing whom he should either permit a community to do a certain thing or to prevent it from doing it till a Civil Court has decided upon the rights of parties. (*Mukerji, J.*) **NANHE MAL v. JAMIL-UR-RAHMAN.** 86 I. C. 89=23 A. L. J. 41=6 L. R. A. Cr. 94=26 Cr. L. J. 683=A. I. R. 1925 All. 316.

**—S. 145—Power of Magistrate—Recording opinion.**

—Where as the result of his enquiry the Magistrate comes to the conclusion that there was no danger of a breach of the peace, his proper course then is to cancel his order under S. 145 (5) and he cannot pass an order under cl. (6). There is nothing in the Code to prevent the Magistrate from recording the results of his enquiry and the opinions at which he has arrived as to possession. (*Pullan, A. J. C.*) **NAWAB SINGH v. RUK-MANGAD SINGH.** 89 I. C. 710=26 Cr. L. J. 1398=A. I. R. 1926 Oudh 182.

**—S. 145—Power of Magistrate—Restoration of possession.**

—In proceedings under S. 145, a Magistrate has no jurisdiction to order restoration of possession.

All that the Magistrate is empowered to do is to declare that a particular party is entitled to possession. At the same time if a party is declared to be entitled to possession and the world at large is forbidden to disturb his possession he would be entitled to take possession and no one would have any right to interfere with his doing so. (*Broadway, J.*) **BAHAWALA v. DUNI CHAND.** 76 I. C. 621=24 Cr. L. J. 461=A. I. R. 1924 Lah. 411.

**—S. 145—Power of Magistrate—Sale proceeds.**

—The sale proceeds of crops standing on the lands when the lands were attached in proceedings may be ordered to be kept in deposit in the Court until one party or the other obtained an order in his favour. (*Spencer, J.*) **SURYANARAYANA v. ANKINEED**

**CR. P. CODE (1898), S. 145—Power of Magistrate—Striking off proceedings.**

**PRASAD.** 81 I. C. 626=20 M. L. W. 58=35 M. L. T. 68=34 M. L. T. 248=47 Mad. 713=25 Cr. L. J. 978=A. I. R. 1924 Mad. 795=46 M. L. J. 565.

**—S. 145—Power of Magistrate—Stay of proceedings.**

—When the Magistrate is able to act upon the police report or other information in starting proceeding under S. 145, he is competent to stay further proceedings on similar information regarding absence of likelihood of breach of peace without being obliged to record such evidence as the parties may adduce. A. I. R. 1924 Mad. 795, Rel. on. (*Suhrawardy and Graham J.J.*) **ABDUR RAHMAN v. DINESH HALDAR.** I. R. 1930 Cal. 232=122 I. C. 296=31 Cr. L. J. 409=33 C. W. N. 399=A. I. R. 1929 Cal. 328.

**—S. 145—Power of Magistrate—Striking off proceedings.**

—A Magistrate shall cancel the order initiating the proceeding under S. 145, if he is satisfied at any stage of the case that no dispute likely to cause a breach of the peace exists, though these words are not expressly used in the section. But the sense is conveyed by the use of the word "exist" in it. 30 Cal. 112; A. I. R. 1925 Mad. 1252; A. I. R. 1924 Mad. 795, Rel. on; 30 Cal. 155, Ref. (*Suhrawardy and Graham, J.J.*) **ABDUR RAHMAN v. DINESH HALDAR.** I. R. 1930 Cal. 232=122 I. C. 296=31 Cr. L. J. 409=33 C. W. N. 399=A. I. R. 1929 Cal. 328.

—*Magistrate can drop proceedings once started if he finds no likelihood of breach of peace.*

Proceedings under S. 145 are not taken in the interests of private parties but for the preservation of the public peace and if the Magistrate is satisfied that the likelihood of the breach of the peace either did not exist or that it has ceased to exist, it is the proper duty of the Magistrate to drop proceedings under S. 145 and withdraw from interfering with the rights of parties in the property. 30 Cal. 112, Rel. on; 20 M. L. W. 58, Foll.

Clause (5) of S. 145 provides for a special case where as the Magistrate is proceeding with the trial of the question of possession, the parties of the proceedings or even other persons who are interested are given the right to show that no dispute likely to cause a breach of the peace exists or has existed. The existence of this clause does not take away the power of the Magistrate himself to drop proceedings if he is satisfied that there is no further likelihood of the breach of the peace. But after he drops the proceedings under S. 145 he is *functus officio* and has no jurisdiction to pass any further orders in the case, e.g., with regard to the delivery of the possession of the attached property to either party. He must leave the parties to settle their rights in the manner they think best to do, in the meanwhile holding his hands. 1 M. L. W. 1032 and A. I. R. 1925 Mad. 327, Foll.; A. I. R. 1923 Mad. 472, Not foll. (*Krishnan, J.*) **NARASAYYA v. C. VENKIAH.** 91 I. C. 399=27 Cr. L. J. 95=49 Mad. 232=22 M. L. W. 524=1925 M. W. N. 792=A. I. R. 1925 Mad. 1252=49 M. L. J. 784.

—Dropping proceedings after passing the preliminary order is not illegal if the Magistrate is satisfied that no dispute likely to cause a breach of the peace existed although in coming to the conclusion he acted on the petition of a third party to the proceedings; and the

**CR. P. CODE (1898), S. 145—Power of Magistrate—Sufficiency of evidence.**

Magistrate is not bound under such circumstances to record the evidence of the witnesses of the petitioner who might have shown by their evidence that a dispute still existed. (*Spencer, J.*) *SURYANARAYANA v. ANKINEED PRASAD*. 81 I. C. 628=

20 M. L. W. 58=35 M. L. T. 68=  
34 M. L. T. 248=47 Mad. 713=25 Cr. L. J. 978=  
A. I. R. 1924 Mad. 795=46 M. L. J. 565.

**—S. 145—Power of Magistrate—Sufficiency of evidence.**

—The Magistrate may take further evidence if he thinks it necessary to do so. But if on the evidence produced he is satisfied as to who is the party in actual possession he need not take further evidence. (*Kulwant Sahay, J.*) *BHULAN RAUT v. KUMARI RAI*.

75 I. C. 535=5 P. L. T. 69=  
2 Pat. L. R. Cr. 104=A. I. R. 1924 Pat. 509.

**—S. 145—Receiver.**

—Section 146 (2) cannot be so read as to make its provisions apply to attachment under S. 145 (4) and the appointment of receiver under S. 145 (4) is illegal. (1910) M. W. N. 821 and 3 P. L. J. 147, Foll.; 91 P. R. 1912, Not foll. (*Dalip Singh, J.*) *DIWAN CHAND v. EMPEROR*.

115 I. C. 29=10 Lah. 800=  
30 P. L. R. 23=30 Cr. L. J. 411=  
A. I. R. 1929 Lah. 223.

—Where a Magistrate finds that there is no likelihood of a breach of peace, he has no jurisdiction to pass an order that the lands under dispute should continue in the custody and management of the receiver. The proceedings under S. 145 having been dropped the Magistrate should direct the receiver appointed by him to hand over the property to the person from whom possession was taken. (*Devadoss, J.*) *MAMIDAPALLI SATTAYA v. CUTUMBARA RAO*. 108 I. C. 904=

29 Cr. L. J. 456=10 A. I. Cr. R. 51=  
1 M. Cr. C. 230=A. I. R. 1928 Mad. 859.

—The High Court has no power to appoint a receiver pending disposal of a petition to revise an order passed under S. 145. (*Devadoss and Wallace, J.J.*) *MARUDAVYA THEVAR v. SHANMUGA SUNDARA THEVAR*.

91 I. C. 702=22 M. L. W. 723=  
1925 M. W. N. 772=27 Cr. L. J. 126=  
A. I. R. 1926 Mad. 139=49 M. L. J. 593.

—Person appointed by Magistrate to take charge of property, has no powers of a Receiver.

Although under S. 145 a Magistrate has in cases of emergency the power to attach the subject in dispute, he has no power at the stage to appoint a Receiver. (8 M. L. T. 314 and 3 P. L. J. 147, Foll.) If in order to prevent a breach of the peace it is necessary for the Magistrate to take possession of the attached property and manage it during the pendency of the proceedings, it is quite competent to him in his administrative capacity or in exercise of his inherent jurisdiction to appoint some person to manage the property on his behalf and subject to his control and supervision, but the person so appointed is in no sense a receiver but merely a servant of the Magistrate, e.g., he has no powers which a receiver appointed under S. 145 (2) can exercise. (*Wadegaonkar, A. J. C.*) *DASHRATH v. TARACHAND*.

89 I. C. 514=8 N. L. J. 69=26 Cr. L. J. 1378=  
21 N. L. R. 191=A. I. R. 1925 Nag. 297.

**—S. 145—Relevancy of title.**

—Neither proof of title nor an adjudication on the question of title constitutes proof of actual possession. (*Kolhatkar, A. J. C.*) *SHIRAM v. SAMIRMAL*.

111 I. C. 662=24 N. L. R. 148=

**CR. P. CODE (1898), S. 145—Revision—Absence of finding.**

29 Cr. L. J. 902=11 A. I. Cr. R. 166=  
A. I. R. 1928 Nag. 284.

—Even a trespasser is entitled to have his actual possession maintained if it is peaceful. (*Kolhatkar, A. J. C.*) *SRIRAM v. SAMIRMAL*. 111 I. C. 662=

24 N. L. R. 148=29 Cr. L. J. 902=  
11 A. I. Cr. R. 166=A. I. R. 1928 Nag. 284.

—The question of title has been expressly excluded from Magistrate's consideration under S. 145. (*Hallifax, A. J. C.*) *GANPAT KUNBI v. DEWAJI*.

110 I. C. 228=29 Cr. L. J. 676=  
10 A. I. Cr. R. 411.

—Enquiry must be limited to actual possession—Rights of parties to possession are immaterial.

In a proceeding under S. 145 the enquiry is limited to the fact of actual possession of the subject of dispute by the parties, and this enquiry is to be without reference to the merits of the claims of any such parties to a right to possess the subject of dispute. The question as to which of the parties has a right to possess the subject of dispute is irrelevant. Where the tenants instead of paying rent to the rightful person having right to collect, pay it willingly to another, the former cannot be said to be "forcibly" dispossessed by the latter. A. I. R. 1925 Pat. 33, Rel. on; 1890 A. W. N. 178, Diss. from. (*Iqbal Ahmad, J.*) *ATA HUSAIN v. LATIF HUSAIN*.

101 I. C. 489=8 L. R. A. Cr. 64=28 Cr. L. J. 437=  
7 A. I. Cr. R. 433=A. I. R. 1927 All. 476.

—In a proceeding under S. 145, the main point to be considered is the fact of actual possession and not the right of a party to possess the subject-matter of dispute. (*Wazir Hasan, J. C.*) *ABDUL WAHAB v. EMPEROR*.

91 I. C. 76=27 Cr. L. J. 44 (Oudh).

—It is not the duty of the Court in proceedings under S. 145 to declare who is entitled to possession. The declaration must be as to who is actually in possession and entitled to remain in possession till a decision is given by a competent Court. (*Adami, J.*) *SUBDA SANTAL v. KUSHAL SANTAL*.

95 I. C. 320=1926 P. H. C. C. 160=  
7 P. L. T. 873=27 Cr. L. J. 784.

—Elaborate enquiries into questions of title need not be made as the proceedings are intended to be summary. (*Kendall, A. J. C.*) *EMPEROR v. MT. MAN KUNWAR*.

81 I. C. 905=25 Cr. L. J. 1081=  
A. I. R. 1925 Oudh 149.

—Questions of title, fraud, etc., cannot be tried in proceedings under S. 145 or S. 144. (*Adami and Bucknill, J.J.*) *H. V. LOW & CO., LTD. v. MAN-INDRA CHANDRA*.

84 I. C. 332=  
3 Pat. 809=26 Cr. L. J. 268=  
A. I. R. 1925 Pat. 33.

—A right to possess is quite different from actual physical possession, and questions as the rights of parties cannot legitimately be the subject of inquiry in proceedings under S. 145, which is concerned solely with the fact of actual physical possession, whether lawful or unlawful. (*Moti Sagar, J.*) *BHAGWAN DAS v. MAULA DAD KHAN*.

75 I. C. 990=  
25 Cr. L. J. 78=A. I. R. 1924 Lah. 678.

**—S. 145—Revision—Absence of finding.**

—Interference by High Court is not necessary when the Magistrate did not make it clear in his order that there would be breach of peace.

Where there was evidence, that both parties were attempting to cultivate the land, the sowings of one party having been ploughed up by the other.

**CR. P. CODE (1898), S. 145—Revision—Absence of finding.**

*Held*, that this was likely to cause a breach of peace, and the mere fact that the Magistrate had not made this clear in his order did not justify the High Court in interfering in revision. 12 C. P. L. R. Cr. 2, Ref. (*Baker, J.C.*) *RAMACHANDRA v. GANPAT.*

87 I.C. 923 = 26 Cr. L. J. 1035 =  
A. I. R. 1925 Nag. 448.

Where the Magistrate failed to decide as to which party was in possession on the date of the preliminary order the High Court can in such circumstances interfere on the ground that the Magistrate has acted without jurisdiction. 16 Cr. L. J. 239; 7 Cr. L. R. 450 and 18 Mad. 41, Foll. (*Venkatasubba Rao, J.*) *PERIASUBBA v. SINNA SUBBAYYA.*

69 I.C. 158 =  
16 M.L.W. 701 = 31 M.L.T. 382 =  
23 Cr. L. J. 670 = A. I. R. 1923 Mad. 142 =  
45 M. L. J. 56.

**—S. 145—Revision—Absence of jurisdiction.**

Where the order is *ultra vires* and without jurisdiction, for example, where the action taken professedly under Chap. XII really does not fall within the jurisdiction granted thereunder a revision will lie, but not otherwise. (*Wazir Hasan, A.J.C.*) *HIRALAL v. EMFEROR.*

11 O.L.J. 59 = 25 Cr. L. J. 440 =  
77 I.C. 728 = A. I. R. 1924 Oudh 331.

When there is initial want of jurisdiction it is clear that the proceedings though they may purport to be under S. 145 are not really proceedings under it and the High Court can interfere under S. 439, but if the proceedings were properly started, all interference on the ground of serious irregularity amounting to improper exercise of jurisdiction or improper refusal to exercise it can be only under S. 107 of the Charter Act. 31 Mad. 318, Foll.; 26 M.L.J. 280, Ref. (*Ramesam, J.*) *THYALYEE v. SRIRANGAROYA.*

71 I.C. 228 =  
1929 M.W.N. 629 = 16 M.L.W. 497 =  
31 M.L.T. 202 = 24 Cr. L. J. 100 =  
A. I. R. 1923 Mad. 60 = 43 M.L.J. 624.

**—S. 145—Revision—Finding of possession.**

The High Court as a Court of revision cannot interfere with the decision of the trial Court, on the factum of possession as long as there is evidence in support of that finding. 14 O.C. 400; 28 I.C. 651 and 43 I.C. 401, Ref. (*Shadi Lal, C.J.*) *ABDUL SATAR v. UDHA LAL.*

93 I.C. 695 = 8 L.L.J. 47 =  
27 P.L.R. 102 = 27 Cr. L. J. 471.

**—S. 145—Revision—Findings of fact.**

It is not the duty of the High Court in a reference made by the Sessions Judge against an order of the Sub-Divisional Officer under S. 145, to examine the evidence to consider whether it might have come to a different finding. (*Allanson, J.*) *MT. GOMIA v. NANKHOO SINGH.*

105 I.C. 229 = 9 P.L.T. 18 =  
28 Cr. L. J. 901 = A.I.R. 1923 Pat. 88.

**—S. 145—Revision—Forum.**

Where an application has been filed against an order of a Magistrate declaring certain persons to be in possession of certain property under S. 145.

*Held*, that the High Court should not entertain the application, as the Sessions Judge has, under Ss. 435 to 438, concurrent jurisdiction in the matter. The application should first be made in the Court of the Sessions Judge. 36 Cal. 643; 48 Cal. 534 and 3 Pat. L. J. 302, Rel. on. (*Findlay, Offg. J. C.*) *BAJIRAO v. MT. DADIBAI.*

91 I.C. 247 = 27 Cr. L. J. 71 =  
A. I. R. 1926 Nag. 285.

**CR. P. CODE (1898), S. 145—Revision—Reference.****—S. 145—Revision—Grounds for.**

In order to interfere with the order under S. 145 putting one party in possession of certain property, the Magistrate must have acted illegally or in an irregular manner. (*Pullan, J.*) *BALBHADDAR SINGH v. ADITYA PRASAD.*

114 I.C. 810 = 6 O.W.N. 17 =  
30 Cr. L. J. 381 = A.I.R. 1929 Oudh 82.

The undefined character of the area of the land in question and the consequent difficulty experienced in settling the exact location thereof had presented an insuperable obstacle in the way of the Magistrate's arriving at a definite conclusion in regard to possession.

*Held*, that there is no good ground for interfering with the order of the Magistrate. (*Kolhatkar, A.J.C.*) *JAN MAHOMED v. JIVAN KHAN.*

111 I.C. 445 =  
29 Cr. L. J. 861 = 11 A. I. Cr. E. 194 =  
A.I.R. 1928 Nag. 325.

Where the Magistrate had gone at length into the question of ownership and his order was further unsatisfactory, in that it did not explain how a breach of the peace was to be apprehended between the parties.

*Held*, that the order should be set aside. (*Campbell, J.*) *AMIR HASAN v. RODAR BAKHSH.*

100 I.C. 712 = 28 P.L.R. 107 =  
7 A.I. Cr. E. 269 = 28 Cr. L. J. 328 =  
A.I.R. 1927 Lah. 822.

Section 145 requires that a Magistrate, before passing an order, should be satisfied that a dispute likely to cause a breach of the peace exists. The section does not require a Magistrate to record evidence on that question sufficient to satisfy a superior Court. Where such an order is not plainly and palpably wrong, the mere absence of any evidence as to the breach of the peace, on the record is not a sufficient reason for interfering in revision. (*Stuart, C.J.*) *RAM PRASAD v. RAM ADHAR.*

104 I.C. 463 = 4 O.W.N. 834 =  
28 Cr. L. J. 847 = A.I.R. 1927 Oudh 359.

Where an enquiry proves that there is a dispute which may lead to bloodshed and where a Magistrate has taken effective steps under S. 145 to abate temporarily the cause of dispute, his order should not be set aside, thereby reviving the conditions he is specifically ordered to remedy, merely because he omitted to put in writing the grounds which had caused him so to act. A.I.R. 1927 P.C. 44, Foll. (*Doyle, J.*) *MAUNG PU v. MAUNG CHIT PYU.*

102 I.C. 911 =  
5 Rang. 129 = 28 Cr. L. J. 623 =  
8 A. I. Cr. R. 241 = A.I.R. 1927 Rang. 177.

**—Absence of reasons for decision vitiates the order.**

Where the order of the Magistrate did not show how he approached the question or how he had considered the evidence in coming to his conclusion, the High Court ordered that the case be re-opened from the point reached on the date of the order and that after hearing the parties afresh and recording statement of reasons for the decision the Magistrate should dispose of the matter. (*Greaves and Panton, J.J.*) *MOTAHERALI JAMADAR v. ESHAQUE SIKDAR.*

81 I.C. 939 = 25 Cr. L. J. 1115 =  
39 C.L.J. 366 = A. I. R. 1924 Cal. 848.

**—S. 145—Revision—Reference.**

A reference asking to confirm a part of the order under S. 145 and quash the rest is not in proper form. (*Chotmner and Divyal, J.J.*) *COLLECTOR OF HOWRAH v. SANTAK DAS.*

99 I. C. 1010 = 44 O.L.J. 593 =  
28 Cr. L. J. 210 = 7 A.I. Cr. R. 383 =  
A. I. R. 1927 Cal. 261.

**CR. P. CODE (1898), S. 145—Security for keeping peace.**

—The Magistrate under S. 145 is to decide the question of possession and not that of title which is to be decided by a Civil Court, and if it is probable that the parties to a land dispute will break the King's peace before the decision of the Civil Court can be given, that danger can be guarded against by an order under S. 107 in an appropriate case. (*Marten and Coyajee, J.J.*) **MALLAPPA, In re.** 95 I. C. 62 = 28 Bom. L.R. 488 = 27 Cr. L.J. 734 = A. I. R. 1926 Bom. 313.

—While it is discretionary with the Magistrate to draw up proceedings under S. 107, the proper course when there is *bona fide* dispute as to lands is to proceed under S. 145. Otherwise, the effect would be to bind down one of the parties only to the dispute without any adjudication upon the question as to which of the two parties is in possession. A.I.R. 1922 Pat. 435 (F. B.), Ref. and foll.; 32 Cal. 966 and 7 C. W. N. 746, Dist. (*Sen, J.*) **SHAMA CHARAN v. EMPEROR.** 90 I. C. 442 = 6 P. L. T. 766 = 26 Cr. L.J. 1562 = 1925 P.H.C.C. 263 = A.I.R. 1925 Pat. 610.

**—S. 145—Symbolical possession.**

—A Criminal Court is not bound by *ex parte* Civil Court decree in execution of which plaintiff landlord obtained merely symbolical possession, in a case between the decree-holder and the third party. 20 C. W. N. 796; 26 Cal. 425, Dist. (*Greaves and Panton, J.J.*) **PROMODA SUNDARI DASSI v. KHETRA BAG.** 81 I. C. 928 = 25 Cr. L. J. 1104 = A.I.R. 1925 Cal. 186.

—*The Criminal Court need not regard the symbolical possession of the decree-holder.*

Where the heirs and representatives of the original judgment-debtor were in possession of a property symbolical possession of which was given to the decree-holder auction-purchaser on 17th November, 1918 a few days before the death of the judgment-debtor, *held*, the Magistrate could not, in S. 145 proceedings instituted on 22nd January, 1921 validly put the auction-purchaser in possession. (*Teunon and Suhrawardy, J.J.*) **SHAHABAJ MANDAL v. BHAJA HARI NATH.** 75 I. C. 75 = 49 Cal. 177 = 25 C.W.N. 743 = 24 Cr. L. J. 875 = A.I.R. 1922 Cal. 364.

**—S. 145—Transfer of case.**

—Although a "case" in Cl. 8, S. 526, includes a proceedings under S. 145, a party in a proceeding under S. 145, cannot apply for adjournment under Cl. (8), S. 526. (*Mullick and Scroope, J.J.*) **LOKA MAHTON v. KALI SINGH.** 106 I. C. 219 = 6 Pat. 553 = 8 P. L. T. 716 = 28 Cr. L. J. 1035 = A.I.R. 1927 Pat. 351.

—Section 526 does not empower a High Court to transfer proceedings under S. 145 of the Code as such proceedings cannot be described as a criminal case in which a person is accused of an offence. (*Martineau, J.*) **NARAIN SINGH v. GANDHARV RAJ.** 25 Cr. L.J. 276 = 76 I.C. 868 = A.I.R. 1925 Lah. 48.

—The fact that the trying Magistrate is believed to have made up his mind that there is no likelihood of a breach of peace is not a sufficient ground for transfer. If he forms any opinion on the question of possession which might hamper him in dealing with the evidence on that point, it might no doubt be proper ground for transferring the case. (*Simpson, A.J.C.*) **MUHAMMAD NAQI KHAN v. RAHAMAT UNNISA.** 76 I.C. 562 = 25 Cr. L.J. 194 = A.I.R. 1923 Oudh 161.

**CR. P. CODE (1898), S. 146—Grounds.****—S. 146—Competent Court.**

—An entry in the finally published record-of-rights cannot be regarded as constituting the final adjudication of a competent Court within the meaning of S. 146 (1), Cr. P. Code. (*Newbold and Mukerji, J.J.*) **KUTISWAR MONDAL v. JITENDRANATH.** 26 Cr. L.J. 1055 = 30 C. W. N. 646 = 87 I.C. 975 = A.I.R. 1926 Cal. 316.

—Order of Revenue Court in mutation proceedings is order of competent court determining the person entitled to possession. (*Boys, J.*) **MT. RAN SRI v. SRI KRISHN.** 82 I.C. 170 = 22 A.L.J. 803 = 5 L.R.A. Cr. 129 = 25 Cr. L.J. 1242 = 46 All. 879 = A.I.R. 1924 All. 777.

**—S. 146—Grounds.**

—For a Magistrate to attach property in dispute under S. 146, all that S. 146 requires is that the Magistrate should be unable to satisfy himself as to which of the parties was in "such possession", that is actual possession of the subject in dispute. (*Mirza and Broomfield, J.J.*) **VENKATRAMAN RAMA HEDGE, In re.** 1930 Cr. C. 548 = 125 I. C. 718 = 31 Cr. L.J. 933 = 32 Bom. L. R. 340 = A.I.R. 1930 Bom. 172.

**—Joint Hindu family disputes—Order not proper.**

A Magistrate took proceedings under S. 145 in respect of a dispute between three Hindu brothers and with regard to property which was formerly joint family property. The question in dispute was whether the three brothers were jointly entitled to the property in dispute or there had been partition in virtue of which the property in dispute had fallen to the share of the eldest brother who was in possession. The Magistrate could not make up his mind on the question and as he would not satisfy himself as to which of the parties was in exclusive possession of the land in dispute, he applied S. 146 and attached the land until the rights of the parties thereto were determined by a competent Court.

*Held*, that although it could not be said that the Magistrate's order under S. 146 was not competent it was an order which ought not have been made under the circumstances of the case. It was clear that whether there had been partition or not the eldest brother was entitled to be in possession. If the alleged partition really took place then he was entitled to be in possession in his own right. If it did not take place he was entitled to be in possession as the eldest brother and the manager of the family. The order of attachment, therefore, was not reasonable and if there was any danger to the breach of the peace, proper order would have been to take proceedings under S. 107 and bind the parties for such term as was necessary. A.I.R. 1926 Bom. 313, Ref. (*Mirza and Broomfield, J.J.*) *In re* **VENKATRAMAN RAMA HEDGE.** 1930 Cr. C. 548 = 125 I.C. 718 = 31 Cr. L.J. 933 = 32 Bom. L.R. 340 = A. I. R. 1930 Bom. 172.

**—Doubtful possession.**

Where the Magistrate is unable to satisfy himself as to which of the parties is then in possession he cannot attach the subject of dispute under S. 146. (*Sundaram Chetty, J.*) **PARANDHAMAYYA v. VIRAYYA.** 1930 M.W.N. 771.

**—No evidence adduced.**

There is no obligation imposed by S. 146 on the Magistrate to make independent enquiry if the parties having been given adequate opportunities decline to adduce evidence as to possession. He is entitled to act on his apprehension of breach of peace founded on information he may have before him and in the absence

**CR. P. CODE (1898), S. 146—Grounds.**

of material which would enable him to protect the possession of one or the other of the parties he must attach the property. 14 C. W. N. 80 and A. I. R. 1922 Pat. 544, Ref.; 12 C. W. N. 896, Dist. and 40 Cal. 105, Diss. from. (*Courtney-Terrill, C. J. and Rowland, J.*) **BENGALI PARIDA v. BANCHHANIDHI PANIGRAHI.**

118 I. C. 326=1930 Cr.C. 5=10 P.L.T. 867=  
30 Cr.L.J. 894=A.I.R. 1930 Pat. 29.

**—Civil Court's decision—Value.**

It is not proper for a Magistrate on the ground that he is unable to determine which party is in possession to attach the land under S. 146 where the Civil Court has not only determined the rights of the parties but has also determined the possession so far as it was in its power to do so. (*Daniels, J.*) **PARABHANS PANDE v. SHEODARSHAN SINGH.**

48 All. 397=  
24 A.L.J. 399=7 L.R.A.Cr. 102=27 Cr. L. J. 559=  
93 I. C. 1055=A.I.R. 1926 All. 685.

**—Inability to decide possession or that neither had it.**

Where there was a dispute between the parties regarding the land in suit and in proceedings under Ch. XII of the Cr. P. Code, the Magistrate attached the land under S. 146 and appointed a Receiver thereof referring the parties to the Civil Court for the determination of their rights, and where a suit was brought by the plaintiff for a declaration that he was the owner of the land,

*Held*, that where it is not known whether it was the plaintiff or the defendant who was guilty of interference with possession or dispossession, all that one can say as to what led the Magistrate to take possession is that it was either his inability to decide who was in actual possession or his decision that neither party was in possession and that neither of these can be said to be wrong by the defendant. (*Kotwal, A. J. C.*) **YEKNATH v. BAHIA.**

85 I. C. 631=20 N. L. R. 195=  
A. I. R. 1925 Nag. 236.

**—Subsequent decision though not inter partes.**

An underground colliery together with certain huts and workings on the surface of the land were attached under S. 145 on 29th March 1922. On the 27th of March 1923 the Subordinate Judge gave a decision relating to a money claim put forward by some person against some members of the second party, as certain rights in respect of the colliery purported to be demised by some of the second party to the plaintiff in that suit had failed. With respect to the ownership of the colliery some part of which was the subject-matter in dispute under proceedings under S. 145, Cr. P. Code, the Sub-Judge came to the conclusion adverse to the rights of the members of the second party. The first party upon this applied to the Magistrate for withdrawal of the attachment and for declaration of possession in accordance with the decree of the Sub-Judge. The Magistrate granted the prayer.

*Held*, that the Magistrate had jurisdiction to pass the order under Sub-S. 1 of S. 146, Cr. P. Code, in view of the decision of the Sub-Judge. (*Greaves and Panton, J.J.*) **ASES KUMAR MISRA v. KISSORI MOHAN SARKAR.**

81 I. C. 553=25 Cr. L. J. 937=  
39 C. L. J. 353=A. I. R. 1924 Cal. 812.

**—S. 146—Procedure.****—No evidence at all.**

Section 146 pre-supposes an enquiry by the Magistrate on the evidence recorded and the object of S. 146 is to give the Magistrate jurisdiction to attach property if, upon the evidence so recorded, he is unable to come to a finding as to who was in possession on the date on which

**CR. P. CODE (1898), S. 146—Release.**

the order under S. 145 was drawn up, and where there is no evidence of any kind on record order attaching property under S. 146 is without jurisdiction. (*Chotzner and Lord Williams, J.J.*) **DAULAT ALI v. HEDAIL MOLLA.**

117 I. C. 600=30 Cr. L. J. 802=  
32 C. W. N. 843=A. I. R. 1928 Cal. 703.

**—Duty of Magistrates**

It should be held as a very important principle in cases under S. 145 that a Magistrate should be extremely reluctant to attach the property in dispute. It is quite intelligible that he might be in a position to say with confidence that he was unable to satisfy himself as to the possession of the parties in cases where the land is jungle or waste. But where there is land admittedly subject year by year and season by season to cultivation, the Magistrate will be only admitting his own weakness if he states that he cannot come to a decision. He has before him two parties quite ready with information. The information may be true or false but it is his duty to collect information and shift it. After all the order under S. 146 is almost the same as an act of confiscation and therefore the Magistrate should naturally be reluctant to make use of that section. (*Foster, J.*) **RAM BAHAL SINGH v. RANG BAHADUR.**

82 I. C. 367=5 P. L. T. 589=25 Cr. L. J. 1295=  
A. I. R. 1924 Pat. 804.

**—Decision as to possession necessary prior to attachment.**

It is not a Magistrate's business to speculate whether his order under S. 145 will prejudice a future decision, perhaps several years hence, in a revenue proceeding. It is also not sound to check his hand because his decision is not final. Although it is true that an attachment under S. 146 will as effectually prevent a breach of the peace as a decision in favour of a party under S. 145, a reasonable effort, varying of course with the circumstances of each particular case, must be made to decide as to possession before there is jurisdiction to attach the subject-matter under S. 146. 40 C. 105, Ref. (*Macpherson, J.*) **WAYESUL HUQ v. SHOBRATI JOLAH.**

74 I. C. 258=4 P. L. T. 441=1 Pat. L. R. 161=  
24 Cr. L. J. 754=A.I. R. 1924 Pat. 47.

**—S. 146—Release.****—No breach of peace—Decision of competent Court regarding possession.**

Once an order under S. 146, Cr. P. Code, has been passed by a Court it can come to an end only under one of two circumstances, the first being that there is no longer any likelihood of a breach of the peace in regard to the subject-matter of the dispute, in which case the Magistrate would be competent to withdraw the order of attachment and he can do so at any time at which there is no such likelihood; and secondly, it is competent for a Magistrate to release the subject-matter of the dispute from attachment if a competent Court has determined the rights of the parties to the proceedings of the person entitled to possession of the subject-matter of the dispute. (*Newbould and Mukerji, J.J.*) **KUTISWAR MONDAL v. JITENDRANATH.**

87 I. C. 975=  
26 Cr. L. J. 1055=30 C. W. N. 646=  
A. I. R. 1926 Cal. 316.

**—Party can be left in possession.**

It is open to the Magistrate under the proviso to make over possession of the property to any person that he thinks fit. He must of course exercise a judicial discretion in deciding to whom the possession is to be given. There may be cases in which it is sufficient for him to



**CR. P. CODE (1898), S. 146—Remedies.**

make an order withdrawing the attachment and leave some party to take possession but it is also open to him to make over possession to any one according to his discretion. (*Simpson, A. J. C.*) **ALI BAHADUR v. EMPEROR.** 90 I. C. 925 = 2 O. W. N. 868 = 26 Cr. L. J. 1629 = A. I. R. 1926 Oudh 146.

**—S. 146—Remedies.**

Where a Magistrate passes an order under S. 146, Cr. P. Code, a person claiming the property need only sue for a declaration.

But where the Magistrate interfered with the possession of the defendants because an emergency had arisen and decided that retention of the sale proceeds was unnecessary, and ordered them to be handed over to the defendants, *held*, the Magistrate was holding the same on behalf of the defendants, and plaintiff's suit must be one for possession and *ad valorem* fees calculated on the value of the subject-matter in dispute must be paid. (*Macnair, A. J. C.*) **SAKHARAM v. TUKARAM.** 103 I. C. 351 = A. I. R. 1927 Nag. 316.

**—S. 146—Revision.****—Interference in.**

The High Court, in the exercise of its revisional jurisdiction, should not lightly interfere with orders that may be passed by the Magistrate for the management of the attached properties under S. 146 of the Code. But where the order of the Magistrate offends against an elementary rule founded on the desire of the Courts to place the parties to a proceeding on a footing of absolute equality the order must be set aside. (*Das and James, J.J.*) **MT. LACHMI KUAR v. GAJADHAR PROSHAD.** 104 I. C. 104 = 7 Pat. 1 = 9 A. I. Cr. R. 8 = 28 Cr. L. J. 776 = 9 P. L. T. 109 = A. I. R. 1927 Pat. 393.

**—Failure to understand Civil Court's decree.**

Where the Deputy Magistrate attached the property in dispute, owing to his not understanding the meaning of a Civil Court's decree relating to the same property, his order is irregular and without jurisdiction. (*Bucknill, J.*) **DURGANAND OJHA v. HIRANAND OJHA.** 76 I. C. 24 = 25 Cr. L. J. 88 = A. I. R. 1924 Pat. 711.

**—S. 146—Scope of.**

Section 146 (2) cannot be so read as to make its provisions apply to attachment under S. 145 (4). 1910 M. W. N. 821 and 3 P. L. J. 147, Foll.; 91 P. R. 1912, Not foll. (*Dalip Singh, J.*) **DIWAN CHAND v. EMPEROR.** 115 I. C. 29 = 30 P. L. R. 23 = 30 Cr. L. J. 411 = 10 Lah. 800 = 12 A. I. Cr. R. 375 = A. I. R. 1929 Lah. 223.

The jewellery and other moveable property must be treated as appurtenant to the math and an order can be properly passed in respect of it under S. 146. 1 P. L. J. 386, Foll. (*Daniels, J.*) **GOKUL NATH v. BARAM NATH.** 93 I. C. 157 = 24 A. L. J. 383 = 7 L. R. A. Cr. 129 = 27 Cr. L. J. 429 = A. I. R. 1927 All. 125.

**—Difference between Ss. 145 and 146.**

Provisions of S. 146 differ from those of S. 145 (6). What the plaintiff has to show to the Court when he comes to it after attachment under S. 146 is that he has rights in the lands attached and he is entitled to possession. Provisions of S. 146 differ from those of S. 145 (6).

**CR. P. CODE (1898), S. 147—Applicability.**

S. 145 (6) provides that the Magistrate shall issue an order declaring a party to be entitled to possession of the subject-matter in dispute until evicted therefrom in due course of law in case he decides that the party was in possession or should, under the first proviso to sub-section 4, be treated as being in possession of the subject-matter in dispute. (*Jwala Prasad, Ag. C. J. and Kulwant Sahay, J.*) **HARGOBIND RAY v. KESHWI PRA-SAD** 84 I. C. 386 = 1924 P. H. C. C. 297 = 6 P. L. T. 465 = A. I. R. 1925 Pat. 168.

**—S. 147—Applicability.****—Right of entry into temple.**

Section 147 applies to disputes as regards entry into a temple or mosque and it would so apply whether the right claimed is an easement or otherwise. A. I. R. 1926 Cal. 437, Dist. (*Dalal, J.*) **DAYA RAM v. EMPEROR.** I. R. 1930 All. 886 = 31 Cr. L. J. 1217 = 127 I. C. 422 = 1930 Cr. C. 672 = A. I. R. 1930 All. 452.

**—Right to enter samadh land.**

The shrines of the followers of the Radhaswami sect known as samadhs are of as great religious sanctity to the followers of that sect as a temple and entry in the compound of the samadh would be covered by the words "right of use of any land." (*Dalal, J.*) **DAYA RAM v. EMPEROR.** I. R. 1930 All. 886 = 31 Cr. L. J. 1217 = 127 I. C. 422 = 1930 Cr. C. 672 = A. I. R. 1930 All. 452.

Where the Magistrate passes under S. 147 an order prohibiting the counter-petitioners from putting up any bunds across a channel in their field, and from interfering with the petitioners removing the obstructions already put up, the order requires to be amended by omitting the words "from interfering with the petitioners removing the obstructions already put up" and substituting therefor the words "from retaining any obstruction to the petitioners' use of the water flowing along the channel in their field," inasmuch as such an order is likely to cause a recurrence of breach of the peace, which such orders are intended to prevent, but the Magistrate is competent to pass an order in the amended form, even under S. 147 as amended in 1923. A. I. R. 1925 Cal. 991, Not foll.; 26 I. C. 730, Appl. (*Pandala, J.*) (*KANTA VENKANNA v. (INUGANTI) VEN-KATA SURYA NEELADRI RAO.*) 129 I. C. 68 = 32 Cr. L. J. 215 = 32 M. L. W. 175 = 1930 M. W. N. 987 = 1930 Cr. C. 1121 = A. I. R. 1930 Mad. 865 = 59 M. L. J. 430.

**—Matter already decided.**

If the matter which is in dispute under S. 147 has actually been adjudicated upon by a Civil Court then a Magistrate has no jurisdiction to enquire into a claim which is entirely contrary to that Court's decree. 11 Bom. 584, Appl. (*Fawcett and Pathar, J.J.*) **ANYA SHEDYA PATIL. In re.** 102 I. C. 546 = 29 Bom. L.R. 715 = 28 Cr. L. J. 578 = 28 A. I. Cr. R. 233 = A. I. R. 1927 Bom. 654.

**—User of public street.**

Section 147 applies to a case where the question is whether the Hindu community are entitled to use a certain street which is a public street, such user being resisted by the Mahomedans who live in that locality. (*Curguen, J.*) **MD. AMIRKHAN v. MAHALINGAM PILLAI.** 105 I. C. 660 = 28 Cr. L. J. 948 =

**CR. P. CODE (1898), S. 147—Applicability.**

26 M. L. W. 535=1927 M.W. N. 789=  
39 M. L. T. 448=9 A. I. Cr. R. 144=  
A. I. R. 1927 Mad. 985=53 M. L. J. 523.

**—Personal and public right—Joinder.**

If one could prove that a road was a public road either by showing that it had been dedicated to the public or that from time immemorial it had been freely used by the public, no question of easement in favour of a private individual would arise. But, on the other hand, although it might seem not to be possible to put forward such proofs as would show that the road was really a public road it might still be possible to prove that a private individual had acquired an easement and, therefore, there is nothing to prevent a claim of this double nature being made. (*Bucknill, J.*) P. D. HAMIR & CO. v. SURESH-CHANDRA. 95 I. C. 761=1926 P. H. C. C. 187=27 Cr. L. J. 841=A. I. R. 1926 Pat. 348.

—A right to take a car in procession along a public road to a temple is a right of user of land which falls within the scope of Sub-S. (1) of S. 147. (*Fawcett and Madgavkar, J.J.*) BASAPPA RACHAPPA BELKERI, *In re*. 89 I. C. 846=27 Bom. L. R. 1058=26 Cr. L. J. 1422=A. I. R. 1925 Bom. 536.

**—Right of worship.**

Where the real dispute between the parties was as to the right to worship in the temple and not as regards the possession of the temple,

*Held*, that the proper section under which action should be taken by the Magistrate to prevent a breach of peace is S. 147 and not S. 145. 16 M. L. T. 427; 29 Mad. 237 and 11 Mad. 323, Rel. on; 17 Cr. L. J. 235, Dist. (*Krishnan, J.*) SINNASWAMI CHETTI v. P. PALANI GOUNDAN. 88 I. C. 2=26 Cr. L. J. 1057=A. I. R. 1925 Mad. 779=48 M. L. J. 528.

**—Right to use wells.**

If the public have from a very long series of years used and have been allowed to use the water of certain wells, whether the wells be public or private, and have been allowed to make use of them as a matter of right and then if certain person claiming ownership forbids the use of the wells, there is every probability of a breach of the peace, and the case is a proper one for enquiry under S. 147. (*Prideaux, A. J. C.*) PARASHRAM v. GOPAL RAMCHANDRA. 77 I. C. 289=25 Cr. L. J. 353=A. I. R. 1924 Nag. 294.

**—S. 147—Contents of order.****—Exercise of right—Finding necessary.**

In the absence of a finding that the right has been exercised within the periods specified by S. 147 the final order under S. 147 cannot be maintained. 2 Pat. L. T. 364, Foll. (*Kulwant Sahay, J.*) SIRKAWAL SINGH v. BHUJA SINGH. 81 I. C. 708=5 P. L. T. 457=25 Cr. L. J. 996=A. I. R. 1924 Pat. 784.

**—S. 147—Exercise of right.****—General user.**

No specific instance of user need be proved within three months. Continuous general user up to the date of obstruction is sufficient. (*Bucknill, J.*) P. D. HAMIR & CO. v. SURESH CHANDRA. 1926 P. H. C. C. 187=27 Cr. L. J. 841=95 I. C. 761=A. I. R. 1926 Pat. 348.

**—Impossibility.**

Where the non-exercise of the right within the proper period is due to circumstances beyond the control of the

**CR. P. CODE (1898), S. 147—Interpretation.**

person claiming the right, the proviso to S. 147 (2) does not apply. Where the right was not exercised in the proper season due to the obstruction of the opponents of the party claiming the right and to the latter resorting to the assistance of the Magistrate.

*Held*, that the proviso to Sub-S. (2) did not apply. (*Fawcett and Madgavkar, J.J.*) BASAPPA RACHAPPA BELKERI, *In re*. 27 Bom. L. R. 1058=89 I. C. 846=26 Cr. L. J. 1422=A. I. R. 1925 Bom. 536.

**—S. 147—Interpretation.**

—Three months are not the three months prior to order, but three months next before the institution of the inquiry. (*Dalal, J.*) DAYARAM v. EMPEROR.

I. R. 1930 All. 886=31 Cr. L. J. 1217=127 I. C. 422=1930 Cr. C. 672=A. I. R. 1930 All. 452.

—The words "and shall thereafter inquire into the matter in the manner provided in S. 145" merely mean that after the order in writing has been drawn up as required by the earlier part of the sub-section, the procedure in the inquiry is then to follow the course laid down in S. 145 and it is immaterial whether the enquiry itself was instituted before or after the drawing up by the Magistrate of the order requiring the parties to attend the Court. (*Courtney-Terrell, C. J. and Scroope, J.*) BHAGAWAN SWAIN v. MATHURI SWAIN.

1930 Cr. C. 721=125 I. C. 143=31 Cr. L. J. 791=A. I. R. 1930 Pat. 349.

**—Institution of inquiry.**

The words "institution of inquiry" in the proviso to Cl. 2, S. 147 does not mean the date of the drawing up of the formal proceedings under S. 147, but it means the date on which the complainant first brings his grievance to the notice of the Magistrate either directly or indirectly through the police, and the Magistrate takes action with a view to enquiring into the allegation, although that action is merely a preliminary to the eventual institution of a formal proceeding. Hence the period of three months is to be calculated from the date, the complainant first approaches the Magistrate and not from the date of institution of formal proceedings. 44 C. L. J. 214, Foll. (*Courtney-Terrell, C. J. and Scroope, J.*) BHAGAWAN SWAIN v. MATHURI SWAIN.

1930 Cr. C. 721=125 I. C. 143=31 Cr. L. J. 791=A. I. R. 1930 Pat. 349.

**—"Inquiry."**

The inquiry contemplated by the proviso to Sub-S. (2) is the inquiry referred to in Sub-S. (1). A. I. R. 1926 Cal. 1051, Foll. (*Wort, J.*) SOHAN LOHAR v. JITU UPADHYA, 122 I. C. 145=31 Cr. L. J. 361=1930 Cr. C. 608=A. I. R. 1930 Pat. 291.

**—Land or water.**

The expression "land or water" as used in S. 147 does not necessarily refer only to private property, though, of course, it does necessarily so refer in Sub-S. (1), S. 145 (*Curgawen, J.*) MD. AMIRKHAN v. MAHALINGAM PILLAI. 26 M. L. J. 35=

1927 M. W. N. 789=39 M. L. J. 148=28 Cr. L. J. 948=105 I. C. 660=9 A. I. Cr. R. 144=A. I. R. 1927 Mad. 985=53 M. L. J. 523.

**—Institution of enquiry.**

The expression "institution of the inquiry" in S. 147, Cr. P. Code, does not mean the date when the formal

**CR. P. CODE (1898), S. 147—Legality of order.**

proceedings are drawn up under the section. So where the complaint was lodged on 24th April 1919 praying for an order under S. 147, Cr. P. Code, and the Magistrate passed an order on 19th May 1919 calling on the other side to show cause and also calling for a report and the proceedings were drawn up on a perusal of the report and subsequently the case was transferred to the Deputy Magistrate on the 16th June 1919 and the case was disposed of on the 8th of July 1919. *Held*, that on those facts the inquiry was instituted at the latest on the 6th May 1919 and that the proceeding was not vitiated by the three months' bar contained in the proviso to S. 147, Cr. P. Code. (*Shamsul Huda and C. C. Ghose, J.J.*) *RAMA NATH BASU CHOUDHURY v. SARADA PROSAD BASU CHOUDHURY*. 99 I. C. 33 =

28 Cr. L. J. 2 = 44 C. L. J. 214.

**—S. 147—Legality of order.**

—An order under S. 147 (3) is to be made only in those cases in which it is shown that no right of way exists. (*Wort, J.*) *SOHAN LOHAR v. JIUT UPADHYA*. 122 I. C. 145 = 31 Cr. L. J. 361 =

1930 Cr. C. 608 = A. I. R. 1930 Pat. 291.

**—Allowing procession and prohibition of interference.**

An order stating that the Hindus must be allowed to pass through a public street with their procession and that the Mahomedans are prohibited from interfering in any manner with the use by the Hindus of the street, is an order which can be legally passed under S. 147. (*Curgewen, J.*) *MD. AMIRKHAN v. MAHALINGAM PILLAI*. 26 M. L. W. 535 =

1927 M. W. N. 789 = 39 M. L. T. 448 =  
28 Cr. L. J. 948 = 105 I. C. 660 =  
9 A. I. Cr. R. 144 = A. I. R. 1927 Mad. 985 =  
53 M. L. J. 323.

**—Bona fide claim of right.**

The provisions of S. 147 are of an emergency nature and are conducted more or less summarily. If the Magistrate, as the result of hearing the evidence, thinks that reasonable grounds have been shown to him that a *bona fide* claim of right exists, then he is justified in passing such order as he may think fit. It is not expected that he should usurp the functions of the Civil Court or that the enquiry under S. 147 should be a formal trial of the matter in issue. The actual rights of the parties must await determination in a civil suit. The words "such right exists" must be understood to mean "such rights as is claimed." (*Bucknill, J.*) *P. D. AMIR & CO. v. SURESHCHANDRA*. 1926 P. H. C. C. 187 = 27 Cr. L. J. 841 =

95 I. C. 761 = A. I. R. 1926 Pat. 348.

—The mere fact that the Magistrate cannot pass an order in favour of the petitioners under Sub-S. (2) is no reason for passing an order in favour of the opponents, prohibiting the petitioners from any exercise of their alleged right. That is an order under Sub-S. (3) which he could only pass if it appears to him that the petitioners' right does not exist. The mere fact that they did not exercise the right during the preceding year is not sufficient to show that the right does not exist, and it only goes to the question of the Magistrate from issuing an order under Sub-S. (2) supporting the alleged right. (*Fawcett and Madgavkar, J.J.*) *BASAPPA RACHAPPA BELKARI, In re*. 89 I. C. 846 = 27 Bom. L. R. 1058 =

26 Cr. L. J. 1422 = A. I. R. 1925 Bom. 536.

**—S. 147—Mandatory injunction.****—What may not amount to.**

Under Cl. 2 it is clear that where a right exists the Magistrate may make an order prohibiting any interfer-

**CR. P. CODE (1898), S. 147—Procedure.**

ence with its exercise. Where there is a right to the water coming through a pyne and it is indispensable to the exercise of that right, that a cutting in the bank should be closed it is merely a matter ancillary to the declaration of the right to the water and if the first party are to be prohibited from interfering with the exercise of this right to the water on the part of the second party, this can only be done effectively by restraining them from preventing the second party from closing this cutting in the bank. There is nothing in the proviso against passing of an order of this kind as it is in no sense a mandatory injunction. (*Ross, J.*) *RAM DHAN PURI v. BARHAMDEO*. 121 I. C. 461 =

31 Cr. L. J. 247 = 10 P. L. T. 376 =  
1929 Cr. C. 153 = A. I. R. 1929 Pat. 351.

**—No power to issue.**

The words of Sub-Sec. (2) do not give the Magistrate any power of directing one of the parties to do a positive act by way of mandatory injunction such as demolishing a wall built by him. The power given to a Magistrate under that sub-section is analogous to the power of a Civil Court to grant a temporary injunction restraining a person from doing a certain act. (*Newbould and B. B. Ghose, J.J.*) *HARI MATI DASI v. HARIDAS DASI*. 88 I. C. 1041 = 41 C. L. J. 568 =  
30 C. W. N. 238 = 26 Cr. L. J. 1265 =  
A. I. R. 1925 Cal. 991.

**—S. 147—Procedure.****—Enquiry by Magistrate and not by police.**

Where an application is made to the Magistrate about an alleged obstruction of a pathway and the Magistrate orders police to enquire and report, that does not constitute institution of the enquiry under the proviso to S. 147. The word "enquiry" in the proviso has reference to the words "enquiry into the matter" in the first paragraph. The enquiry that is contemplated there is enquiry by the Magistrate and not enquiry by the police. Institution of the enquiry into the existence of the likelihood of the breach of the peace must precede the enquiry into the respective rights of the parties and the Magisterial enquiry is instituted when proceedings are drawn up by the Court under S. 147. (*Sukrawardy and Durval, J.J.*) *RAM CHANDRA ACHARJEE v. ADITYA CHANDRA PAL*. 53 Cal. 851 =

30 C. W. N. 863 = 44 C. L. J. 307 =  
27 Cr. L. J. 1089 = 97 I. C. 353 =  
A. I. R. 1926 Cal. 1051.

—Where in a case under S. 147 regarding a dispute about water-course a witness stated that there would be a fight if the other party would demolish a certain bund.

*Held*, that there was sufficient material for a Magistrate to hold that there was a danger of the breach of the peace and the proper course to adopt would be to place both sides on security under S. 107 of the Cr. P. Code and leave them to have their rights settled by the Civil Courts. (*Broadway, J.*) *AHMAD DIN v. JIWAN*. 27 Cr. L. J. 801 = 95 I. C. 465 =

A. I. R. 1926 Lah. 550.

**—Proprietor not added.**

Order under S. 147 against the gomashtha of a proprietor is not illegal, and the omission to add the proprietor as a party to the proceeding is a mere irregularity, or at the most an error of law and does not render the proceedings illegal, especially when the gomashtha files written statement on behalf of the proprietor and con-

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tests on his behalf. (*Kulwant Sahay, J.*) CHHA-  
KAURI LAL v. ISHER SINGH. 91 I.C. 814 =  
6 P.L.T. 799 = 27 Cr.L.J. 142 =  
A.I.R. 1926 Pat. 196.

**—Conversion of proceedings under S. 145 into one under S. 147.**

Where proceedings are instituted under S. 145 on the basis of a police report which states that there is an imminent risk of a breach of the peace, but the Magistrate afterwards discovers that the question at issue is not one of possession under S. 145, but is one as to rights falling under S. 147, he can convert the proceedings into proceedings under S. 147. (*Greaves and Panton, J.J.*) ANATH BANDHU NUNDY v. WAHID ALI PRAMANIK.

85 I.C. 654 = 26 Cr.L.J. 558 =  
A.I.R. 1925 Cal. 1022.

**—Amendment without notice.**

Where the Court amended the proceedings which related originally only to a portion of a pathway, by making them applicable to the whole pathway without notice to the party affected.

*Held*, that the final order was not binding on the party affected. (*Greaves and Panton, J.J.*) JANKI NATH KUNDU PAL v. MONMOHAN DE.

81 I.C. 162 = 25 Cr. L. J. 674 =  
A.I.R. 1925 Cal. 263.

**—Ex parte evidence of second party—No opportunity to first party.**

If Magistrate comes to the conclusion that there is no likelihood of a breach of the peace and therefore no action need be taken either under S. 144 or under S. 147, Cr. P. Code, he would be justified in doing so. Where a Magistrate disposes of the matter by taking evidence *ex parte* by going over to the office of the second party and making enquiries in the absence of the petitioners and without giving them an opportunity of adducing their own evidence and examining witnesses and coming to a distinct finding as to the alleged right of easement set up by the petitioners and comes to the conclusion that the right is with the second party and that if the petitioners go upon the land they do so at their own risk.

*Held*, in effect, he makes an order in favour of the second party under S. 147 and prevents the petitioners from going upon the land. Such a procedure is wholly unjustifiable and order must be set aside. (*Kulwant Sahay, J.*) NARENDRA NATH SARKAR v. EAST INDIAN RAILWAY.

77 I.C. 807 = 5 P.L.T. 419 =  
2 Pat. L.R. Cr. 209 = 25 Cr. L. J. 455 =  
A.I.R. 1924 Pat. 717.

**—S. 147—Revision.****—Finding of fact.**

Finding of fact under S. 147 cannot be traversed by revisional proceedings, and as indicated by Sub-S. (4) the aggrieved party should seek his remedy in the Civil Court. (*Jackson, J.*) KHAZI MAHOMED KHAN, *In re*.

22 M.L.W. 831 = A.I.R. 1926 Mad. 154.

**—S. 147—Right of easement.****—Magistrate need not find that easement is established.**

As to the right of the person to the flow of water down a channel, it is not necessary for the Magistrate to find that a right of easement strictly so-called is established. All that he has to find is that the person has been for long time using the water flowing down the channel and has in fact used it during the last season. (*Pandit, J.*) (KANTA) VENKANNA v. (INUGANTI)

**CR. P. CODE (1898), S. 148—Costs.**

VENKATA SURYA NEELADRI. 129 I. C. 68 =  
32 Cr.L.J. 215 = 32 M.L.W. 175 =  
1930 M.W.N. 987 = 1930 Cr. C. 1171 =  
A.I.R. 1930 Mad. 865 = 59 M.L.J. 430.

**—S. 148—Costs.**

Order under S. 148 for costs must be made by the Magistrate who tried the case under S. 145 and the application for costs must be made within a reasonable time. 24 C.W.N. 672, Foll. (*Fazl Ali, J.*) MANGLU SAHU v. RAMDHANI TOMBOLI.

9 P.L.T. 835 = 30 Cr.L.J. 252 = 114 I.C. 193 =  
12 A.I.Cr.R. 212 = A.I.R. 1929 Pat. 93.

**—Actually incurred.**

The Magistrate can award costs to the successful party but such costs must be based on proper materials, namely, the actual costs incurred as pleader's fees and costs of witnesses. 1 P.L.T. 369, Foll. (*Fazl Ali, J.*) MANGLU SAHU v. RAMDHANI TOMBOLI.

9 P.L.T. 835 = 33 Cr.L.J. 252 = 114 I.C. 193 =  
12 A.I.Cr.R. 212 = A.I.R. 1929 Pat. 93.

**—Order allowing withdrawal or staying proceedings under S. 145—Costs can be awarded.**

An order permitting the withdrawal of proceedings, and more so a final irrevocable order staying proceedings instituted under S. 145 of the Code after the Magistrate has assumed jurisdiction under that section, is an order falling within the purview of Sub-S. 5 of that section, and as such decision under that section within the meaning of S. 148. It is a decision by him that no such dispute has existed or exists, as to give him jurisdiction to continue the proceedings. There is nothing in Sub-S. (5) to prevent a Magistrate in arriving at the decision without recording any evidence whatsoever; and it is equally within his competence to rely upon information recorded by him from any source whatsoever including that contained in a statement made by any party to the proceedings. 9 M.L.T. 324, Diss. from; 30 Cal. 112 and 20 Cal. 867, Kel. on. Where, therefore, a Magistrate has permitted the withdrawal of the proceedings or has made an order staying proceedings altogether, it may fairly be assumed that he has acted on such implied admission and has decided under Sub-S. (5) of S. 145 that no disputes exist which would give him jurisdiction to continue the proceedings and that he is, therefore, competent to award costs. (*Rupchand Bilaram and DeSouza, A. J. Cs.*) RELUMAL v. PHERUMAL.

22 S.L.R. 386 = 29 Cr. L.J. 857 = 111 I.C. 441 =  
A.I.R. 1928 Sind 193.

The applicant induced the Magistrate to assume jurisdiction under Chap. XII, Cr. P. Code, when he had no such jurisdiction.

*Held*, in consequence of his unlawful act he could be made to pay the costs incurred by the other side. (*Rupchand Bilaram and DeSouza, A. J. Cs.*) RELUMAL v. PHERUMAL. 22 S.L.R. 386 = 111 I.C. 441 =  
29 Cr. L. J. 857 = A.I.R. 1928 Sind 193.

**—Only a party liable.**

A Magistrate has no power to saddle any person with costs of a proceeding under S. 145. Person to be charged must be a party. (*Simpson, A.J.C.*) EMPEROR v. CHET KHAN.

27 Cr. L. J. 21 =  
91 I. C. 53 = A.I.R. 1926 Oudh 269.

**—Only trial Court and not High Court.**

An order as to costs under S. 148 is a discretionary order, and it is better that the discretion should be

**CR. P. CODE (1898), S. 148—Local inspection.**

exercised by the Court of trial, and not by the High Court, on incomplete materials in revision. (*Simpson, A.J.C.*) **EMPEROR v. CHET KHAN**, 27 Cr. L. J. 21 = 91 I. C. 53 = A. I. R. 1926 Oudh 269.

**—S. 148—Local inspection.****—Principles regarding.**

Section 148 clearly provides for local inspection whenever such enquiry is deemed necessary for the purposes of Chapter XII of the Code. Such enquiry can be made either by any Magistrate subordinate to the Magistrate before whom the case is pending or by that Magistrate himself. Although as a rule it is better to have such an investigation made by some other person, there is nothing in law to prevent the presiding Magistrate from making the investigation himself, provided he records what he saw and does not act upon hearsay evidence. It is a salutary principle of law that the finding of a Court must be based upon evidence duly recorded by it and not upon the impression formed by the judge on a local inspection of the locality. He can then in order to elucidate the evidence make a local inspection and the object of a local enquiry would be only with a view to understand the evidence actually adduced in the case. Moreover it is absolutely necessary that if a Magistrate makes a local enquiry he must make a note of what he saw and must place it on the record so that the parties may be in a position to know what impression the Magistrate had got by the local enquiry. (*Kulwant Sahay, J.*) **ABDUL HAMID v. HASAN RAZA**, 72 I. C. 951 = 4 P. L. T. 297 = 1 Pat. L. R. Cr. 195 = 24 Cr. L. J. 487 = A. I. R. 1923 Pat. 366.

**—S. 149—Interpretation.**

—Per *Sulaiman, J.*—'Interpose' connotes the idea of actively intervening and not merely a prohibition by word of mouth. (*Walsh, Ag. C. J. and Sulaiman, J.*) **KING-EMPEROR v. RAGHUNATH VENAİK**, 47 All. 205 = 22 A. L. J. 1049 = 26 Cr. L. J. 599 = 6 L. R. A. Cr. 1 = 85 I. C. 823 = A. I. R. 1925 All. 165.

**—S. 149—Scope.**

—Per *Sulaiman, J.*—To hold that under S. 149 a police officer can pass any oral order he thinks desirable, would be to hold that his word is law. If his powers were to be so wide, it would be unnecessary for the Magistrate or the police to take any precautionary measures in advance; it would be quite sufficient to send down a Sub-Inspector to the scene and let him pass all sorts of sweeping orders, disobedience of which will entail conviction. Such method, if sanctioned, would deprive the persons concerned of all opportunity to appeal to higher authorities, and they would have to submit to such orders at the peril of a prosecution. Such wide powers vested in a police officer would interfere unreasonably with the ordinary liberty of private citizens and could not have been contemplated to be within the scope of S. 149, Cr. P. Code. (*Walsh, Ag. C. J. and Sulaiman, J.*) **EMPEROR v. RAGHUNATH VENAİK**, 47 All. 205 = 22 A. L. J. 1049 = 26 Cr. L. J. 599 = 6 L. R. A. Cr. 1 = 85 I. C. 823 = A. I. R. 1925 All. 165.

**—S. 151—Emergency.**

—Arrest without emergency—Private defence—Right of.

If without any emergency for arrest contemplated by S. 151, a Police Officer arrests or attempts to arrest a per-

**CR. P. CODE (1898), S. 154—Admissibility in evidence.**

son, the arrest or the attempt to arrest is not only not strictly justifiable by law but is illegal and the person who is arrested or attempted to be arrested, is entitled to offer resistance. If further, such person apprehends hurt at the hands of armed constables sent for the arrest, and such constables use criminal force towards such person, who retaliates it causing them simple injury it cannot be said that he has exceeded his right of private defence. 24 Cal. 320 and A. I. R. 1926 Lah. 19, Rel. on. (*Zafar Ali and Bhide, J.J.*) **GAMAN v. EMPEROR**, 121 I. C. 734 = 31 P. L. R. 285 = 31 Cr. L. J. 294 = 1930 Cr. C. 396 = A. I. R. 1930 Lah. 348.

**—S. 151—Legality.****—Test—Emergency.**

If without any emergency for arrest contemplated by S. 151, a Police Officer arrests or attempts to arrest a person, the arrest or the attempt to arrest is not only not strictly justifiable by law but is illegal and the person who is arrested, or attempted to be arrested is entitled to offer resistance. If, further, such person apprehends hurt at the hands of armed constables sent for the arrest, and such constables use criminal force towards such person, who retaliates it causing them simple injury it cannot be said that he has exceeded his rights of private defence. 24 Cal. 320 and A. I. R. 1926 Lah. 19, Rel. on. (*Zafar Ali and Bhide, J.J.*) **GAMAN v. EMPEROR**, 121 I. C. 734 = 31 Cr. L. J. 294 = 31 P. L. R. 285 = 1930 Cr. C. 396 = A. I. R. 1930 Lah. 348.

**—Ch. XIV (Ss. 154 to 176)—Investigation.****—Condition necessary.**

Before there should be an investigation under Chap. XIV there must be an information given to an officer in charge of a police station and reduced to writing by him. (*Newbould and Mukerjee, J.J.*) **DARGAHI v. EMPEROR**, 88 I. C. 733 = 26 Cr. L. J. 1213 = 52 Cal. 499 = A. I. R. 1925 Cal. 831.

**—S. 154—Admissibility in evidence.**

—The proposition that, because a person of the party of the accused goes first to the Police Station and says that some of the complainant's party has committed an offence; the real complaint lodged later on under S. 154 against the accused must be kept off the record save on terms under S. 162, is one which cannot be judicially approved. (*Rankin, C. J. and C. C. Ghose, J.*) **OSMAN GANI MISTRY v. EMPEROR**, 125 I. C. 111 = 31 Cr. L. J. 771 = 1930 Cr. C. 130 = A. I. R. 1930 Cal. 130.

**—Limits of.**

Statements in first information report can be used for the purpose of corroborating or contradicting a witness but are inadmissible for the purpose of proving that the facts alleged therein are correct. 17 C. W. N. 1213; A. I. R. 1925 All. 303 and A. I. R. 1927 Cal. 17, Foll. (*Basley, C. J. and Pandarai, J.*) **SANKARALINGA TEVAN v. EMPEROR**, 53 Mad. 590 = I. R. 1930 Mad. 698 = 124 I. C. 508 = 31 Cr. L. J. 742 = 1930 M. W. N. 496 = 3 M. Cr. C. 100 = 1930 Cr. C. 632 = 31 M. L. W. 451 = A. I. R. 1930 Mad. 632 = 58 M. L. J. 397.

**CR. P. CODE (1898), S. 154—Admissibility in evidence.**

—Use of the first information report as if it were substantive evidence is illegal. (*Tek Chand, J.*) SHEOKARAN v. EMPEROR. 110 I. C. 590 = 10 A. I. Cr. R. 497 = 29 Cr. L. J. 734 = A. I. R. 1928 Lah. 923.

—A first information report can only be used to corroborate or contradict under the provisions of Ss. 157 and 145, Evidence Act, the person who makes it. It cannot be used as substantive evidence to contradict other persons. A. I. R. 1928 Lah. 17, Foll. (*Addison and Dalip Singh, J.J.*) GAMAN v. EMPEROR. 116 I. C. 187 = 11 L. L. J. 1 = 12 A. I. Cr. R. 453 = 30 Cr. L. J. 571 = A. I. R. 1928 Lah. 913.

**—Not substantive evidence.**

First information report is not substantive evidence and can only be properly used to corroborate or contradict the maker thereof. It cannot be used to contradict numerous other witnesses who are unanimous on a particular fact. A. I. R. 1928 Lah. 17, Ref. to. (*Addison and Coldstream, J.J.*) DHARAM SINGH v. EMPEROR. 9 A. I. Cr. R. 567 = 29 Cr. L. J. 343 = 108 I. C. 162 = A. I. R. 1928 Lah. 507.

—A statement made to the police after the police have commenced an investigation should not be treated as a first information and should be inadmissible except for the purposes mentioned in S. 162. 1 P. L. T. 491 and A. I. R. 1922 Pat. 535, Cons.; A. I. R. 1923 Pat. 550, Foll. (*Adami and Wort, J.J.*) HABIB KHAN v. EMPEROR. 29 Cr. L. J. 728 = 110 I. C. 584 = A. I. R. 1928 Pat. 634.

—It sometimes happens that after the first information has been laid against the accused, a counter-information is laid against the complainant or his party by a member of the accused's party who is not himself an accused. As this comes under S. 154 and must be reduced to writing and signed, it cannot come within S. 162. Whether it is admissible at the trial of the accused will depend upon the circumstances and must be decided under Evidence Act. The police cannot of course treat statements as informations unless they are really received as such and come truly and properly within S. 154. (*Rankin and Drival, J.J.*) AZIMADDY v. EMPEROR. 99 I. C. 227 = 44 C. L. J. 253 = 28 Cr. L. J. 99 = 54 Cal. 237 = A. I. R. 1927 Cal. 17.

**—Not substantive evidence.**

First information report is not substantive evidence by itself, but it can only be used under S. 157 as a previous statement to corroborate or contradict a statement made subsequently in Court. (*Shadi Lal, C. J. and Zafar Ali, J.*) CHOUGHATTA v. EMPEROR. 27 Cr. L. J. 121 = 91 I. C. 697 = A. I. R. 1926 Lah. 179.

—The first information report is not a substantive piece of evidence, it can be used merely by way of corroboration or as a contradiction and not any further. (*Sulaiman, J.*) CHITTAR SINGH v. EMPEROR. 85 I. C. 650 = 23 A. L. J. 14 = 47 All. 280 = 26 Cr. L. J. 554 = A. I. R. 1925 All. 303.

**CR. P. CODE (1898), S. 154—Contents.****—List of stolen property—Map prepared by police.**

A list of stolen property handed to a Police Officer in the course of investigation is not admissible in evidence and should not be placed before the jury. The admission of such a list however would not of itself vitiate the trial unless it is shown that the accused have been prejudiced by such admission. Where the names of certain persons are sent to the Police as being the names of those who are suspected of being concerned in the commission of an offence and the evidence of the person who supplied these names to the Police is challenged in Court, the list of names supplied by him is admissible in evidence to corroborate his statement. A map which contains upon it certain things which must have been supplied to the Police Officer by some person should not be admitted unless there had been the evidence of the person as to what he said to the officer and the evidence of the Police Officer as to what the person told him. (*Greaves and Panton, J.J.*) KALIA v. EMPEROR. 85 I. C. 723 = 26 Cr. L. J. 579 = A. I. R. 1925 Cal. 959.

—First information report is not substantive evidence of the facts recorded in them and a conviction cannot be based on such reports. They can be used to corroborate the witnesses who made them and are of value showing that they told the same story at the first possible occasion. If they tell a different story in Court, the report can be used to contradict them or discredit their testimony. But it is not legitimate for a Court, when witnesses tell a different story in the witness-box and contradict the report made by them, to discard the evidence given on oath and to rely on the report. (*Ryves, J.*) JAMALUDDIN v. KING-EMPEROR. 74 I. C. 716 = 24 Cr. L. J. 812 = A. I. R. 1924 All. 164.

**—S. 154—Contents.**

—There is nothing in law to the effect that a first information report must give every detail or any detail. It should be sufficient to induce the police to leave the police station and investigate the affair. (*Addison and Dalip Singh, J.J.*) GAMAN v. EMPEROR. 116 I. C. 187 = 11 L. L. J. 1 = 12 A. I. Cr. R. 453 = 30 Cr. L. J. 571 = A. I. R. 1928 Lah. 913.

**—Omission of names of witnesses.**

The mere fact that in the first information report the names of the witnesses, who ultimately support the prosecution, are not given, is not a matter which would throw suspicion upon the story for the prosecution. (*Shadi Lal, C. J. and Agha Haidar, J.*) CHANDU v. EMPEROR. 108 I. C. 370 = 29 Cr. L. J. 378 = A. I. R. 1928 Lah. 657.

—Every detail need not be given in the first report to the police, which is not substantive evidence. (*Addison and Skemp, J.J.*) EMPEROR v. IBRAHIM. 105 I. C. 807 = 8 Lah. 605 = 28 P. L. R. 649 = 28 Cr. L. J. 983 = 9 A. I. Cr. R. 132 = A. I. R. 1928 Lah. 17.

—Where the first information report was made by one not an eye-witness of the affair, and he based his report upon third-hand information, and the report itself did not profess to mention the names of all the culprits, and did not definitely state even the number of the persons who came to the house of the deceased, the omission of the names of some persons cannot be



**CR. P. CODE (1898), S. 154—Contents.**

regarded as an adequate ground for distrusting an eyewitness's deposition to the contrary. (*Shadi Lal, C. J. and Addison, J.*) *KARMAN v. EMPEROR.*

93 I. C. 1040 =  
27 Cr. L. J. 544 = A. I. R. 1926 Lah. 369.

—*Value.*

Where complainant previously knew the accused and in the first information report their names are mentioned not as persons who were identified at the spot but only as suspects whose conversation asking others to come that night was overheard the evening before, the inclusion of their names in the first information report, carries no weight. (*Addison, J.*) *MANGAL SINGH v. EMPEROR.* 93 I. C. 892 = 27 Cr. L. J. 492 (Lah.).

**—S. 154—First information.**

—A first information under S. 154 is not a statement within S. 162, which is inadmissible in evidence. A. I. R. 1927 Cal. 17, Rel. on: such a statement though not substantive evidence can be used to corroborate or contradict its author. 17 C. W. N. 1213, Foll. (*Kinkhede, A. J. C.*) *MOHAMMAD IBRAHIM v. EMPEROR.* 112 I. C. 902 = 30 Cr. L. J. 38 =

11 A. I. Cr. R. 526 = A. I. R. 1929 Nag. 43.

—A statement made to the Police after the police have commenced an investigation should not be treated as a first information and should be inadmissible except for the purposes mentioned in S. 162. 1 P. L. T. 491 and A. I. R. 1922 Pat. 535, Cons.; A. I. R. 1923 Pat. 550, Foll. (*Adami and Wort, J.J.*) *HABIB KHAN v. EMPEROR.* 110 I. C. 584 = 29 O. L. J. 728 =

A. I. R. 1928 Pat. 634.

—A *ruqa* drawn up by a police officer during investigation embodying the substance of the report of the complainant previously made and some result of the investigation made by him and neither signed nor thumb-marked by the complainant cannot fall within the definition of "first information." (*Shadi Lal, C. J. and Zafar Ali, J.*) *CHOGHATTA v. EMPEROR.*

91 I. C. 697 = 27 Cr. L. J. 121 =  
A. I. R. 1926 Lah. 179.

—A statement made by a witness during investigation after the police officer has actually arrived on the scene and himself seen what has happened, is not first information. (*Sulaiman, J.*) *CHITTAR SINGH v. EMPEROR.* 85 I. C. 650 = 23 A. L. J. 14 = 47 All. 280 =

26 Cr. L. J. 554 = A. I. R. 1925 All. 303.

—A statement made by the accused implicating himself and others cannot be called 'first information report' so far as he is covered. (*Walsh, J.*) *SUBEDAR v. EMPEROR.* 77 I. C. 890 = 4 L. R. A. Cr. 210 =

25 Cr. L. J. 490 = A. I. R. 1924 All. 207.

**—S. 154—'Information.'**

—*What is.*

A statement by a witness to the police officer in the course of an investigation under Ch. 14 of the Cr. P. Code and recorded under S. 161 Cr. P. Code is not information given to the Police under S. 154 and, therefore, even if it is false, the witness is not liable to be prosecuted under Penal Code S. 182. Rat. Un. Cr. C. 124 Ref. (*Maung Ba, J.*) *SULTAN v. C. DE M. WELBOURNE*

90 I. C. 316 = 26 Cr. L. J. 1532 =  
4 Bur. L. J. 261 = 3 Rang. 577 =

A. I. R. 1925 Rang. 364.

**—S. 154—Officer in charge.**

—Assistant Sub-Inspector on duty in mofussil during investigation is not officer-in-charge of the police station for purposes of S. 154, when the first information report is made to him unless he comes within the strict terms of S. 4. (*C. C. Ghose and Jack, J.J.*) *MOMIN TALUQDAR v. EMPEROR.* 117 I. C. 601 =

30 Cr. L. J. 803 = A. I. R. 1928 Cal. 771.

**CR. P. CODE (1898), S. 15 —Private complaint.****—S. 154—Prosecution.**

—*Bound to produce—But not bound by it.*

The prosecution is bound by practice to produce in Court the First Information Report made to the police but it is not bound to refrain from leading evidence that the report is not accurate. To hold that the prosecution is tied down tightly to the words of the First Information Report would recognise the recording officer as possessing an authority which in no way belongs to him and would be more dangerous. (*Campbell, J.*) *RAJA v. EMPEROR.* 77 I. C. 817 = 25 Cr. L. J. 465 =  
A. I. R. 1924 Lah. 591.

**—S. 154—Telegram.**

—A telegram sent to the police that an offence has been committed is not a document referred to in S. 154. (*Phillips and Madhavan Nair, J.J.*) *PUBLIC PROSECUTOR v. CHIDAMBARAM.* 110 I. C. 461 =

28 M. L. W. 187 = 10 A. I. Cr. R. 388 =

1 M. Cr. C. 159 = 29 Cr. L. J. 717 =

A. I. R. 1928 Mad. 791 = 55 M. L. J. 231.

**—S. 155—Complaint.**

—Application requiring sanction of the Court for making an investigation under S. 155 (2) is not a complaint. (*Mirza and Broomfield, J.J.*) *In re, SHIVLINGAPPA BHAGAPPA.* 32 Bom. L. R. 782 =

1930 Cr. C. 891 = A. I. R. 1930 Bom. 372.

**—S. 155—Investigation, powers of.**

—A police officer while he is holding an investigation on a charge of house trespass in the house of A, has no right to enter the house of A's neighbour B, and if he so enters the house of another person he is not acting in the discharge of his duty as such public officer. The only authority which a police officer making an investigation has to enter a house without a search warrant is when he has reasonable grounds for believing that anything necessary for purposes of an investigation into any offence, which he is authorised to investigate, may be found in any place within the limits of the police station of which he is in charge. (*Dalal, J.*) *JAGANNATH v. EMPEROR.*

107 I. C. 688 = 9 A. I. Cr. R. 102 =

9 L. R. A. Cr. 13 = 26 A. L. J. 410 =

29 Cr. L. J. 272 = A. I. R. 1928 All. 185.

**—S. 156—Order directing enquiry.**

—*When to be passed.*

If a Magistrate asks the police to make an enquiry under S. 156 (3) after he has issued process to the accused, his order is without jurisdiction and the police enquiry started under such an order is illegal. (1911) 2 M. W. N. 74, Foll. But the mere fact that the Magistrate orders issue of process to complainant, accused and prosecution witnesses, does not take away from him the power to direct the police to enquire into the case. (*Devadoss, J.*) *S. VIJAYARAGHAVACHARIAR v. EMPEROR.* 114 I. C. 365 = 1 M. Cr. C. 341 =

30 Cr. L. J. 326 = A. I. R. 1928 Mad. 1268.

**—S. 156—Private complaint.**

—*No ouster of power of police to enquire.*

The mere fact that a private complaint is filed in a Court and the Magistrate takes cognizance of the private complaint does not and cannot deter the police from enquiring into the offences which have been committed and which come to their knowledge not from the complainant party but on information which they secure in the course of their duty from other persons. A charge sheet then framed by the police is proper and the mere fact that there was a private complaint does not take away the rights of the police to conduct the prosecution. (*Devadoss, J.*) *VIJAYARAGHAVACHARIAR v. EMPEROR.* 114 I. C. 365 = 30 Cr. L. J. 326 =

1 M. Cr. C. 341 = A. I. R. 1928 Mad. 1268.

## CR. P. CODE (1898).

## —S. 157—Preliminary inquiry.

## —Powers of Magistrates.

Where the case comes before a first class Magistrate, under the provisions of Ss. 157 and 159 of the Cr. P. Code he can depute a Sub-Deputy Magistrate to hold an investigation or a preliminary inquiry. The latter can also under the provisions of S. 164, Sub-S. (1) record a statement of a witness made before him in the course of the police investigation and therefore this is admissible as a statement made in the course of an investigation. (*Sanderson, C. J. and Chotner, J.*) **HARENDRA NATH v. EMPEROR.** 84 I. C. 451=40 C. L. J. 313=26 Cr. L. J. 307=A. I. R. 1925 Cal. 161.

## —S. 160—Accused.

—A police officer has no power to require the attendance of or to examine under Ss. 160 and 161 a person accused of the offence under investigation. 4 Bom. L. R. 644, and 27 Cal. 295, Appr. (*Rutledge, C. J., Heald, Duckworth, Chari and Mung Ba, J.J.*) **EMPEROR v. NGA THA DIN.** 96 I. C. 145=4 Rang. 72=5 Bur. L. J. 30=27 Cr. L. J. 881=A. I. R. 1926 Rang. 116 (F. B.).

## —S. 160—'Any person'.

## —Meaning.

The expression "any person" used in Ss. 160, 161 and 162 has one and the same meaning and denotes one and the same class of persons. That class is described with sufficient accuracy in S. 160, in which the expression is for the first time used. Every person belonging to that class must be a person who is within the limits of the station of the police officer making the investigation, or in an adjoining station, who from the information given or otherwise appears to be acquainted with the circumstances of the case and who is bound to attend on an order in writing being issued to him by the said officer. An accused person who is in police custody cannot fall under this class of persons, for the simple reason that the question of a summons being issued to him and of the obligation to attend cannot possibly arise in his case, he being in police custody. (*Pri deaux, Kinkhede and Kolhatkar, A. J. Cs.*) **GOLA v. EMPEROR.** 114 I. C. 273=24 N. L. R. 158=30 Cr. L. J. 258=12 A. I. Cr. R. 177=A. I. R. 1929 Nag. 17 (F. B.).

## —S. 160—Applicability—Accused.

—Sections 160, 161 and 162 do not apply to an accused person and do not affect or override S. 27 of the Evidence Act, which applies only to information received from a person accused of any offence in the custody of a police officer. A. I. R. 1926 Pat. 232, and A. I. R. 1925 Mad. 574; Appr. (*Rutledge, C. J., Heald, Duckworth, Chari and Maung Ba, J.J.*) **EMPEROR v. NGA THA DIN.** 96 I. C. 145=4 Rang. 72=5 Bur. L. J. 30=27 Cr. L. J. 881=A. I. R. 1926 Rang. 116 (F. B.).

## —S. 161—'Any person'.

—The expression "any person" in S. 161 refers to a witness and not to the person who is accused of the offence. (*Rupchand Bilaram, A. J. C.*) **UMER DURAZ MUNSHI v. EMPEROR.** 86 I. C. 410=19 S. L. R. 142=26 Cr. L. J. 778=A. I. R. 1925 Sind 237.

## —S. 161—Applicability.

—Where a driver of a motor car driving without a license, when asked for his name by the Superintendent of Police gave a wrong name.

*Held*, that the Superintendent of Police was not holding an investigation and the question put to the driver was not put under S. 161, Cr. P. Code, so as to give him benefit of S. 162. (*Allanson, J.*) *On difference between*

## CR. P. (CODE 1898), S. 162—Admissibility.

(*Adami and Wort, J.J.*) **EMPEROR v. LACHMAN SINGH.** 113 I. C. 587=7 Pat. 715=10 P. L. T. 244=30 Cr. L. J. 177=11 A. I. Cr. R. 597=A. I. R. 1929 Pat. 4.

## —Statement of witnesses.

Section 172 does not provide for the recording of statements of witnesses by Police during investigation. Any statements of witnesses that are so recorded, in whatever form these statements may be recorded, are recorded under S. 161, Cr. P. Code, and the defence have the right to ask for a copy of such statements and to use the statements for the purpose of contradicting the witnesses for the prosecution. (*C. C. Ghose and Cammiade, J.J.*) **SADHU SHAIKH v. EMPEROR.** 109 I. C. 355=32 C. W. N. 280=29 Cr. L. J. 531=A. I. R. 1928 Cal. 260.

—It is doubtful whether a statement to the police by the witness under S. 161 that he knew nothing about the occurrence is not a statement within the meaning of S. 161. (*Suhrawardy and Duval, J.J.*) **ASERUDDIN v. EMPEROR.** 100 I. C. 353=53 Cal. 980=28 Cr. L. J. 273=7 A. I. Cr. C. 417=A. I. R. 1927 Cal. 257.

## —S. 161—Statement of accused.

## —Admissibility.

Any incriminating statement made by an accused person at an inquiry held under S. 161, Cr. P. Code, would be excluded at the trial under S. 25 of the Evidence Act, as having been made to a Police officer, and as such of no material use at the trial. (*Rupchand Bilaram, A. J. C.*) **UMER DURAZ MUNSHI v. EMPEROR.** 86 I. C. 410=19 S. L. R. 142=26 Cr. L. J. 778=A. I. R. 1925 Sind 237.

## —S. 162—Cr. P. Code.

## Admissibility.

## Contradiction.

## Effect on Evidence Act.

## Extent of use.

## Granting copies.

## Object and scope.

## Oral statement.

## Police proceedings.

## Procedure.

## Proof.

## Scope.

## Stage for copies.

## Statements of accused.

## Use against accused.

## Miscellaneous.

## —S. 162—Admissibility.

—The accused was charged under S. 46, Excise Act. A statement was made by his co-accused to the Excise Inspector to the effect that as soon as the Excise Inspector came, there was a man with him who ran away.

*Held*, that it was not a statement made to the police officer in course of investigation under Ss. 160 and 170, Cr. P. Code, and was not inadmissible in evidence. Nor was the statement reduced to writing so as to be inadmissible under S. 162, Cr. P. Code. Even if the statement was taken as confession under S. 25, Evidence Act, S. 162, Cr. P. Code did not apply in cases of accused persons. A. I. R. 1927 Cal. 17, Rel. on. (*Suhrawardy and Costello, J.J.*) **TURA SADAR v. EMPEROR.** 52 C. L. J. 177=1930 Cr. C. 1110=A. I. R. 1930 Cal. 710.

## —List of stolen ornaments.

Where during a search, ornaments were found on the person of the accused's wife, and it was alleged that they were the ornaments stolen during the dacoity and a list handed over to the investigating police officer during

**CR. P. CODE (1898), S. 162—Admissibility.**

the course of investigation included the ornaments.

*Held*, that the list being a statement within the meaning of S. 162, Cr. P. Code, was clearly inadmissible and its admission having caused misdirection, the verdict of the Jury and the sentence of the accused should be set aside. (*C. C. Ghose and B. B. Ghose, J.J.*) **FULBASH SHEIKH v. EMPEROR.** 120 I. C. 458=

1929 Cr. C. 71=31 Cr. L. J. 127=  
A. I. R. 1929 Cal. 448.

**—Remarks of Police officer.**

The police officer in charge of an investigation is not debarred from making explanatory remarks in reference to his own conduct even though it may inferentially have reference to the statements made by witnesses; and their admissibility in evidence is not to be questioned. (*Rankin, C. J. and C. C. Ghose, J.*) **TOTA MEAH v. EMPEROR.** 119 I. C. 139=56 Cal. 1106=

30 Cr. L. J. 1015=A. I. R. 1929 Cal. 298.

**—Police evidence as to identification.**

Evidence of police officers who give evidence with regard to the identification parades which were held and who depose to certain of the accused having been identified by prosecution witnesses in an identification parade is not inadmissible in evidence under S. 162, as their evidence does not relate to any statement made to the police but is a simple exposition of a fact or circumstances witnessed by themselves. (*Findlay, J.C.*) **RAMADHIN BRAHMIN v. EMPEROR.**

29 Cr. L. J. 963=112 I. C. 51=  
11 A. I. Cr. R. 302=A. I. R. 1929 Nag. 36.

**—Approver's statement before pardon.**

Statement made by an approver to the police before he is tendered a pardon, is a previous statement of a witness and it can be used either to corroborate him or to contradict him under the ordinary provisions of the Evidence Act and therefore the accused is entitled to have a copy of such statement. (*Harrison and Dalip Singh, J.J.*) **HAZARA SINGH v. EMPEROR.**

9 Lah. 389=108 I. C. 167=29 Cr. L. J. 348=  
9 A. I. Cr. R. 559=A. I. R. 1928 Lah. 257.

**—Test.**

So far as authenticity goes, a telegram stands in no better position than village gossip. There is no guarantee that a telegram received has actually been sent by the person who purports to send it and it undoubtedly would be the duty of the police officer on receiving the telegram that an offence has been committed, to verify the fact that it was really sent as it purports to have been sent. Where the police officer went to the place from which the telegram was sent and examined the person by whom it purported to have been sent and he confirmed the fact of sending it and gave other details of the offence which he alleged to have been committed.

*Held*, that the statement of the person examined cannot be said to be a statement taken in the course of the investigation within S. 162, and was therefore, admissible in evidence. 1 M. L. W. 355, and A.I.R. 1925 Cal. 831, Rel. on. (*Phillips and Madhavan Nair, J.J.*) **PUBLIC PROSECUTOR v. CHIDAMBARAM.**

28 M. L. W. 187=10 A. I. Cr. R. 388=  
1 M. Cr. C. 159=29 Cr. L. J. 717=110 I. C. 461=  
A. I. R. 1928 Mad. 791=55 M. L. J. 231.

—A statement made to the police after the police have commenced an investigation should not be treated as a first information and should be inadmissible except for the purposes mentioned in S. 162. 1 P. L. T. 491 and A.I.R. 1922 Pat. 535, Cons.; A.I.R. 1923 Pat. 550, Foll. (*Adami and Wort, J.J.*) **HABIB KHAN v. EMPEROR.** 110 I. C. 584=29 Cr. L. J. 728=

A. I. R. 1928 Pat. 634.

**—Limits.****CR. P. CODE (1898), S. 162—Contradiction.**

Section 162 does not prohibit the use of statements, made by any person to a police officer in the course of an investigation under Ch. 14 of that Code, in proceedings under S. 476 of the Code, in cases where the alleged offence which is under consideration in the proceedings under S. 476 was not under investigation at the time when the statements were made. (*Heald and Maung Ba, J.J.*) **U. HTIN GYAW v. KING-EMPEROR.**

5 Rang. 26=6 Bur. L. J. 32=101 I. C. 465=  
28 Cr. L. J. 433=8 A. I. Cr. R. 22=  
A. I. R. 1927 Rang. 113.

—Section 162, Cr. P. Code, is clear enough to exclude any statement to police made by any person and directs that such statement shall not be used for any purpose. (*Suhrawardy and Pantion, J.J.*) **BHAGIRATHI CHOWDHURY v. EMPEROR.** 30 C. W. N. 142=

27 Cr. L. J. 222=92 I. C. 174=A. I. R. 1926 Cal. 550

—Under S. 162 no statement or any record thereof whether in a police diary or otherwise or any part of such statement made by any person to a police officer in the course of an investigation under Chapter 14 is inadmissible as evidence except as provided in the second paragraph of that section. (*Newbould and B. B. Ghose, J.J.*) **KERAMAT MONDAL v. EMPEROR.**

42 C. L. J. 524=27 Cr. L. J. 263=92 I. C. 439=  
A. I. R. 1926 Cal. 320.

—Under S. 162 no statement made to the police by "any person," whether accused or witness, during an investigation can be even mentioned in evidence except as under S. 162. (*Halifax and Kinkhede, A. J. Cs.*) **DADI LODHI v. EMPEROR.** 27 Cr. L. J. 731=

95 I. C. 59=A. I. R. 1926 Nag. 368.

—The provisions of S. 162 as amended absolutely bar the use of statements, both oral and written, and make those statements inadmissible for any purpose under the Evidence Act in any enquiry or trial except for one purpose, and that is by the accused to contradict a prosecution witness in the manner provided by S. 145, Evidence Act. A.I.R. 1925 Mad. 579, Diss. from. (*Rutledge, C. J. Heald, Duckworth, Chari and Maung Ba, J.J.*) **EMPEROR v. NGA THA DIN.**

4 Rang. 72=5 Bur. L. J. 30=27 Cr. L. J. 881=  
96 I. C. 145=A. I. R. 1926 Rang. 116 (F. B.).

—Statements made to the Investigating Sub-Inspector in the course of an investigation are inadmissible in evidence under S. 162 of the Code of Criminal Procedure. (*Sanderson, C. J. and Chotanar, J.*) **HARENDRA NATH v. EMPEROR.** 84 I. C. 451=

26 Cr. L. J. 307=40 C. L. J. 313=  
A. I. R. 1925 Cal. 161.

—Statements recorded by a Police officer under S. 162, cl. (1), are inadmissible in evidence at the trial of the offence under investigation at the time when those statements were made. (*Kincaid J. C. and Aston, A. J. C.*) **BAHADUR WALAD RANO KHASKHELI v. EMPEROR.** 88 I. C. 7=19 S. L. R. 71=

26 Cr. L. J. 1063=A. I. R. 1925 Sind 289.

—Under S. 162 as substituted by the Amendment Act of 1923 it is not permissible for statements to the police whether oral or written to be put in evidence in order to corroborate a prosecution witness or to contradict a defence witness. (*Shah, Ag. C. J. and Fawcett, J.*) **KING EMPEROR v. VITHI BALU.**

26 Bom. L. R. 965=26 C. L. J. 223=83 I. C. 1007=  
A. I. R. 1924 Bom. 510.

**—S. 162—Contradiction.****—Mode.**

Under S. 162 a statement made before the investigating officer can be used for the purpose of contradicting such witness when produced at the trial but after strict compliance with the provisions of S. 145, Evidence Act,

**CR. P. CODE (1898), S. 162—Contradiction.**

If the witness admits to have made the statement the previous statement in writing need not be proved. If he denies to have made any such statement and it is intended to contradict him the relevant portions of the record contrary to his statement in Court must be read to him and the witness should be given the opportunity to reconcile the same. It is only after this is done that the record of the previous statement becomes admissible in evidence for the purpose of contradicting the witness and can then be proved in any manner provided by law. (*Jai Lal and Bhole, J.J.*) **GOPI CHAND v. EMPEROR.**

126 I. C. 573 = 11 Lah. 460 = 31 P. L. R. 797 =  
31 Cr. L. J. 1071 = 1930 Cr. C. 603 =  
A. I. R. 1930 Lah. 491.

**—Only relevant portion evidence in the case.**

Only those portions of statements made by witnesses before the police as have been actually used under S. 162, Cr. P. Code, to contradict the witnesses in the manner provided in S. 145, Evidence Act, in the course of their cross-examination or re-examination are parts of the judicial record and can be treated as evidence in a case. The other parts of the statement cannot be relied upon by the prosecution or the defence in determining the guilt or innocence of the accused and should not be referred to by the Judge. (*Tek Chand and Agha Haidar, J.J.*) **MT. SBHAI v. EMPEROR.**

121 I. C. 66 = 31 Cr. L. J. 199 =  
1930 Cr. C. 553 = A. I. R. 1930 Lah. 449.

—Under S. 162, the entries made in the police diaries can be used only for the limited purpose of contradicting the evidence of the witnesses for the prosecution and only when such entries have been duly proved. References by a Magistrate to police proceedings cannot be justified even under S. 172. (*Shadi Lal, C. J. and Agha Haidar, J.*) **EMPEROR v. RAM RANG.**

10 A. I. Cr. R. 230 = 109 I. C. 221 =  
29 Cr. L. J. 493 = A. I. R. 1928 Lah. 820.

**—Mode.**

It is only what is written in the police diaries that can be used under S. 145, Evidence Act, to contradict the witness, and what the Police officer stated that a witness said or did not say, is inadmissible. The way to prove those portions of the written statement of a witness which have been specifically put to him in order to contradict him is for the accused to mark the passage or passages in the copy from the police diaries given to him and then to ask the writer of the statement to say that it is a true copy. (*Addison and Coldstream, J.J.*) **DHARAM SINGH v. EMPEROR.**

9 A. I. Cr. R. 567 =  
29 Cr. L. J. 343 = 108 I. C. 162 = A. I. R. 1928 Lah. 507.

—Statements made before the investigating Police Officers cannot be used in any way except for the limited purpose of contradicting the testimony of the prosecution witnesses produced at the trial. (*Efforde and Jai Lal, J.J.*) **HAYAT v. EMPEROR.**

29 Cr. L. J. 282 =  
107 I. C. 766 = 10 L. L. J. 389 =  
A. I. R. 1928 Lah. 380.

**—What amounts to.**

Where an accused is not allowed to cross-examine a witness with reference to certain omissions in his statement to the police and statement in Court, it must be left to the Court in each particular case to decide whether the omission amounts to a contradiction or not. A. I. R. 1926 Pat. 362, Diss. from. (*Harrison and Dalip Singh, J.J.*) **HAZARA SINGH v. EMPEROR.**

9 Lah. 389 = 9 A. I. Cr. R. 559 = 29 Cr. L. J. 348 =  
108 I. C. 167 = A. I. R. 1928 Lah. 257.

**—Mode.**

The only way a witness can be contradicted by statements made to the police under the provisions of S. 162, Cr. P. Code, is to prove his written statement and put

**CR. P. CODE (1898), S. 162—Effect on Evidence Act.**

it to the witness under S. 145, Indian Evidence Act, to permit him to explain the contradictions, if any. Statements made to the police cannot be used at a trial in any other way. (*Addison and Skemp, J.J.*) **EMPEROR v. IBRAHIM.**

8 Lah. 605 = 28 P. L. R. 649 =  
105 I. C. 807 = 28 Cr. L. J. 983 = 9 A. I. Cr. R. 132 =  
A. I. R. 1928 Lah. 17.

**—Statement in diary.**

Statements attested by the Sub-Inspector concerned, although recorded in his diary, are recorded under S. 162 and can be used for the purpose of contradicting witnesses in cross examination. (*Wasir Hasan and Pullan, J.J.*) **JADUNANDAN BRAHMAN v. EMPEROR.**

2 Luck. 605 = 4 O. W. N. 699 = 104 I. C. 242 =  
28 Cr. L. J. 802 = A. I. R. 1927 Oudh 321.

—Under S. 162 as amended, statements made by any persons to a police officer in the course of an investigation under Chap. 14 shall not be used for any purpose except to contradict a witness at the request of the accused in the manner provided in the second paragraph of the section. (*Newbould and B. B. Ghose, J.J.*) **GAHUR HOWLدار v. EMPEROR.**

30 C. W. N. 503 =  
27 Cr. L. J. 641 = 9 I. C. 593 = A. I. R. 1926 Cal. 793.

—Statements made by witnesses to the police officer during the course of investigation under Chapter 14 cannot be used by the Court for contradicting those witnesses. (*N. R. Chatterjea and B. B. Ghose, J.J.*) **KERAMAT MANDAL v. EMPEROR.**

42 C. L. J. 528 =  
27 Cr. L. J. 277 = 92 I. C. 453 = A. I. R. 1926 Cal. 147.

—What can be contradicted.  
S. 158 of Evidence Act, places a person whose statement has been used as evidence under S. 32 in the same category as a witness actually produced in Court for the purpose of contradicting his statement by a previous statement made by him. Therefore a statement which has been admitted in evidence under S. 32 may be contradicted by another statement of the same person made to police during investigation. (*Harrison and Jai Lal, J.J.*) **HARI RAM v. EMPEROR.**

26 Cr. L. J. 1425 =  
89 I. C. 897 = A. I. R. 1926 Lah. 122.

—Omissions can be proved.  
To construe S. 162 as meaning that while any part of the statement of a witness to the police may be used to contradict him, yet if the contradiction consists in this that a statement made at the trial was not made in any part of the statement to the police, such a contradiction cannot be proved, seems to be an artificial construction and cannot be adopted. A. I. R. 1926 Patna 20 Dissented. (*Ross and Foster, J.J.*) **ILTA KHAN v. EMPEROR.**

5 Pat. 346 = 7 P. L. T. 634 = 27 Cr. L. J. 796 =  
95 I. C. 396 = A. I. R. 1926 Pat. 362.

—Mode.  
The provisions of S. 162 do not prevent the prosecution, after a witness has made a statement, from asking him simply whether he made that statement to the police, or when a witness has made a statement in his evidence, from asking the Police Officer whether in fact the witness had made that statement to him. (*Adami and Bucknill, J.J.*) **GUHI MIAN v. EMPEROR.**

93 I. C. 988 = 4 Pat. 204 = 27 Cr. L. J. 524 =  
A. I. R. 1925 Pat. 450.

**—S. 162—Effect on Evidence Act.**

—The provisions of S. 27, Evidence Act, are quite independent of those of S. 162, Cr. P. Code, and the amended S. 162, does not repeal or in any way affect S. 27. A. I. R. 1926 Rang. 116 (F.B.); A. I. R. 1926 Lah. 88; A. I. R. 1925 Mad. 574 and A. I. R. 1928 Nag. 108, Appr. A. I. R. 1927 Cal. 17; A. I. R. 1926 Pat. 232; A. I. R. 1925 Rang. 101 and A. I. R. 1926 Rang. 116 (F.B.), Ref.; A. I. R. 1926 Nag. 368, Diss. from. (*Prideaux*

**CR. P. CODE (1898), S. 162—Effect on Evidence Act.**

*Kinkhede and Kolhatkar, A.J.Cs.*) **GOLA v. EMPEROR.**  
 24 N.L.B. 158 = 114 I.C. 273 = 30 Cr.L.J. 258 =  
 12 A. I. Cr. R. 177 = A. I. R. 1929 Nag. 17 (F.B.).

Section 27, Evidence Act, is not affected by S. 162 Cr. P. Code, but S. 162 is affected by S. 27, Evidence Act. The result is that a special exemption to S. 162, Cr. P. Code, exists in the circumstances mentioned in S. 27, Evidence Act. A.I.R. 1926 Rang. 116 (F.B.), Rel. on. (*Ramesam, Waller and Jackson, J.J.*)  
**CHINNA THIMAPPA v. TALUKUNTA THIMMAPPA.**

51 Mad. 967 = 29 Cr. L. J. 1098 =  
 112 I.C. 682 = 28 M. L. W. 314 =  
 1 M. Cr. C. 201 = A.I.R. 1928 Mad. 1028 =  
 55 M. L. J. 351.

S. 27, Evidence Act is not repealed by S. 162, Cr. P. Code. A. I. R. 1926 Rang. 116 (F.B.), Foll. (*Findlay, J. C. and Macnair, A. J. C.*) **SHEOKALAK PRASAD v. EMPEROR.**

11 N. L. J. 7 = 9 A. I. Cr. R. 408 =  
 29 Cr. L. J. 400 = A. I. R. 1928 Nag. 108.

S. 162 of the Cr. P. Code overrides the provisions of S. 27, Evidence Act. (*Kotwal, A. J. C.*)  
**BHAGIA v. KING EMPEROR.**

100 I. C. 820 =  
 28 Cr. L. J. 340 = 7 A. I. Cr. R. 575 =  
 A. I. R. 1927 Nag. 203.

The provisions of S. 165 cannot be used in contravention of S. 162 of the Cr. P. Code. (*Otter, J.*)  
**MAUNG HTIN GYAW v. MAUNG PO SEIN.**

99 I. C. 1019 = 4 Rang. 471 = 28 Cr. L. J. 219 =  
 7 A. I. Cr. R. 373 = A. I. R. 1927 Rang. 74.

S. 162 applies to the statements of persons examined as witnesses by the police in the course of investigation and not to the statement of an accused person and it does not override or modify the provisions of S. 27 of the Evidence Act. (*Shadi Lal, C. J. and Addison, J.*) **RANNUN v. KING EMPEROR.**

94 I. C. 901 =  
 7 Lah. 84 = 27 Cr. L. J. 709 = 27 P. L. R. 583 =  
 A. I. R. 1926 Lah. 88.

S. 162 of the Cr. P. Code must be taken as overriding S. 27 of the Evidence Act. (*Doyle, J.*)  
**EMPEROR v. NGA KYAING.**

94 I. C. 706 =  
 27 Cr. L. J. 658 = A. I. R. 1926 Rang. 112.

The amended S. 162 does not exclude from evidence the fact that the accused made a statement to the police that the weapon with which the crime had been committed was concealed in a prickly-pear bush. The section both before and after amendment, is directed against the admission, at the instance of the prosecution of Police diaries and other records prepared or copied from the diaries of investigating officers. The provisions of the Evidence Act are quite independent of the sections in the Cr. P. Code and cannot be treated as impliedly repealed in consequence of the amendment of the Code of Criminal Procedure. (*Spencer, O. C. J. and Reilly, J.*) **SEMALAI GOUNDAN, In re.**

86 I. C. 664 = 26 Cr. L. J. 840 = 21 M. L. W. 199 =  
 A. I. R. 1925 Mad. 574.

S. 162 of the Cr. P. Code in its present form, overrides S. 27 of the Evidence Act. In determining whether the guilt of the accused has been proved it is necessary to ignore entirely all evidence which is held to be inadmissible under S. 162, Cr. P. Code. Conviction on the ground that the stolen property was discovered in consequence of a statement made by the accused to a Police-officer is bad. (*Baguley, J.*)  
**BAWA ROWTHER v. EMPEROR.**

84 I. C. 545 =  
 26 Cr. L. J. 321 = 3 Bur. L. J. 245 =  
 A. I. R. 1925 Rang. 101.

**—S. 162—Extent of use.**

—Standing by themselves, the police proceedings

**CR. P. CODE (1898), S. 162—Extent of use.**

are not substantive evidence in the case and cannot be used in order to test the correctness of the statements made by witness on oath before the Court. (*Shadi Lal, C. J. and Agha Haidar, J.*) **EMPEROR v. RAM RANG.**  
 109 I. C. 221 = 10 A. I. Cr. R. 230 =  
 29 Cr. L. J. 493 = A. I. R. 1928 Lah. 820.

**—Inconsistency.**

Statements to the police are not evidence in themselves and the true question before the jury in case of inconsistency is whether the inconsistency in the statements did not make the evidence in Court unreliable. (*Ross and Wort, J.J.*) **TAJALI MIAN v. EMPEROR.**

104 I. C. 459 = 7 Pat. 50 = 28 Cr. L. J. 843 =  
 9 P. L. T. 57 = A. I. R. 1928 Pat. 31.

Under S. 162 no statement made by a witness to a police officer in the course of an investigation under Chap. 14 of the Code, if not reduced into writing can be used at the trial for any purpose whatsoever. It cannot be used either to corroborate or to contradict a witness, either for the benefit of the accused or against him. If such a statement had been reduced to writing, its use for any purpose whatsoever is also prohibited unless (a) it is the statement of a witness called for the prosecution (b) the Court has ordered the accused to be furnished with a copy, and (c) the written record of the statement has been duly proved. It may then be used within the limits set forth in the proviso to S. 162. (*Campbell and Addison, J.J.*) **BAHADUR SINGH v. EMPEROR.**

95 I. C. 467 = 7 Lah. 264 = 8 L. L. J. 174 =  
 27 Cr. L. J. 803 = 27 P. L. R. 379 =  
 A. I. R. 1926 Lah. 367.

A Magistrate is not justified in referring to the statements made in the police diaries unless and until the witnesses have been confronted by those statements. (*Harrison, J.*) **MUNICIPAL COMMITTEE, SIMLA v. MUKAND SINGH.**

94 I. C. 271 = 27 Cr. L. J. 607 =  
 A. I. R. 1926 Lah. 365.

**—Improper use.**

To believe the evidence of a witness because a perusal of the police diaries satisfied the Court that he was examined at the earliest opportunity and had made the same statement before the police is an improper use of the police diaries. (*Shadi Lal, C. J.*) **FAZAL v. EMPEROR.**

94 I. C. 358 = 27 Cr. L. J. 614 =  
 A. I. R. 1926 Lah. 363.

**—Strict compliance.**

A statement made by any person to a Police Officer in the course of a criminal investigation can only be used at the trial in strict accordance with the provisions of S. 162. (*Shadi Lal, C. J. and Fforde, J.*) **MOHAMMAD v. EMPEROR.**

89 I. C. 252 = 26 Cr. L. J. 1308 =  
 A. I. R. 1926 Lah. 54.

**—Limits cannot be used for corroboration.**

A statement by a person to the police in the course of the investigation of an offence cannot be used for any purpose at the trial of that offence except to contradict the evidence given at the trial by that person. In particular it cannot even if admitted to contradict, be used to corroborate the evidence of that person or to meet a suggestion of the defence. Where, however, the judgment of the lower appellate Court deals at length with the case of each of the petitioners independently of the inadmissible evidence and there is overwhelming direct and positive evidence against each accused and the accused have also not been prejudiced in any way, the infringement of the provisions of S. 162, Cr. P. Code, is under S. 167 of the Evidence Act, not a ground for a new trial or for the reversal of the decision of the lower Court. (*Macpherson and Sen, J.J.*) **RAMIYAD DASADH v. EMPEROR.**

95 I. C. 273 = 7 P. L. T. 673 =  
 1926 P. H. O. C. 13 = 27 Cr. L. J. 763 =

## CR. P. CODE (1898), S. 162—Extent of use.

## A. I. R. 1926 Pat. 211.

—According to the recently amended provisions of the Cr. P. Code statements of witnesses recorded by the investigating officer can only be used to assist the accused in particular by showing that a witness who in court deposes to certain facts has in such a statement at an earlier stage given an account or made statements which are contradictory to the testimony which he gives in Court. They cannot be used in cross-examining the witnesses not merely to show contradictions but at large for the purpose of showing that the statements did not corroborate or assist the story as put forward in the first information report. (*Bucknill and Macpherson, J.J.*) *BADRI CHOUDHURI v. EMPEROR.* 92 I. C. 874 = 6 P. L. T. 620 = 27 Cr. L. J. 362 =

## A. I. R. 1926 Pat. 20.

—When a Sub-Inspector does not remember what witnesses stated at the investigation and refuses to refresh his memory from the diaries, the Court should compel him to look into the diaries for the purpose of answering the question. (*Adami, J.*) *MOHIUDDIN KHAN v. KING-EMPEROR.* 2 Pat. L. B. Cr. 202 =

## A. I. R. 1924 Pat. 829.

—A Police statement can only be used for one purpose and that is by the accused to contradict a prosecution witness in the manner provided by S. 145 of the Evidence Act. (*Shah, Ag. C.J. and Faucett, J.*) *KING-EMPEROR v. VITHUBALU.* 83 I. C. 1007 =

## 26 Bom. L. R. 965 = 26 Cr. L. J. 223 =

## A. I. R. 1924 Bom. 510.

—Statements embodied in police diaries can be used in favour of an accused person, but not against him. (*Zafar Ali, J.*) *RAJINDAR SINGH v. THE CROWN.* 77 I. C. 489 = 25 Cr. L. J. 409 =

## A. I. R. 1923 Lah. 516.

## —S. 162—Granting copies.

## —Reason for refusal.

When witnesses for the prosecution *M* and *J* were examined, the accused's counsel asked for copies of the statements made by those witnesses to the police. On referring to the police diaries, the Court found that the statement of *J* was recorded jointly with another prosecution witness who was tendered for cross-examination but was not cross-examined.

*Held*, that the Court in the circumstances could refuse to supply a copy of the statement made to the police. *Lah. Cr. App. 1095 of 1924, Rel. on.* (*Zafar Ali and Johnstone, J.J.*) *BANTA SINGH v. EMPEROR.* 122 I. C. 491 = 31 Cr. L. J. 444 =

## 1930 Cr. C. 561 = A.I.R. 1930 Lah 457.

## —Magistrates opinion as to contradiction immaterial.

The copy of statement of a witness before police can only be refused, if the statement or statements contained therein are not relevant or their disclosure is not essential in the interests of justice or expedient to the public interests. The mere fact that the statement of the witness before the police does not in the opinion of the trying Magistrate contradict the evidence of the witness in the Court is no reason for refusing to grant the copy. (*Rupchand and Wild, A. J. Cs.*) *UMAR v. EMPEROR.* 1930 Cr. C. 617 = 123 I. C. 689 =

## 31 Cr. L. J. 592 = A. I. R. 1930 Sind 153.

—Per *Rankin, C.J.*—It is not the intention of the amended section that the Judge should consider whether a foundation has been laid by way of cross-examination before copies of statements can be granted: (*Obiter*) *A. I. R. 1927 Cal. 514, Doubt.* (*Rankin, C. J. and Buckland, J.*) *BAHARATI SARDAR v. EMPEROR.* 49 G. L. J. 197 = 116 I. C. 167 = 30 Cr. L. J. 580 =

56 Cal. 849 = 13 A. I. Cr. B. 8 = A.I.R. 1929 Cal. 182.

## CR. P. CODE (1898), S. 162—Granting copies.

## —Refusal entails remand.

If during the course of the trial after the charge is framed the accused desires to cross examine prosecution witnesses further and applies to the trying Magistrate to grant him copies of the statements made by the witnesses to the police during the investigation, the Magistrate should allow him such copies and should not pass judgment without disposing of such application, and if the appellate Court finds that the statements of witness were recorded in the diary he should remand the case and allow the copies to the accused. *A. I. R. 1929 Rang. 87, Rel. on.* (*Subhedar A. J. C.*) *RAGHYA v. EMPEROR.* 119 I. C. 675 = 30 Cr. L. J. 1097 = 1929 Cr. C. 264 =

## A. I. R. 1929 Nag. 240.

## —Court's opinion as to contradiction immaterial.

The Court cannot refuse to grant copies to the accused of the statements of prosecution witness, which have been previously reduced to writing, because on a perusal thereof it considers that there is no contradiction of the depositions recorded in Court. Although the statement previously recorded into writing may only be used to contradict a witness, the Court cannot, on that ground, refuse to grant a copy because there is apparently no contradiction. *A. I. R. 1928 Pat. 215, Ref.* (*Staples, A.J.C.*) *K. FASIUDDIN v. EMPEROR.* 117 I. C. 213 = 30 Cr. L. J. 728 = 1929 Cr. C. 47 =

## A. I. R. 1929 Nag. 172.

## —Court's opinion immaterial.

The language of S. 162 is mandatory and the Court has no power to refuse the application once it had been made unless the case comes under the second proviso to S. 162 and in his opinion the statement made by the witness is not relevant to the subject-matter of the inquiry or trial and that its disclosure to the accused was not essential in the interest of justice and was inexpedient in the public interest. There is nothing in S. 162 to authorize the Court to look into the statement in the police diaries for the purpose of finding out whether it is contradictory to the statement made in Court or not before granting the application. That is the function of the lawyer for the accused after a copy of the statement has been granted to him. *A. I. R. 1928 Pat. 215, Rel. on.*; *A. I. R. 1927 Cal. 514, Diss.* (*Courtney Terrell, C. J. and Fasl Ali, J.*) *JHARI GOPA v. EMPEROR.* 8 Pat. 279 = 10 P.L.T. 460 = 118 I. C. 130 = 30 Cr. L. J. 853 = 1929 Cr. C. 21 =

## A. I. R. 1929 Pat. 268.

## —Non-examination of witness—Refusal—Proper.

Where a witness was tendered by the prosecution but was discharged without being examined or cross-examined,

*Held*, that the application to furnish the accused with a copy of the statement made to the police by the witness was rightly refused. (*Jwala Prasad and Ross, J.J.*) *WAJID ALI v. EMPEROR.* 7 Pat. 153 =

## 10 P. L. T. 297 = 30 Cr. L. J. 273 = 114 I. C. 220 =

## A. I. R. 1929 Pat. 34.

—When the statement of a prosecution witness has been reduced into writing whether in a police diary or otherwise, the accused, under the new Code, is entitled to ask the Court to refer to it and to be furnished with a copy of it, 33 Cal, 1023, Dist. (*Darwood J.*) *SULAIMAN MAHAMED v. EMPEROR.* 6 Rang 672 = 115 I. C. 899 = 30 Cr. L. J. 538 = 12 A. I. Cr. B. 327 =

## A. I. R. 1929 Rang. 87.

## —Refusal—Procedure.

Where the lower Court wrongly refuses to furnish a copy of prior statement of a witness, the proper course in appeal is that counsel should be furnished with a copy of the statement and any contradictions between that statement and those made in Court by the witness



**CR. P. CODE (1898), S. 162—Granting copies.**

should be taken as left unexplained by him. Each case must be decided on its own facts and the extent of the prejudice to the accused in each case must determine whether the trial should be held altogether vitiated or whether the defect can be remedied by following the procedure indicated above. A. I. R. 1927 Cal. 644 and A. I. R. 1927 Nag. 24, Cons. (*Harrison and Dalip Singh, J.*) *AZARA SINGH v. EMPEROR*.

9 Lah. 389=108 I. C. 167=29 Cr. L. J. 348=  
9 A. I. Cr. R. 559=A. I. R. 1928 Lah. 257.

**—Imperative upon the Court.**

Per *Jwala Prasad, J.*—The discretion which vested in the Court formerly of granting copies under S. 162 has now been taken away by the amendment, and it has now become imperative upon the Court to grant copies to the accused at his request. The words "the Court shall refer to such writing" are obviously for the purpose of enabling the Court to exercise discretion under prov. 2, and not for the purpose of restricting the right of the accused to obtain a copy, the discretion wherein has been expressly taken away by the legislature. (*Jwala Prasad and Ross, J.*) *RAMGULAM TELI v. EMPEROR*

7 Pat. 205=9 P.L.T. 92=107 I. C. 817=  
29 Cr. L. J. 297=10 A. I. Cr. R. 12=  
A. I. R. 1928 Pat. 215.

—Statement made by an approver to the police before he is tendered a pardon, is a previous statement of a witness and it can be used either to corroborate him or to contradict him under the ordinary provisions of the Evidence Act and therefore the accused is entitled to have a copy of such statement. (*Harrison and Dalip Singh, J.*) *HAZARA SINGH v. EMPEROR*.

9 Lah. 389=108 I. C. 167=29 Cr. L. J. 348=  
9 A. I. Cr. R. 559=A. I. R. 1928 Lah. 257.

**—Refusal—Prejudice Trial bad.**

Where the trial Court refused to allow the defence to have a copy of the statement of a witness made to the Sub-Inspector and it was found by looking at the statement that the accused had been seriously prejudiced by not being allowed to use the statement in cross-examining that witness.

*Held*, that the trial was bad. (*Cuming and Graham, J.*) *MOFIZADDI v. EMPEROR*. 45 C. L. J. 561=  
31 C. W. N. 940=104 I. C. 245=28 Cr. L. J. 805=  
A. I. R. 1927 Cal. 644.

**—Obligatory on the Court.**

The effect of the amendment of S. 162 is to make it obligatory on the Court to give the accused copies of the statements subject only to the exclusion of irrelevant matters which the public interest requires should not be disclosed. (*Chotzner and Duval, J.*) *MODARI SIKDAR v. EMPEROR*.

54 Cal. 307=102 I. C. 550=  
28 Cr. L. J. 582=8 A. I. Cr. 112=  
A. I. R. 1927 Cal. 514.

**—Opinion of Court immaterial.**

The provisions of S. 162 are imperative. The Court shall, on the request of the accused, direct that the accused be furnished with a copy. A refusal to grant copies can only be made if the requirements of the second proviso to S. 162 are satisfied, namely if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests. The application for copies should not be refused on the mere ground that it might not help the defence or that possibly there was no contradiction. (*Sen, J.*) *CHEDI PRASAD SINGH v. EMPEROR*.

8 P. L. T. 613=28 Cr. L. J. 597=102 I. C. 773=  
8 A. I. Cr. R. 271=A. I. R. 1927 Pat. 325.

**CR. P. CODE (1898), S. 162—Object and Scope.****—S. 162—Object and Scope.**

—Section 1, sub-S. (2) of the Code lays down that nothing contained in the Act shall apply to the Bombay Police. Therefore S. 162 does not exclude a statement before a Bombay police-officer from being proved except in so far as it is inadmissible under the Bombay City Police Act, 1902. (*Kcmg, J.*) *EMPEROR v. WAHIDUDDIN HAMIDUDDIN NO. (2)*.

32 Bom. L. R. 327=54 Bom. 528=  
31 Cr. L. J. 1003=1930 Cr. C. 482=  
126 I. C. 333=A. I. R. 1930 Bom. 158.

—Section 162 and 172 do not apply to Calcutta Police. (*Suhrawardy, J.*) *PANCHANAN MUKERJI v. EMPEROR*.

116 I. C. 160=33 C. W. N. 203=  
30 Cr. L. J. 577=12 A. I. Cr. R. 448=  
A. I. R. 1929 Cal. 257.

—S. 162 applies to witnesses and not to the accused under trial. A. I. R. 1927 Cal. 17, Foll. (*Mukerji and Graham, J.*) *NEWAJ ALI MOLLA v. EMPEROR*.

118 I. C. 368=33 C. W. N. 257=  
30 Cr. L. J. 916.

—S. 162 contains a general provision embracing all statements made by persons examined in the course of an investigation. (*Prideaux, Kinkhede and Kolhatkar, A. J. Cs.*) *GOLA v. EMPEROR*. 114 I. C. 273=  
24 N. L. R. 158=30 Cr. L. J. 258=  
12 A. I. Cr. R. 177=A. I. R. 1929 Nag. 17 (F. B.).

—The words "shall any such statement . . . . . be used" in para. 1, S. 162, apply to both oral and written statement. 4 Rang. 72 (F. B.), Ref. 48 M. 640=48 M. L. J. 195, overruled. (*Ramesam, Waller and Jackson, J.*) *CHINNA THIMMAPPA v. TALUKUNAE THIMMAPPA*. 112 I. C. 682=  
51 Mad. 967=1 M. Cr. C. 201=28 M. L. W. 314=  
29 Cr. L. J. 1098=A. I. R. 1928 Mad. 1028=  
55 M. L. J. 351 (F. B.).

—Statement of accused after arrest.

The word "statement" in S. 162, Cr. P. Code, is a very general word. It is intended to refer to statements recorded under the provisions of Ss. 160 and 161, Cr. P. Code. A clear distinction is drawn in S. 173, Cr. P. Code, between "persons who appear to be acquainted with the circumstances of the case" and the accused, and this must raise a doubt whether the phrase "persons supposed to be acquainted with the facts and circumstances of the case" in S. 161 includes an accused after arrest, but the side note to S. 161 can be used to assist to come to the conclusion that S. 161 is not intended to apply to an arrested accused. Therefore it follows that S. 162 does not refer to statements made by an accused after arrest. A. I. R. 1926 Rang. 116 (F. B.), Foll. (*Findlay, J. C. and Macnair, A. J. C.*) *SHIOBALAK PRASAD v. EMPEROR*. 108 I. C. 442=  
11 N. L. J. 7=9 A. I. Cr. R. 408=  
29 Cr. L. J. 400=A. I. R. 1928 Nag. 108.

—Statement's during enquiry under S. 197.

Where, in a case where sanction of the Local Government was necessary under S. 197 a confidential enquiry was made by an officer of the Criminal Investigation Department before such sanction was granted or before any enquiry was directed by the Magistrate and statements of witnesses were recorded at such enquiry by such officer and also before a Magistrate,

*Held*, the statements recorded by the Criminal Investigation Department Officer were not statements under S. 162 nor were the statements recorded by the Magistrate statements under S. 164: 19 Bom. 51, Rel. on. (*Crump and Madgavkar, J.*) *EMPEROR v. JEHANGIR ARDESHIR*. 8 A. I. Cr. R. 324=29 Bom. L. R. 996=  
28 Cr. L. J. 1012=106 I. C. 100=  
A. I. R. 1927 Bom. 501

**CR. P. CODE (1898), S. 162—Object and Scope.**

—The object of amending S. 162 is that the police should no longer claim any privilege in respect of any statement on the ground that it is a statement recorded under S. 172. It is quite immaterial whether the statement is labelled as recorded under S. 172. (*Cuning and Graham, J.J.*) **MAFIZADDI v. EMPEROR.**

45 C. L. J. 561 = 31 C. W. N. 940 = 104 I. C. 245 = 28 Cr. L. J. 805 = A. I. R. 1927 Cal. 644.

—Breach of S. 162 not prejudicing the accused does not vitiate trial. The purpose of S. 162 is to amend for the purpose of criminal trials certain sections in the Evidence Act which states what evidence is admissible and inadmissible in certain circumstances. (*Rankin, C. J. and C. C. Ghose, J.*) **SAJJAD MIRZA v. EMPEROR.**

45 C. L. J. 199 = 28 Cr. L. J. 446 = 101 I. C. 478 = A. I. R. 1927 Cal. 372.

—For the application of S. 162 there must be a statement which is capable of being recorded, and reduced to writing and, therefore, if a witness says: "I did not make any statement to the police," it cannot be a statement under S. 162. (*Suhrawardy and Duval, J.J.*) **ASERUDDIN v. EMPEROR.**

53 Cal. 980 = 28 Cr. L. J. 273 = 100 I. C. 353 = 7 A. I. Cr. R. 417 = A. I. R. 1927 Cal. 257.

—Neither statement by accused nor first information report is covered by S. 162.

Statements by accused are not within S. 162. A. I. R. 1926 Rang. 116 (F. B.); A. I. R. 1926 Lah. 88 and A. I. R. 1926 Pat. 232, Foll. The first information report against the accused is clearly not a statement within the contemplation of S. 162 because it is not made in the course of an investigation. Such report has to be tendered under one or other of the provisions of the Evidence Act. The usual course is for the prosecution to call the informant and for the first information to be tendered as corroboration under S. 157; but it could also be tendered in a proper case under S. 32 (1) as a declaration as to the cause of the informant's death, or as part of the informant's conduct (of the *res gestae*) under S. 8. Theoretically, the defence could prove the information to impeach the informant's credit under S. 155 or to contradict him under S. 145. Statements made by third parties to the police in the course of their investigation can be used as corroboration under S. 157, or in contradiction under S. 145 or to impeach credit under S. 155 provided the person who made the statement is called as a witness. This would apply to the prosecution and to the defence indifferently under the Evidence Act. But S. 162 of the Cr. P. Code, enacts first that if such a statement is not recorded in writing it cannot be used in evidence in any circumstance or for either side or for any purpose. A. I. R. 1926 Rang. 116 (F. B.); A. I. R. 1925 Lah. 399 and A. I. R. 1924 Bom. 510, Foll. If such a statement has been recorded in writing then it cannot be used for any purpose but one and that by the defence. Provided that the person who made it is called as a witness for the prosecution the defence may apply for a copy of the statement and if it be proved may use it under S. 145 of the Evidence Act to contradict that witness. Broadly speaking, a statement made by an accused to police officer may be proved against him under the Evidence Act if it is not a confession; and even if it is part of a confession it is admissible under S. 27 if a fact is deposed to as discovered in consequence of the information. S. 162 of the Cr. P. Code does not disturb this position. (*Rankin and Duval, J.J.*) **AZIMODDY v. EMPEROR.**

54 Cal. 237 = 28 Cr. L. J. 99 = 44 C. L. J. 253 = 99 I. C. 227 = A. I. R. 1927 Cal. 17.

—The proviso to S. 162 applies to statements made by persons who are called as witnesses for the prosecution

**CR. P. CODE (1898), S. 162—Police proceedings.**

tion only and not if they are summoned by the Court at the suggestion of the defence. (*Tekchand, J.*) **GURDELLA SHAH v. EMPEROR.**

28 Cr. L. J. 828 = 104 I. C. 444 = A. I. R. 1927 Lah. 713.

—The view that the provisions of S. 162 do not apply to a case of complaint is not justified by anything in that section. (*Kotwal, O. J. C.*) **HARI MAHADEO-GORE v. EMPEROR.**

9 N. L. J. 167 = 99 I. C. 46 = 28 Cr. L. J. 14 = 7 A. I. Cr. R. 170 = A. I. R. 1927 Nag. 24

—The words "statement of any person" appearing in that section refer to the statement of any witness in the course of a police investigation and not to the statement of an accused person in respect of whom such investigation is held and they can only be excluded under S. 25 of the Evidence Act if they are in the nature of incriminating statements and are used by the Crown as such. A useful test as to the admissibility of statements made to the police is to ascertain the purpose to which they were put by the prosecution. A. I. R. 1925 Sind 237, Foll. (*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*) **HUSSAINBIBI v. EMPEROR.**

20 S. L. R. 74 = 27 Cr. L. J. 456 = 93 I. C. 248 = A. I. R. 1926 Sind 151.

—S. 162—Oral statement.

—Use—Contradiction—Defence witness.

No oral statement made by any person to a police officer in the course of an investigation under this chapter and no record of any such oral statement can be used for any purpose in a Court of law in respect of an offence under investigation at the time when such statement was made, except for the purpose of contradicting a prosecution witness. It can only be used for that purpose under special conditions. Such a statement cannot be used for the purpose of contradicting a defence witness. (*Stuart, C. J. and Raza, J.*) **GANGA v. EMPEROR.**

1930 Cr. C. 156 = 4 Luck. 726 = 124 I. C. 444 = 31 Cr. L. J. 689 = 6 O. W. N. 1056 = A. I. R. 1930 Oudh 60.

—Admissibility.

The application of the new S. 162 is confined as that of the old one was, to the written record; the new section was designed to confer on an accused person legal right, which the old section did not give, of having a copy of such written statement for the purpose of using it to contradict the witness and as regards proof and use of oral statements, the law is unaltered and is as it was before. All oral statements which were previously admissible, under the Evidence Act, the use of which was not prohibited by the Cr. P. Code, are still admissible and may be used. (*Wallace and Madhavan Nair, J.J.*) **VENKATASUBBIAH v. EMPEROR.**

85 I. C. 209 = 26 Cr. L. J. 721 = 48 Mad. 640 = 21 M. L. W. 190 = 1925 M. W. N. 68 = A. I. R. 1925 Mad. 579 = 48 M. L. J. 195.

—Statement made to Police-officer during an investigation need not be reduced to writing and oral evidence regarding the same is admissible. (*Kennedy, J. C. and Aston, A. J. C.*) **PITHUMAL v. EMPEROR.**

88 I. C. 449 = 26 Cr. L. J. 1137 = 18 S. L. R. 342.

—S. 162—Police proceedings

—Explanation not excluded.

S. 162 does not prevent a police officer from explaining his conduct in sending up a particular set of accused persons for trial by making a report that he had received no information to such and such effect. A. I. R. 1929 Cal. 298, Foll. (*Fforde and Addison, J.J.*) **BASANT SINGH v. EMPEROR.**

122 I. C. 568 = 31 Cr. L. J. 442 = 31 P. L. R. 185 = 1930 Cr. C. 596 = A. I. R. 1930 Lah. 484.

—Whole statement to be recorded.

Police officers who are charged with the duty of in-

**CR. P. CODE (1898), S. 162—Police proceedings.**

investigating crimes should not be in a position to take the statements of witnesses, extract as much as they think is relevant or important for entry in their diaries and then destroy the original statement. The practice is illegal in so far as it deprives the accused of an important right and it may result in the destruction of valuable evidence in favour of an accused. (*Darwood, J.*) **SULAIMAN MAHOMED v. EMPEROR.** 6 Rang. 672=

115 I. C. 899 = 30 Cr. L. J. 538 =

12 A. I. Cr. R. 327 = A. I. R. 1929 Rang. 87.

—*Memorandum of statement is enough.*

It is immaterial whether the statement recorded is the actual record of the words used by the witness. It is sufficient even if the statement is recorded in the form of a memorandum of what the witness had said to the police officer. It is not necessary, in order that an accused person may be allowed under S. 162 to contradict the witness that the statement must contain the very words used by the witness. (*Cuming and Graham, J.J.*) **MOFIZADDI v. EMPEROR.** 45 C. L. J. 561 =

31 C. W. N. 940 = 104 I. C. 245 = 28 Cr. L. J. 805 =  
A. I. R. 1927 Cal. 644.

**—S. 162—Procedure.**

Where copies of the statements recorded by a Circle Inspector of Police were not allowed to be given to the accused, as no statement was reduced to writing. *Held*, that the accused could not be held to be prejudiced by not being given copies of the statements.

*Held*, however, that the police officer's report should certainly have been placed on the record, if the accused so desired. (*Pullan, J.*) **ABDUL KARIM v. EMPEROR.** 1930 Cr. C. 1211 = 7 O. W. N. 957.

—It would be convenient in practice if the Magistrate were to refer beforehand to the police or the Excise authorities and enquire if there is any objection to the copies being given. (*Stemp, J.*) **GHULAM NABI v. EMPEROR.** 117 I. C. 377 = 30 Cr. L. J. 760 =

A. I. R. 1929 Lah. 429.

—*For contradiction.*

A copy of the statement made before the police cannot be used against the witness till he has been confronted with it. The right procedure, when a prosecution witness is contradicting himself, is to ask the Judge to look into the diary and decide whether the accused person should not have a copy of the statement. If such copy be granted, the witness's attention must be called to the same. A. I. R. 1915 P. C. 7, Ref. (*Mears, C. J. and Mukerji, J.*) **KASHIRAM v. EMPEROR.**

109 I. C. 120 = 29 Cr. L. J. 472 =

9 L. R. A. Cr. 30 = 9 A. I. Cr. R. 249 =

26 A. L. J. 139 = A. I. R. 1928 All. 280.

—The combined effect of the first two paragraphs of S. 162 is that when a witness for the prosecution is being examined, if an accused has reason to believe that the statement which the witness is making in Court differs from the statement which he made to the police, then the accused or his advocate may ask the Court to refer to the record of any statement made by the witness to the police and, if it be found that there is any variation between the two statements, the defence is entitled to a copy of the record of the statement made to the police. The copy must then be proved, and the witness may be cross-examined on that statement under S. 145, Evidence Act, and his attention must be drawn to the particular points in which his statement in Court differs from the record of his statement to the police. (*Heald and Baguley, J.J.*) **BANA SINGH v. EMPEROR.**

6 Rang. 137 = 10 A. I. Cr. R. 403 = 110 I. C. 333 =

29 Cr. L. J. 701 = A. I. R. 1928 Rang. 150.

—Procedure prescribed by S. 162 must be followed in admitting statements made to police officer during

**CR. P. CODE (1898), S. 162—Stage for copies.**

investigation and if the accused or his advocate does not ask the Court to refer to such statements they cannot be admitted. (*Heald and Chari, J.J.*) **NGA PO CHON v. KING-EMPEROR.** 4 Rang. 356 = 98 I. C. 491 =

27 Cr. L. J. 1371 = A. I. R. 1927 Rang. 80.

**—S. 162—Proof.**

—*Necessity of.*

Reference by a magistrate to statements made by a witness before the police with a view to contradict prosecution witness is entirely erroneous when the statements were not given to the accused persons on trial and no attempt was made to prove them. (*Broadway and Zafar Ali, J.J.*) **EMPEROR v. AHMAD.**

9 A. I. Cr. R. 346 = 29 Cr. L. J. 14 =

106 I. C. 350 = A. I. R. 1928 Lah. 144.

—*Due proof is essential.*

There is no presumption as to the genuineness of the statements of witnesses entered in the police diaries, and unless they are duly proved the evidence given in Court cannot be contradicted by them. (*Martineau and Campbell, J.J.*) **LABA SINGH v. CROWN.**

6 Lah. 24 = 26 Cr. L. J. 1153 = 26 P. L. R. 139 =

83 I. C. 513 = A. I. R. 1925 Lah. 337.

—*Necessary prior to admission.*

The words "if duly proved" in S. 162 clearly show that the record of the statement cannot be admitted in evidence straightaway but that the officer before whom the statement was made should ordinarily be examined as to any alleged statement or omitted statement that is relied upon by the accused for the purpose of contradicting the witness; and the provisions of S. 67 of the Evidence Act apply to this case as well as to any other similar case. If the particular police-officer who recorded the statement is not available, other means of proving the statement may be availed of, e.g., evidence that the statement is in the hand-writing of that particular officer. (*Shah, Ag. C. J. and Fawcett, J.*) **KING-EMPEROR v. VITTU BALU.** 26 Bom. L. R. 965 =

26 Cr. L. J. 223 = 83 I. C. 1007 =

A. I. R. 1924 Bom. 510.

**—S. 162—Scope.**

—*Statements of accused during investigation.*

No doubt S. 162 of the Cr. P. Code of 1923 has altered the previous law so as to completely exclude statements made by witnesses during the course of an investigation, except for certain limited purposes, yet the statements of accused persons provided they do not amount to a confession, are still admissible in law. The main object of the Legislature in effecting the amendment was to prohibit the use of the statements of prosecution witnesses as corroboration under S. 157 of the Evidence Act. The general provisions of the law with regard to the admissibility of statements made by accused persons like other admissions do not seem to be affected. (*Mullick, A. C. J. and Jwala Prasad, J.*) **JAGWA DHANUK v. EMPEROR.** 5 Pat. 63 =

7 P. L. T. 396 = 27 Cr. L. J. 484 =

93 I. C. 884 = A. I. R. 1926 Pat. 232.

**—S. 162—Stage for copies.**

—*No copy prior to cross-examination.*

So far as proceedings before charge are concerned, copies of witness's statements made to the police should not be granted until the stage of cross-examination is reached. If that stage is allowed to go by without application being made, an accused must wait until the witness is again about to be subjected to cross-examination before he can claim grant of a copy. Under S. 145, Evidence Act, until the occasion arises for putting the statement to the witness it cannot legally be used for any purpose whatsoever. It should not therefore be placed in the accused's hands until that stage

**CR. P. CODE (1898), S. 162—Stage for copies.**

in the trial has been reached when he may so use it. A. I. R. 1926 Mad. 183; A. I. R. 1929 Cal. 182 and A. I. R. 1923 Bom. 23, Ref.; A. I. R. 1927 Cal. 514, Doubled. (*Curgemen, J.*) **PUBLIC PROSECUTOR v. VEDI.**

122 I. C. 463 = 31 Cr. L. J. 414 =  
1930 Cr. C. 185 = 2 M. Cr. C. 243 =  
1929 M. W. N. 885 = 31 M. L. W. 241 =  
A. I. R. 1930 Mad. 185.

—At the trial the accused applied for copies of statements made by the witnesses for the prosecution and it was ordered by the trying Magistrate that the copies should be granted at the commencement of the cross-examination of each witness. But the pleader for the defence did not file any folios and did not do the necessary acts to get the copies, saying that it would be inconvenient for him to file folios at that stage and it was no use to get copies at a subsequent time.

*Held*, that the grievance of the defence that they were not given their rights under S. 162 was groundless and under the circumstances it was needless to consider whether the proper time for granting the copies was at the commencement of the cross-examination or at the time when the witness enters the witness-box. (*Rankin, C. J. and Buckland, J.*) **BABARALI SARDAR v. EMPEROR.**

49 C. L. J. 197 = 116 I. C. 167 =  
30 Cr. L. J. 580 = 56 Cal. 840 =  
13 A. I. Cr. R. 8 = A. I. R. 1929 Cal. 182.

—If the accused have not availed themselves of the opportunity of asking for the copies of the statements during the Committing Magistrate's enquiry, they have no further right under S. 162 than to go to the Judge at the time of the trial and ask him to grant such copies. (*Rankin, C. J. and Buckland, J.*) **BABARALI SARDAR v. EMPEROR.**

49 C. L. J. 197 =  
116 I. C. 167 = 30 Cr. L. J. 580 = 56 Cal. 840 =  
13 A. I. Cr. R. 8 = A. I. R. 1929 Cal. 182.

—An accused person is not entitled to a copy of a statement made by a prosecution witness under S. 162, until the witness is sought to be cross-examined. But as a matter of practice there is no harm if a copy of the statement is given at an earlier stage. A. I. R. 1928 Bom. 23, Ref. (*Skemp, J.*) **GHULAM NABI v. EMPEROR.**

117 I. C. 377 = 30 Cr. L. J. 760 =  
A. I. R. 1929 Lah. 429.

—An accused person has a right to apply for copies as soon as a witness is called for prosecution either in an inquiry or in a trial. (*Staples, A. J. C.*) **K. FASUDDIN v. EMPEROR.**

117 I. C. 213 =  
30 Cr. L. J. 728 = 1929 Cr. C. 47 =  
A. I. R. 1929 Nag. 172.

—*When witness concerned enters the box.*

An accused is entitled to get a copy of the statements of a witness on behalf of the prosecution for the purpose of contradicting the prosecution witness in the manner provided by S. 145, Evidence Act, but such an application must be made at the time when the prosecution witness, whom it is desired to cross-examine by reference to his previously recorded statement, appears in the witness-box. 33 Cal. 1023; A. I. R. 1926 Mad. 183 and A. I. R. 1927 Cal. 514, Foll. (*Patkar and Baker, J.J.*) **SHAIK USMAN v. EMPEROR.**

52 Bom. 195 =  
9 A. I. Cr. R. 476 = 29 Cr. L. J. 221 =  
107 I. C. 57 = 29 Bom. L. R. 1581 =  
A. I. R. 1928 Bom. 23.

—*Prior to cross-examination.*

The opportune moment for making an application for copies of the statements made by the witnesses before the police is after the witnesses are examined on behalf of the prosecution. It is not necessary that the accused must have laid the foundation for being entitled to cross-examine the prosecution witnesses upon

**CR. P. CODE (1898), S. 162—Statement of accused.**

the statements made by them before the police. A. I. R. 1927 Cal. 514 and A. I. R. 1927 Pat. 243, Diss. from; A. I. R. 1927 Pat. 325 and A. I. R. 1928 Pat. 215, Foll. (*Jwala Prasad, J.*) **KRISHNA SINHA v. EMPEROR.**

10 A. I. Cr. R. 383 = 29 Cr. L. J. 715 =  
110 I. C. 459 = A. I. R. 1928 Pat. 593.

—*Cross-examination need not have begun.*

All that the section requires is that the witness for the prosecution should be produced in Court. There is nothing in the section which requires that the cross-examination shall have been opened. The defence cannot be in a position to contradict the witness by his previous statement or to lay any foundation for the suggestion that there is a contradiction before it has seen the statement. 33 Cal. 1023, Rel. on; A. I. R. 1927 Cal. 514; A. I. R. 1926 Mad. 183 and A. I. R. 1927 Pat. 243, Diss. from. (*Jwala Prasad and Ross, J.J.*) **RAMGULAM TELI v. EMPEROR.**

7 Pat. 205 = 9 P. L. T. 92 = 107 I. C. 817 =  
29 Cr. L. J. 297 = 10 A. I. Cr. R. 12 =  
A. I. R. 1928 Pat. 215.

—The accused is entitled to be furnished with copies of statements of witnesses only after the witness has been called for the prosecution and the cross-examination has laid the foundation for the suggestion that the evidence given by the witness in Court is contradicted by his statement recorded under S. 161 and not before the commencement of the preliminary enquiry. (*Chotzner and Duval, J.J.*) **MADARI SIKDAR v. EMPEROR.**

54 Cal. 307 = 102 I. C. 550 =  
28 Cr. L. J. 582 = 8 A. I. Cr. R. 112 =  
A. I. R. 1927 Cal. 514.

—*Prior to cross-examination.*

To interpret the section to mean that the copies can be demanded only after cross-examination of a witness is begun, would lead to inconvenience and delay in the trial. (*Kotwal, O. J. C.*) **HARI MAHADEO GORE v. EMPEROR.**

9 N. L. J. 167 =  
99 I. C. 46 = 28 Cr. L. J. 14 =  
7 A. I. Cr. R. 170 = A. I. R. 1927 Nag. 24.

—*Contradiction—Necessary.*

The question of furnishing to the accused a copy of the statement of a witness recorded by the police in the course of the investigation into an offence does not at all arise until the witness is called for the prosecution at the inquiry or trial in respect of the offence and the Court is not competent to direct that the accused be furnished with a copy of such statement unless it contains something which constitutes a contradiction to a statement made by the witness in his deposition at such inquiry or trial. (*Jwala Prasad and Macpherson, J.J.*) **SASDAT MIAN v. KING-EMPEROR**

103 I. C. 597 = 6 Pat. 329 = 28 Cr. L. J. 709 =  
8 A. I. Cr. R. 383 = 8 P. L. T. 780 =  
A. I. R. 1927 Pat. 243.

—The stage when the accused is entitled to ask for a copy of deposition of a witness before police is when the witness is under cross examination, and has already made the statement which the accused wishes to contradict by proof of his former statement to the police. (*Krishnan and Wallace, J.J.*) **PERAMASAMI RAYUDU, In re.**

91 I. C. 532 = 22 M. L. W. 784 =  
27 Cr. L. J. 100 = A. I. R. 1926 Mad. 183.

—*S. 162—Statement of accused.*

It is wrong for the Judge to allow a mashirnama (police report) containing the statement of the accused regarding the place of crime to be exhibited and to refer to that report in his judgment. (*Percival, J. C. and Rupchand, A. J. C.*) **DUR MAHOMED v. EMPEROR.**

1930 Cr. C. 1142 = A. I. R. 1930 Sind 305.

—*Admissibility—Test purpose*

**CR. P. CODE (1898), S. 162—Statement of accused.**

*Per Rupchand, A. J. C.*—The fact that an accused person has made a statement with the object of exculpating him or that his statement if believed would exculpate him does not by itself render it admissible in evidence. If notwithstanding the form in which it has been made the statement is nevertheless an admission of incriminating circumstances and is used by the prosecution as such, it is not admissible in evidence. A useful test as to the admissibility of a statement made by an accused person to the police is to ascertain the purpose for which it is being put to by the prosecution. Where the prosecution rely upon the statement as corroborative proof of certain facts deposed to by the prosecution witnesses and not with the object of proving their falsity, the statement is not admissible in evidence. *A. I. R. 1925 Sind 237*; 6 Bom. 34, 14 Bom. 260 (F. B.); 19 Bom. 362 and *A. I. R. 1926 Sind 151*, Rel. on. (*Wild, A. J. C. on difference between Percival, J. C. and Rupchand, A. J. C.*) *MOHUMED YUSUF v. EMPEROR.* 126 I. C. 449 = 31 Cr. L. J. 1026 = 1930 Cr. C. 865 = *A. I. R. 1930 Sind 225.*

**—Mere admissions.**

An accused person did not know the contents of the previously made statement by another co-accused; he did not know that he was being charged with any offence; he had not in fact been charged by the police with any offence; he was not in custody, and under such circumstances he made a statement.

*Held*, that the statement was a mere admission and admissible in evidence against the accused but not against his co-accused. *A. I. R. 1927 Cal 17*, Rel. on. (*Courtney Terrell, C. J. and Adami, J.*) *RAJ KUMAR SINGH v. EMPEROR.* 111 I. C. 721 = 9 P. L. T. 449 = 29 Cr. L. J. 913 = 11 A. I. Cr. R. 143 = *A. I. R. 1928 Pat. 473.*

**—Prior to arrest.**

Statements made by accused to police officer before his arrest are inadmissible and the investigating officer cannot be made to disclose them in his examination as prosecution evidence. 3 N. L. R. 51 and 6 N. L. R. 180, Dist. (*Kotwal, A. J. C.*) *SHEOSATYANARAYAN-LAL v. EMPEROR.* 91 I. C. 945 = 8 N. L. J. 217 = 27 Cr. L. J. 161 = *A. I. R. 1926 Nag. 1.*

**—Not covered.**

The statement of any person in S. 162 refers to the statement of any person examined as a witness and not to the statement of any accused person in respect of whom the investigation is being held. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) *ADHO v. EMPEROR.* 86 I. C. 961 = 19 S. L. R. 6 = 26 Cr. L. J. 897 = *A. I. R. 1925 Sind 257.*

**—Not covered.**

The words "statement of any person" in S. 162, Cr. P. C., refer to the statement of any witness in the course of a Police investigation, and not to the statement of an accused person in respect of whom such investigation is held. Such parts of a confessional statement as lead to discovery of incriminating facts as also statements made to the Police by an accused person which are not of an incriminating nature are admissible. (*Rupchand Bilaram, A. J. C.*) *UMER DURAZ MUNSHI v. EMPEROR.* 86 I. C. 410 = 19 S. L. R. 142 = 26 Cr. L. J. 778 = *A. I. R. 1925 Sind 237.*

**—S. 162—Use against accused.**

There is nothing in the Code to justify the use of statements made under S. 161 by the prosecution for its own purposes and especially for the purpose of corroborating the statements made by prosecution witnesses in Court. (*Courtney Terrell, C. J. and Fazl Ali, J.*) *JHARI GOPA v. EMPEROR.* 118 I. C. 130 =

**CR. P. CODE (1898), S. 162—Miscellaneous.**

8 Pat. 279 = 10 P. L. T. 460 = 30 Cr. L. J. 858 = 1929 Cr. C. 21 = *A. I. R. 1929 Pat. 268.*

—Statements made by the witnesses to the police during the investigation are not admissible for purpose of corroborating their depositions before the committing Magistrate. (*Shadi Lal, C. J. and Zafar Ali, J.*) *RAKHA v. CROWN.* 93 I. C. 230 = 6 Lah. 171 = 26 P. L. R. 304 =

27 Cr. L. J. 438 = *A. I. R. 1925 Lah. 399.*

—It is improper of the Court to use Police diaries against the accused. (*Scott Smith, J.*) *AZIZ v. EMPEROR.* 84 I. C. 436 = 26 Cr. L. J. 292 = *A. I. R. 1925 Lah. 295.*

**—By consent.**

Consent or desire of accused cannot legalize the procedure of using police diaries as evidence in the case either for or against the accused. (*Wazir Hasan, A. J. C.*) *MANNA LAL v. KING-EMPEROR.* 75 I. C. 753 = 27 O. C. 40 = 25 Cr. L. J. 49 = *A. I. R. 1925 Oudh 1.*

**—It is no evidence.**

A statement to the police by a witness is inadmissible in evidence for any purpose against the accused. But it is admissible in evidence to contradict the sworn testimony of the witness. When the person who made the previous statement is examined in Court, that statement can be used as provided for in the Indian Evidence Act to contradict and sometimes to corroborate the witness; but is not substantive evidence by itself, and a conviction cannot be based upon it. (*Kyus, J.*) *SHIAM SUNDER v. EMPEROR.* 76 I. C. 572 = 26 Cr. L. J. 204 = *A. I. R. 1923 All. 469.*

**—S. 162—Miscellaneous.****—Infringement of rules under is mere irregularity.**

The infringement of the provisions of S. 162, Cr. P. Code, is an irregularity which can be cured under S. 537 if it has not occasioned a failure of justice. In considering whether a particular infringement of the provisions of the Cr. P. Code is one which does or does not come within the purview of S. 537, what one has to consider is whether any vital rule of procedure has been broken and whether the irregularity goes to the root of the proceedings 35 Cal.-61, Appl.; 25 Mad. 61 (P. C.), Dist.; *A. I. R. 1923 All. 81*, Ref. (*Beaumont, C. J. and Madgavkar, J.*) *NURMAHOMED KADARBHAI v. EMPEROR.* 32 Bom. L. R. 1279 = 1930 Cr. C. 1182 = *A. I. R. 1930 Bom. 595.*

—One of the witnesses who was examined in the committing Magistrate's Court died before trial in the Sessions Court. He was not cross-examined immediately after his examination-in-chief. The Sessions Judge refused to allow the Sub-Inspector of Police to be cross examined on the statements said to have been made to him by the witness and recorded by him under the provisions of S. 161.

*Held*, at the time when the deposition of the witness was taken before the Committing Magistrate there can be no question that the accused had the right and opportunity of cross-examining him in terms of S. 33 of the Evidence Act, and as the accused did not exercise his right and did not avail of the opportunity of cross-examining this witness immediately after his examination-in-chief before the committing Magistrate had been finished his deposition could not be excluded.

*Held*, further, that the terms of S. 162, if applicable at all could only have been applicable during the stage of the enquiry before the committing Magistrate and could not in any view of the matter be held to be applicable when the case was in the Sessions Court and

**CR. P. CODE (1898), S. 162—Miscellaneous.**

therefore the Sessions Judge did not err at all in refusing the prayer of the accused to be allowed to cross-examine the Sub Inspector. (*Rankin, C. J. and C. C. Ghose, J.*) **AZIMUDDY v. EMPEROR.** 101 I. C. 661 = 31 C. W. N. 410 = 28 Cr. L. J. 485 = 8 A. I. Cr. R. 134 = A. I. R. 1927 Cal. 398.

—Breach of S. 162 not prejudicing the accused does not vitiate trial. (*Rankin, C. J. and C. C. Ghose, J.*) **SAJJAD MIRZA v. EMPEROR.**

45 C. L. J. 199 = 28 Cr. L. J. 446 = 101 I. C. 478 = A. I. R. 1927 Cal. 372.

—It is illegal to allow the investigating officer to give evidence that such and such persons during the investigation gave him the names of the accused. (*Campbell and Addison, J.J.*) **BAHADUR SINGH v. EMPEROR.**

7 Lah. 264 = 8 L. L. J. 174 = 27 P. L. R. 379 = 27 Cr. L. J. 803 = 95 I. C. 467 = A. I. R. 1926 Lah. 367.

**—S. 163—Assurance of amnesty.**

—*Not contrary to section.*

The local Government prosecutes offenders. There is no law that it must prosecute every offender, and it is well known that offenders do manage to conceal their misdeeds or that evidence is found insufficient. There is nothing to prevent the prosecuting authority from refraining from prosecution. The discretion to refrain from instituting a prosecution in any particular case is inherent in the authority to which the Law has entrusted the power to institute a prosecution. It makes no difference to the competency of the witness if that assurance of non-prosecuting is communicated before the witness makes any statement. The Local Government is quite entitled to give such an assurance or amnesty and it is also entitled to ratify what has already been done by the enquiring officer. Such an assurance therefore in no way affects the competency of the witness to whom it is given, though it may affect the credibility of his evidence. Such an assurance is not contrary to Ss. 163 and 343 of Cr. P. Code. A. I. R. 1923 All. 91, Foll. (*Prideaux, A.J.C.*) **ANANT WASUDEO CHANDERKAR v. EMPEROR.** 89 I. C. 1035 = 8 N. L. J. 138 = 26 Cr. L. J. 1467 = A. I. R. 1925 Nag. 313.

**—S. 163—Retraction.**

—*Inference.*

The mere fact of the retraction of a confession is not in itself sufficient to make it appear that was unlawfully induced. (*Addison and Dalip Singh, J.J.*) **RAHMAT v. EMPEROR.** 113 I. C. 65 = 30 Cr. L. J. 49 = 11 L. L. J. 5 = 11 A. I. R. 506.

**—S. 164.**

**Applicability.**

**Certificate.**

**Confession and statement.**

**Evidentiary value.**

**Inquiry and Warning.**

**Jurisdiction.**

**Oral Statement.**

**Procedure.**

**Retraction.**

**Time and place.**

**Miscellaneous.**

**—S. 164—Applicability.**

—Where, in a case where sanction of the Local Government was necessary under S. 197 a confidential enquiry was made by an officer of the Criminal Investigation Department before such sanction was granted or before any enquiry was directed by the Magistrate and statements of witnesses were recorded at such enquiry by such officer and also before a Magistrate,

**CR. P. CODE (1898), S. 164—Certificate**

*Held*, the statements recorded by the Criminal Investigation Department Officer were not statements under S. 162 nor were the statements recorded by the Magistrate statements under S. 164. 19 Bom. 51, Rel. on. (*Crumph and Madgavkar, J.J.*) **EMPEROR v. JEHAN-GIR.** 106 I. C. 100 = 29 Bom. L. R. 996 = 8 A. I. Cr. R. 324 = 28 Cr. L. J. 1012 = A. I. R. 1927 Bom. 501.

**—Calcutta police.**

Even though the police in Calcutta may not conduct their investigations in precise accordance with the provisions of Ch. XIV, to construe S. 164 which would exclude its utilization in Calcutta during the police investigation at any time afterwards before the commencement of the enquiry or trial, is to read it in a somewhat strained and unnatural sense. A. I. R. 1925 Cal. 587; 15 Cal. 595 (F.B.), Dist. (*Adami and Bucknill, J.J.*) **NILMAHAB CHAUDHURY v. EMPEROR.**

96 I. C. 509 = 7 A. I. Cr. R. 75 = 5 Pat. 171 = 27 Cr. L. J. 957 = A. I. R. 1926 Pat. 279.

**—Calcutta police.**

S. 164, Cr. P. Code, in spite of the alteration that it has undergone by the amendment introduced by Act XVIII of 1923 does not apply to the confessions recorded in investigations conducted by the police in the town of Calcutta. (*Mukerji, J.*) **EMPEROR v. PANCHKARI DUTT.** 86 I. C. 414 =

52 Cal. 67 = 29 C. W. N. 300 = 26 Cr. L. J. 782 = A. I. R. 1925 Cal. 587.

**—S. 164—Certificate.**

—*Absence—Effect.*

When the Magistrate has complied with the provisions of S. 164, but has failed to append to the record the necessary certificate required by S. 164. S. 533 comes into operation and on proof by the Magistrate that he had complied with the provisions of S. 164, the record becomes admissible. S. 533 is by its terms confined to confessions or statements recorded under S. 164 or S. 364. After the Magistrate has been examined and the Court is satisfied that the statement was duly made it is the record of such a statement that has been made admissible by S. 533 and not the evidence of the Magistrate about the terms of the statement. Case-law discussed. (*Jai Lal and Currie, J.J.*) **JOG RAI v. EMPEROR.** 1930 Cr. C. 682 = A. I. R. 1930 Lah. 534.

—*Presence of—Presumption.*

Where there is no positive evidence that the precautions required by S. 164 were not taken and the certificate required by sub-S. (3) is duly appended to the record of the confession, the presumption is that the precautions described in the section were duly taken. The law does not anywhere state what or how many questions the Magistrate, who is about record a confession, must make in order to satisfy himself in accordance with the directions in that section. A. I. R. 1922 Lah. 237, Ref. (*Zafar Ali and Coldstream, J.J.*) **MAJHI v. EMPEROR.** 104 I. C. 247 =

28 Cr. L. J. 807 = A. I. R. 1927 Lah. 682.

—*Presence of—Presumption.*

If, when a document is tendered in evidence at a trial purporting to be a confession of the accused, it is found to contain the memorandum required by S. 164 (3), a presumption arises under S. 80 of the Evidence Act that all the necessary formalities purporting to have been performed have in fact been performed and the document is admissible in evidence without further proof. (*Broadway and Addison, J.J.*) **PARTAP SINGH v. EMPEROR.** 93 I. C. 978 = 6 Lah. 415 = 7 L. L. J. 482 = 27 Cr. L. J. 514 = A. I. R. 1925 Lah. 605.

—*Absence or defect—Cure.*

If the said memorandum does not appear or is defect-



**CR. P. CODE (1898), S. 164—Certificate.**

tive, the document is inadmissible unless the defects can be cured by the examination of the Magistrate who recorded it under S. 533.

Where the memorandum at the foot of confession recorded does not conform with the form as laid down the defect is curable if it is of form and not of substance. If as a matter of fact, the statement was duly recorded that is to say, after the required explanation had been given, but the Magistrate had failed to embody that fact in the certificate such a defect would be curable. If the explanation had not been made the statement could not be held to have been 'duly made' and S. 533 cannot be appealed to. (*Broadway and Addison, J.J.*) **PARTAP SINGH v. EMPEROR.**

93 I. C. 978=6 Lah. 415=7 L. L. J. 482=  
27 Cr. L. J. 514=A. I. R. 1925 Lah. 605.

**Sufficient compliance.**

Where the Magistrate who recorded the confession did not sign the certificate which is prescribed by the Code as now amended and signed the certificate which was in use under the old Code and where the accused was not asked if he made the statement voluntarily, but was asked the following question only:—"Are you prepared to make a statement of your own free will?" and where the record of the confession too did not show that the appellant was warned that he was not bound to make a confession and that if he did, it might be used in evidence against him; but where the Magistrate himself was called as a witness and in his evidence, he said in clear terms, that he cautioned the accused, explaining to him that he was not bound to make any statement and that if he did so it might be used in evidence against him.

*Held*, that the confession, as recorded, was admissible in the case especially since the Magistrate had been examined and had shown that he had observed the provisions of the law. 9 Mad. 224; A.I.R. 1922 Lah. 237, Dist.; 2 Pat. L. T. 773, Foll. (*Adami and Bucknill J.J.*) **RAMAI HO v. EMPEROR.** 84 I. C. 458=3 Pat. 872=26 Cr. L. J. 314=A. I. R. 1925 Pat. 191.

**Effect of.**

The certificate recorded by a Magistrate at the foot of confession is not conclusive and facts, leading the Court to think that the confession was not voluntary, can be proved. (*Kanhaiya Lal, J. C. and Daniels, A. J. C.*) **NAR SINGH v. EMPEROR** 73 I. C. 257=

25 O. C. 229=24 Cr. L. J. 561=  
A. I. R. 1922 Oudh 302.

—Where there is no record that the Magistrate gave any warning to the accused before recording his confession, the confession so recorded is extremely defective. Prejudice that may be caused to the accused persons by such a record cannot be exaggerated. But defects of this character can be remedied under S. 533. (*Jwala Prasad and Sultan Ahmad, J.J.*) **MAKSUD ALI v. EMPEROR.** 60 I. C. 56=2 P. L. T. 773=

22 Cr. L. J. 200=A. I. R. 1921 Pat. 337.

**—S. 164—Confession and Statement.**

—*Accused should not be allowed sufficient time for reflection.*

There is nothing to show that warning should be given to the accused immediately before the confession is recorded or that it should be repeated again just before the prisoner's arrival before the Magistrate. Where the Magistrate allows the accused seven hours to think over the question and to decide whether he would make a confession or not and then records the confession, such recording is proper. (*Percival, J. C. and Rupchand, A. J. C.*) **DUR MAHOMED v. EMPEROR.** 1930 Cr. C. 1142=

A. I. R. 1930 Sind 305.

**CR. P. CODE (1898), S. 164—Evidentiary value.**

—*Accused pointing places of incidents—Notes by Magistrate at the time not a confessional statement.*

Notes made by Magistrate while the accused pointed out several places to him could not be treated as evidence of confession of the accused to the Magistrate. The notes do not purport to be a record of the confessional statement by the approver or the other arrested persons, nor do they pretend to comply in any way with the provisions of S. 164. They are not in the form of questions and answers nor do they record even in a narrative from what each individual accused is supposed to have stated to the Magistrate. It is not mentioned in the notes nor is it deposited to orally by the Magistrate, that when an accused was brought before him, he satisfied himself that the former was going to make a statement voluntarily, nor was any attempt made to explain to him that his statement might be used as evidence against him. They were no more than a record of the proceedings of the Magistrate during the investigation and could not be admitted in evidence as a record of a confessional statement made by the accused. (*Tekchand, J.*) **BAGHET SINGH v. EMPEROR.**

121 I. C. 497=1929 Cr. C. 426=31 Cr. L. J. 269=  
A. I. R. 1929 Lah. 794.

—As regards the necessity for recording statements in manner provided by S. 164, no distinction can be drawn between a statement made by an accused person and a confession made by him. 8 C. W. N. 22 and 45 Cal. 557, Foll. (*Teunon and Ghose, J.J.*) **EMPEROR v. LALIT MOHAN.** 62 I. C. 578=25 C. W. N. 788=

22 Cr. L. J. 562=A. I. R. 1921 Cal. 111.

**—S. 164—Evidentiary value.**

—A statement made under S. 164 behind the back of the accused cannot be properly used as evidence against him. The only object in recording such statement is to obtain a hold over the witness. 17 O. C. 363, Foll. (*Raza and Pullan, J.J.*) **MANNI v. EMPEROR.** 7 O. W. N. 736=1930 Cr. C. 946=

A. I. R. 1930 Oudh 406.

—*Examination of Magistrate—Subsequent examination of witnesses.*

An honorary Magistrate who had recorded a statement of a witness under S. 164 was examined as the very first witness to prove the statement before the witness himself was examined, with a view that the aforesaid witness would resile from part of the statement so recorded to save one of the accused.

*Held*, that this should not have been permitted. The statement could only be recorded in evidence for certain limited purposes and only after examining that aforesaid witness. (*Wild, J. C. and Rupchand, A. J. C.*) **MAHOMAD KHAN v. EMPEROR.** 1930 Cr. C. 1145=

A. I. R. 1930 Sind 308.

—Previous statements used for discrediting the evidence of witness cannot be used as substantive evidence. 34 Cal. 129 (P.C.) Ref. 26 Mad. 191; and 17 O. C. 363, Foll. (*Walsh and Kendall, J.J.*) **BISHEN DATT v. EMPEROR.** 105 I. C. 677=8 L. B. A. C. 130=

8 A. I. Cr. R. 287=25 A. I. J. 994=  
28 Cr. L. J. 965=A. I. R. 1927 All. 705.

—Statements of witnesses recorded under S. 164, Cr. P. Code, cannot be used for the purpose of contradicting the statements of other witnesses made at the trial. (*Harrison and Jailal, J.J.*) **HARI RAM v. EMPEROR.** 89 I. C. 897=28 Cr. L. J. 1425=

A. I. R. 1926 Lah. 122.

—*Self-exculpatory statements of accused.*

The word "statement" in S. 164, Cr. P. Code is not limited to a statement by a witness but includes that made by an accused and not amounting to a confession. Where the statements though of a somewhat incrimi-

**CR. P. CODE (1898), S. 164—Evidentiary value.**

nating nature, are self-exculpatory and were duly recorded in accordance with the provisions of S. 164, they can be rightly admitted in evidence. 2 C. W. N. 702, Dist., 1922 Cal. 342, Foll. (*Newbould and B. B. Ghose, J.J.*) **ABDUL RAHIM v. EMPEROR.**

88 I. C. 1055 = 41 C. L. J. 474 =  
26 Cr. L. J. 1279 = A. I. R. 1925 Cal. 926.

—Where an accused person makes a statement before a Magistrate under S. 164 of the Cr. P. Code and the statement is not a confession but is of an exculpatory character, it is not admissible in evidence in favour of the accused but is admissible against him as evidential of a fact relative to the prosecution story. (*Bucknill and Ross, J.J.*) **GOLAM MOHAMMAD v. EMPEROR.**

86 I. C. 814 = 4 Pat. 327 = 6 P. L. T. 598 =  
3 Pat. L. R. Cr. 175 = 26 Cr. L. J. 878 =  
A. I. R. 1925 Pat. 536.

—A statement recorded by any Magistrate in the course of a police investigation under S. 164 is not evidence in a stage of a judicial proceeding within the meaning of S. 193, I.P. Code, Expl. 2. 18 Bom. 377 F.B., Overruled; 11 Bom. 659 and 22 All. 119, Appr. (*Macleod, C.J., Shah, Fawcett and Setalvad, J.J.*) **PURSHOTAM ISHVAR AMIN v. EMPEROR.**

60 I. C. 593 =  
45 Bom. 834 = 23 Bom. L. R. 1 =  
22 Cr. L. J. 241 = A. I. R. 1921 Bom. 3 (F. B.).

**—S. 164—Inquiry and warning.****—Limits of questioning.**

In recording confessions under S. 164, the Magistrate should merely record such confessions or statement as the accused might desire to make. It is no part of his duty to ask questions in detail on matters already within the Magistrate's knowledge and endeavour to reconcile the statements of the accused with other co-accused. But if the statement contains any real ambiguity it is the duty of the Magistrate with great caution and exercising great discretion to question the accused in order to eliminate the ambiguity and give him a chance to make his statement intelligible. (*Boys and Young, J.J.*) **ABDUL JALIL KHAN v. EMPEROR.**

1930 A. L. J. 1105 = 1930 Cr. C. 1002 =  
A. I. R. 1930 All. 746.

**—Madras rules—Form of questions.**

Where the Magistrate, before recording a confession asked the accused: "Do you understand that you are at liberty to make a confession or not as you like, and are you aware that there is no necessity or compulsion on you to make any such statement or confession which may be used in evidence against you?"

*Held*: that the question satisfied the spirit of R. 196 (2). The specimens of questions suggested in the Criminal Rules of Practice seem to be leading questions suggesting torture or other ill-treatment by the police, and it seems to be undesirable to put such questions in the form mentioned in the rule. The whole object and policy of R. 196 is that a Magistrate should satisfy himself that there is no compulsion by the police or ill-treatment so as to raise the suspicion that the statement of the accused is not a voluntary statement, and so long as the spirit of the rule is satisfied it is undesirable that questions should be put in this form showing a total want of trust in the police. (*Ramesam and Jackson, J.J.*) **KUPATHAN v. EMPEROR.**

105 I. C. 667 = 1927 M. W. N. 824 =  
28 Cr. L. J. 955 = 9 A. I. Cr. R. 148 =  
A. I. R. 1927 Mad. 974 = 53 M. L. J. 739.

**—Elucidation and not cross-examination.**

It would be going much too far to say that a magistrate recording a statement or a confession under S. 164 cannot and should not ask a single question of the deponent. But it is equally certain that his position

**CR. P. CODE (1898), S. 164—Inquiry and warning.**

when recording such statement or confession, is merely that of a recording magistrate, and that he is in no sense enquiring into the case, and that he is in no sense an investigating officer. Such statements and confessions made to a police-officer are not regarded as being made in circumstances which justify a Court under ordinary circumstances, in relying upon the record of them, and they cannot be ordinarily put in evidence. But it is desirable that if a witness is really willing to make a statement, or a guilty person is really willing to make a confession, a record of that should be made in such circumstances as may make it reasonably safe to rely upon it. A magistrate would be justified in, and ought, in the ordinary performance of his duties, to clear up any matter which is ambiguous on the face of the statement, but he is wholly unjustified in extracting by questions from the deponent, facts which the deponent has not spoken to in his Court and facts of which the magistrate himself would only be aware of because he has been supplied with some copy of a statement which somebody else alleges the deponent has made and is willing to make again before the magistrate, or unless he is prompted by somebody who is aware of such facts. Everything must depend on the nature of the questioning and the object of it, and the mere fact that an answer was elicited by a question does not make the proceedings improper, or the statement inadmissible as a confession. Under S. 164 the magistrate is bound to record every question that he asked. It is of great importance that this provision of the law should be obeyed, otherwise it may be impossible to tell how far a witness voluntarily deposes to a matter, and how far it was extracted from him by questioning even in the nature of cross-examination. (*Boys and Banerji, J.J.*) **HASAN ALI v. KING-EMPEROR.**

23 A. L. J. 719 = 6 L. R. A. Cr. 137 =  
26 Cr. L. J. 1209 = 88 I. C. 729 = A. I. R. 1926 All. 22.

**—Requirements as to.**

The only warning the magistrate recording confession gave to the accused was whether the accused was willing to make a voluntary confession and that if he made a confession that might be used against him. He did not appear to have informed the accused that he was a magistrate and he did not put to the accused questions in order to find out whether the confession which the accused was about to make was a voluntary one or not.

*Held*: the defects in the manner of recording the confession made it inadmissible. (*Chotner and Mukerji, J.J.*) **EMPEROR v. GARIB HARI.**

27 Cr. L. J. 621 = 30 C. W. N. 454 = 94 I. C. 365 =  
A. I. R. 1926 Cal. 742.

—It is sufficient compliance with the law if the accused when asked whether he wishes to make a statement voluntarily, replies that he does, then he is warned that any statement he might make would be used as evidence against him and even then he replies that he is willing to make a statement. (*Adami and Bucknill, J.J.*) **NILMADHAB CHAUDHURY v. EMPEROR.**

7 A. I. Cr. R. 75 = 5 Pat. 171 = 27 Cr. L. J. 957 =  
96 I. C. 509 = A. I. R. 1926 Pat. 279.

—Where there is nothing to show that the accused was told that he need not make a confession and that if he did so it might be used as evidence against him, his confession is inadmissible in evidence. (*Scott Smith and Fforde, J.J.*) **BAHAWALA v. CROWN.**

88 I. C. 854 = 6 Lah. 183 = 26 P. L. R. 331 =  
26 Cr. L. J. 1238 = A. I. R. 1925 Lah. 432.

—The principal requirement introduced by the Amending Act in S. 164 is that a Magistrate before recording any confession should explain to the person

**CR. P. CODE (1898), S. 164—Inquiry and warning.**

making it that he is not bound to make a confession, and that if he does so it may be used in evidence against him. The confession becomes inadmissible if this essential requirement is not complied with. (*Le Rossignol and Ffoido, J.J.*) **MT. RAO v. CROWN.** 88 I. C. 599 = 7 L. L. J. 170 = 26 Cr. L. J. 1175 = 26 P. L. R. 173 = A. I. R. 1925 Lah. 367.

**—Voluntary character—Essential.**

Section 164 makes it imperative for a magistrate before recording a confession made to him in the course of a Police investigation to question the person making it as to whether he is making it voluntarily and where this is not done a confession is not admissible in evidence. When considering a confession recorded during the course of a Police investigation and which is subsequently retracted the Court must reach a definite conclusion that it is voluntarily made, before it is admitted in evidence. If the Court has any doubt on the point it should give the benefit of the doubt to the accused person.

Where while in Police custody, the accused made a confession on being questioned by the Court Inspector who immediately produced him before a Magistrate who proceeded to record the confession in the presence of the Court Inspector and after recording it remanded the accused to Police custody.

**Held**, that it would be most unsafe to hold that the confession was made voluntarily and that, therefore, it was not admissible against the accused. 1922 Lah. 237, Foll. (*Scott-Smith and Zafar Ali, J.J.*) **NEKI v. EMPEROR.** 76 I. C. 180 = 25 Cr. L. J. 116 = A. I. R. 1924 Lah. 624.

—Where before recording the confession the Magistrate, although he stated that he was satisfied that the confessions were made voluntarily, failed to question the confessants whether they were making a voluntary statement.

**Held**, that provisions of S. 164 are not complied with and the confessions are therefore not admissible. 2 Lah. 325, Foll. (*Shadi Lal, C. J. and LeRossignol, J.*) **KHUSHI MUHAMMAD v. THE CROWN.**

81 I. C. 627 = 6 L. L. J. 166 = 25 Cr. L. J. 979 = A. I. R. 1924 Lah. 481.

**—Real caution must be given.**

Confessing accused are almost invariably unarmed beforehand of the necessary cautions, and are given to understand that if they do not reply satisfactorily to the questions that will be put to them, their statements will not be accepted; but this is not proper. (*Wasir Hasan and Cuming, A. J. Cs.*) **MAHADEO v. KING-EMPEROR.** 10 O. L. J. 280 = A. I. R. 1924 Oudh 65.

**—S. 164—Jurisdiction.**

—Where an investigation was being held by the Burdwan Police but the accused was arrested at Calcutta by Calcutta police,

**Held**, that the arrest of the accused and his production before the Magistrate in Calcutta must be considered as something done in the course of that investigation and not apart and quite detached from the investigation that was being held at Burdwan. (*Chotzner and Mukerji, J.J.*) **EMPEROR v. GARIB HARI.** 27 Cr. L. J. 621 = 30 C. W. N. 454 = 94 I. C. 385 = A. I. R. 1926 Cal. 742.

**—Native States.**

Magistrate of Native State recording the explanation of an accused for the purpose of the Extradition Rules of that State is not recording the statement of an accused person in the course of an investigation under Chapter XIV of the Cr. P. C. (*Crumph, J.*) **EMPEROR v. ANANDRAO GANGARAM.**

**CR. P. CODE (1898), S. 164—Procedure.**

89 I. C. 1046 = 27 Bom. L. R. 1034 = 49 Bom. 642 = 26 Cr. L. J. 1478 = A. I. R. 1925 Bom. 529.

**—S. 164—Oral statement.****—Can prove confession.**

A confession or an incriminating statement made in the presence of a Magistrate by an accused person while in police custody who is not produced before the Magistrate with a view to record his confession can be proved by oral testimony of the Magistrate when it has not been reduced to writing. In absence of any provision of law making it obligatory on the part of a Magistrate to record a confession it is not a matter required by law to be reduced to the form of a document. (*Jai Lal and Currie, J.J.*) **JOG RAJ v. EMPEROR.**

1930 Cr. C. 682 = A. I. R. 1930 Lah. 534.

**—Magistrate can prove.**

Any Magistrate is competent to hold a test identification and if he is not empowered to deal with the matter under enquiry he can prove the statement made before him under the provisions of S. 157, Evidence Act, S. 164, Cr. P. C., covers the case where a Magistrate acts under this section and records a statement made to him, (*Chotzner and Gregory, J.J.*) **SAMIUDDIN v. EMPEROR.** 32 C. W. N. 616 = 10 A. I. C. R. 223 = 29 Cr. L. J. 497 = 109 I. C. 225 = A. I. R. 1928 Cal. 500.

**—Admissibility—Procedure.**

S. 364, Cr. P. C. makes it obligatory upon the Magistrate who examines a person as an accused, to record the whole of the questions put to him and answers given by him. But statements whether in the nature of information given by witnesses about a crime or admissions by persons who have taken part in a crime, if made during the course of an investigation but before the commencement of trial or inquiry are governed by S. 164, which permits but does not compel the Magistrate to record the same. Oral evidence of a Magistrate who watches investigation conducted by the police under instructions given to him under S. 159, Cr. P. C. and who did not himself make any independent inquiry or record any statements from the available witnesses are admissible to prove that the accused confessed the crime to him though the statement was not recorded under S. 164. (*Spencer and Kumaraswami Sastri, J.J.*) **TANGEDUPALLE PEDDA OBIGADU v. PULLASSI PEDDA.** 45 Mad. 230 = 30 M. L. J. 107 = 23 Cr. L. J. 680 = 69 I. C. 264 = 14 M. L. W. 542 = 1921 M. W. N. 779 = A. I. R. 1922 Mad. 40 = 42 M. L. J. 37.

**—S. 164—Procedure.****—Confession after challan was returned to police.**

The Police produced an accused under S. 302, I. P. C. before a Magistrate on 1st September with a view to his committal to Sessions. The Magistrate adjourned the case to 2nd September in order to give opportunity to the accused to engage a counsel. On 2nd September however, the case was not taken by the Magistrate and the police took back the challan alleging that it was incomplete but on the same day a statement under S. 164 was recorded by the Magistrate, in which the accused made full confession of his guilt. Later on, at the close of the prosecution case, the accused retracted his confession alleging that the same had been made under promise of pardon.

**Held**, that the confession could not be used against the prisoner. There was no law which authorized the Magistrate to return the challan after he had taken cognizance of the case. The course adopted by the police in taking back the challan was illegal as well as unfair to the accused and the confession could be ruled out for that reason alone. (*Jai Lal and Bhide, J.J.*) **PAHLA**

## CR. P. CODE (1898), S. 164—Procedure.

WAN v. EMPEROR. 123 I. C. 540 = 31 Cr. L. J. 533 = 1930 Cr. C. 558 = A. I. R. 1930 Lah. 454.

—S. 533.—*Not strictly complied with—Cure.*

Even if a statement be not recorded strictly in conformity with S. 164 so long as the Magistrate purports to have recorded it under that section, and even after the statement has been received in evidence, S. 533 can be resorted to and evidence taken that an accused person duly made the statement recorded. S. 533 plainly provides that notwithstanding anything contained in S. 91, Evidence Act, such statement shall be admitted, if the error has not injured the accused as to his defence on the merits. 18 Cal. 549; 21 Bom. 495; and 32 Cal. 550, Rel; 9 Mad. 224, Dist.; 17 Cal. 862 Diss. from. (*Maung Ba and Brown, J.J.*) BA YIN v. EMPEROR.

121 I. C. 782 = 7 Rang. 759 = 31 Cr. L. J. 297 = 1930 Cr. C. 245 = A. I. R. 1930 Rang. 53.

—*Different language.*

Omission to record confession in the language used by the accused may be over-looked if he has not injured the accused in his defence. 7 F. R. 1899 Cr. Foll. (*Harrison and Agha Haidar, J.J.*) NAWAB v. EMPEROR.

100 I. C. 821 = 28 Cr. L. J. 341 = 7 A. I. C. R. 562 = A. I. R. 1927 Lah. 285.

—The provisions of S. 164 (3) render it incumbent on a Magistrate who is called on to record a confession to explain to the person who is to make it that he is not bound to make a confession at all, and that if he does so it may be used as evidence against him. Further the Magistrate should only record the confession if upon examination of the person making it, he has reason to believe that it will be made voluntarily. (*Broadway and Addison, J.J.*) PARTAP SINGH v. EMPEROR.

93 I. C. 978 = 6 Lah. 415 = 7 L. L. J. 482 = 27 Cr. L. J. 514 = A. I. R. 1925 Lah. 605.

—*Self-exculpatory statement.*

Where the statement made by one of the accused persons previous to the trial before another Magistrate was not a confession but was in the nature of an exculpatory statement, and the procedure prescribed in S. 164 of the Cr. P. Code, was not followed.

*Held*, that the statement was not admissible in evidence against the other accused. (*Scott Smith, J.*) BATAN SINGH v. EMPEROR.

86 I. C. 219 = 7 L. L. J. 39 = 26 Cr. L. J. 731 = A. I. R. 1925 Lah. 334.

—The statement recorded by a Magistrate is admissible in evidence under S. 164 whether taken on solemn affirmation or not. (*Kincaid, J. C. and Aston, A. J. C.*) BAHADUR WALAD RANO KHASKHELI v. EMPEROR.

88 I. C. 7 = 19 S. L. R. 71 = 26 Cr. L. J. 1063 = A. I. R. 1925 Sind. 289.

—S. 164—Retraction.

—*Just before certificate.*

A Magistrate complying with necessary formalities recorded the statement of the accused and had the necessary thumb mark affixed on it on his admitting its correctness. He then proceeded to append his certificate and while the certificate was being written, the accused stated that the statement was made at the instance of police. On his persisting in that statement he recorded further statement on which the accused clearly stated that the statement was made at the instance of police.

*Held*, that the accused must be regarded as having made no confession inasmuch as although statement had been recorded fully and correctness admitted, the requirements of S. 164 had not been fully complied with by Magistrate before the accused resiled. (*Broadway and Agha Haidar, J.J.*) ARJAN SINGH v. EMPEROR.

119 I. C. 325 = 30 P. L. R. 646 = 30 Cr. L. J. 1046 = 1930 Cr. C. 289 = 11 Lah. 106 = A. I. R. 1930 Lah. 257.

## CR. P. CODE (1898), S. 164—Miscellaneous.

—*Value of confession.*

That a confession, having been retracted, cannot be acted upon without material corroboration, is not an absolute rule. If the reasons given by an accused person for having made a confession, which he subsequently withdraws, are, on the face of them, false, it is not apparent why that confession should not be acted on, as it stands and without any further corroboration. (*Waller and Cornish, J.J.*) KESAVA PILLAI v. EMPEROR.

1929 Cr. C. 485 = 30 M. L. W. 642 = 2 M. Cr. C. 298 = 1929 M. W. N. 901 = A. I. R. 1929 Mad. 837 = 57 M. L. J. 681.

—A retracted confession cannot be given any weight, unless it is well corroborated by reliable evidence. (*Adami and Bucknill, J.J.*) RAMAI HO v. EMPEROR.

84 I. C. 458 = 3 Pat. 872 = 26 Cr. L. J. 314 = A. I. R. 1925 Pat. 191.

—*What amounts to.*

One witness had stated that the appellant was beaten before he told the Police what had happened, and the Magistrate stated that the appellant was returned to the Police after making his confession. Further there were details in the confession which conflicted with the evidence for the prosecution. The confession had been retracted on the first possible occasion.

*Held*, it was not genuine and it is of no value as evidence against the appellant. (*Shadi Lal, C. J. and Campbell, J.*) HARPHUL v. THE CROWN.

75 I. C. 762 = 25 Cr. L. J. 58 = A. I. R. 1923 Lah. 429.

—*When sufficient for conviction.*

A confession made and retracted must always be open to some suspicion. But it is sufficient for a conviction, if the Court is satisfied that it was voluntarily made and true. The credibility of such a confession in each case is a matter for the Court to decide, according to circumstances of each particular case. 8 W. R. 40 Cr.; 22 Cal. 164, Followed. (*Das and Adami, J.J.*) BEHARI ADRABI v. EMPEROR.

60 I. C. 789 = 3 P. L. T. 98 = 22 Cr. L. J. 293 = A. I. R. 1922 Pat. 492.

—S. 164—Time and place.

—It is a question whether a confession under S. 164 can be recorded by a Magistrate after a case has been sent to him for inquiry. (*Jai Lal and Bhide, J.J.*) PAHLAWAN v. EMPEROR.

1930 Cr. C. 558 = 123 I. C. 540 = 31 Cr. L. J. 533 = A. I. R. 1930 Lah. 454.

—*Holiday—Any place.*

There is no provision of law which forbids a Magistrate from recording a confession on a Sunday or any other holiday and at a place other than the Court-House. (*Tek Chand and Ffords, J.J.*) KHANUN v. EMPEROR.

11 L. L. J. 461 = 1930 Cr. C. 179 = 125 I. C. 49 = 31 Cr. L. J. 759 = A. I. R. 1930 Lah. 171.

—The Code itself contains no provisions as to the confession being made in open Court. (*Adami and Bucknill, J.J.*) NILMADHAB CHAUDHURY v. EMPEROR.

96 I. C. 509 = 7 A. I. C. R. 75 = 5 Pat. 171 = 27 Cr. L. J. 957 = A. I. R. 1926 Pat. 279

—S. 164—Miscellaneous.

—*Copies.*

The order of the Magistrate refusing to grant copies of the statements recorded under S. 164 of such witnesses as were to appear at the trial, is wrong. 30 Mad. 466; A. I. R. 1925 Lah. 605 and A. I. R. 1926 Lah. 122, Dist. (*Skemp, J.*) GHULAM NABI v. EMPEROR.

117 I. C. 377 = 30 Cr. L. J. 760 = A. I. R. 1929 Lah. 429.

—A was charged of murder. Before police investigation had been concluded, an incomplete challan was plac-

**CR. P. CODE (1898), S. 164—Miscellaneous.**

ed before the committing Magistrate who, after recording the evidence of some witnesses, examined the prisoner under S. 342, wherein A admitted his participation in assault. But when he was again examined he denied having committed the murder and attributed his previous statement to a promise of pardon by the police and also to the ill-treatment by the investigation officer. It was found that the incomplete challan was produced with the object of avoiding mandatory provisions of S. 164.

*Held*, that an attempt by the police to get over the mandatory provisions of S. 164 must be deprecated and such a confession must be excluded from consideration. (*Shadi Lal, C. J. Coldstream, J.*) SULLAH v. EMPEROR. 110 I. C. 329=29 P. L. R. 388=

10 L. L. J. 311=10 A. I. Cr. R. 508=29 Cr. L. J. 697=A. I. R. 1928 Lah. 724.

**Presidency Magistrate's Powers.**

The change by amendment of 1923 is made to allow a Presidency Magistrate to record a confession in the course of police investigation. Although S. 1 bars the application of the Code to the police it does not bar an application of the Code to a Magistrate or any Magistrate not being a police officer. (*Adami and Bucknall, J.J.*) NILMADHAB CHAUDHURY v. EMPEROR. 7 A. I. Cr. R. 75=5 Pat. 171=27 Cr. L. J. 957=

96 I. C. 509=A. I. R. 1926 Pat. 279.

**—S. 165—Copies.****Refusal illegal.**

The order directing an application for copies under S. 165 (5) to be filed is tantamount to refusing to grant the copies. Such an order cannot be treated as an extra judicial order, and being actually in disregard of the specific provisions of the law is illegal and can be set aside under S. 435. (*Sulaiman, Ag. C. J.*) CHURAMANI CHATURVEDI v. EMPEROR. 110 I. C. 215=

26 A. L. J. 703=29 Cr. L. J. 663=9 L. R. A. Cr. 84=9 A. I. Cr. R. 536=A. I. R. 1928 All. 402.

**—S. 165—General search.****Meaning—Powers of.**

Section 165 does not give any authority for the general search of the stolen property but only for specified stolen articles. A general search means a search not in respect of specific documents or things which the officer considered were necessary or desirable for the purpose of the investigation in hand but a roving enquiry for the purpose of discovering documents or things which might involve persons in criminal liability. (*Cuming and Page, J.J.*) PARESH CHANDRA SEN v. JOGENDRA NATH. 27 Cr. L. J. 1195=

97 I. C. 955=A. I. R. 1927 Cal. 93.

**—S. 165—Intention.**

The new provision of Cl. (5) of S. 165 is intended as an extra safeguard to protect individuals against general or roving searches, and so it is essential that a police officer conducting a search under S. 165 or 166 should send forthwith to the nearest Magistrate copies of the record that he has prepared before undertaking the search. (*Newbould and B. B. Ghose, J.J.*) LAL MEA v. EMPEROR. 43 C. L. J. 184=

27 Cr. L. J. 542=93 I. C. 1038=A. I. R. 1926 Cal. 663.

**—S. 165—Legality.****Specific articles.**

Where a Police Officer searches a house for stolen articles for which a particular list is given to him, he is making a search for specific article and his action is not illegal. (*Cuming and Page, J.J.*) PARESH CHANDRA SEN v. JOGENDRA NATH. 27 Cr. L. J. 1195=

97 I. C. 955=A. I. R. 1927 Cal. 93.

**CR. P. CODE (1898), S. 167—Powers of Magistrate.****Specific documents.**

Per *Page, J.*—A Police Officer is entitled to search even for specific documents or things in the house of a person accused of a crime. 38 Cal. 304, Diss. from. (*Cuming and Page, J.J.*) PARESH CHANDRA v. JOGENDRA NATH. 27 Cr. L. J. 1195=

97 I. C. 955=A. I. R. 1927 Cal. 93.

**—S. 165—Scope.****Not imperative.**

The provisions of Cl. (4) of S. 165 are not imperative, but they apply to a search by the police, the provisions of Ss. 102 and 103, Cr. P. Code, so far as may be. (*Dalal, J.*) SHIAM LAL v. EMPEROR. 8 A. I. Cr. R. 7=8 L. R. A. Cr. 92=

28 Cr. L. J. 652=103 I. C. 108=A. I. R. 1927 All. 516.

—S. 165 not only authorises a police-officer to make a search for what is stolen and believed to be stolen property but also permits a search for anything necessary for the purposes of an investigation into any offence. (*Boys and Ashworth, J.J.*) EMPEROR v. PARAM SUKH. 23 A. L. J. 1037=6 L. R. A. Cr. 173=

27 Cr. L. J. 11=91 I. C. 43=A. I. R. 1926 All. 147.

**—S. 167—Legal advice to accused.**

—Proceedings before a Magistrate under S. 167 fall within the provisions of S. 340. It is in the interests of justice that an accused person should have access to legal advice even while he is in police custody during the course of an investigation. An interview with the legal adviser should not therefore be refused to a prisoner who is remanded to police custody under S. 167. (*Bhude, J.*) SUNDAR SINGH v. EMPEROR. 1930 Cr. C. 1041=31 P. L. R. 780=

A. I. R. 1930 Lah. 945.

**—S. 167—Magistrate's functions.****Judicial.**

A Magistrate acting under S. 167 has to weigh evidence to decide whether the prisoner should be detained in custody or not. Weighing of such evidence is essentially a judicial function. A Magistrate acting under S. 167 cannot therefore be said to be acting in executive capacity. (*Bhude, J.*) SUNDAR SINGH v. EMPEROR. 1930 Cr. C. 1041=31 P. L. R. 780=A. I. R. 1930 Lah. 945.

**—S. 167—Object.**

—Intention of Legislature is that accused should be brought before Magistrate competent to try or commit, with least delay. (*Mookerjee and Chatterjee, J.J.*) NAGENDRA NATH CHAKRABARTI v. EMPEROR. 81 I. C. 220=25 Cr. L. J. 732=51 Cal. 402=

38 C. L. J. 388=A. I. R. 1924 Cal. 476.

**—S. 167—Powers of Magistrate.****Detention.**

Where a Magistrate receives a complaint he should either himself examine one or more complainants and take action under S. 202, or if he is taking action on his own knowledge, he should transfer the proceedings completely to another Magistrate so that that Magistrate may proceed to enquiry or trial after recording the statement of the complainant. It is also open to him to make report to police who can take action under S. 167. But so far as can be gathered from provisions of the Code a Magistrate has not the powers of a police officer to investigate and keep an accused person in custody for the purposes of such investigation; custody can only follow where definite charge has been made and complainant has been examined. (*Dalal, J.*) ANAND BEHARI LAL v. EMPEROR. 11 L. R. A. Cr. 33=1930 A. L. J. 635=1930 Cr. C. 371=1930 A. L. J. 635=52 All. 457=126 I. C. 236=31 Cr. L. J. 998=A. I. R. 1930 All. 258.

**CR. P. CODE (1898),****—S. 167—Procedure.**

—On the expiry of the period of 15 days allowed under Ss. 61 and 167 the police must either release the accused under S. 167, security being taken if required or the Magistrate must take cognizance on a report under S. 173 if the report according to the Magistrate makes out a *prima facie* case or the Magistrate must release him (*Greaves and Pantan, J.J.*) BHOLANATH DAS v. EMPEROR. 83 I. C. 628 = 28 C. W. N. 490 = 26 Cr. L. J. 68 = A. I. R. 1924 Cal. 614.

**—S. 167—Remand to police custody.****—Principle governing.**

Remands to police custody ought not to be granted except in cases of real necessity and even then the period should be fixed with due regard to the reasonable requirements of the case. When a remand to police custody is granted under S. 167, Cr. P. C., reasons must clearly be stated in the order as required by sub-S. (3) of that section. (*Bhide, J.*) DHURUV DEV v. EMPEROR.

31 P. L. R. 693.

**—S. 170—Private complaint.****—No bar to police prosecution.**

The mere fact that a private complaint is filed in a Court and the Magistrate takes cognizance of the private complaint does not and cannot deter the police from enquiring into the offences which have been committed and which come to their knowledge not from the complainant party but on information which they secure in the course of their duty from other persons. A charge-sheet then framed by the police is proper and the mere fact that there was a private complaint does not take away the rights of the police to conduct the prosecution. (*Devadoss, J.*) S. VIJAYARAGHAVA CHARIAR v. EMPEROR. 114 I. C. 365 = 1 Mad. Cr. C. 341 = 30 Cr. L. J. 326 = A. I. R. 1928 Mad. 1268.

**—S. 172—Admissibility.****—List of stolen property—Map prepared by police.**

A list of stolen property handed to a Police Officer in the course of investigation is not admissible in evidence and should not be placed before the jury. The admission of such a list however would not of itself vitiate the trial unless it is shown that the accused have been prejudiced by such admission. Where the names of certain persons are sent to the Police as being the names of those who are suspected of being concerned in the commission of an offence and the evidence of the person who supplied these names to the Police is challenged in Court, the list of names supplied by him is admissible in evidence to corroborate his statement. A map which contains upon it certain things which must have been supplied to the Police Officer by some person should not be admitted unless there had been the evidence of the person as to what he said to the officer and the evidence of the Police Officer as to what the person told him. (*Greaves and Pantan, J.J.*) KALIA v. EMPEROR. 85 I. C. 723 = 26 Cr. L. J. 579 = A. I. R. 1925 Cal. 959.

**—S. 172—Applicability.**

Ss. 162 and 172 do not apply to Calcutta Police. (*Suhrawardy, J.*) PANCHANAN MUKHERJEE v. EMPEROR. 116 I. C. 160 = 33 C. W. N. 203 = 30 Cr. L. J. 577 = 12 A. I. Cr. R. 448 = A. I. R. 1929 Cal. 257.

**—Calcutta police.**

Where a diary is prepared under S. 47 (a) of the Calcutta Suburban Police Act no privilege attaches to it and S. 172 has no application and therefore the accused person would be entitled to use those statements recorded by the Police Officer of witnesses who have been examined in the case, to contradict those witnesses who had given evidence before the Magistrate under S. 145 of the Evidence Act. It is immaterial in a criminal

**CR. P. CODE (1898), S. 172—Use at trial.**

case on whose behalf it is put in. (*Ghose and Cumming, J.J.*) SURESH CHANDRA GHOSH v. EMPEROR.

74 I. C. 261 = 24 Cr. L. J. 757 = A. I. R. 1924 Cal. 542.

**—S. 172—Object.**

The object of sub-section 2 is to enable the Court to direct the police officer who is giving his evidence, to refresh his memory from the notes made by him in the course of the investigation of the case, or to question him as to contradictions which may appear between statements so recorded and the evidence he is giving in Court. If used for the latter purpose, the provisions of Ss. 145 and 161 of the Evidence Act shall apply. (*Shadi Lal, C. J. and Fforde, J.*) MOHAMMAD v. EMPEROR.

26 Cr. L. J. 1308 = 89 I. C. 252 = A. I. R. 1926 Lah. 54.

**—S. 172—Personal diary.****—Not inadmissible.**

Entries made in a personal diary kept by a police officer, who did not start or carry on the investigation of a case do not fall within the purview of S. 172 and are not therefore inadmissible in evidence by virtue of the provisions of that section. (*Greaves and Pantan, J.J.*) KALIA v. EMPEROR. 85 I. C. 723 = 26 Cr. L. J. 579 = A. I. R. 1925 Cal. 959.

**—S. 172—Refusal to refer.**

It may be within the right of the police officers not to refer to a diary, but the accused is entitled to the benefit of their refusal to refer to the diary and to disclose the source of their information. (*Jwala Prasad, J.*) DEODHARI PANDEY v. EMPEROR.

86 I. C. 274 = 26 Cr. L. J. 738 = 1925 P. H. C. C. 6 = A. I. R. 1925 Pat. 131.

**—S. 172—Right of the accused.**

The Magistrate called for the diary after receiving a written statement from the Police that there was no statement recorded under S. 162, Cr. P. Code.

*Held*, that if the diary was one of the kind described in S. 172 neither the accused nor his agents were entitled to call for them or to see them unless and until they were used by the Police or by the Court for the purposes described in the section. (*Foster, J.*) RABINDRA NATH v. EMPEROR. 84 I. C. 441 = 26 Cr. L. J. 297 = A. I. R. 1925 Pat. 339.

**—S. 172—Scope of.**

What is intended to be recorded under S. 172 is what the Police Officer did, the places where he went, the people he visited, what he saw, etc., and no statement can be recorded under this section and therefore it would not be a privileged one. (*Cumming and Graham, J.J.*) MOFIZODDI v. EMPEROR. 45 C. L. J. 561 = 31 C. W. N. 940 = 104 I. C. 245 = 28 Cr. L. J. 805 = A. I. R. 1927 Cal. 644.

**—S. 172—Statements.****—Not covered.**

S. 172 does not apply in any way to the statements of persons and certainly does not override the provisions of the Evidence Act. (*Harrison and Dalip Singh, J.J.*) HAZARA SINGH v. EMPEROR. 9 Lah. 389 = 9 A. I. Cr. R. 559 = 29 Cr. L. J. 348 = 108 I. C. 167 = A. I. R. 1928 Lah. 257.

**—S. 172—Use at trial.****—After verdict.**

If the Judge could refer to the diaries before the verdict of the jury he could obviously refer to them after the verdict as the trial does not end with the verdict. (*Cumming and Lord Williams, J.J.*) REBATI MOHAN v. EMPEROR. 32 C. W. N. 945 = 56 Cal. 150 = 115 I. C. 258 = 30 Cr. L. J. 435 = 12 A. I. Cr. R. 265 = A. I. R. 1929 Cal. 57.



**CR. P. CODE (1898), S. 172—Use at trial.**

—The power under S. 172, Cr.P. Code, to look into case diaries should be sparingly exercised. (*Beaseley, C. J. and Cornish, J.*) KUMARASWAMI ASARI v. EMPEROR. 1929 M. W. N. 587.

—Standing by themselves the police proceedings are not substantive evidence in the case and cannot be used in order to test the correctness of the statements made by witnesses on oath before the Court. References by a magistrate to police proceedings cannot be justified even under S. 172. A. I. R. 1917 P. C. 25, Rel. on. (*Shadi Lal, C. J. and Agha Haidar, J.*) EMPEROR v. RAM RANG. 109 I. C. 221=10 A. I. Cr. R. 230=29 Cr. L. J. 493=A. I. R. 1928 Lah. 820.

—*Caution necessary—Foundation for questions to witnesses.*

The entries in the police diary cannot be used as though they were evidence in the case to discredit the prosecution evidence. They can be used only to aid it in the inquiry or trial. The aid which a Court can receive from the entries in such a diary is usually confined to utilising the information given therein as a foundation for questions to be put to the witnesses, and in using the diary the Court should always employ very great caution. (*Stuart, C. J. and Raza, J.*) RAJARAM v. KING-EMPEROR. 3 O. W. N. 1001=99 I. C. 342=28 Cr. L. J. 134=7 A. I. Cr. R. 52=A. I. R. 1927 Oudh 64.

—*Limits of.*

To disbelieve the story of the defence only because it is nowhere mentioned in the Police Zimnis, amounts to making use of the Zimnis in such a way as to strengthen the case for the prosecution and to show that the rival story told by the defence is untrue,—a course forbidden by the provisions of the Cr. P. Code. (*Harrison and Fforde, J.J.*) DEVI v. EMPEROR

27 Cr. L. J. 572=94 I. C. 140=A. I. R. 1926 Lah. 485.

—The Court may also use the diaries in the course of the trial for the purpose of clearing up obscurities in the evidence or bringing out relevant facts which the court thinks are material in the interests of a fair trial. If the statements in question however, have not been made evidence in accordance with these statutory provisions, no Court has the right to refer to them subsequently for the purpose of coming to a judicial decision upon the case which is under trial or enquiry. (*Shadi Lal, C. J., and Fforde, J.*) MOHAMMAD v. EMPEROR. 26 Cr. L. J. 1308=89 I. C. 252=A. I. R. 1926 Lah. 54.

**—S. 173—Form.**

—*Requirements.*

S. 173 does not require to be entered in charge-sheet abstract of evidence given by each of the witnesses and the charge-sheet prescribed by G. O. No. 3487 Law (General), dated 16th October 1928 and published in the Fort St. George Gazette, dated 23rd October 1928, can be legally prescribed under S. 173 although it requires less details to be given than the form previously prescribed and is not illegal. (*Reilly, J.*) BALASUNDARAM, *In re*. 122 I. C. 341=1930 Cr. C. 191=31 Cr. L. J. 387=1929 M. W. N. 504=2 M. Cr. C. 190=A. I. R. 1930 Mad. 191.

**—S. 173—Police report.**

—*Conviction based on—Validity of.*

No Magistrate trying a case is supposed to draw material for a conviction from the report of a Sub-Inspector when that Sub-Inspector has not in fact been examined in Court. (*Foster, J.*) JAI SINGH v. KING-EMPEROR. 97 I. C. 424=27 Cr. L. J. 1112=7 A. I. Cr. R. 136=A. I. R. 1927 Pat. 37.

**CR. P. CODE (1898), S. 174—Granting of copies.****—S. 173—Powers of District Magistrate.**

—The District Magistrate has no power under the Criminal Procedure Code to call for a charge-sheet after the final report is put up before a Magistrate empowered to take cognizance of the offence under S. 173 and is disposed of by him. (*Jwala Prasad, J.*) SHUKA-DEVA SAHAY v. HAMID MIYAN. 7 Pat. 561=10 P. L. T. 14=29 Cr. L. J. 942=11 A. I. Cr. R. 209=111 I. C. 862=A. I. R. 1928 Pat. 585.

**—S. 173—Railway police.**

—*Are governed by Cr. P. C. unless specially prohibited.*

The railway police, if they have completed an investigation before the time mentioned in the proviso to sub-R. 1 to R. 26 under S. 84, Railways Act, are not impliedly prohibited from exercising the ordinary powers which the officer in charge of a police station has of making a report as to the result of his investigation under S. 173, Cr. P. Code. The provisions of the Criminal Procedure Code apply, unless there is anything in any enactment for the time being in force regulating the manner of investigating offences connected with railway accidents to the contrary. There is nothing that clearly frustrates the authority of the police officer mentioned in S. 173, Cr. P. Code, who has completed his investigation at the time an enquiry under R. 20 is commenced or ordered. (*Fawcett and Mirza, J.J.*) SHIVBHAT MANJUNATHBHAT v. EMPEROR. 109 I. C. 487=10 A. I. Cr. R. 308=29 Cr. L. J. 551=52 Bom. 238=30 Bom. L. R. 392=A. I. R. 1928 Bom. 162.

**—S. 173—Validity of report.**

—Where the Court makes an order for investigation under S. 155 (2) and a charge-sheet is filed after making the investigation, that charge-sheet can be regarded as coming under the description of report; but if such charge-sheet, after mentioning sections of Penal Code, fails to give any details or circumstances of any description, the provisions of S. 173 which require that the nature of the information should be stated and those of S. 190 (1) (b) which require that the facts constituting the offences should be stated are disregarded and so prosecution cannot be based on such charge-sheet treating it either as report or complaint. (*Mirza and Broomfield, J.J.*) SHIVLINGAPPA BHAGAPPA, *In re*. 32 Bom. L. R. 782=127 I. C. 110=1930 Cr. C. 891=A. I. R. 1930 Bom. 372.

**—S. 173—What is a report.**

—In a case investigated by the police against three persons for theft the police sent up their report wherein one person had been described as concerned in theft and for the other two they reported that witnesses spoke against them on account of enmity but if the Court thought there was evidence against them the Court may issue warrants.

*Held*, that the report was a police report within S. 173 even as regards the other two persons. (*Kincaid, J. C., Raymond and Aston, A. J. C.*) MEHRAB v. THE CROWN. 83 I. C. 885=17 S. L. R. 150=26 Cr. L. J. 181=A. I. R. 1924 Sind 71 (F. B.).

**—S. 174—Granting of copies.**

—The fact that the inquest is held in the presence of two or more respectable inhabitants does not render the statements taken by police officer under S. 174 any the less statements made to a police officer. Such statements are therefore not public documents of which accused is entitled to a copy and the procedure which governs the grant of copies of statements under S. 162 governs also the grant of copies of statements made at the inquest. A. I. R. 1926 Mad. 183, Rel. on. When the medical officer is not examined at the beginning of

**CR. P. CODE (1898), S. 174—Granting of copies.**

the enquiry, a copy of the *post mortem* certificate ought to be given to the accused for the purpose of enabling him to conduct his defence, and so the inquest report (excluding statements made therein), when the investigating police officer is not examined at the beginning of the enquiry. (*Wallace, J.*) **MARUTHAMUTHU KUDUMBAN v. KING-EMPEROR.** 50 Mad. 750 = 25 M. L. W. 599 = 38 M. L. T. 314 = 1927 M. W. N. 392 = 101 I. C. 495 = 28 Cr. L. J. 433 = 8 A. I. Cr. R. 80 = A. I. R. 1927 Mad. 512 = 52 M. L. J. 601.

**—S. 174—Procedure.**

—The proceedings under S. 174 should be kept quite distinct from the proceedings taken on the complaint regarding the same death. (*Broadway, J.*) **GULAB KHAN v. GHULAM MD. KHAN.** 8 Lah. L. J. 524 = 27 P. L. R. 779 = 99 I. C. 58 = 23 Cr. L. J. 26 = 7 A. I. Cr. R. 214 = A. I. R. 1927 Lah. 30.

**—S. 176—Illegality in proceedings—Remedy.**

—In the course of an inquiry held under S. 176 by a mahalkari who was invested with powers of a 2nd Class Magistrate by name the District Superintendent of Police reported, imputing a cognizable offence to the Magistrate in the conduct of the enquiry, to the Collector and District Magistrate; the Collector started departmental enquiry and suspended the Magistrate and relieved him of his functions as mahalkari and Magistrate.

*Held*, that if the Collector was satisfied on perusal of the papers that there was an illegality or an irregularity in the proceedings, under S. 176 he could have reported, to the High Court under S. 438, and the High Court would have passed such orders as it thought fit, but the action of Collector in interfering with the judicial enquiry and virtually putting an end to it was both illegal and improper and that the Magistrate continued to be a 2nd Class Magistrate though he was suspended as mahalkari, as the power of suspending the Magistrate was given only to Local Government by S. 26. (1887) Unrep. Cr. C. 322, Rel. on. (*Mirza and Patkar, J.J.*) **LAXMINARAYAN TIMMANNA KARKI, In re.** 30 Bom. L. R. 1050 = 11 A. I. Cr. R. 324 = 29 Cr. L. J. 1063 = 112 I. C. 567 = A. I. R. 1928 Bom. 390.

**—S. 176—Object.**

—*Check on police.*

S. 176 proceeds upon the basis that enquiry into a suspicious death should not depend merely upon the opinion the police may form but that there should be a further check by enabling a local Magistrate to hold an independent enquiry. (*Mirza and Patkar, J.J.*) **LAXMINARAYAN TIMMANNA KARKI, In re.** 30 Bom. L. R. 1050 = 11 A. I. Cr. R. 324 = 29 Cr. L. J. 1063 = 112 I. C. 567 = A. I. R. 1928 Bom. 390.

**—S. 176—Proceedings, nature.**

—Proceedings of a Magistrate under S. 176 are an "inquiry" as defined by S. 4 (1) (k) and a "judicial proceeding" as defined by S. 4 (1) (m). (*Mirza and Patkar, J.J.*) **LAXMINARAYAN TIMMANNA KARKI, In re.** 30 Bom. L. R. 1050 = 11 A. I. Cr. R. 324 = 29 Cr. L. J. 1063 = 112 I. C. 567 = A. I. R. 1928 Bom. 390.

**—S. 176—Revision.**

—*Proceedings.*

The High Court has power to revise proceedings of a Magistrate under S. 176, either under S. 435 or S. 439, apart from its inherent powers under S. 561-A. (*Mirza and Patkar, J.J.*) **LAXMINARAYAN TIMMANNA KARKI, In re.** 30 Bom. L. R. 1050 =

**CR. P. CODE (1898), S. 179—Applicability.**

11 A. I. Cr. R. 324 = 29 Cr. L. J. 1063 = 112 I. C. 567 = A. I. R. 1928 Bom. 390.

**—S. 177—Bigamy.**

—*Place of second marriage.*

The offence of bigamy and the abetment of bigamy is triable only in the district in which the second marriage or the abetment took place and not in the district in which the woman is reported to have been enticed away. (*Martineau, J.*) **AMIRCHAND v. THE CROWN.** 85 I. C. 365 = 26 Cr. L. J. 525 = 6 L. L. J. 422 = A. I. R. 1924 Lah. 732.

**—S. 177—Interpretation.**

—*Ordinarily.*

The word "ordinarily" in S. 177 must be taken to mean "except in the cases provided hereinafter to the contrary". A. I. R. 1925 Pat. 187, Foll. (*Fawcett and Mirza, J.J.*) **EMPEROR v. GOVERDHAN RIDKARAN.** 30 Bom. L. R. 387 = 10 A. I. Cr. R. 157 = 29 Cr. L. J. 533 = 109 I. C. 355 = A. I. R. 1928 Bom. 140.

**—S. 177—Trial without jurisdiction.**

—*Rectification.*

Where an offence is being inquired into and tried by a Court contrary to the provisions of S. 177, the error can be rectified by the High Court by transfer to the Court having jurisdiction. The High Court is not bound to quash the proceedings. 23 O. C. 87 Diss. (*Dalal, J.C.*) **MUBARAK ALI v. ABDUL HAQ.** 85 I. C. 721 = 26 Cr. L. J. 577 = A. I. R. 1925 Oudh 490.

**—S. 177—Two offences.**

—An accused was charged under S. 366 and S. 376 and 114, I. P. C., the offence under S. 366 triable at A and the offence under Ss. 376 and 114 triable at B, and he was ordered to take trial for both the offences at B.

*Held*, that the Court at B had no jurisdiction to try the second offence which was triable at A. (*Mirza, J.*) **EMPEROR v. MOHANLAL ADITRAM.** 30 Bom. L. R. 1253 = 12 A. I. Cr. R. 49 = 113 I. C. 617 = 30 Cr. L. J. 191 = A. I. R. 1928 Bom. 475.

**—S. 179—Applicability.**

The provisions under Chap. 15-A are not separately independent of one another so that if one provision applied, the other would not so apply; and consequently merely because there are certain provisions with regard to place of inquiry, in a case of criminal breach of trust under S. 181 (2) it does not follow that S. 179 would not apply to that enquiry. S. 179 does cover that offence as also cheating under S. 408, Penal Code: 19 All. 111, Rel. on.; 32 All. 397; 35 All. 29; A. I. R. 1924 All. 77, Ref.; 34 All. 487, Dist. (*Dalal, J.*) **S. F. RICH v. EMPEROR.** 1930 A. L. J. 849 = 1930 Cr. C. 669 = 125 I. C. 589 = 31 Cr. L. J. 865 = A. I. R. 1930 All. 449.

—Although loss to the principal or employer may be the usual and the normal result of criminal breach of trust, it is neither the necessary ingredient nor even the necessary consequence of the offence of criminal breach of trust. It is the act itself which in law amounts to the offence apart from any such consequence and therefore the jurisdiction to try an offence of criminal misappropriation or criminal breach of trust is governed by S. 181 (2) and not by S. 179. Further, if there is a further duty enjoined upon the agent or the factor to render accounts at another place, the failure in rendering such accounts or rendering false accounts at such place does not confer jurisdiction under S. 179 upon the Magistrate at latter place. 46 Bom. 641. Overruled; 19 All. 111 and 35 All. 29, Diss. from; 44 Cal. 912;

**CR. P. CODE (1898), S. 179—Applicability.**

38 Mad. 639 and A. I. R. 1925 Cal. 613, Ref.; *Rex v. Oliphant*, (1905) 2 K. B. 67, Dist.

Per *Madgavkar, J.*—The matter entirely depends upon where the act of criminal misappropriation including dishonest intent is completed as far as the knowledge and belief of complainant go. (*Beaumont, C. J., Madgavkar and Baker, J.J.*) *JIVANDAS SAVCHAND, In re.* 32 Bom. L. R. 1195=1930 Cr. C. 1026=

A. I. R. 1930 Bom. 490 (F. B.).

—Section 181 (2) and not S. 179 applies to a case of criminal breach of trust. (*Suhrawardy and Mukerji, J.J.*) *GUNANANDA DHONE v. LALA SANTI PRAKASH NANDY.* 86 I. C. 213=41 C. L. J. 80=

29 C. W. N. 432=26 Cr. L. J. 725=

A. I. R. 1925 Cal. 613.

—S. 179 does not govern the jurisdiction of a Court to try the offence of criminal misappropriation or of criminal breach of trust for which a special provision is to be found in S. 181 (2). 22 P. R. 1915 (Cr), Foll. (*Shadr Lal, C. J.*) *MAHTAB DIN v. THE CROWN.*

77 I. C. 490=25 Cr. L. J. 410=

A. I. R. 1924 Lah. 663.

**—S. 179—Cheating.****—Composite acts.**

Where the accused styling himself as "The Director of Mesmerism" posted three V. P. parcels containing a piece of paper purporting to convey the first lesson in mesmerism, the parcels were received by the addressees and value paid to the post office, the act of deceiving and the act of inducing delivery of property were composite acts which began with the delivery of the parcels to the post office for posting. The posting was an essential part of the offence and so both under S. 179 and S. 182 (2) the Court in whose local area the posting was made had jurisdiction to try the case. A. I. R. 1923 Mad. 666, Appr.; 38 Mad. 639, Not Appr.; 1927 Mad. 544, Diss. from. (*Mirza and Broomfield, J.J.*) *GAFUR KARIMBAX v. EMPEROR.*

1930 Cr. C. 790=127 I. C. 177=

32 Bom. L. R. 785=A. I. R. 1930 Bom. 358.

**—V. P. Parcels.**

Accused sent by V. P. P. certain boxes purporting to contain tea at the order of A to Hyderabad. A paid the value payable amount and took delivery of the boxes but on opening found them to contain merely sawdust.

*Held*, the delivery contemplated by S. 415, Penal Code, is 'delivery to any person', a phrase which will include even an agent. The deceit and the delivery in consequence of the deceit were complete when the money was handed over to the Post Office and the subsequent delivery by the Post Office to accused was not a necessary ingredient of the offence and therefore the offence was completely committed in Hyderabad and the Madras Court had therefore no jurisdiction. (*Wallace, J.*) *M. A. KALEEK v. EMPEROR.*

101 I. C. 484=1927 M. W. N. 221=

28 Cr. L. J. 452=8 A. I. Cr. R. 69=

A. I. R. 1927 Mad. 544=52 M. L. J. 511.

**—Telegram.**

Where the accused at C gave the telegram for despatch from T to one J.

*Held*, that he caused the despatch of the telegram at T and the T Court had jurisdiction to try the offence under Ss. 468-109 and 420-511. Indian Penal Code. (*Jackson, J.*) *E. RAMAN CHETTIAR v. KING-EMPEROR.* 99 I. C. 127=28 Cr. L. J. 95=

A. I. R. 1927 Mad. 77=51 M. L. J. 635.

**—Letter.**

Where the crucial letter by which for the first time the complainant was clearly led to realise that there had been an intention to cheat on the part of the accused

**CR. P. CODE (1898), S. 179—Defamation.**

was received by him at Buxar.

*Held*, that there was jurisdiction to try the accused at Buxar. (*Buckmill, J.*) *P. H. METCALF v. G. WATSON.* 76 I. C. 17=25 Cr. L. J. 81=A. I. R. 1924 Pat. 708.

**—S. 179—Consequence—Meaning.**

The term 'consequence' means a consequence which forms a part and parcel of the offence. It does not mean a consequence which is not such a direct result of the act of the offender as to form a part of the offence. (*Beaumont, C. J., Madgavkar and Baker, J.J.*) *JIVANDAS SAVCHAND, In re.* 32 Bom. L. R. 1195=

1930 Cr. C. 1026=A. I. R. 1930 Bom. 490 (F. B.).

—The word "consequence" S. 179 bears its ordinary grammatical meaning and is not to be restricted in its meaning to consequence which is a necessary ingredient of the offence. (*Mirza and Broomfield, J.J.*) *GAFUR KARIMBAX v. EMPEROR.* 1930 Cr. C. 790=

127 I. C. 177=32 Bom. L. R. 785=

A. I. R. 1930 Bom. 358.

—The word "consequence" in S. 179 is to be understood in its ordinary grammatical meaning and need not be restricted to mean a consequence which is necessary ingredient of the offence.

A company at Karachi employed an agent to sell their goods in the Punjab who committed criminal breach of trust.

*Held*, that with regard to jurisdiction of Court S. 179 would govern the case and Karachi Court would have jurisdiction as "consequence" in its grammatical sense had ensued at Karachi. A. I. R. 1922 Bom. 39, Foll. (*Percival, J. C. and Aston, A. J. C.*) *GOVINDSINGH v. EMPEROR.* 114 I. C. 99=22 S. L. R. 404=

30 Cr. L. J. 249=A. I. R. 1929 Sind 30.

—The word "consequence" in S. 179 does not include all the possible results of an act, but is restricted in its scope to certain specified results; these are the results specified in the provision of the law making the act an offence. (*Halliday, A. J. C.*) *BAKERJI v. GOVINDS.* 81 I. C. 538=20 N. L. R. 72=25 Cr. L. J. 922=

A. I. R. 1924 Nag. 253.

—The 'consequence' contemplated by S. 179 of the Code must be an essential part of the offence charged. (*Oldfield and Ramesam, J.J.*) *MOHIDIN PAKKIRI, In re.* 68 I. C. 843=

45 Mad. 839=16 M. L. W. 335=31 M. L. T. 282=

1922 M. W. N. 690=23 Cr. L. J. 619=

A. I. R. 1923 Mad. 50=43 M. L. J. 475.

**—S. 179—Conspiracy.**

The provisions of S. 179 do not apply in so far as the words "and of any consequence which has ensued" are concerned where the offence alleged is complete.

Where there was a conspiracy for bringing into existence a false report with regard to a service return the proper forum of trial of the service peon, the witnesses to the false report, and other parties is the place where the service of evidence was obtained and offence completed and not the place where consequences of the false service return followed. (*Wort, J.*) *ABDUL KARIM v. EMPEROR.* 117 I. C. 309=

10 P. L. T. 161=30 Cr. L. J. 765=1929 Cr. C. 369=

A. I. R. 1929 Pat. 640

**—S. 179—Defamation.****—Either place.**

If the defamatory letter is posted in Madras with a view to be read in Tinnevely, the offence of defamation is triable either in Madras or in Tinnevely. (*Spencer, J.*) *KRISHNAMURTHI v. PARASURAMA.*

72 I. C. 69=24 Cr. L. J. 309=32 M. L. T. 164=

A. I. R. 1923 Mad. 666=44 M. L. J. 648.

## CR. P. CODE (1898),

## —S. 179—Essentials.

—What S. 179 provides is that when a person is accused of the commission of any offence by reason of two things; by reason, first, of anything which has been done, and secondly of any consequence which has ensued, then jurisdiction is conferred on the Court the act has been done or the consequence has ensued. The offence therefore must be charged by reason of the two things, the act done and the consequence which ensued; and the consequence therefore forms the necessary part of the offence. S. 179 does not refer to an offence charged by reason of an act done, from which any consequence has ensued. (*Beaumont, C. J. and Madhavkar and Baker, JJ.*) JIVANDAS SAVCHAND, *In re*. 1930 Cr. C. 1026=32 Bom. L. R. 1195=

A.I.R. 1930 Bom. 490 (F.B.).

## —S. 179—Misappropriation.

—Place of entrustment of pro notes for collection.

An accused, an employee in a firm of Rangoon, was entrusted with a number of pro-notes and hundis of different values with instructions to proceed up-country (Burma) and collect the amounts due upon them at the various places where the firms concerned were situated, and the accused tendered a final cash account at Rangoon. It was found out that he had misappropriated to his personal expenses a certain sum out of this collections. It was contended that the misappropriation took place in the districts and the subject of the offence was the money and not the hundis or pro-notes, and, therefore, Rangoon Courts had no jurisdiction to try the accused for misappropriation.

*Held*, that the Rangoon Courts had jurisdiction to deal with this matter. The promissory notes were entrusted to the accused in Rangoon and the accused must account for them in Rangoon. (*Das, J.*) YACOOB AHMAD *v.* V. M. ABDUL GANNY.

111 I. C. 860=6 Rang. 389=29 Cr. L. J. 940=

A. I. R. 1928 Rang. 217.

—Section 181—Place of accounting.

The accused was employed at L under an agreement to work for a firm at K and had to remit moneys and render periodical accounts to the Head Office of the firm in K. He misappropriated money of the firm while at L.

*Held*, that K Court had jurisdiction to try the accused.

Per *Wild, J. C.*—The word "consequence" in S. 179 should be given its ordinary meaning and should not be restricted to mean a consequence which is a necessary ingredient of the offence. The alleged fact that wrongful loss was caused at K which is the headquarters of the firm gave the Court at K jurisdiction to try the case as the loss was a consequence of the offence alleged to have been committed at L within the meaning of S. 179.

Per *Aston, A. J. C.*—An agent whose duty it is to have certain funds or accounts delivered at a certain place, commits the offence at that place, if he fraudulently misappropriates the funds having omitted to remit them and having omitted to account for them, and therefore, apart from the provisions of S. 179, S. 181 would apply, the facts complained of amounting to an offence committed in K. (*Wild, J. C. and Aston, A. J. C.*) GOBINDRAM JEEBANMAL *v.* EMPEROR.

112 I. C. 361=29 Cr. L. J. 1033=

11 A. I. Cr. R. 392=A. I. R. 1928 Sind 166.

—A Court, in whose jurisdiction the accused has neither to submit account nor to pay to the complainant the profits of the firm, cannot try the offence of misappropriation of the partnership funds. (*Banerji, J.*) BEHARI LAL *v.* GANGADIN.

97 I. C. 368=

## CR. P. CODE (1898), S. 181—Conspiracy.

27 Cr. L. J. 1104=A. I. R. 1927 All. 69.

—The accused who was carrying on business at Calcutta ordered certain goods through complainant, a commission agent at Delhi. The goods were to be delivered at Calcutta and payment was to be made at Delhi. The goods arrived in Calcutta and the accused was allowed to take delivery on condition that he would hold them in trust till payment but he disposed of them before making the payment.

*Held*, that the offence was complete as soon as he misappropriated the goods by selling them without authority at Calcutta. And the fact that he did not first pay at Delhi as agreed upon did not affect the case. The loss at Delhi was not a "consequence" such as is referred to in S. 179 of the Code. 7 P. R. 1910 Cr.; 34 A. 487, Ref. (*Shadi Lal, C. J.*) ABDUL HAQ *v.* EMPEROR. 69 I. C. 631=A. I. R. 1924 Lah. 353.

## —S. 179—Place of loss.

—The offence of criminal breach of trust with the act of conversion and the intention to cause wrongful gain or wrongful loss, the intention can only be formed or at least can only be proved to have been formed at the place where the conversion takes place. For the purposes of S. 179, it is immaterial where the wrongful loss actually takes place, and indeed whether any such loss actually does take place or not. (A. I. R. 1922 Bom. 39, Diss. 38 Mad. 639, Foll.). (*Hallifax, A. J. C.*) BANERJI *v.* PATNIS. 81 I. C. 538=

20 N. L. R. 72=25 Cr. L. J. 922=

A. I. R. 1924 Nag. 253.

## —S. 179—Scope.

—Sections 179 to 184 are controlled by the provisions of S. 188 and the alternative jurisdiction conferred by those sections can be exercised on the production of the certificate of the Political Agent according to the special provisions of S. 188. 41 All. 452, Rel. on; 21 M. L. J. 441 and 5 S. L. R. 266, Ref. 38 Mad. 779, *held* no longer good law. (*Patkar and Wild, JJ.*) EMPEROR *v.* SANA MATHUR. 32 Bom. L. R. 98=

54 Bom. 171=1930 Cr. C. 479=125 I. C. 417=

31 Cr. L. J. 833=A. I. R. 1930 Bom. 155.

—Section 181 (2) does not in any way modify the provision of S. 179. (*Dalal, J.*) MD. RASHID KHAN *v.* EMPEROR. 96 I. C. 656=27 Cr. L. J. 992=

7 L. R. A. Cr. 114=A. I. R. 1926 All. 466.

—Section 179 is controlled in respect of certain offences by S. 181 and no question of convenience or expediency can be considered under S. 185. That section deals only with questions of competency when they are involved in doubt. 44 C. 598, Foll.

Where the accused was charged under S. 420 and S. 406, I. P. Code, the former triable at Basti as well as at Bombay and the latter triable only at Bombay, the Basti Court was directed to proceed with the trial under S. 420 and to drop so far as that Court was concerned the charge under S. 406 of the Code. (*Kanhaiya Lal, J.*) GIRDHAR DAS *v.* KING-EMPEROR.

75 I. C. 353=24 A. L. J. 621=

4 L. R. A. Cr. 142=21 Cr. L. J. 929=

A. I. R. 1924 All. 77.

## —S. 181—Applicability.

—Cr. P. Code, S 181 (2).

Section 181 (2) and not S. 179 applies to a case of criminal breach of trust. (*Suhrawardy and Mukerji, JJ.*) GUNANANDA DHONE *v.* LALA SANTI PRAKASH NANDY. 86 I. C. 213=41 C. L. J. 80=

29 C. W. N. 432=26 Cr. L. J. 725=

A. I. R. 1925 Cal. 613.

## —S. 181—Conspiracy.

—Jurisdiction—Test.

If a conspiracy is entered into in District A and acts

**CR. P. CODE (1898), S. 181—Conspiracy.**

are committed in pursuance of that conspiracy in District B, the Magistrate of District A can try the conspiracy but cannot try the accused in the same trial for acts committed outside his District. And the mere fact that the offences could have been tried jointly under S. 239, Cr. P. Code, if committed within his jurisdiction, will not give him jurisdiction to try them. (26 C. W. N. 680, Dist.) (*Newbould and Chakravarty, J.J.*) **BISESWAR v. EMPEROR.**

83 I. C. 911=28 C. W. N. 975=26 Cr. L. J. 207=  
A. I. R. 1924 Cal. 1034.

**—S. 181—Criminal breach of trust.****—Entrustment to carrier—Place of delivery.**

A carrier, who was entrusted with goods to be delivered at a particular place, had to journey through British as well as foreign territory. At the place of delivery he could not deliver the goods intact, and was accused of breach of trust. There was no evidence to show when and where the offence was committed, the only evidence of the breach of trust being the failure to deliver intact.

*Held*: that, failure to deliver the goods intact is sufficient evidence to prove breach of trust, and the place of delivery must be presumed to be the place where the offence took place unless the accused proves that the offence was not committed at that place. 38 Mad. 639 and 5 Mad. 23, Ref. and A.I.R. 1923 Lah. 487, Diss. (*Wallace, J.*) **PUBLIC PROSECUTOR v. PODIMONU BEARY.**

114 I. C. 238=52 Mad. 61=  
1928 M. W. N. 791=30 Cr. L. J. 245=  
12 A. I. Cr. R. 138=1 M. Cr. C. 167=  
28 M. L. W. 843=A.I.R. 1928 Mad. 1136=  
55 M. L. J. 499.

**—Place of accounting.**

Where the accused is under a liability to render accounts at a particular place and fails to do so by reason of having committed an offence of criminal breach of trust which is alleged against him, the Court, within the local limits of whose jurisdiction that place is situated, may enquire into and try the offence under the provisions of S. 181 (2). A. I. R. 1925 Cal. 613, Foll. (*Zafar Ali, J.*) **RAM SAHAI v. KRISHNALAL.**

96 I. C. 212=7 L. L. J. 586=27 Cr. L. J. 900=  
A. I. R. 1926 Lah. 119.

**—Place of accounting.**

Where the accused is under a liability to render accounts at a particular place and fails to do so by reason of having committed an offence of criminal breach of trust which is alleged against him, the Court, within the local limits of whose jurisdiction that place is situated, may enquire into and try the offence under the provisions of S. 181 sub-S. (2). (*Suhrawardy and Mukerji, J.J.*) **GUNANANDA DHONE v. LALA SANTI PRAKASH NANDY.**

86 I. C. 213=41 C. L. J. 80=  
29 C. W. N. 432=26 Cr. L. J. 725=  
A. I. R. 1925 Cal. 613.

**—Place where property is retained by accused.**

The complainant who carried on business at Lyallpur had employed the accused M as agent of his firm to sell goods at Karachi. The contract of agency was entered into at Lyallpur, and it appeared that the agent was to remit the sale proceeds and to send his accounts to the complainant at Lyallpur. The principal preferred a complaint against the agent charging him with the commission of an offence under S. 408. *Held* that property was received or retained by the accused at Karachi and that the offence if any was committed at that place and that the Lyallpur Court had no jurisdiction to entertain the complaint. (*Shadi Lal, C. J.*) **MAHTAB DIN v. THE CROWN.**

77 I. C. 490=25 Cr. L. J. 410=  
A. I. R. 1924 Lah. 663.

**CR. P. CODE (1898), S. 181—Criminal misappropriation.****—Section 179—Place of conversion.**

For the application of S. 179 it is essential that the offence should depend on an act done and on a consequence which has ensued. Loss to one person though a normal result of an act of misappropriation by another, is not an essential ingredient of the offence of criminal misappropriation. The offence is complete if the conversion is done with the intention of causing wrongful gain to the offender irrespective of any loss which may ensue to any other person. The offence does not depend on the consequence which has ensued but on the act which has been done and therefore the offence is triable where the conversion takes place and the accused intends wrongful gain to himself and falls under S. 181 (1). 44 C. 912, Foll. (*May Oung, J.*) **AHMAD EBRAHIM v. HAJEE A. A. GANNY.**

74 I. C. 74=  
1 Rang. 56=2 Bur. L. J. 40=24 Cr. L. J. 746=  
A. I. R. 1923 Rang. 209.

**—S. 181—Criminal misappropriation.**

The offence of criminal misappropriation is triable only by the Court within the limits of whose jurisdiction the misappropriation took place.

A partner, bound under the articles of partnership to manage the business at Rangoon and forward weekly accounts to the head office at Bombay, misappropriated the firm's moneys at Rangoon and sent false accounts to Bombay. *Held*, (i) The offence was committed at Rangoon and the Bombay Courts had no jurisdiction. (ii) The accounts submitted at Bombay were only evidence of the commission of the offence and could not confer jurisdiction. (iii) The consequent loss to the principal was not a part of the offence. Case law reviewed. (*Beaumont, C.J. Madgavkar and Baker, J.J.*) **JIVANDAS SAVCHAND, In re.**

32 Bom.L.R. 1195=1930 Cr. C. 1026=  
A.I.R. 1930 Bom. 490 (F.B.).

Where the complainant appointed the accused his agent for sale of certain commodities at N and that in pursuance of that arrangement he sent goods to the accused, who, however, in direct contravention of the directions given to him as to the manner in which the goods had to be sold, sold them and misappropriated the proceeds,

*Held*, that a criminal case under S. 409, Penal Code, cannot be instituted in L. A. I. R. 1924 Lah. 663, Foll. (*Jai Lal, J.*) **DURGA PRASAD v. BANWARI LAL.**

108 I. C. 901=10 A. I. Cr. R. 92=  
29 Cr. L. J. 453 (Lah.).

**—Place of actual receipt or retention is the test—Intention not material.**

It is not essential, under S. 181, Sub-S. (2), that at the time the property is said to be received or retained by the accused person he must have a dishonest intention to misappropriate it or to commit criminal breach of trust with reference to it. It is enough for the purposes of the section if the property which is the subject of the offence was received or retained by the accused at a particular place to give jurisdiction to the Magistrate of that place to try the case, even if the property was received quite properly and innocently, at that place, and was subsequently dealt with at another place dishonestly. 38 Mad. 779 and A.I.R. 1922 Bom. 49 Dist.

The accused hired a cycle at Poona for six hours, but, instead of returning the same in accordance with his written contract, he took it out to Yeola and deposited it with one D as a security for an advance of Rs. 6.

*Held*, that the Poona Magistrate would have jurisdiction to try the offence. (*Shah and Percival, J.J.*)

**CR. P. CODE (1898), S. 181—Criminal misappropriation.**

**EMPEROR v. LAXMAN.** 99 I. C. 76=51 Bom. 101=28 Bom. L. R. 1292=28 Cr. L. J. 44=7 A. I. Cr. R. 216=A. I. R. 1927 Bom. 38.

—Where money was received by P from the complainant in Calcutta, that is, the misappropriation took place there,

*Held*, that the case should be tried in Calcutta. (*C. C. Ghose and Cuming, J.J.*) **A. K. MAITRA v. KAMINI MOHAN BOSE.** 77 I. C. 425=25 Cr. L. J. 377=A. I. R. 1925 Cal. 107.

—Where the complaint was that accused No. 1 delivered a certain amount to accused No. 2 in Kangra District for payment at Hoshiarpur and that the money was dishonestly misappropriated by both the accused in Kangra District, the offence is triable only in Kangra District. (*Campbell, J.*) **DINANATH v. TULSHI RAM.** 83 I. C. 696=6 Lah. L. J. 471=26 Cr. L. J. 136=A. I. R. 1925 Lah. 171.

—Under S. 403, Penal Code, the offence is complete, the moment the accused receives or retains the money with a dishonest motive of appropriating it or converting it into his own use. Where the accused receives money in respect of which the offence is committed at one place to be handed over at another, the offence is committed at the former place. The failure to hand over the money is not a necessary ingredient to constitute an offence of criminal misappropriation and is therefore not a consequence which has ensued by reason of anything done by the accused. (*Jwala Prasad, J.*) **GAWKARAN LAL v. SARJOO SAW.** 1921 P. H. C. C. 31=A. I. R. 1921 Pat. 85.

—**S. 181—Scope.**  
—S. 181 (2) does not in any way modify the provision of S. 179. (*Dalal, J.*) **MAHAMMAD RASHID KHAN v. EMPEROR.** 7 L. R. A. Cr. 114=27 Cr. L. J. 992=96 I. C. 656=A. I. R. 1926 All. 466.

—**S. 181—Stolen property.**  
—S. 181 (3) as amended means that the offence of being in possession of stolen property may be inquired into either in the district where the property was stolen or where it was found to be dishonestly possessed. The words "such offence" in that section mean any offence of possession. (*Askworth, J.*) **EMPEROR v. BHIMA.** 24 A. L. J. 148=6 L. R. A. Cr. 208=27 Cr. L. J. 21=91 I. C. 53=A. I. R. 1926 All. 167.

—**S. 182—Objection to jurisdiction.**  
—Where the District Magistrate is moved against any order of a Magistrate under S. 182 and the contention is that a Court altogether outside the district has jurisdiction to try the case, the District Magistrate deals with the matter only in his revisional powers. (*Mukerji and Jack, J.J.*) **KASIM ALI v. MD. TAZAFFUL HUSSAIN.** 49 C. L. J. 62=115 I. C. 95=30 Cr. L. J. 401=12 A. I. Cr. R. 373=A. I. R. 1929 Cal. 204.

—**S. 183—Breach of trust by carrier.**

—*Not applicable.*  
A carrier, who was entrusted with goods to be delivered at a particular place, had to journey through British as well as foreign territory. At the place of delivery he could not deliver the goods intact, and was accused of breach of trust. There was no evidence to show when and where the offence was committed the only evidence of the breach of trust being the failure to deliver intact.

*Held* S. 183 does not apply in such cases. 38 Mad. 639; A. I. R. 1925 Mad. 23, Dist. and A. I. R. 1923 Lah. 487. Diss. from. (*Wallace, J.*) **PUBLIC PROSECUTOR**

**CR. P. CODE (1898), S. 188—Trial before certificate.**

**v. PODIMONU BEARY.** 114 I. C. 238=1928 M. W. N. 791=52 Mad. 61=1 M. Cr. C. 167=28 M. L. W. 843=30 Cr. L. J. 245=12 A. I. Cr. R. 138=A. I. R. 1928 Mad. 1136=55 M. L. J. 499.

—**S. 183—Offence during journey.**

—Offence committed in course of journey from one place to another can be tried by court having jurisdiction at latter place. (*Kennedy, J. C. and Raymond, A. J. C.*) **KING-EMPEROR v. MOULABUX.** 77 I. C. 727=25 Cr. L. J. 439=A. I. R. 1925 Sind 177.

—**S. 183—Theft in train.**

—Where a theft is committed from a running train, any Court through whose jurisdiction the train passes during the journey may try the offence, no matter in whose jurisdiction the offence was committed. (*Abdul Qadir, J.*) **LAZARUS MEGH NATH v. EMPEROR.** 71 I. C. 797=24 Cr. L. J. 253=A. I. R. 1924 Lah. 351.

—**S. 186—Scope and applicability.**  
—The wording of the section itself shows that it relates to offences which the Magistrate knows at the outset to have been committed, it at all outside the limits of his jurisdiction. The marginal note makes the meaning clearer and still more the references to the section in schedule III and section 529 of the Code. (*Walmsley and Suhravard, J.J.*) **AMULYA CHARAN DUTT, In re.** 76 I. C. 424=25 Cr. L. J. 184=A. I. R. 1923 Cal. 401.

—**S. 188—Alternative charge.**

—*Certificate necessary.*  
The framing of an alternative charge under Ss. 379 and 411, I. P. C., does not confer jurisdiction on a Magistrate when the offence under S. 411 is committed beyond the limits of British India, for, under the express terms of S. 188, he cannot exercise it without a certificate from the Political Agent. (*Patkar and Wild, J.J.*) **EMPEROR v. SANA MATHUR.** 1930 Cr. C. 479=125 I. C. 417=31 Cr. L. J. 833=32 Bom. L. R. 98=54 Bom. 171=A. I. R. 1930 Bom. 155.

—**S. 188—Signing of Certificate.**

—The section does not mention the word "certificate" at all and there is no direction for the signing of a certificate by any particular person. Nor is the manner prescribed in which it is to be proved that the Political Agent has certified that the charge ought to be enquired into in British India although obviously the most convenient method of proving this is the production of a document signed by the Political Agent. (*Campbell, J.*) **RULIYA SINGH v. EMPEROR.** 7 Lah. 468=27 Cr. L. J. 942=27 P. L. R. 708=96 I. C. 398=A. I. R. 1926 Lah. 609.

—It is unreasonable to assume on the strength of a certificate signed by the Under-Secretary to the Political Agent that the Political Agent has himself certified that the charge ought to be enquired into in British India. (*Campbell, J.*) **RULIYA SINGH v. EMPEROR.** 7 Lah. 468=27 Cr. L. J. 942=27 P. L. R. 708=96 I. C. 398=A. I. R. 1926 Lah. 609.

—**S. 188—Trial before certificate.**

—*Void.*  
The proceedings of a Magistrate committing an accused person to the Sessions Court, before a certificate under S. 188 is obtained, are void and illegal and the commitment may be quashed. A. I. R. 1925 Lah. 185, Foll. (*Campbell and Addison, J.J.*) **BUTA SINGH v. EMPEROR.** 7 Lah. 396=27 Cr. L. J. 1168=27 P. L. R. 447=97 I. C. 752=A. I. R. 1926 Lah. 582.

—*Can be continued after sanction.*  
The sanction of a Political Agent or the Local Govern-



**CR. P. CODE (1898), S. 188—Trial before certificate.**

ment as the case may be is necessary for the prosecution of a native Indian subject committing an offence without and beyond the limits of British India. But the proceedings in such a case may be continued on the subsequent obtaining of the sanction even though the absence of such sanction will come in the way of the inquiry being proceeded with. (*Kincaid, J. C. and Aston, A. J. C.*) **ALLIBHOY JIVRAJ v. EMPEROR.**

81 I. C. 108 = 19 S. L. R. 122 = 25 Cr. L. J. 620 =  
A. I. R. 1925 Sind 88.

**—Cure—Subsequent production.**

Where the certificate under S. 188 was not obtained at the date of the complaint,

Held the defect would be cured if the certificate has been obtained subsequently. (*Shah and Kaji, J.J.*) **RAMBHARTHI HIRABHARTHI, In re.** 47 Bom. 907 = 25 Bom. L. R. 772 = 25 Cr. L. J. 333 = 77 I. C. 189 = A. I. R. 1924 Bom. 51.

**—S. 188—Trial with certificate.**

Where the Political Agent has certified that in his opinion the charge ought to be enquired into in British India prior to the commencement of the commitment proceedings, the commitment is perfectly valid. (*Campbell, J.*) **RULIYA SINGH v. EMPEROR.**

7 Lah. 468 = 27 Cr. L. J. 942 = 27 P. L. R. 708 =  
96 I. C. 398 = A. I. R. 1926 Lah. 609.

**—S. 188—Trial without certificate.****—Vid.**

The defect as to absence of a certificate of Political Agent as required by S. 188 is not curable by the subsequent production of the same. 11 P. R. (Cr.) 1899, Foll.; 13 Mad. 423 and 19 All. 109, Appl. (*Campbell, J.*) **RAM CHARU v. KING-EMPEROR.**

5 Lah. 416 = 27 Cr. L. J. 218 =

92 I. C. 170 = A. I. R. 1925 Lah. 185.

**—S. 188—Trial without sanction.****—Vitiated.**

If an offence of forgery is committed in a Feudatory State, then under S. 188 of the Cr. P. Code the accused cannot be tried without the sanction of the Political Agent of that State or the Local Government. The omission to obtain such a sanction vitiates the trial and the conviction of the accused of that charge. (*Jwala Prasad and James, J.J.*) **RAM PRASAD GURU v. EMPEROR.**

122 I. C. 155 = 31 Cr. L. J. 364 = 11 Pat. L. T. 433 =  
1930 Cr. C. 929 = A. I. R. 1930 Pat. 501.

**—S. 190—Accused in alternative.****—Complaint bad.**

It is wrong that any Court should accept a complaint which charges two people in the alternative and it is also wrong that an order sanctioning such a prosecution in the alternative should be passed. (*Carr, J.*) **NARINJAN DAS v. EMPEROR.**

126 I. C. 535 = 31 Cr. L. J. 1065 = A. I. R. 1930 Rang. 51.

**—S. 190—Adding accused.****—Not affected by section.**

A Magistrate takes cognizance of an offence, not of an offender. When he adds an accused person at any stage of the proceedings he is not acting under S. 190 at all. So where after the trial has commenced the Court puts a witness into the dock instead of the witness-box, the Court is not taking cognizance of the offence even so far as that person is concerned. Case-law discussed. (*Simpson, A. J. C.*) **SRI KISHAN, v. DEBI DAYAL.**

90 I. C. 915 = 2 O. W. N. 823 =

26 Cr. L. J. 1619 = A. I. R. 1925 Oudh 739.

**—Quite within the powers.**

When a Magistrate takes cognizance of a complaint under S. 190, cl. (b), and directs process to issue against other persons whose names transpired in the

**CR. P. CODE (1898), S. 190—Complaint by Police.**

prosecution evidence during the trial, he is perfectly justified in doing so and he is deemed to have taken action against them under clause (a) and not under clause (c). (*Kincaid, J. C., Raymond and Aston, A. J. C.*) **MEHRAR v. THE CROWN.** 83 I. C. 885 =

17 S. L. R. 150 = 26 Cr. L. J. 181 =

A. I. R. 1924 Sind 71 (F. B.).

**—S. 190—Addition of charge.****—Proper.**

Where the Magistrate, acting on the facts disclosed in the evidence for the prosecution, added a second charge in respect of an act alleged to have been done in pursuance of the conspiracy which was the only offence alleged in the complaint,

Held, that the Magistrate's action was not only justified under S. 235, Cr. P. Code, but such initiation taken by him was on the original complaint and not upon his own knowledge or suspicion, because when a Magistrate has taken cognizance of an offence upon complaint, it is competent for him to take cognizance of any offence that is disclosed by the evidence and therefore S. 191 does not apply. A. I. R. 1922 Cal. 107, Foll. (*Maug Ba and Doyle, J.J.*) **ABDUL RAHMAN v. EMPEROR.** 94 I. C. 717 = 4 Bur. L. J. 213 =

27 Cr. L. J. 669 = A. I. R. 1926 Rang. 53.

**—S. 190—Applicability.**

The provisions of S. 190 do not apply to proceedings taken under S. 110 by a Magistrate upon information received from any person other than a police officer. 27 All. 172, Foll. (*Kincaid, J. C.*) **MAHOMEDALLY v. EMPEROR.** 20 S. L. R. 291 =

27 Cr. L. J. 1280 = 98 I. C. 128 =

A. I. R. 1927 Sind 77.

**—S. 190—Cognizance without jurisdiction.****—Good faith necessary.**

The law requires that the Magistrate, who takes cognizance of a non-cognizable offence under S. 190, sub-S. (1), cl. (a) or cl. (b) without having jurisdiction, should only act in good faith, though erroneously, to make his proceedings valid. A. I. R. 1926 Mad. 865, (F. B.); A. I. R. 1924 Cal. 614, Foll.; 32 Mad. 3; A. I. R. 1925 Mad. 672; 1 P. L. T. 73; 11 A. L. J. 331; 26 Bom. 150, Dist. (*Fforde and Agha Haidar, J.J.*) **EMPEROR v. WALLI MAHOMED.** 29 Cr. L. J. 65 = 106 I. C. 577 =

9 A. I. Cr. R. 317 = A. I. R. 1928 Lah. 66.

A Magistrate of the 2nd class cannot take cognizance of a complaint that certain persons were guilty of murder. Where therefore he does entertain such a complaint and finding it to be false takes action under S. 190, though defect in conviction could be cured by S. 529, complainant cannot be prosecuted for false complaint. The powers of a 2nd class Magistrate can be extended only to the extent specified in S. 37 and Sch. 4 which provisions are to be read with S. 190 in such cases. (*Ross and Kulwant Sahay, J.J.*) **BENGALI GOPE v. EMPEROR.** 5 Pat. 447 = 7 P. L. T. 335 =

27 Cr. L. J. 704 = 94 I. C. 896 =

A. I. R. 1926 Pat. 400.

**—S. 190—Complaint by Police.**

There is nothing either in the Police Act, Ss. 23, 24 or 25 or in the Cr. P. Code, which would in any way prevent a police officer from lodging a complaint with regard to a non-cognizable offence. (*Wort, J.*) **LALBIHARI SINGH v. EMPEROR.**

10 P. L. T. 601 = 1929 Cr. C. 274 =

120 I. C. 297 = 31 Cr. L. J. 55 =

A. I. R. 1929 Pat. 514.

**—Can be taken cognizance of.**

By virtue of S. 190 (1) (b) and S. 200 (a) magistrates mentioned in S. 190 are entitled to take cognizance of even non-cognizable offences upon a report

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made in writing by a Police Officer without examining the officer upon oath. A. I. R. 1926 Mad. 865 (F.B.), Foll. (*Dalal, J.*) PRAG DATT TEWARI v. EMPEROR.

111 I. C. 858 = 29 Cr. L. J. 938 =  
10 L. R. A. Cr. 19 = 51 All. 382 =  
11 A. I. Cr. R. 152 = 1929 A. L. J. 68 =  
A. I. R. 1928 All. 765.

—Even a non-cognizable offence can be taken cognizance of on police complaint.

*Patkar, J.*—The wording of S. 190 is quite general and would include even a non-cognizable offence being taken cognizance of by a magistrate upon a report by a police officer. The report of a police officer in respect of a non-cognizable offence if it contains an allegation in writing to a magistrate with a view to his taking action under the Code that some person has committed an offence would amount to a complaint within the meaning of S. 4 (4). A magistrate can in a proper case treat a police report of a non-cognizable offence as a complaint and take cognizance under S. 190, cl. (a), especially where such report is made by the police officer regarding an offence committed by his subordinate. 26 Bom. 150 and A.I.R. 1926 Mad. 865, Foll.; A. I. R. 1925 Bom. 131, Dist.

Per *Fauzett, J.*—The expression "report by any police officer" in S. 190 (1) (b) does not cover a report in a case where the Police Officer is expressly prohibited from investigating and reporting. (*Fauzett and Patkar, JJ.*) EMPEROR v. SHIVASWAMI GURUSWAMI. 51 Bom. 498 = 29 Bom. L. R. 742 =

105 I. C. 459 = 28 Cr. L. J. 939 =  
A. I. R. 1927 Bom. 440.

—A police officer is not prohibited under the Cr. P. Code from presenting a complaint to the Magistrate in a non-cognizable case. (*Shadi Lal, C. J. and Le Rossignol, J.*) EMPEROR v. GHULAM HUSSAIN.

82 I. C. 753 = 25 Cr. L. J. 1361 = 6 Lah. L. J. 606 =  
A. I. R. 1925 Lah. 237.

—The written allegation of a non-cognizable offence made by a police officer who is also a Public Prosecutor with the idea of making the Court take action on it is not the report of a police officer but it is a complaint as defined in S. 4 of the Cr. P. Code, and it is competent for the Court to take action thereon. The words "Report of a Police Officer" refer to the report of a police officer in cases in which he is authorised to investigate by the Code. (*Shadi Lal, C. J. and Le Rossignol, J.*) EMPEROR v. GHULAM HUSSAIN.

82 I. C. 753 = 25 Cr. L. J. 1361 =  
6 Lah. L. J. 606 = A. I. R. 1925 Lah. 237.

**—S. 190—"Complaint", what is.**

—A tahsildar alleged in writing to a magistrate that three persons named in the document have committed an offence and had made a definite request that they should be tried under the Penal Code.

*Held*, that such a document sent by the tahsildar to the magistrate was a complaint. 12 C.W.N. 438; A. I. R. 1924 All. 190; 26 I. C. 148 and 11 Mad. 443; Ref. (*Bennet, J.*) SHEO PRATAP SINGH v. EMPEROR. 1930 A.L.J. 1316 = 1930 Cr. C. 1204 =

A. I. R. 1930 All. 820.

**—S. 190—Construction.**

—Under S. 190, a Magistrate takes cognizance of an offence and not of the offender. (*Kincaid, J.C. Raymond and Aston, A. J. Cs.*) MEHRAT v. THE CROWN. 83 I. C. 885 = 17 S. L. R. 150 =

26 Cr. L. J. 181 = A. I. R. 1924 Sind 71 (F. B.).

**—S. 190—Information.**

—"Upon his own knowledge" does not include knowledge gained from a police report. 14 Cal. 707,

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Expl. (*Worl, J.*) LALBIHARI SINGH v. EMPEROR. 10 P. L. T. 601 = 1929 Cr. C. 274 = 120 I. C. 297 = 31 Cr. L. J. 55 = A. I. R. 1929 Pat. 514.

—Anonymous letter.

Even if the knowledge or suspicion about the commission of an offence was based on an anonymous letter, that will be sufficient to entitle the Magistrate to take cognizance provided there was no bar to the taking of such cognizance. But the complaint has to be of an offence of which the Magistrate has authority to take cognizance. (*Dalal, J.*) BHAIROON PRASAD v. EMPEROR. 9 L. R. A. Cr. 140 = 10 A. I. Cr. R. 450 = 113 I. C. 78 = 30 Cr. L. J. 62 = 1929 A. L. J. 57 = 51 All. 377 = A.I.R. 1928 All. 756

—A letter written to the District Magistrate conveying information of an offence and asking for action to be taken can be treated as information under S. 190 (c) for taking action. (*Neave, A. J. C.*) CHHOTTE MAHARAJ v. KING-EMPEROR.

81 I. C. 971 = 25 Cr. L. J. 1147 =  
28 O. C. 33 = A. I. R. 1925 Oudh 144.

**—S. 190—Own knowledge.**

—What amounts to.

The mere fact that previous to the making of the written complaint the Magistrate happened to be in the village and the complainant related the story of the offence to him orally and he inspected the locality, would not bring the case within the purview of sub-clause (c) of the section, and if the same Magistrate starts the proceedings on the written complaint, the case would fall under S. 190 (1) (a) and S. 191 would not apply. (*Banerji, J.*) SAL DEO v. KING-EMPEROR. 7 L. R. A. Cr. 191 = 27 Cr. L. J. 1406 =

98 I. C. 718 = A. I. R. 1927 All. 101.

—Procedure.

A Magistrate is not precluded from trying a case of which he has taken cognizance on his own knowledge under S. 190 (c) provided he has complied with the provisions of S. 191. In such a case S. 556 ceases to operate. (*Heald, J.*) NGA CHIT KYAU v. EMPEROR.

84 I. C. 249 = 3 Bur. L. J. 121 =  
26 Cr. L. J. 249 = A. I. R. 1924 Rang. 352.

**—S. 190—Police report.**

—Contents.

Where the Court makes an order for investigation under S. 155 (2) and a charge-sheet is filed after making the investigation, that charge-sheet can be regarded as coming under the description of report; but if such charge sheet, after mentioning sections of Penal Code, fails to give any details or circumstances of any description, the provisions of S. 173 which require that the nature of the information should be stated and those of S. 190 (1) (b) which require that the facts constituting the offences should be stated are disregarded and so prosecution cannot be based on such charge-sheet treating it either as report or complaint. 37 Cal. 49 and A.I.R. 1924 Cal. 476, Foll. (*Mirza and Broomfield, JJ.*) *In re SHIVLINGAPPA BHAGAPPA.*

32 Bom. L. R. 782 = 1930 Cr. C. 891 =  
A. I. R. 1930 Bom. 372.

—The report of a Sub-Inspector of Excise to a Magistrate is a police report only for the purposes of S. 190, Cr. P. Code. The report is not a police report for other purposes. (*Cuming and Gregory, JJ.*) RADHIKA MOHAN DAS v. HAMID ALI.

54 Cal. 371 = 28 Cr. L. J. 316 = 100 I. C. 540 =  
A. I. R. 1927 Cal. 405.

—Non-cognizable offence.

A conviction by a Court of Sessions cannot be set aside on revision simply on the ground that there is a defect in the initiation of proceedings in the commitment Court

**CR. P. CODE (1898), S. 190—Police report.**

or some irregularity in the commitment proceedings. Magistrates are entitled to take cognizance of non-cognizable offences upon a report made in writing by a police officer without examining the officer on oath. (*Tek Chand, J.*) **SHANKAR LAL v. EMPEROR.**

28 Cr. L. J. 821 = 104 I. C. 437 =

A. I. R. 1927 Lah. 702.

—Not confined to cognizable cases.

The report of police officer mentioned in S. 190 (1) (b) is not confined to a report of a cognizable offence. It includes even the police report in a non-cognizable case. His examination on oath is not necessary. A. I. R. 1925 Mad. 672, Overruled. (*Coutts-Trotter, C. J. Spencer and Krishnan, J.J.*) **PUBLIC PROSECUTOR v. RATNAVELU CHETTY.**

49 Mad. 525 =

27 Cr. L. J. 1031 = 25 M. L. W. 248 =

38 M. L. T. 177 = 1927 M. W. N. 43 = 96 I. C. 983 =

A. I. R. 1926 Mad. 865 = 52 M. L. J. 210 (F. B.).

—Magistrate can take cognizance both in cognizable and non-cognizable offences upon a report mentioned in S. 190 (1) (b) since the provisions of S. 190 extend to all offences. The use of the words police report in S. 173 does not restrict this power as conferred by S. 190 (1) (b). (*Greaves and Panton, J.J.*) **BHOLANATH DAS v. EMPEROR.**

83 I. C. 628 = 28 C. W. N. 490 = 26 Cr. L. J. 68 =

A. I. R. 1924 Cal. 614.

—“Police report” means police-report within meaning of S. 170. (*Mookerjee and Chatterjee, J.J.*) **NAGENDRA NATH CHAKRABARTHY v. EMPEROR.**

81 I. C. 220 = 51 Cal. 402 = 38 C. L. J. 388 =

25 Cr. L. J. 732 = A. I. R. 1924 Cal. 476.

—Use of—By Magistrates.

Where the police find on enquiry a complaint to be false the complainant can place the matter before a Magistrate under Sub S. 1 (a) of S. 190. But where the Magistrate has already taken cognizance of an offence, if where the charge sheet is placed before the Magistrate, the police officer as the prosecution medium, omits the names of certain persons whose participation in the offence had up to that time been before the Magistrate, the Magistrate is not compelled in any way to follow what is after all no more than an advice tendered by the prosecuting authority. Without giving reasons, however, he should not differ from the advice. Once having taken cognizance of the offence the Magistrate is strictly independent of any opinion which the police offer to him, and he can order that any persons accused as being participators in the offence should be produced before him, to undergo the preliminary enquiry, or for trial in cases which do go to a higher tribunal for trial. If this were not the law the police would be in possession of powers which might be subject to the gravest abuse. As a matter of procedure the proper course in such a case would be for the Magistrate simply to call upon the Police to bring forward a charge sheet against those who the Magistrate thinks ought to be brought before him. (*Adami and Bucknill, J.J.*) **RAGHUPAT NARAYAN SINGH v. EMPEROR.**

84 I. C. 241 = 1924 P. H. C. C. 162 =

6 P. L. T. 323 = 26 Cr. L. J. 241 =

A. I. R. 1924 Pat. 597.

—There is no justification for restricting the term “police report” in S. 190 (b) to reports under S. 173 only. (1911) 5 S. L. R. 1, Dis. (*Kincaid, J. C., Raymond and Aston, A. J. Cs.*) **MEHRAB v. THE CROWN.**

83 I. C. 885 = 17 S. L. R. 150 = 26 Cr. L. J. 181 =

A. I. R. 1924 Sind 71 (F. B.).

—S. 190—Powers of District Magistrate.

—Where the Township and Sub-Divisional Officers enquire into certain unauthorised horse races and

**CR. P. CODE (1898), S. 190—Procedure.**

submit the proceedings to the Deputy Commissioner who on considering the report records an order in his capacity as District Magistrate, taking cognizance of offences, the latter has jurisdiction to take cognizance of offences, in the manner he did. 43 Mad. 709, Rel. on; 37 Cal. 221 Cons. (*Carr, J.*) **EMPEROR v. NGA PO WIN.** 125 I. C. 360 = 8 Rang. 246 = 1930 Cr. C. 906 = 31 Cr. L. J. 867 = A. I. R. 1930 Rang. 253.

—Exercise of.

Where with regard to an offence which has been the subject of police report and has not been finally disposed of by a Magistrate, a District Magistrate thinks it necessary to continue proceedings against the accused it is more regular for him to withdraw the pending case to his own file under S. 528, rather than to begin separate proceedings by taking cognizance of the same offences under S. 190 (1) (c). 5 C. W. N. 488 and 4 C. W. N. 242, Dist. (*James, J.*) **GHANA MAHAPATRA v. EMPEROR.** 1929 Cr. C. 582 = A. I. R. 1929 Pat. 710.

—S. 190—Powers of District Registrar.

—After a Sub-Registrar refused to register a document, an appeal was made to the Dt. Registrar but that appeal was dismissed, and the Dt. Registrar who was also the Dt. Magistrate directed the prosecution of one C the purchaser for an offence under S. 471, Penal Code.

*Held*, that the Dt. Registrar who was also the Dt. Magistrate was competent to take cognizance under S. 190, cl. (1), sub-section (c) Cr. P. Code, and to transfer the case to a Subordinate Magistrate in order that a commitment inquiry might be held and there was therefore, no defect in the jurisdiction of the Sessions Judge to try the accused. (*Mullick and Bucknill, J.J.*) **CHETA MAHTO v. KING-EMPEROR.**

74 I. C. 536 = 89 I. C. 1050 = 2 Pat. 459 =

4 P. L. T. 727 = 24 Cr. L. J. 792 =

26 Cr. L. J. 1482 = A. I. R. 1924 Pat. 128.

—S. 190—Powers of Magistrate.

—There is nothing in the Code of Criminal Procedure to restrain the Sub-Divisional Magistrate from taking action in respect of an offence which he thinks has been committed but which has not been brought to his notice in the form of a complaint. S. 190 (c) gives very wide powers to the Magistrate. What is intended thereby is that the Magistrate should be able to bring his experience to bear upon any statement of facts made to him by an aggrieved person who might not know what his legal remedy was in the given circumstances. Where the person aggrieved made a petition to the Sub-Divisional Magistrate to take action against A and B under Ss. 107 or 145, Cr. P. Code, and did not allege in his petition that any offence had been committed by A and B and the Magistrate passed the following order. “This is a case under Ss. 447 and 352, I. P. C., and is transferred to the Court of the Tahsildar,” and the Tahsildar tried A and B and ultimately convicted them under Ss. 352 and 447, I. P. C.

*Held*, that the Magistrate was acting within his jurisdiction when he read the statement as being a complaint of facts, which constituted an offence, and even if the definition of “complaint” would rule out the application of Cl. (a), S. 190, the Magistrate was certainly able to take cognizance of the offence under Cl. (c). (*Pullan, J.*) **SARFARAZ v. EMPEROR.** 7 O. W. N. 792 = 1930 Cr. C. 1164 = A. I. R. 1930 Oudh 500.

—S. 190—Procedure.

—A District Magistrate sent a matter to Sub-Divisional Magistrate for enquiry and report, and, after the report was made, ordered him to try the case himself. No opportunity was given to the accused to be tried by a different Magistrate and he was convicted.

**CR. P. CODE (1898), S. 190—Procedure.**

*Held*, that it was the Magistrate who took cognizance of the case and the proceedings should be quashed as the case should have been tried in another Court. (*Pullan, J.*) **LACHMI NARAIN v. EMPEROR.**

113 I. C. 326 = 5 O. W. N. 1136 =

30 Cr. L. J. 134 = 4 Luck. 353 =

12 A. I. Cr. E. 93 = A. I. R. 1929 Oudh 87.

—One *A* was challenged by the police for murder. In the course of committal proceedings the Magistrate found that there were some witnesses who said that the murderer was not *A* but *M*. The Magistrate therefore proposed to suspend further proceedings against *A* and directed that proceedings on the charge of murder should be started against *M* with the intention of committing one or the other to the Sessions Court.

*Held*, that the procedure, though not illegal, was not suitable. The magistrate should either commit *A* to the Sessions Court or, if he is not satisfied that there are sufficient grounds for committing him to the Sessions Court, should discharge him, and that further proceedings should not be taken against *M* until *A* is either convicted, acquitted, or discharged. (*Wild, J. C. and Aston, A. J. C.*) **SHER MAHOMED v. EMPEROR.**

115 I. C. 335 = 12 A. I. Cr. E. 372 =

30 Cr. L. J. 459 = A. I. R. 1929 Sind 17.

—*Accused to be informed.*

Where a magistrate takes cognizance of a case neither upon a complaint nor upon a police report, he must be deemed to have taken cognizance of it upon his own knowledge or suspicion, and in that case it is his duty to inform the accused that he is entitled to have his case tried by another Court. (*Sulaiman, J.*) **NARAIN DAS v. EMPEROR.**

92 I. C. 741 = 27 Cr. L. J. 325 =

7 L. R. A. Cr. 38 = A. I. R. 1926 All. 325.

—*Reasons—Desirable*

It is desirable that a magistrate taking cognizance under S. 190 (1) (c) should record the information upon which he has acted, though he may not disclose the source of his information. But his omission to do so does not necessarily vitiate the proceedings. 35 Cal. 1076, Rel. on. (*Godfrey, J.*) **MAUNG NYI BU v. EMPEROR.**

93 I. C. 77 = 4 Bur. L. J. 211 =

27 Cr. L. J. 413 = A. I. R. 1926 Rang. 46.

—*Non-cognizable case.*

The petitioner made a statement to the Village Munsif that a dacoity was committed in his house and mentioned certain persons as having taken part in the dacoity. The Village Munsif forwarded the complaint to the Police, who held an investigation and referred the case as false. The Sub-magistrate to whom the papers were sent, accepted the referred charge-sheet and struck the case off his file. The police put in a charge sheet before the Sub-Divisional magistrate against the petitioner for an offence under S. 211 I. P. C. The Sub-Divisional magistrate transferred the case to the Second Class magistrate who had acted on the referred charge-sheet in the alleged dacoity case.

*Held*, that this was not a case in which the police could start proceedings of their own accord. The offence under S. 211 is a non-cognizable one and the Police were not empowered to investigate into a non-cognizable offence and charge the petitioner. It was open either to the accused in the alleged dacoity case or to the Village Munsif, or any Police officer to prefer complaint under S. 190, Cr. P. Code, in which case the magistrate before whom the complaint is made might take the case on his file after taking a sworn statement from the complainant. As such course was not adopted in this case, the proceedings were illegal. (*Devadoss and Wallace, J.J.*) **PERUMAL NAICK v. EMPEROR.**

90 I. C. 398 = 1925 M. W. N. 317 =

**CR. P. CODE (1898), S. 191—Effect of non-compliance.**

22 M. L. W. 209 = 26 Cr. L. J. 1550 =

A. I. R. 1925 Mad. 672.

—**S. 190—Taking cognizance.**

—*Deprivation of jurisdiction to proceed.*

Where a magistrate has properly taken cognizance of a complaint nothing that can happen subsequently will suffice nor can anything in S. 195 (1) (b), operate to deprive him of jurisdiction to proceed thereon in accordance with law. A. I. R. 1925 Pat. 717, Dist. (*Macpherson, J.*) **PARMANAND BRAHMACHARI v. EMPEROR.**

116 I. C. 46 = 1930 Cr. C. 6 = 30 Cr. L. J. 554 =

10 P. L. T. 618 = 12 A. I. Cr. E. 427 =

A. I. R. 1930 Pat. 30.

—Taking cognizance occurs as soon as the magistrate as such applies his mind to the suspected commission of an offence. 37 Cal. 412, Foll. (*Macpherson, J.*) **PARMANAND BRAHMACHARI v. EMPEROR.**

116 I. C. 46 = 10 P. L. T. 618 = 12 A. I. Cr. E. 427 =

1930 Cr. C. 6 = 30 Cr. L. J. 554 =

A. I. R. 1930 Pat. 30.

—*Cl. s. a, b, & c, not mutually exclusive.*

While considering S. 190 it cannot be treated that the three alternatives upon which a magistrate may take proceedings are mutually exclusive. It is not correct that a magistrate while taking cognizance of an offence should have done it under some one of the alternatives to the exclusion of the other. (*Courtney Terrell, C.J., Dhavle and James, J.J.*) **BHARAT KISHORE LAL SINGH DEO v. JUDHISTIR MODAK.**

10 P. L. T. 779 =

30 Cr. L. J. 1056 = 119 I. C. 413 =

1929 Cr. C. 341 = A. I. R. 1929 Pat. 473.

—*Point of time.*

Under S. 190 a Magistrate takes cognizance of a case when the complaint is filed and even before the examination of the accused under S. 200. (6 Pat. L. J. 116; 11 Mad. 443, Foll.) (*Oigors and Wallace, J.J.*) **AMBAYARA GOUNDAN v. PACHAMUTHU GOUNDAN.**

81 I. C. 218 = 19 M. L. W. 461 = 25 Cr. L. J. 730 =

A. I. R. 1924 Mad. 587.

—**S. 191—Applicability.**

—The mere fact that previous to the making of the written complaint the magistrate happened to be in the village and the complainant related the story of the offence to him orally and he inspected the locality, would not bring the case within the purview of sub-cl. (c) of the section, and if the same magistrate starts the proceedings on the written complaint, the case would fall under S. 190 (1) (a) and S. 191 would not apply. (*Banerji, J.*) **BALDEO v. KING-EMPEROR.**

98 I. C. 718 =

7 L. R. A. Cr. 191 = 27 Cr. L. J. 1406 =

A. I. R. 1927 All. 101.

—**S. 191—Effect of non-compliance.**

—*Trial vitiated.*

Section 191 is imperative and a failure to inform the accused his right to be tried by another magistrate under S. 191 is not a mere irregularity which is cured under S. 537, but it vitiates the trial. 28 All. 212 and A. I. R. 1923 All. 383, Foll. (*Sulaiman, J.*) **NARAIN DAS v. EMPEROR.**

92 I. C. 741 =

27 Cr. L. J. 325 = 7 L. R. A. Cr. 38 =

A. I. R. 1926 All. 325.

—Trial is not in accordance with law if provisions of S. 191 are not complied with. (*Harrison, J.*) **SOMMUN v. EMPEROR.**

96 I. C. 989 =

27 Cr. L. J. 1037 = A. I. R. 1926 Lah. 627.

—Omission to inform accused of his right to be tried by another Magistrate vitiates the trial instituted and carried on by the Magistrate under S. 476, Cr. P. Code. (*Wasir Hasan, J. C.*) **KING-EMPEROR v. NAIPAL.**

82 I. C. 152 = 11 O. L. J. 532 =

**CR. P. CODE (1898), S. 191—Effect of non-compliance.**

25 Cr. L. J. 1224 = 28 O. C. 1 =  
A. I. R. 1924 Oudh 448.

—**S. 191—Grounds for transfer.**

—A complaint was made against a person that he had come with a mob of men to the house where the complainant held the village-school, had entered the house, beaten the complainant with the help of those who were with him and turned him out of the house. There was also an allegation that the person and his companions had taken away certain properties of the complainant. Charges were drawn under Ss. 448 and 323. Accused applied for transfer from Third Class magistrate to one having higher powers on the ground that the case made by prosecution was in fact a case which would justify charge under S. 452.

*Held*, that the case could not be transferred on the alleged ground, but it must be transferred because if allegations be correct, a much more serious offence was committed than could be punished by 3rd Cl. Magistrate. (*Adami, J.*) **SURAJ NARAYAN v. EMPEROR.**

1929 Cr. C. 271 = A. I. R. 1929 Pat. 511.

—**S. 191—Trial.**

—A Magistrate is not precluded from trying a case of which he has taken cognizance on his own knowledge under S. 190 (?) provided he has complied with the provisions of S. 191. In such a case S. 556 ceases to operate. (*Held, J.*) **NGA CHIT KYAW v. KING-EMPEROR.**

84 I. C. 249 = 3 Bur. L. J. 121 =  
26 Cr. L. J. 249 = A. I. R. 1924 Rang. 352.

—**S. 192—Legality of transfer.**

—*Limit of power.*

Application was made to the District Magistrate praying for action to be taken under S. 145 of the Code. The District Magistrate took the petition on file and without himself taking action under S. 145 (1) transferred it to Sub-Divisional Magistrate under him for disposal. Sub-Divisional Magistrate made an order under S. 145 (1). But the land concerned was not within the local limits of his jurisdiction.

*Held*, that the District Magistrate was wrong in transferring the case to a Sub-Divisional Magistrate who had no jurisdiction over the land concerned. The District Magistrate had no power to alter the boundaries of any sub-division of his District permanently, temporarily, or for the purpose of any particular case. The Sub-Divisional Magistrate's order therefore was without jurisdiction. 26 Mad. 188 and 22 Cal. 898, Dist.; 41 Mad. 246, Appr. (*Reilly, J.*) **CHELLAPATHI NAIDU v. SUBBA NAIDU.**

114 I. C. 625 =  
28 M. L. W. 664 = 1928 M. W. N. 921 =  
1 M. Cr. C. 320 = 52 Mad. 241 =  
30 Cr. L. J. 340 = A. I. R. 1928 Mad. 1230 =  
55 M. L. J. 693.

—**S. 192 (1) empowers a Magistrate to transfer a case for enquiry or trial but it does not empower him to transfer a case simply for the purpose of considering the report of an investigation under S. 202, Cr. P. Code, which he has himself ordered.** (*Suhrawardy and Mukerjee, J.J.*) **MAHABIR SINGH v. GIRIBALA DASSI.**

87 I. C. 526 = 29 C. W. N. 508 = 26 Cr. L. J. 990 =  
A. I. R. 1925 Cal. 742.

—**S. 192—Notice.**

—*To accused—Necessity.*

In cases of transfer, the District Magistrate, before passing an order of transfer, should give an opportunity to the accused to show cause why transfer should not be made. (*Devadoss, J.*) **RAMALINGA ODAYAR v. EMPEROR.**

51 Mad. 610 = 28 M. L. W. 303 =  
1 M. Cr. C. 143 = 29 Cr. L. J. 734 = 110 I. C. 590 =  
A. I. R. 1928 Mad. 560 = 55 M. L. J. 217.

**CR. P. CODE (1898), S. 193—Fresh Charge.**

—**S. 192—Procedure after transfer.**

—A Magistrate to whom a case is transferred by the District Magistrate under the provisions of S. 192 stands in the shoes of the original Magistrate and he has full authority to deal with the case as if he himself had taken cognizance of it. (*Chotner and Gregory, J.J.*) **HEMENDRA NATH SEN v. EMPEROR.**

55 Cal. 1274 = 30 Cr. L. J. 352 = 114 I. C. 800 =  
A. I. R. 1929 Cal. 192.

—*Powers.*

If the Sub-Divisional Magistrate, acting under S. 192 (1) transfers a case of which he has taken cognizance before issue of summons, the Magistrate who receives the case on transfer has power to do all that is requisite to try and decide the case, including power to issue summons on the accused. He has the same power where the High Court directs transfer of the case from the file of the Sub-Divisional Magistrate and the case is transferred to his file in accordance with that direction. (*Macpherson, J.*) **RAJA MADHU SUDAN DEV v. PANU PARHI.**

7 P. L. T. 420 = 27 Cr. L. J. 855 = 95 I. C. 935 =  
A. I. R. 1926 Pat. 358.

—**S. 192—Retransfer.**

—*Powers.*

On a complaint being filed before the Sub-Divisional Officer, the complainant was examined and police was ordered to submit a report. The police submitted a final report stating that the case was maliciously false and filed a complaint for the prosecution of the complainant under S. 211 of the Indian Penal Code. The Sub-Divisional Officer did not take cognizance of the case under S. 211 but merely asked the accused to show cause why he should not be prosecuted. At the same time the complainant put in a petition impugning the police report and praying for an enquiry by a Judicial Officer. The complainant was directed to adduce evidence. His witnesses, however, were not present on the day fixed and he prayed for time. The case was thereupon adjourned, but on the adjournment date the following order was passed: "Witnesses were present. To Mr. Q. (a Deputy Magistrate) for disposal" Mr. Q. did not examine any of the witnesses being of opinion that it would be a waste of time to do so. But on looking into the police report and hearing the pleader of the complainant he directed the investigating officer to submit a charge-sheet in the case. Subsequently the Sub-Divisional Officer purported to re-call the case from the file of the Deputy Magistrate and make it over to another Deputy Magistrate with certain instructions as to how he should proceed.

*Held*, the order transferring the case to the Deputy Magistrate was under S. 192 and the whole case was transferred. The Deputy Magistrate had full seisin of the case and Sub-Divisional Officer could not re-call the case for the reasons shown in his order or transfer it to another Deputy Magistrate, much less with instructions as to how he should deal with the case. The order of the Sub-Divisional Officer transferring the case to another Magistrate as well as the order of the Deputy Magistrate asking for a charge-sheet from the police should be set aside. (*Sen, J.*) **MAHARI DHANGAR v. BALDEO NARAIN.**

7 P. L. T. 530 =  
1926 P. H. C. C. 16 = 26 Cr. L. J. 1585 =  
90 I. C. 657 = A. I. R. 1926 Pat. 525.

—**S. 193—Fresh charge.**

—*Cannot be added in sessions court.*

The object of S. 193, Cr. P. Code, in requiring that a Court of Sessions shall not take cognizance of an offence unless the accused has been committed to it by a competent Magistrate is to secure to the accused who is

**CR. P. CODE (1898), S. 193—Fresh Charge.**

charged with a grave offence a preliminary enquiry which would afford him the opportunity of becoming acquainted with the circumstances of the offence, and to enable him to make his defence. This object would indubitably be frustrated, if a fresh charge is substituted or added in the Sessions Court on which the prosecution have not led evidence even in the Sessions Court but intend to lead evidence. (*Kincoed, J.C. and Rupchand Bilaram, A.J.C.*) **EMPEROR v. STEWART.**

21 S.L.R. 55 = 27 Cr. L. J. 1217 = 97 I. C. 1041 =  
A. I. R. 1927 Sind 28.

**—S. 193—Transfer of reference.**

Where the Sessions Judge transferred the hearing of a reference under S. 123, Cr. P. Code to the Additional Sessions Judge,

*Held*, that S. 193 (2) should be interpreted in a liberal sense and that the first Additional Sessions Judge has jurisdiction to hear the reference. (*Walmesley and Chotamur, J.J.*) **BINODE BEHARI NATH v. EMPEROR.**

81 I.C. 61 = 81 I. C. 149 = 50 Cal. 229 =  
39 C. L. J. 75 = 27 C. W. N. 996 =  
25 Cr. L. J. 573 = 25 Cr. L. J. 661 =  
A. I. R. 1923 Cal. 649

**—S. 195.**

Appeal.  
Appellate Court.  
Applicability.  
Complaint.  
Costs  
Counsel.  
Court, meaning of.  
Death of Applicant.  
Delay.  
Duty of Court.  
Effect of amendment.  
High Court.  
Interpretation.  
Limitation.  
Notice.  
Powers of Court.  
Probability of Conviction.  
Procedure.  
Revision.  
Sanction.  
Scope of.  
Subordinate Court. *See also* APPELLATE COURT  
Subordination.  
Miscellaneous.

**—S. 195—Appeal.**

No appeal lies when prosecution is launched under S. 195 (a). The only remedy to set it right is by way of revision. (*Carr, J.*) **P. J. MONEY v. EMPEROR.**

111 I. C. 672 = 6 Rang. 529 = 29 Cr. L. J. 912 =  
A. I. R. 1928 Rang. 296.

The right of appeal given by S. 476 (b), Cr. P. Code, is restricted to offences referred to in S. 195, sub-S. (1), cl. (b) or (c) and no right of appeal is given by S. 476 (b) in respect of any offence referred to in S. 195, sub-S. (1) cl. (a). (*Iqbal Ahmad, J.*) **BRIJENDRA NATH v. EMPEROR.**

102 I. C. 483 =  
8 A. I. Cr. R. 55 = 8 L. R. A. Cr. 101 =  
28 Cr. L. J. 547 = A.I.R. 1927 All. 828.

A sanction for prosecution by a single judge sitting on the Original Side is an order and not a judgment and no appeal lies. (*Schwabe, C. J., Oldfield and Coutts Trotter, J.J.*) **K. V. MUNISWAMY MUDALIAR v. RAJARATNAM PILLAI.**

71 I. C. 126 =  
16 M. L. W. 365 = 1922 M. W. N. 594 =  
31 M. L. T. 287 = 45 Mad. 928 = 24 Cr. L. J. 78 =  
A. I. R. 1922 Mad. 495 = 43 M. L. J. 375 (F. B.).

**CR. P. CODE (1898).****—S. 195—Appellate Court.****—Test.**

The determination of the superior Court is not confined to the decrees which are appealable. What is stated is that a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees. (*Dalal, J.*) **RATAN LAL v. HAFIZ ABDUL HAI.** 1930 Cr. C. 631 = 1930 A. L. J. 1010 = 125 I. C. 753 = 31 Cr. L. J. 898 = A.I.R. 1930 All. 407.

By reference to Rr.' 16 and 17 of Local Self Government Rules (1925) it may be taken as certain that the returning officer is a public servant subordinate to the District Magistrate. The District Magistrate therefore has authority to hear an appeal under S. 195 (5), Cr. P. Code, and he is not justified in refusing jurisdiction. (*Dalal, J.*) **MADUSUDAN LAL v. EMPEROR.**

120 I. C. 128 = 30 Cr. L. J. 1159 =  
11 L. R. A. Cr. 27 = 13 A. I. Cr. R. 137 =  
1930 A. L. J. 216 = 1929 Cr. C. 659 =  
A. I. R. 1929 All. 931.

The omission of the word "only," in sub-S. (3) does not imply any change in the law as it existed before the amended Code. A Magistrate empowered under S. 407 (2) cannot be regarded as a Court "to which appeals ordinarily lie," the Court of the District Magistrate being the Court to which appeals ordinarily lie. 30 Cal. 394; 26 Mad. 656 (F. B.), Foll. 18 Mad. 487, Dist. and not Foll. (*Mukerji and Graham, J.J.*) **MOHIM CHANDRA v. EMPEROR.**

116 I. C. 638 =  
33 C. W. N. 285 = 49 C. L. J. 342 =  
30 Cr. L. J. 658 = 56 Cal. 824 =

13 A. I. Cr. R. 103 = A. I. R. 1929 Cal. 172.

Where under notification by High Court with previous sanction of the Local Government as provided for by statute appeals lying from Munsif's decree are preferred to the Court of the Subordinate Judge, the latter Court is the Court to which appeals ordinarily lie within the meaning of S. 195 (3). (*Kulwant Sahay and Macpherson, J.J.*) **RAMACHANDRA PANDHI v. EMPEROR.**

117 I. C. 878 = 8 Pat. 428 =  
30 Cr. L. J. 834 = 1929 Cr. C. 158 =  
A. I. R. 1929 Pat. 367.

**—Valuation—No test.**

On refusal of sanction to prosecute in respect of an offence referred to in S. 195 committed in the course of a civil suit the valuation of such suit is immaterial for the purpose of deciding to which Court of Appeal an application under S. 195 for granting sanction will lie: 17 All. 51, Foll. (*Waller and Madhavan Nair, J.J.*) **PALANIAPPA CHETTI v. CHETTIAPPA CHETTI.**

99 I. C. 957 = A. I. R. 1927 Mad. 683.

A Sub-Divisional Officer granting sanction under sub-S. (1) (a) is subordinate to the District Magistrate and not the Sessions Judge for purpose of sub-S. (5). Sub-S. (3) refers to the cases mentioned in Cls. (b) and (c) of S. 195 (1) where the complaint must be made by the Court and not to Cl. (a) where the complaint is to be made by a public servant. (*Dawson Miller, C. J. and Foster, J.*) **MAINI MISSIR v. KING EMPEROR.**

100 I. C. 961 = 6 Pat. 39 = 28 Cr. L. J. 353 =  
8 P. L. T. 488 = 7 A. I. Cr. R. 466 =  
A. I. R. 1927 Pat. 111.

For the purpose of S. 195 Munsiffs in the Punjab are subordinate to the Senior Sub-Judge and hence appeals from an order granting or refusing sanction lie to him. (*Moti Sagar, J.*) **JAWALA SINGH v. MADAN GOPAL.**

91 I. C. 251 = 27 Cr. L. J. 75 (Lah.) =  
1 L. C. 7.

An appeal from a complaint made by a Judge of the Court of Small Causes, who describes himself as a Munsiff because he was a Munsiff invested with Small



**CR. P. CODE (1898), S. 195—Appellate Court.**

Cause powers, for prosecution of a person under Ss. 471 and 467, I. P. Code lies to the District Judge and not to the Court of the Sessions Judge. (*Dalal, J. C.*) **FATEH BAHADUR v. ABDUL RAHIM.** 91 I. C. 387 = 2 O. W. N. 845 = 27 Cr. L. J. 83 = A. I. R. 1925 Oudh 713.

—For the purposes of S. 195, a Munsif is subordinate only to the Senior Subordinate Judge and not to the District Judge who has therefore no jurisdiction to grant sanction for a prosecution for offences committed in the Munsif's Court. (*Martineau, J.*) **KANHAIYA LAL v. ROSHAN MAL.** 69 I. C. 448 = 23 Cr. L. J. 720 = A. I. R. 1924 Lah. 356.

—*Special powers—Not to affect the ordinary form.*

By Notification No 4848-VI-353 of the 3rd December, 1921, the City Magistrate of Lucknow had been invested with the power to hear appeals from orders and convictions by Magistrate of the 2nd and 3rd classes under S. 407 (2) read with S. 37 of the Cr. P. Code.

*Held*, that for the purpose of S. 195, clause (7) of the Code, an appeal from the decision of a Bench of Honorary Magistrates, exercising second or third class powers, was to be deemed "ordinarily" to lie to the District Magistrate and not to the City Magistrate. 30 Cal. 394 and 26 Mad. 656, Ref. (*Kankaya Lal, J. C.*) **AMAMAD HUSSAIN v. MT. RAHMAN.**

85 I. C. 39 = 26 O. C. 358 = 26 Cr. L. J. 423 = A. I. R. 1924 Oudh 239.

**—S. 195—Applicability.**

—Where a party who has brought a civil suit has not himself fabricated the evidence in relation to that suit but is challenging certain evidence the opposite party might produce against him to his prejudice as being false and fabricated and it is not produced and the party succeeds in the suit, party is entitled to file a complaint against the other party under Ss. 192 and 193, Penal Code, and it is not necessary that the Court should file complaint under S. 195 (4), Cr. P. Code. A. I. R. 1923 Bom. 105 and 39 Mad. 677, Dist. (*Mirza and Broomfield, J.J.*) *In re* **MOHANIRAJ KRISHNA KORHALKAR.** 1930 Cr. C. 769 = 32 Bom. L.R. 589 = A. I. R. 1930 Bom. 337.

**—S. 195—Complaint—Additional offences.**

—*Fresh complaint not necessary.*

Where the original complaint alleged an offence of conspiracy only, but the evidence disclosed another offence committed in pursuance of that conspiracy and covered by S. 195 (1) (c) and the Magistrate framed charge in respect of this second offence,

*Held*, no complaint was necessary under S. 195 (1) (c). Under S. 254 the Magistrate is not restricted to the original offence which he has taken cognizance of. Moreover, S. 235, Cr. P. Code, permits a joinder of charges in respect of offences arising out of the same transaction. (*Maung Ba and Doyle, J.J.*) **ABDUL RAHMAN v. KING EMPEROR.** 94 I. C. 717 = 4 Bur. L. J. 213 = 27 Cr. L. J. 669 = A. I. R. 1926 Rang. 53.

**—S. 195—Complaint—Evasion of.**

—*Fabrication—False evidence in the guise of fraud.*

Where a complaint stated that certain persons conspired with others and forged a document with the deliberate object of using it in evidence in certain proceedings pending in a Court and other proceedings that might follow, and that it was actually so used in the proceedings pending before a Court,

*Held*, that the offence complained of fell under cl. (b). S. 195 (1), Cr. P. Code, and, therefore the complaint cannot be taken cognizance of except on the complaint in writing of the Court in which the offence

**CR. P. CODE (1898), S. 195—Complaint—If necessary.**

was alleged to have been committed. To hold in such a case that although a private person was barred from prosecuting for fabricating false evidence, he would still be at liberty to prosecute for fraud would mean that the provisions of S. 195 (1) (b), Cr. P. Code, might be evaded by this simple expedient. It was not open to the Court to try the accused either for fabricating evidence or for fraud because the specific offence of fabricating false evidence should be given preference over the more general offence of forgery. A. I. R. 1924 All. 296, not Foll.; 31 Mad. 43, Dist.; 25 Bom. 90, Disc. and Dist.; A. I. R. 1922 Mad. 223, Cons. A. I. R. 1925 All. 230, Rel. on. (*Curgenven, J.*) **PERIANN MUTHIRIAN v. VENGU AYYAR.** 114 I. C. 360 = 28 M. L. W. 687 = 1929 M. W. N. 136 = 2 M. Cr. C. 19 = 30 Cr. L. J. 322 = A. I. R. 1929 Mad. 21 = 56 M. L. J. 208.

—*Preferring complaints under different sections of Penal Code.*

The complainant, who was not party to a suit in which the document was filed, filed the petition asking the Court to direct a prosecution of the accused under various sections including Ss. 471 and 474 of Penal Code. That petition was rejected by the Court and the appeal to the District Judge was dismissed. Thereafter the complainant filed another complaint, a complaint of an offence under S. 474. The accused was put upon his trial and was convicted and sentenced.

*Held*, that the terms of S. 195 Cr. P. Code, could not be evaded and that the offence being clearly under S. 471 if any offence was made out at all and that process having been sought and refused under S. 476, Cr. P. Code, it would be wrong to permit the prosecution in the manner adopted. 44 Cal. 970 and 19 C.W.N. 125, Foll.; A. I. R. 1924 Cal. 718, Ref.; A. I. R. 1921 Cal. 1 (S.B.) Dist. (*Rankin and C. C. Ghose, J.J.*) **IBRAHIM v. EMPEROR.** 111 I. C. 435 = 29 Cr. L. J. 849 = 11 A. I. R. 79 (Cal.).

—When the Code provides that the Court shall not take cognizance of certain offences without complaint from the public servant it is not open to a Magistrate to ignore this provision by the device of instituting the case under another section of the Penal Code. Hence the Magistrate cannot say that he took cognizance of an offence under S. 225 (b) of the Penal Code and that having done so he was entitled under S. 238 of the Cr. P. Code to convict the accused under S. 173 of the Penal Code which he regarded as a minor offence of the same character as that for which a penalty is provided under S. 235 (b). (*Neave, J.*) **SRI NARAIN SINGH v. EMPEROR.** 85 I. C. 62 = 47 All. 114 = 22 A. L. J. 1005 = 26 Cr. L. J. 448 = 5 L. R. A. Cr. 153 = A. I. R. 1925 All. 129.

**—S. 195—Complaint—Grounds for.**

—*Finding of competent Court.*

The finding of a competent Court that a document is a forgery or that a witness has committed perjury before it is a sufficient *prima facie* ground for an order under S. 195 or S. 476. (*Daniel, J.*) **DWARAKA PRASAD v. MAKUND SARUP.** 90 I. C. 290 = 24 A. L. J. 122 = 26 Cr. L. J. 1506 = 6 L. R. A. Cr. 630 = 6 L. R. A. Cr. 213 = A. I. R. 1926 All. 21.

**—S. 195—Complaint—If necessary.**

—Where no proceedings take place in Court in furtherance of the false information given by the accused it cannot be said that the offence under S. 211, I. P. C., was committed in relation to a proceeding in Court and the complaint of a Magistrate is not necessary in de-

**CR. P. CODE (1898), S. 195—Complaint—If necessary.**

S. 195 (1) (b). (*Bennet, J.*) *EMPEROR v. GAYA TELI*.  
1930 Cr. C. 1202 = A. I. R. 1930 All. 818.

**—S. 195—Complaint—Legality of.**

Where an appeal from order of Munsif refusing to make complaint under Cr. P. Code, S. 476, was filed before District Judge but he transferred the appeal for disposal to Additional Judge who directed issue of complaint,

*Held*, that the direction was legal. 39 Cal. 774; 40 Cal. 37 and A. I. R. 1927 All. 469, not Foll.; A. I. R. 1926 All. 229; 34 All. 205 and A. I. R. 1921 All. 211. Foll. (*Iqbal Ahmed, J.*) *NARAIN DAS v. EMPEROR*.  
102 I. C. 485 = 49 All. 792 =  
25 A. L. J. 559 = 7 A. I. Cr. R. 534 =  
8 L. E. A. Cr. 81 = 28 Cr. L. J. 549 =  
A. I. R. 1927 All. 555.

**—S. 195—Complaint—Several offences.**

Where a Magistrate has no jurisdiction to take cognizance of an offence under S. 211 for want of proper complaint he can investigate the complaint as regards S. 182. (*Mullick and Jwala Prasad, Jj.*) *DAROGA GOPE v. KING EMPEROR*.

88 I. C. 1045 = 5 Pat. 33 = 6 P. L. T. 515 =  
1926 P. H. C. C. 106 = 26 Cr. L. J. 1269 =  
A. I. R. 1925 Pat. 717.

**—S. 195—Complaint—Want of.****—Offence under S. 211, I. P. C.—Court cannot act.**

Section 195 (1) (b) is a bar to cognizance of offence under S. 211 alleged to have been committed in or in relation to a proceeding in a Court except on complaint in writing by that Court or some other Court to which that Court is subordinate and so where there is clearly no such complaint in writing it is not open to a Magistrate to take cognizance under S. 190 (1) (c). (*Macpherson, J.*) *EMPEROR v. LALCHAND TEBI*.

123 I. C. 399 = 31 Cr. L. J. 494 =  
1930 Cr. C. 718 = A. I. R. 1930 Pat. 346.

**—Illegality.**

The provisions of S. 195 (c) read with S. 476 are imperative and non-compliance with them is an illegality not curable by S. 537. A. I. R. 1926 All. 700, Rel. on. (*Kinkhede, A. J. C.*) *TULARAM MARWADI v. EMPEROR*. 100 I. C. 1044 = 28 Cr. L. J. 388 =  
7 A. I. Cr. R. 521 = A. I. R. 1927 Nag. 184.

**—Ousts jurisdiction.**

The absence of a complaint in writing as required by S. 195 (1) of the public servant concerned or his superior makes the Court a Court not of competent jurisdiction and, therefore, renders valueless the plea of previous acquittal as a bar to his re-trial on the same facts after proper complaint is made. S. 537 (a) does not apply as in the first trial there cannot be said to be an error, omission or irregularity in a complaint, but an absence of complaint altogether. (*Kincaid, J. C. and Tyabji, A. J. C.*) *FAKIR MAHOMMED v. EMPEROR*.  
97 I. C. 417 = 21 S. L. R. 1 = 27 Cr. L. J. 1105 =  
A. I. R. 1927 Sind 10.

**—Proceedings void.**

Since the amendment, if a Court entertains a case covered by S. 195, Cr. P. Code, without such a complaint as the law requires, its proceedings are void. (*Daniels, J.*) *JANKI PRASAD v. EMPEROR*.

96 I. C. 213 = 7 L. E. A. Cr. 93 =  
27 Cr. L. J. 901 = A. I. R. 1926 All. 700.

**—Proceedings rendered void.**

The absence of sanction or complaint under S. 195, Cr. P. Code, vitiates the whole proceedings and the defect is not cured by S. 537, which applies to errors of procedure and not to substantive errors of law. Where a trial is contrary to law it is no trial at all and

**CR. P. CODE (1898), S. 195—Complaint—When unnecessary.**

disobedience to an express provision of law as to the mode of the trial is not an irregularity which can be cured by S. 537 Cr. P. Code. It is an illegality which vitiates the whole trial. Absence of complaint or irregularity in complaint makes whole proceedings void *ab initio*. (*Raza, J.*) *RAM SAMUJH v. EMPEROR*.

96 I. C. 521 = 1 Luck. 523 = 7 A. I. Cr. R. 45 =  
3 O. W. N. 614 = 27 Cr. L. J. 969 =  
A. I. R. 1926 Oudh 485.

**—Incurable.**

The want of a complaint by the Court concerned under S. 195 will vitiate the whole trial and the defect cannot be condoned. (*Daniels, J. C.*) *GIRDHARI LAL v. KING-EMPEROR*. 86 I. C. 993 = 12 O. L. J. 194 =  
2 O. W. N. 174 = 26 Cr. L. J. 929 =  
29 O. C. 1 = A. I. R. 1925 Oudh 413.

**—Police officer's request enough.**

When a police officer asks that a person should be prosecuted under S. 211 for information given to him and gives evidence himself in support of that charge, no serious irregularity can arise in the conviction of the accused in proceedings initiated upon that report. A report by police officer in a non-cognizable case is a complaint within the definition. 30 Cal. 910; 32 P. R. 1910 and 30 Cal. 285, Dist.; 40 Cal. 300 and 22 Bom. 550, Foll. (*Lumsden, J.*) *MEHR CHIRAOH DIN v. THE CROWN*. 76 I. C. 189 = 4 Lah. 359 =  
25 Cr. L. J. 125 = A. I. R. 1924 Lah. 258.

**—Not in writing—Curable.**

Where the complainant was examined on oath by the Magistrate when cognizance was taken of the offence, absence of a complaint in writing would only amount to an error, omission or irregularity as contemplated by S. 537 of the Code. (*Kulwant Sahay, J.*) *LACHMI SINGH v. THE KING-EMPEROR*. 81 I. C. 620 =  
5 P. L. T. 505 = 1924 P. H. C. C. 181 =  
25 Cr. L. J. 972 = A. I. R. 1924 Pat. 691.

**—S. 195—Complaint—What is.****—Police challan.**

A process-server presented a report on the back of a warrant to the Civil Court that he was beaten by A when he was attaching property in its execution. Thereupon, the Civil Court reported the matter to the police who challaned A under Ss. 332 and 394, I. P. C. The Magistrate found these offences not proved, but he convicted A under S. 186.

*Held*, that the Magistrate had no jurisdiction to convict the accused under S. 186, as neither the report nor the police challan constituted a complaint. (*Shadi Lal, C. J.*) *MT. DARKAN v. EMPEROR*.

110 I. C. 101 = 10 A. I. Cr. R. 486 =  
29 Cr. L. J. 645 = A. I. R. 1928 Lah. 827.

Where a prosecution was initiated by the Police who made the complaint and on that complaint the Magistrate passed an order to summon the accused,

*Held*, that the order could not be construed as a "complaint" within the meaning of the Code. (*Buckmill and Ross, Jj.*) *SHAIKH MUHAMMAD YASSIN v. EMPEROR*. 86 I. C. 825 = 4 Pat. 323 = 6 P. L. T. 457 =  
26 Cr. L. J. 889 = A. I. R. 1925 Pat. 483.

**—S. 195—Complaint—When necessary.**

Even where the use as genuine of a forged document under S. 471, I. P. C., is prior to the proceedings before the Court, the complaint of the Court before which that document was filed or used is necessary under S. 195. 39 Mad. 677; A. I. R. 1925 Bom. 433; 1925 Lah. 266 and 1925 All. 30, Rel. on. (*Pandalai, J.*) *THADI SUBBI REDDI v. EMPEROR*. 32 M. L. W. 273 =  
1930 Cr. C. 1125 = 1930 M. W. N. 989 =  
A. I. R. 1930 Mad. 869 = 59 M. L. J. 229.

**CR. P. CODE (1898), S. 195—Complaint—When unnecessary.****—Prosecution of party to suit.**

A party to a suit where offences covered by S. 195, Cr. P. Code, are committed cannot be tried without a complaint under S. 476, Cr. P. Code, though accused who are not parties to the suit can be so prosecuted.

Where a Judge had asked the police authorities to investigate the matter and had subsequently appeared as a witness

*Held*, that this is immaterial. (*Jai Lal, J.*) BISHAM-BAR DAS *v.* EMPEROR. 1929 Cr. C. 417 =

123 I. C. 847 = 31 Cr. L. J. 589 =

A. I. R. 1929 Lah. 785.

**—Prosecution of—Parties to suit.**

A Magistrate has no jurisdiction to issue a warrant under S. 468, Penal Code, against persons who are parties to a suit without the complaint of the Court before whom the civil suit was tried. (*Dalip Singh, J.*) GANDA SINGH *v.* EMPEROR. 112 I. C. 565 =

29 Cr. L. J. 1061 = A. I. R. 1929 Lah. 125.

**—Prosecution under S. 211, Penal Code.**

A made a complaint to the police that B snatched away currency notes which was filed. Subsequently B filed a complaint against A under S. 211, Penal Code, and thereupon A laid a complaint against B and B was charged under Ss. 420 and 403. Allegations made in both the cases were the same. B was acquitted and thereupon he applied for the case against A to be proceeded with.

*Held*, that prosecution of A under S. 211 was not sustainable without complaint by the Magistrate who tried the case of A against B. 44 Cal. 650, Rel. on. (*C.C. Ghose and Duval, J.J.*) SHEIKH SAMIR *v.* SAJIDAR RAHMAN. 53 Cal. 824 = 28 Cr. L. J. 86 =

99 I. C. 118 = A. I. R. 1927 Cal. 95.

—Where a false complaint is lodged and dismissed, the Magistrate dismissing the complaint is not competent to proceed against the complainant under S. 211, Penal Code. He should make a complaint under S. 195, Cr. P. Code. (*Ross and Kulwant Sahay, J.J.*) AMBIKA SINGH *v.* EMPEROR. 5 Pat. 450 =

96 I. C. 651 = 7 P. L. T. 716 = 27 Cr. L. J. 987 =

7 A. I. Cr. R. 20 = A. I. R. 1926 Pat. 368.

**—Offence under S. 182, Penal Code.**

The essence of an offence under S. 182 is not the falseness of the information; as it is the essence of an offence under S. 211, but the contempt of the lawful authority of the public servant and unless and until the public servant concerned chooses to move the matter, the Court has no authority to do so *suo motu*, by whatever process it reaches the result. (*Wallace and Madhavan Nair, J.J.*) MUTHU GOUNDAN *v.* EMPEROR. 87 I. C. 418 = 1925 M. W. N. 108 =

21 M. L. W. 661 = 26 Cr. L. J. 962 =

A. I. R. 1925 Mad. 400.

**—S. 195—Complaint—When unnecessary.****—Offence under Ss. 192 and 193, Penal Code.**

Where a party who has brought a civil suit has not himself fabricated the evidence in relation to that suit but is challenging certain evidence the opposite party might produce against him, to his prejudice as being false and fabricated and is not produced and the party succeeds in the suit, party is entitled to file a complaint against the other party under Ss. 192 and 193, Penal Code, and it is not necessary that the Court should file complaint under S. 195 (b), Cr. P. Code. A. I. R. 1923 Bom. 105 and 39 Mad. 677, Dist. (*Mirza and Broomfield, J.J.*) *In re* MOHANIRAJ KRISHNA KORHALKAR. 1930 Cr. C. 769 = 32 Bom. L. R. 589 =

A. I. R. 1930 Bom. 337.

**—Offences by persons not parties to proceedings.****CR. P. CODE (1898), S. 195—Complaint—Who can make.**

Certain criminal case in which K was on one side and R on the other ended in a compromise. In these proceedings a certified copy of a municipal plan had been filed on behalf of R. The copy was taken out by a person identified as R by a pleader N. R made an application to the Chief Presidency Magistrate asking for enquiry into the matter, his complaint being that K and others had tampered with the original plan and had taken out the certified copy by giving a false receipt and on false identification by N. The Chief Presidency Magistrate, after examining R, issued warrant against K under Ss. 417, 419, 430 and 109, Penal Code.

*Held*, that the offences were not committed by parties to any proceedings in Court while the said proceedings were pending in respect of documents produced or given in evidence in such proceedings. The offences were committed long after the proceedings had terminated and S. 195 did not operate as a bar to the cognizance of the offences. The allegations made in the complaint of R were such as must be inquired into. (*C. C. Ghose and Pearson, J.J.*) KARTICK CHANDRA *v.* EMPEROR. 1930 Cr. C. 358 = 127 I. C. 287 = 51 Cr. L. J. 51 =

A. I. R. 1930 Cal. 278.

**—False charge to police.**

When a false charge has been made only to the police, but the person making the false charge has not applied to the Magistrate and no Court proceedings whatever have ensued, no complaint is necessary under S. 195, Cr. P. Code, before a prosecution under S. 211, Penal Code, can be instituted against the informant. 43 Cal. 1152, Foll.; A. I. R. 1924 All. 779, Appr.; 34 All. 522, Doubtful. (*Findlay, J.C.*) BHOLU *v.* PUNAJI. 23 N. L. R. 136 = 10 N. L. J. 191 = 105 I. C. 454 =

28 Cr. L. J. 934 = 9 A. I. Cr. R. 87 =

A. I. R. 1928 Nag. 17.

**—S. 195—Complaint—Who can make.****—Court and not Prosecuting Inspector.**

The intention of the legislature in framing S. 195 (c) is to give authority only to the Court in which the proceeding was pending to file a complaint in respect of documents which were produced or given in evidence before it. A prosecution, therefore, cannot proceed on a complaint filed by a Prosecuting Inspector. It is necessary for such a complaint to be lodged by the Court in which the documents had been produced. A. I. R. 1925 Bom. 433, Kel. on. (*Tek Chand, J.*) KFSHAB CHANDER *v.* EMPEROR. 1930 Cr. C. 239 =

12 L. L. J. 1 = 125 I. C. 181 = 31 Cr. L. J. 778 =

A. I. R. 1930 Lah. 225.

**—Complaint sent to Sub-Inspector for enquiry found by him to be false—Magistrate and not Sub-Inspector to prefer complaint under S. 182, Penal Code.**

The petitioner filed a complaint before the Magistrate who after examining the petitioner sent the complaint to the Sub-Inspector for inquiry and report. The Sub-Inspector reported the case to be maliciously false, recommended the prosecution of the petitioner under S. 211, Penal Code and preferred a complaint of that offence against the petitioner. The petitioner filed a petition impugning the report and praying the Magistrate to make a judicial inquiry. The Magistrate directed the Sub-Inspector to submit a report for prosecution under S. 182 and on receipt of the "report for prosecution" issued summons on the petitioner under S. 182.

*Held*, that the order was wrong in law, that S. 195 (1) (a), Cr. P. Code, bars a complaint by the Sub-Inspector of an offence under S. 182 since he was not "the public servant concerned" or the superior of such public servant to whom the false information, punishable

**CR. P. CODE (1898), S. 195—Complaint—Who can make.**

under S. 182 was given and that S. 195 (1) (b) was a bar to cognizance being taken of it except on the complaint of the Magistrate. (*Macpherson, J.*) **JOKHI MIAN v. MAHMUD DAFADAR.** 115 I. C. 882 = 10 P. L. T. 77 = 30 Cr. L. J. 545 = 12 A. I. Cr. R. 363 = A. I. R. 1929 Pat. 92.

**—Court.**

Under S. 195 (1) (b) it is only the Court that can file the complaint for the offence committed before it, and not the particular public servant concerned. (*Sen, J.*) **RAM AJODHYA SINGH v. EMPEROR.** 103 I. C. 99 = 8 P. L. T. 674 = 28 Cr. L. J. 643 = 8 A. I. Cr. R. 253 = A. I. R. 1927 Pat. 327.

**—Court before which offence was committed.**

If an offence has been committed in or in relation to any proceeding in any civil, revenue or criminal Court, that Court alone can start proceedings, but if offences mentioned in sub-clauses (b) or (c) are committed in respect of a document produced or given in evidence in such proceeding then also no Court shall take cognizance of them except on the complaint in writing by such Court, and the proceedings started on a private complaint in relation to an offence under sub-cl. (c) are illegal and ought to be quashed. 14 A. L. J. 74, Foll. (*Sulaiman, J.*) **KANHAIYA LAL v. BHAGWAN DAS** 89 I. C. 1053 = 48 All. 60 = 23 A. L. J. 956 = 6 L. R. A. Cr. 153 = 26 Cr. L. J. 1485 = A. I. R. 1926 All. 30.

—In the Central Provinces a complaint in respect of an offence under S. 186, I. P. C., in respect of a process-server can be made by a Nazir or a District Judge or the Judicial Commissioner,\* but not a Sub-Judge nor an Additional Judicial Commissioner. (*Hallifax, A. J. C.*) **MRITYUNJAY PRASAD v. RAM-RAO.** 96 I. C. 866 = 27 Cr. L. J. 1010 = A. I. R. 1926 Nag. 485.

**—Action under S. 210. Penal Code—Second Court.**

Where a plaintiff first instituted a suit in one Court and obtained a decree for a part of his claim and then proceeded to present a fresh plaint in respect of the item disallowed and obtained an *ex parte* decree, the action under S. 210, Indian Penal Code can only be taken by the Court in which later suit was filed or by the Court to which they are both subordinate, as the filing of the second suit cannot be held to be an offence committed in relation to proceedings in the first Court. (*Harrison, J.*) **VISHNU RAM v. CROWN.** 90 I. C. 660 = 6 Lah. 445 = 7 L. L. J. 341 = 26 P. L. R. 717 = 26 Cr. L. J. 1588 = A. I. R. 1925 Lah. 524.

**—S. 195—Complaint—Miscellaneous.****—Not a judicial order.**

*Obiter.*—A complaint made under the provisions of S. 195 (a) by the Magistrate acting as a public servant is not a judicial order. (*Dawson Miller, C. J. and Foster, J.*) **MAINI MISIR v. KING EMPEROR.** 100 I. C. 961 = 6 Pat. 39 = 28 Cr. L. J. 353 = 8 P. L. T. 488 = 7 A. I. Cr. R. 466 = A. I. R. 1927 Pat. 111.

**—S. 195—Counsel.**

—A Counsel is not a party within the meaning of S. 195 (c). (*Dalip Singh, J.*) **GANDA SINGH v. EMPEROR.** 112 I. C. 565 = 29 Cr. L. J. 1061 = A. I. R. 1929 Lah. 125.

—A vakil is not a "party" for the purposes of S. 195 (1) (c). (*Curgenven, J.*) **PONNUSAMI UDAYAR v. EMPEROR.** 115 I. C. 481 = 28 M. L. W. 769 = 2 M. Cr. C. 39 = 30 Cr. L. J. 469 = 12 A. I. Cr. R. 299 = A. I. R. 1929 Mad. 115.

**CR. P. CODE (1898).****—S. 195—Court—Meaning of.**

—The Assistant Registrar of Co-operative Societies, to whom a dispute touching a debt due to a society by a member is referred, is a court within the meaning of S. 195, Cr. P. Code. (*Krishnan Pandalar, J.*) **SUBBI REDDI, In re,** 1930 M. W. N. 689 = 32 M. L. W. 273 = A. I. R. 1930 Mad. 869 = 1930 Cr. C. 1125 = 59 M. L. J. 229.

—Ss. 195 and 476, Cr. P. Code, make reference to the "Court" and not to the "Judge" or even the "Presiding Officer" of the Court. It is clear that, whether the Judge or the presiding officer is the same or a different person, the Court remains the same and it is the Court that is competent to make the complaint. (*Jai Lal, J.*) **FAQIR SINGH v. EMPEROR.** 112 I. C. 356 = 29 Cr. L. J. 1028 = 11 A. I. Cr. R. 380 = A. I. R. 1928 Lah. 759.

**—Land Acquisition Collector—Not a Court.**

Although the word used in S. 195, sub-S. (2), is "includes", the Courts which can make a complaint under that section are restricted to the Courts detailed in S. 476, Cr. P. Code; namely, civil, criminal and revenue. Land Acquisition Collector is not a Court within S. 195 so far as S. 207, Indian Penal Code is concerned. His function really is to ascertain on behalf of the Government what is the value of the property which the Government proposes to acquire and to make an offer to the party. In doing so he is allowed to import his own knowledge into the matter. 32 Cal. 605 (P. C.), Rel. on, (*Cuming and Graham, JJ.*) **GALSTAUN v. BANKU BEHARI DHAR.** 104 I. C. 249 = 31 C. W. N. 825 = 28 Cr. L. J. 809 = A. I. R. 1927 Cal. 621.

—The Court appointing the guardian, under the Guardian and Wards Act when it receives the report of the guardian, does not act in an administrative or executive capacity, but as a "Court" within the meaning of S. 195 (c) Cr. P. Code. (*Kinkhede, A. J. C.*) **TULARAM MARWADI v. EMPEROR.** 100 I. C. 1044 = 28 Cr. L. J. 388 = 7 A. I. Cr. R. 521 = A. I. R. 1927 Nag. 184.

—The expression 'Court' in S. 195 is of a wider scope than the expression 'civil, revenue or criminal Court' in S. 476. (*Sulaiman, J.*) **KANHAIYA LAL v. BHAGWANDAS.** 89 I. C. 1053 = 48 All. 60 = 23 A. L. J. 956 = 6 L. R. A. Cr. 153 = 26 Cr. L. J. 1485 = A. I. R. 1926 All. 30.

**—Successor in office.**

Court under S. 195 (c) includes a successor in office of the Magistrate before whom an offence is committed; therefore, when an offence is committed in respect of which sanction is required, before a particular Magistrate presiding the Court, his successor in office can make a complaint in respect of that offence. The same thing applies to a Court of Naib Tahsildar in Punjab, as by Punjab Government Notification No. 1536, dated 8th November 1889, all Naib Tahsildars are *ex officio* created Magistrates of the 3rd Class. 25 P. R. 1889, held obsolete. (*Campbell, J.*) **BEHRAM v. EMPEROR.** 95 I. C. 312 = 7 Lah. 108 = 27 Cr. L. J. 776 = 27 P. L. R. 314 = A. I. R. 1926 Lah. 305.

**—Election Commissioners.**

The complaint which the Election Commissioners purport to make under S. 476 must be deemed to be one under S. 195 (1) (b) by a Court in its wider meaning excluding a "civil, revenue or Criminal Court." (*Sulaiman and Daniels, JJ.*) **BILAS SINGH v. EMPEROR.** 89 I. C. 630 = 47 All. 934 = 23 A. L. J. 845 = A. I. R. 1925 All. 737.

—Per *Sulaiman, J.*—The word "means" in S. 195, sub-clause (2), of the old Code has been substituted

**CR. P. CODE (1898), S. 195—Court—Meaning of.**

by the word "includes," which suggests that the term "Court" is intended to be a wider expression than a "civil, revenue or criminal Court." If it had not a wider meaning, it was wholly unnecessary to say "but does not include a registrar or sub-registrar etc."

Per *Daniels, J.*—It seems doubtful whether the Legislature, in substituting the word "includes" for "means" in S. 195 (2), really intended to widen the definition. They may have thought that to say that the term "Court" means "a Civil, Revenue or Criminal Court but does not include a registrar or Sub-Registrar", implies that "registrar or sub-registrar" would be a Court unless specially excepted from the definition. The word "includes" in an enactment is not always of a wider significance than the word "means." 1899 App. Cas. 99, Rel. on. (*Sulaman and Daniels, J.J.*)

*BILAS SINGH v. EMPEROR.* 89 I. C. 630 =  
47 All. 934 = 23 A. I. J. 845 =  
A. I. R. 1925 All. 737.

—*Court in Native State not included.*

The word "Court" in Cl. (c) of S. 195 (1) does not include a Court in a Native State such as Baroda State, 35 Bom. 139, Ref. (*Fawcett and Madgavkar, J.J.*)  
*MULJIBHAI HIRABHAI PATEL In re.* 89 I. C. 976 =  
49 Bom. 860 = 27 Bom. L. R. 1063 =  
26 Cr. L. J. 1456 = A. I. R. 1925 Bom. 535.

—*Officer in the Collectorate—Not a Court.*

An officer in the Collectorate directing refund of the surplus sale proceeds is not a Court and no sanction is necessary to prosecute persons who forge the signature of co-debtors on a Mukhtearnama empowering the mukhtear to withdraw the surplus. (*Mullick and Bucknill, J.J.*)  
*JHARULAL v. MAHANTH MADAN DAS.*

74 I. C. 713 = 2 Pat. 257 = 24 Cr. L. J. 809 =  
A. I. R. 1923 Pat. 410.

**—S. 195—Death of applicant.**

—*Cannot be continued.*

The Court is not entitled to grant the sanction to the legal representative on a petition presented by that representative's predecessor. It is no doubt open to the legal representative separately to apply for sanction if so advised. (*Oldfield and Devadoss, J.J.*)  
*GHULAM MOHIDEEN v. AHAMADULLA BEGAM.* 71 I. C. 49 =  
16 M. L. W. 881 = 1922 M. W. N. 810 =  
32 M. L. T. 102 = 24 Cr. L. J. 2 = 46 Mad. 88 =  
A. I. R. 1923 Mad. 206 = 44 M. L. J. 66.

**—S. 195—Delay.**

—*Reason to set aside order for prosecution.*

Delay may under certain circumstances be almost a sufficient ground in itself but in other cases it may not be a ground at all for setting aside order for prosecution. (*Boys, J.*)  
*EMPEROR v. BALDEO PRASAD.*

82 I. C. 285 = 22 A. L. J. 772 = 5 L. R. A. Cr. 121 =  
25 Cr. L. J. 1277 = 46 All. 851 =  
A. I. R. 1924 All. 770.

—*Unexplained—Fatal.*

There is no limitation fixed for applications for sanction to prosecute but in such cases no time should be lost in instituting proceedings. Delay obviously tends to prejudice the person against whom proceedings are to be taken. (*Lumid n, J.*)  
*ABDUL QADIR v. MUHAMMAD IBRAHIM KHAN.* 76 I. C. 183 =  
25 Cr. L. J. 119 = A. I. R. 1924 Lah. 569.

—Long lapse of time after the commission of offence under S. 193, I. P. C. and what may be called accused's temporary lapse from probity justify the Court in not granting sanction. (*Teunon and Suhrwardy, J.J.*)  
*TRAILOKYA NATH BANERJI v. RADHARANJAN.* 23 Cr. L. J. 380 = 67 I. C. 204 = 25 C. W. N. 886.

**—S. 195—Duty of Court.**

—*Care—Proper charge—List of witnesses.*

**CR. P. CODE (1898), S. 195—Effect of amendment.**

It is very desirable that civil or criminal Courts, when they make a complaint, should devote some thought to the matter, frame a proper charge and state in detail the names of witnesses who are likely to prove the charge. For want of such information a complaint very often results in acquittal reflecting discredit on Courts of law. (*Dalal, J.*)  
*GAURI SHANKAR v. EMPEROR.*

120 I. C. 127 = 10 L. R. A. Cr. 150 =  
30 Cr. L. J. 1158 = 12 A. I. Cr. E. 496 =  
1929 Cr. C. 509 = A. I. R. 1929 All. 905.

—It is the duty of a Court to make a complaint in every case that comes to its notice of an offence which cannot be tried except on the complaint of a Court, and there are only two reasons that can justify it in not doing so. One is that the offence is trivial, and the other that the evidence available is not sufficient to make a conviction probable. (*Hallifax, A. J. C.*)  
*MRITYUNJAY PRASAD v. RAMRAO.* 27 Cr. L. J. 1010 =  
96 I. C. 866 = A. I. R. 1926 Nag. 485.

**—S. 195—Effect of amendment.**

—*Pending proceedings.*

The alteration in the law of procedure relating to the grant of sanction cannot invalidate proceedings validly begun under the old procedure. A. I. R. 1925 Mad. 1122, Foll. (*Findlay, Offg. J. C.*)  
*WASUDEO v. KING EMPEROR.* 91 I. C. 997 = 27 Cr. L. J. 181 =  
A. I. R. 1927 Nag. 71.

—*Prosecution begun—Legality unaffected.*

Although when once the amended Code had come into force, no sanction for a prosecution could be granted, even though the offence was committed prior to the amendment, the amendment does not affect the legality of a prosecution already instituted on sanction. (*Daniels, J.*)  
*KRWAL RAM v. EMPEROR.* 93 I. C. 1056 = 7 L. R. A. Cr. 101 = 27 Cr. L. J. 560 =  
A. I. R. 1926 All. 421.

—*Fresh complaint unnecessary.*

When the sanction has been given and the case has been instituted before the amendment comes into force the case can proceed to its logical conclusion and a fresh complaint under the amended section is not necessary. A. I. R. 1925 Lah. 330, Approved; A. I. R. 1924 Mad. 615 (2). Diss. (*Harrison, J.*)  
*EMPEROR v. AKBAR ALI SHAH.* 7 Lah. 99 = 8 L. L. J. 87 = 27 Cr. L. J. 724 =  
27 P. L. R. 181 = 95 I. C. 52 = A. I. R. 1926 Lah. 131.

—*Sanction before and prosecution after is illegal.*

A prosecution for perjury started after the amended Code came into force, on the strength of sanction granted before its coming into force is illegal. (*Mukerji, J.*)  
*AMERAJ SINGH v. EMPEROR.* 86 I. C. 287 =  
23 A. L. J. 35 = 26 Cr. L. J. 751 =  
6 L. R. A. Cr. 70 = A. I. R. 1925 All. 306.

—*Sanction before and complaint after is bad.*

The alteration made by the new enactment affects only procedure to be adopted for setting the law in motion. A person who had obtained sanction prior to the date of the enforcement of the Act, could not lawfully institute, after that date, a complaint in respect of an offence covered by the sanction. (*Shadi Lal, C. J.*)  
*JAWAHAR LAL v. JAGGU MAL.* 6 Lah. 41 =  
26 Cr. L. J. 1163 = 26 P. L. R. 152 = 88 I. O. 523 =  
A. I. R. 1925 Lah. 330.

—*Lapse of sanction—Procedure.*

Where, before the amendment of Cr. P. Code a Subordinate Court granted sanction under S. 195 of the Code but the sanction lapsed owing to the subsequent amendment of the Code.

*Held*, that the remedy of the complainant was to move the Subordinate Court to make a complaint under the amended S. 476 and not to move a superior Court under S. 476-A of the Code to make a complaint.

**CR. P. CODE (1898), S. 195—Effect of amendment.**

(*Wallace and Madhavan Nair, JJ.*) PATTABI  
CHETTI v. GOPALA CHETTI. 88 I. C. 357 =  
26 Cr. L. J. 1125 = A. I. R. 1925 Mad. 1181.

—Sanction before—Revocation after—Powers.

Sanction for prosecution granted before the coming into force of the new Code under which the provision as to the grant and revocation of sanction is abolished, can be revoked even after the coming into force of the new Code, the right to apply for revocation of sanction not being a mere matter of procedure but of substantive right. *Gardner v. Lucas*, (1878) 3 A. C. 582; *Attorney-General v. Sillem* 10 H. L. C. 704 and *Colonial Sugar Refining Co. v. Irving*, (1905) A. C. 369, Foll. (*Coutts-Trotter, C. J. Spencer, Kumaraswami Sastri v. Beasley and Srinivasa Aiyangar, JJ.*) RAMAKRISHNA AIYAR v. SITHAI AMMAL. 91 I. C. 395 = 27 Cr. L. J. 91 = 1925 M. W. N. 684 = 48 Mad. 620 = 22 M. L. W. 879 = A. I. R. 1925 Mad. 911 = 49 M. L. J. 223 (F.B.).

—Sanction refused under old Act—Sanction under new Act on appeal is valid.

Where proceedings under S. 195 were commenced and the order of the Subordinate Judge refusing to sanction prosecution was passed under the old Code but during the pendency of an application to the District Judge against the order of refusal the new Code came into force and the District Judge sanctioned the prosecution.

*Held*, that inasmuch as the accused had incurred the liability to have his prosecution sanctioned and the complainant on the dismissal of his application by the Subordinate Judge had acquired a right to apply for sanction to the appellate Court, S. 6 (c) of the General Clauses Act applied to the case and the repeal of the old S. 195 did not affect the investigation. (*Daniels, J.*) KASHMIRI LAL v. MT. KISHEN DEN. 83 I. C. 650 = 5 L. R. A. Cr. 99 = 26 Cr. L. J. 90 = A. I. R. 1924 All. 563.

—Prosecution by private party is at an end.

After the passing of the Amending Act XVIII of 1923, no Court can take cognisance of offences under S. 172 to 188 Indian Penal Code, when the complaint is by a private party even if a sanction had been granted to the complainant but the party aggrieved may still apply to the court to set the Criminal Law in motion against the offending party. Application to grant sanction under S. 195, Cl (6) is not in the nature of an appeal to the Appellate Court against the order of the lower Court but is an application for the exercise of a special power conferred on the Appellate Court and is part of the processual law. Such an application cannot, after the Amending Act of 1923, be entertained or heard as it is in its nature an application for grant of sanction for prosecution by a private party. 39 Mad. 750 (F.B.); 30 Mad. 382, Foll. (*Odgers and Wallace, JJ.*) NATARAJA PILLAI v. RANGASWAMI PILLAI. 77 I. C. 297 = 47 Mad. 384 = 19 M. L. W. 358 = 34 M. L. T. 56 = 25 Cr. L. J. 361 = A. I. R. 1924 Mad. 657 = 46 M. L. J. 274.

—Sanction acted upon.

Where a complaint had been instituted pending an application to the High Court for revocation of sanction on the basis of which the complaint was filed and during the pendency of this application the new Amending Act of 1923 came into force, *held*, that the sanction was quite effective and not infructuous. (*Ramesam and Wallace, JJ.*) MUTHIAH GOUNDAN v. CHINNA NALLAPPA GOUNDAN. 83 I. C. 702 = 19 M. L. W. 392 = 1924 M. W. N. 358 = 26 Cr. L. J. 142 = A. I. R. 1924 Mad. 615.

—No right of revocation.

An application for the revocation of a sanction to pro-

**CR. P. CODE (1898), S. 195—In relation to—Effect.**

secute granted by the lower Court cannot be entertained after the passing of Act XVIII of 1923 amending the Cr. P. Code. The law requiring sanction is repealed by Act XVIII of 1923. Consequently the procedure prescribed by the new Act must be adopted for prosecutions to be launched after that Act has come into force. (*Krishnan and Waller, JJ.*) SAKSHA AIYAR v. PUBLIC PROSECUTOR. 81 I. C. 190 = 19 M. L. W. 463 = 34 M. L. T. 353 = 25 Cr. L. J. 702 = A. I. R. 1924 Mad. 585.

**—S. 195—High Court.**

—The Bench taking criminal appellate and revisional business of the High Court is always authorized to entertain applications in connexion with orders made by civil Courts under Ss. 195 and 476, Cr. P. Code. 40 Cal. 477, Rel. on. (*C. C. Ghose and Pearson, JJ.*) SARAT CHANDRA BHATTACHARJEE v. HARI CHARAN DE. 1930 Cr. C. 362 = 127 I. C. 265 = 51 C. L. J. 45 = A. I. R. 1930 Cal. 282.

—Can transfer—Powers of transferred Court.

S. 526 of the Cr. P. Code which clothes the High Court with power to transfer any case from any file to any other file controls S. 195 (3) and Ss. 476-A. and 476-B of the Code. The Court to which an appeal against an order refusing or granting a sanction for prosecution is transferred is invested with all the powers of the ordinary Court of Appeal or revision for hearing the particular appeal or revision against the order under S. 195 of the Code and can grant or refuse sanction or proceed under S. 476. (*Kinkhede, A. J. C.*) BUDHABAI v. ALI BHAI. 86 I. C. 428 = 26 Cr. L. J. 796 = A. I. R. 1925 Nag. 358.

—The High Court declined to treat a sanction granted after the new Code came into operation as a complaint either under S. 195 (1) (b) or S. 476 or to remand the case with a direction that the lower Court should consider whether on the facts it should make a "complaint" under S. 476 or remark in that order that it was open to the Judge to deal with the matter under S. 476, if an application was made to him thinking that the Judge might take that order as an intimation to him as to the course he should adopt and act accordingly. (*Greaves and Panton, JJ.*) BALDEO MISSER v. DY. I. G. OF POLICE, C. I. D. BENGAL. 84 I. C. 62 = 51 Cal. 652 = 26 Cr. L. J. 238 = A. I. R. 1924 Cal. 826.

—Withdrawal by.

Where the Sessions Judge forwarded an alleged offender under S. 179, I.P.C., to Dt. Magistrate under S. 482 without giving reasons for not acting under S. 480, Cr. P. Code, the complaint was withdrawn by the High Court under S. 195 (5), Cr. P. Code. (*Wazir Hasan, J. C.*) CHEDI LAL v. EMPEROR. 81 I. C. 951 = 11 O. L. J. 358 = 25 Cr. L. J. 1127 = A. I. R. 1924 Oudh 402.

—High Court can make the necessary complaint in respect of offence committed in Court subordinate to it. (*Hald, J.*) P. N. S. M. SVED KHAN v. P. K. C. NAGOOR. 84 I. C. 326 = 3 Bur. L. J. 141 = 26 Cr. L. J. 262 = A. I. R. 1924 Rang. 369.

**—S. 195—In relation to—Effect.**

—The Court may make a complaint against a person under S. 476 for an offence under S. 211, I.P.C. if it is of opinion that the proceeding before the Court was caused to be started by that person though he was not a party to the proceeding before it. An offence may be committed by a person in relation to a judicial proceeding though it may be in a judicial proceeding. (*Sukrawardy and Costello, JJ.*) AKHLA KULLA CHAUDHRY



**CR. P. CODE (1898), S. 195—'In relation to'—Effect,**

*v. EMPEROR.* 127 I. C. 65 = 52 C. L. J. 149 = 1930 Cr. C. 1063 = A. I. R. 1930 Cal. 671.

—S. 195—"In or in relation to proceeding—False information to police

—*Subsequent Court proceedings—Offence, if committed in relation to proceedings.*

The petitioner himself planted a mould in respondent's house and gave information to the Police that Respondent was counterfeiting coin. The respondent was prosecuted but was discharged. Subsequently the Court granted an application for sanction to prosecute the petitioner for an offence under S. 211 I. P. C. On application to revoke the sanction on the ground that the offence was not committed "in or in relation to any proceeding in the Court".

*Held*, that the facts alleged against the petitioner did constitute an offence in relation to the proceedings before the Magistrate. (*Carr, J.*) ANI *v.* AH YONE.

84 I. C. 863 = 3 Bur. L. J. 289 = 26 Cr. L. J. 383 = A. I. R. 1924 Rang. 211.

—S. 195—Interpretation.

—*Offence committed in relation to any proceeding in any court.*

The applicant purchased a house from one R. The sale-deed contained recitals alleged to be untrue and prejudicial to the rights of D. the owner of a neighbouring house. D filed a suit against the applicant for a declaration that the recitals were false and fraudulent. The Court passed a decree which involved a finding that the recitals in the sale-deed were incorrect. D then moved the court to take proceedings against the applicant for forgery, etc., under S. 476, Cr. P. Code.

*Held*, that Ss. 476 and 195 (1) (d) did not apply and that the applicant could be prosecuted by the aggrieved person without the intervention of the Civil Court. Expression "offence committed in relation to any proceeding in any court" explained. (*Mirza and Broomfield, J.J.*) *In re* MOHANRAJ KRISHNA KORHALKAR.

32 Bom. L. R. 589 = 1930 Cr. C. 769 = A. I. R. 1930 Bom. 337.

—"In" and "in relation to" explained.

The words "in" and "in relation to" mean that an offence may be committed by a person in relation to a judicial proceeding though he may not be a party to the proceeding or though it may not have been committed by that person in a judicial proceeding. (*Suhrawardy and Costello, J.J.*) AKHLA KULLA CHAUDURY *v.* EMPEROR.

52 C. L. J. 149 = 1930 Cr. C. 1063 = 127 I. C. 65 = A. I. R. 1930 Cal. 671.

—"Authority".

Whether the police are public servants subordinate to the District Magistrate under S. 195 (1) (a) or not, there is no reason to doubt that the very wide expression in S. 195 (5) "any authority to which such public servant is subordinate" connoting apparently a more distant and general entity than departmental superior, covers the District Magistrate in relation to the police of his district. (*Macpherson, J.*) KANTIR MISSIR *v.* EMPEROR.

117 I. C. 37 = 30 Cr. L. J. 710 = 11 P. L. T. 88 = 1930 Cr. C. 74 = A. I. R. 1930 Pat. 98.

—"Offence"—Non-parties not affected

When an offence of forgery is committed by more than one person, and one of them at least is a party to the proceeding in which the document is produced, such participants in the forgery as are not parties to the proceeding may be prosecuted otherwise than under the provisions of Ss. 195 and 476, Cr. P. Code. The term "offence" used in S. 195 (1) (c) refers only to the share taken in the transaction by a party. The power therefore, to proceed against non-parties is not affected.

**CR. P. CODE (1898), S. 195—Interpretation.**

12 Bom. L. R. 383, not Foll.; 3 Mad. 400; 25 Mad. 671; 30 Mad. 226; 40 Mad. 100; 26 M. L. J. 220; A. I. R. 1923 Mad. 87; 15 C. W. N. 565; A. I. R. 1925 Rang. 28; and A. I. R. 1925 Rang. 195. Rel. on. (*Curgenven, J.*) PONNUSWAMI UDAYAR *v.* EMPEROR.

115 I. C. 481 = 28 M. L. W. 769 = 2 M. Cr. C. 39 = 30 Cr. L. J. 469 =

12 A. I. Cr. R. 299 = A. I. R. 1929 Mad. 115.

—"Offence".  
The term "offence" as used in Cl. (c), denotes the transaction of forgery as a whole, so that the Court is debarred from taking cognizance of that transaction including the shares taken in it by non-parties as well as parties, and does not refer merely to the share taken by a party so that the power to proceed against non-parties is not affected. 12 Bom. L. R. 383, Rel. on. (*Curgenven, J.*) PERIANNATHUTHIRIAN *v.* VENGU AYYAR.

114 I. C. 360 = 28 M. L. W. 687 = 1929 M. W. N. 196 = 2 M. Cr. C. 19 = 30 Cr. L. J. 322 = A. I. R. 1929 Mad. 21 = 56 M. L. J. 208.

—"Produced or given in evidence."

The words "produced or given in evidence" in S. 195 (c), Cr. P. Code, do not limit the procedure under that section to a limited class of user within the wider class contemplated by S. 471. The word "or" which intervenes between the word "produced" and the words "given in evidence" shows that it is disjunctive and that the procedure is applicable not only in cases where the document has been given in evidence but also in cases where it has been produced and the ambit of the word "produced" is very wide. A. I. R. 1925 Bom. 467 and A. I. R. 1924 Cal. 718, Rel. on. (*Courtney-Terrell, C. J.*) BAJU GHA *v.* EMPEROR.

113 I. C. 712 = 9 P. L. T. 800 = 30 Cr. L. J. 236 = 12 A. I. Cr. R. 236 = A. I. R. 1929 Pat. 60.

—"In relation to any proceeding".

It requires the complaint of the Court not only in respect of certain offence committed in the proceedings in the Court but in relation to any proceedings in the Court. The expression "in relation to any proceedings" is very general and is wide enough to cover a proceeding in contemplation before a criminal Court though the proceedings may not have commenced when the offence was committed. A. I. R. 1923 Bom. 105 Foll. (*Percival, J. C. and Rupchand, A. J. C.*) CHUHERMAL NIHALMAL *v.* EMPEROR.

117 I. C. 147 = 23 S. L. R. 285 = 30 Cr. L. J. 732 = 1929 Cr. C. 160 = A. I. R. 1929 Sind 132.

—"Produced in evidence".

Where a party to a proceeding hands up a document to the Judge who does not take the document of the file but returns it to the party, the document is "produced" in the proceeding, within the meaning of S. 195 (c). No complaint with reference to the document can be entertained by a Criminal Court in the absence of a complaint in writing by the Court concerned. (*Mirza and Percival, J.J.*) GULABCHAND RUPJI *v.* EMPEROR.

92 I. C. 427 = 49 Bom. 799 = 27 Bom. L. R. 1039 = 27 Cr. L. J. 251 = A. I. R. 1925 Bom. 467.

—S. 463, I. P. C., is used in S. 195 (1) (c) in a comprehensive sense so as to embrace all species of forgery and thus includes a case falling under S. 467. (*Martineau, J.*) KHAJRATI RAM *v.* MALWA RAM.

85 I. C. 377 = 5 Lah. 550 = 26 Cr. L. J. 537 = A. I. R. 1925 Lah. 266.

—The words "any offence described in S. 463" in S. 195 (1) (c) must be taken to mean all forms of forgery under whatever section of the Penal Code they fall. (*Baker, J. C.*) ISMAIL PANJU *v.* KING EM-

## CE. P. CODE (1898), S. 195—Interpretation.

PEROR. 88 I. C. 283=26 Cr. L. J. 1115=  
A.I.R. 1925 Nag. 337.

—The word "produced or given in evidence" in S. 195, Cr. P. Code, refer to the production of the original and not the production of a copy. 8 O. C. 313, Foll. (*Daniels, J. C.*) GIRDHARI LAL v. KING-EMPEROR. 86 I. C. 993=12 O. L. J. 194=

2 O. W. N. 174=26 Cr. L. J. 929=  
29 O. C. 1=A.I.R. 1925 Oudh 413.

—Words in section should be given wide interpretation.

The words of S. 195 (d) should be given as wide an application as possible. Some of the offences enumerated in the clause are capable of being committed in relation to a judicial proceeding which did not exist. False evidence, for instance, may be fabricated for a contemplated suit or property may be fraudulently concealed in contemplation of an execution proceeding. The clause applies if judicial proceeding is in existence at the time when it is sought to prosecute the offender for the offence in question. If two offences are even remotely connected by the relationship of cause and effect, then the first may be said to have been committed in relation to the second. It may be that the commission of the latter offence may never have been intended, but if it is in fact the consequence of the former offence, then S. 195 applies. (*Mullick and Jwala Prasad, J.J.*) DAROGA GOPE v. EMPEROR.

88 I. C. 1045=5 Pat. 33=6 P. L. T. 515=  
26 Cr. L. J. 1269=1926 P. H. C. O. C. 106=  
A. I. R. 1925 Pat. 717.

—'Produced or given in evidence.'

The words "produced or given in evidence" do not include production of the document in pursuance of an order of Court for inspection in the sanction proceedings or for translation. (*Schwabe, C. J., Oldfield and Coutts Trotter, J.J.*) MUNUSWAMY v. RAJARATNAM. 72 I. C. 340=45 Mad. 928=

16 M. L. W. 505=24 Cr. L. J. 340=  
A. I. R. 1923 Mad. 136=44 M. L. J. 774 (F.B.).

## —S. 195—Limitation.

—Sanction—Refusal of revocation—Time runs from date of sanction.

The opposite party obtained a sanction under S. 195, Cr. P. Code for the prosecution of the applicant under S. 471, I. P. C., but no action was taken for some months and the applicant applied to have the order of sanction revoked and this application was rejected. Held, that the sanction cannot possibly be said to have been given by the Court which did not originally grant the sanction but which merely refused to revoke that sanction when it had been granted and hence six months' period began to run from the date of grant of sanction originally. 40 All. 338, Foll.; 26 M. L. J. 51, Diss. (*Neave, A. J. C.*) MAKHDUM THATER v. EMPEROR. 1 O. W. N. 752=87 I. C. 595=26 Cr. L. J. 995=  
A. I. R. 1926 Oudh 22.

—Time runs from the granting of sanction—Extension.

The period of six months begins to run from the date of granting of the sanction. The High Court has jurisdiction to extend the time though the period of six months has expired and though the sanction is no longer in force. But in such a case, it ought to be very careful not to extend the time unless it is clearly shown that there is "good cause" for extending the time, within the meaning of the section. (*Sanderson, C. J. and Panton, J.*) RAM SARAN SINGH v. CHANDRA MOHAN SAHA. 71 I. C. 222=24 Cr. L. J. 94=  
A. I. R. 1924 Cal. 386.

## —S. 195—Notice.

## CE. P. CODE (1898), S. 195—Powers of Court.

—Not necessary.

Before sanction is granted, notice need not be issued to the person proposed to be charged. There is no statutory obligation upon any Judge to do anything of the kind. (*Walsh, J.*) ANGNOO SINGH v. EMPEROR.

71 I. C. 865=20 A. L. J. 881=45 All. 109=  
24 Cr. L. J. 257=A. I. R. 1923 All. 35.

## —S. 195—Powers of Court.

—Conviction after remand by same Magistrate.

There is nothing in the Code which lays down that once a Magistrate declines under S. 476 to file a complaint, he is *functus officio*, or that a complaint subsequently filed by him confers no jurisdiction to deal with the person complained against. It is hardly open to argument that a refusal by the Magistrate under S. 476, to file a complaint against an accused person, attracts the applicability of the doctrine of *autre fois acquit* enunciated by S. 403, or that it amounts to judgment within the meaning of Ss. 366 and 369 which may not therefore be subsequently reviewed. (*Wild, J. C. and Rupchand, A. J. C.*) RAJABALI HASSANALI v. EMPEROR.

1930 Cr. C. 1147=A. I. R. 1930 Sind 315.

—The petitioner had lodged an information of arson before the police. The police reported the charge laid by the petitioner to be false and asked for his prosecution under S. 211, I.P.C. This report was put up before the Magistrate on the 18th July 1927, on which date the Magistrate accepting the police report summoned him under S. 211 of the Code to appear. A week later, the petitioner filed a complaint before the Magistrate protesting against the police investigation and asserting that his case was true and praying that the case against the accused charged by him be proceeded with. The Magistrate ordered to keep the application pending till the decision of the other case against him and the enquiry against the petitioner continued. The Magistrate committed the petitioner to the Court of Sessions.

Held, that the complaint not having been disposed of legally, the Magistrate had no jurisdiction to take cognizance of the offence merely upon the police report and he had consequently no jurisdiction to continue the enquiry against the petitioner and to commit him to the Court of Sessions. A. I. R. 1925 Pat. 483, Foll. (*Jwala Prasad, J.*) RAMDHARI GOPE v. EMPEROR.

110 I. C. 212=9 P. L. T. 236=  
29 Cr. L. J. 660=10 A. I. R. Cr. R. 417.

—Compromise in appeal—Trial Court can prefer complaint.

The mere fact, that in the appellate Court the parties agreed to compromise the matter, or to get it decided by a reference to arbitration, or in accordance with the statement of a referee, cannot take away the jurisdiction vested in the trial Court to make a complaint under S. 476, Cr. P. Code, provided that Court is satisfied that "it is expedient in the interests of justice that such a complaint should be made." (*Iqbal Ahmad, J.*) NARAINDAS v. KING-EMPEROR. 102 I. C. 485=

25 A. L. J. 559=7 A. I. Cr. R. 534=  
8 L. R. A. Cr. 81=28 Cr. L. J. 549=  
49 All. 792=A. I. R. 1927 All. 555.

—The Commissioner is Subordinate to the Court appointing him and the offence to refuse to take the oath and answer the question put by the Commissioner is an offence against the Court itself. (*Madgavkar and Patkar, J.J.*) NANA KHANDERA GADGE v. EMPEROR.

29 Bom. L. R. 1476=28 Cr. L. J. 1021=  
106 I. C. 109=A. I. R. 1927 Bom. 647.

—Forger not a party can be prosecuted.

*Prideaux, A. J. C.*—A Court has power to launch the prosecution of a person for forgery committed in respect of proceedings in Court, whether that person is a

**CR. P. CODE (1898), S. 195—Powers of Court.**

party to those proceedings or not. A. I. R. 1925 Bom. 433 and A. I. R. 1926 All. 21, Foll.; A. I. R. 1925 Rang. 28, not Foll. (*Kotval, Offg. J.C. and Prideaux, A. J. C.*)  
*JOSSABALI v. AYUB KARIM KACHHI.*

100 I. C. 529 = 10 N. L. J. 70 = 28 Cr. L. J. 305 =  
 A. I. R. 1927 Nag. 14.

—*Witness committing offence of forgery—Complaint can be made.*

The Legislature, in introducing the amendments of 1923, intended S. 476 to be co-extensive in its scope with clauses (b) and (c) of S. 195 (1), and there is nothing in S. 195 and S. 476 to prevent a Court from making a complaint under the ordinary law in respect of the offence under S. 471, I.P.C. which it found to have been committed before it, either by a party or a witness. (*Daniels, J.*) *DWARAKA PRASAD v. MAKUND SARUP.*

90 I. C. 290 = 24 A. L. J. 122 = 26 Cr. L. J. 1506 =  
 6 L. R. A. Civ. 630 = 6 L. R. A. Cr. 213 =

A. I. R. 1926 All. 21.

—The lower Court cannot take cognizance of an offence under a section other than the one for which there is a complaint by superior Court as required by S. 195 (c). (*Raza, J.*) *RAM SAMUJH v. EMPEKOR.*

96 I. C. 521 = 1 Luck. 523 = 3 O. W. N. 614 =  
 7 A. I. Cr. R. 45 = 27 Cr. L. J. 969 =

A. I. R. 1926 Oudh 485.

—For offence mentioned in S. 195 (c), the Court has jurisdiction to file a complaint only against parties to the suit. A. I. R. 1925 Rang. 28, Foll. (*Carr and Muung Gyi, J.J.*) *SHEW PHWE v. MA ME HMOKE.*

85 I. C. 244 = 3 Bur. L. J. 344 = 26 Cr. L. J. 500 =  
 3 Rang. 48 = A. I. R. 1925 Rang. 195.

—It is not open to a Court to make a complaint in respect of any person other than persons who were parties to the proceedings before it. (*Robinson, C. J. and Brown, J.*) *GURUSWAMI v. D. K. S. EBRAHIM.*

84 I. C. 439 = 26 Cr. L. J. 295 = 2 Rang. 374 =  
 A. I. R. 1925 Rang. 28.

—*Court cannot order production of documents about which sanction is asked for.*

Where in sanction proceedings under S. 195, Criminal Procedure Code, in respect of a certain document, the Judge ordered the plaintiff to produce the document, held that the order was without jurisdiction and absolutely repugnant to all those fundamental notions of fairness to a person about to be accused of a criminal offence which lie at the root of the Criminal Law of England and of India alike. (*Schwabe, C. J., Oldfield and Coutts-Trotter, J.J.*) *K. V. MUNISWAMY MUDALIAR v. RAJA-RATNAM PILLAI.*

72 I. C. 340 = 45 Mad. 928 =  
 16 M. L. W. 505 = 24 Cr. L. J. 340 =

A. I. R. 1923 Mad. 136 = 44 M. L. J. 774 (F B.).

**—S. 195—Probability of conviction.**

—A Court should, before sanctioning prosecution under S. 195 (1) (b), consider two essential factors namely a reasonable prospect of success in the prosecution of a witness under Penal Code, S. 193 and the expediency of such prosecution in the interest of public justice. (*Tapp, J.*) *JAGAT SINGH v. EMPEROR.*

120 I. C. 687 = 1930 Cr. C. 23 = 31 Cr. L. J. 179 =  
 A. I. R. 1930 Lah. 55.

—In granting or refusing sanction to prosecute under the provisions of S. 195 what has mainly to be seen is whether there is a reasonable probability of a conviction. (*Kinkhede, A. J. C.*) *BHAGIRATHIBAI v. EMPEROR.*

89 I. C. 713 =  
 26 Cr. L. J. 1401 = A. I. R. 1926 Nag. 141.

—Sanction should not be granted unless there is a reasonable expectation of a conviction. (*Lumsden, J.*) *ABDUL QADIR v. MUHAMMAD IBRAHIM KHAN.*

76 I. C. 183 = 25 Cr. L. J. 119 = A. I. R. 1924 Lah. 569.

**CR. P. CODE (1898), S. 195—Revision.**

—The granting of sanction to prosecute for perjury is a matter within the discretion of the Magistrate and sanction should not be given in a case in which it is obvious that there can be no chance of conviction. (*Beachcroft and Ghose, J.J.*) *DURGA PRASAD v. ARI PATER.*

61 I. C. 711 = 22 Cr. L. J. 423 (Cal.).

—The main principle which should guide Courts in taking action under S. 195 or S. 476 is that no prosecution should be allowed or instituted unless there is a reasonable probability of conviction. 10 N. L. R. 177, Rel. on. (*Hallsfax, A. J. C.*) *KRISHNARAO RAM-CHANDRA v. SITARAM.*

59 I. C. 855 =  
 22 Cr. L. J. 151 = A. I. R. 1921 Nag. 91.

**—S. 195—Procedure.**

—When an Income-tax Officer makes a complaint under S. 476, in respect of a false return his examination on oath as an ordinary complaint is unnecessary and is a mere superfluity. (*Baguley, J.*) *K. C. V. REDDY v. EMPEROR.*

8 Rang. 25 = 1930 Cr. C. 661 =  
 125 I. C. 266 = 31 Cr. L. J. 793 =

A. I. R. 1930 Rang. 201.

—Where a complaint is found to be false, it is improper, if not illegal, to prosecute the complainant before the complaint, in respect of which he was to be prosecuted, was finally disposed of under S. 203, or otherwise. (*Macpherson, J.*) *JOKHI MIAN v. MAH-MUD DAFADAR.*

115 I. C. 882 = 10 P. L. T. 77 =  
 30 Cr. L. J. 545 = 12 A. I. Cr. R. 363 =

A. I. R. 1929 Pat. 92.

—An offence of perjury was committed before the Sessions Court at A, commitment to which was made by Magistrate at B. Subsequently another Sessions Division was constituted at K for the district in which B was included as distinct from A.

Held, that an application to the Court at K in respect of the offence was not proper. (*Shah and Percival, J.J.*) *MANEKLAL GARBADDAS, In re.*

99 I. C. 81 = 28 Bom. L. R. 1296 = 28 Cr. L. J. 49 =  
 7 A. I. Cr. R. 206 = A. I. R. 1927 Bom. 47.

—*Passages complained against need not be given in the order.*

Where the particular passages in respect of which sanction was sought under S. 195 were set out in the application for sanction but, not in the order of the Court,

Held, that the order of sanction must be deemed to have been passed with respect to the statements contained in the application for sanction and was valid. (*Daniels, J.*) *KASHMIRI LAL v. MT. KISHAN LAL.*

83 I. C. 650 = 5 L. R. A. Cr. 99 = 26 Cr. L. J. 90 =  
 A. I. R. 1924 All. 563.

—As a matter of judicial prudence, sanction to prosecute for making a false complaint ought not to be granted until the complaint is properly dealt with and dismissed. (*Kotval, A. J. C.*) *MAHADU v. EMPEROR.*

75 I. C. 543 = 24 Cr. L. J. 959 =  
 A. I. R. 1924 Nag. 115.

**—Same as civil cases.**

Proceedings taken by a Civil Court under S. 195 are, in appeal and revision, deemed by the High Court to be proceedings of a civil nature and are therefore governed by the rules relating to civil cases. Where an appeal from an order of a Munsif granting sanction, which (appeal) had been transferred by the District Judge to the Additional District Judge for disposal, the powers of the latter cannot be deemed to be more circumscribed than those of the District Judge himself. (*Gokul Prasad, J.*) *RAM CHARAN v. MEWA RAM.*

61 I. C. 513 = 43 All. 409 = 19 A. L. J. 192 =  
 22 Cr. L. J. 385 = A. I. R. 1921 All. 211.

**—S. 195—Revision.**

—*High Court will not interfere in revision ordi-*

**CR. P. CODE (1898), S. 195—Revision.**

*marily on grounds of public policy or likelihood of conviction.*

As the choice of instituting a prosecution is no more placed in the hands of private persons, and no prosecution can be instituted for the offences specified in S. 195 which have been committed in or in relation to a proceeding in a Court unless the Court itself prefers a complaint, and the person who is the subject of the complaint has a definite right of appeal to a superior Court against the institution of the complaint, High Court, unless the circumstances are altogether outside the ordinary, will not examine in revision the merits of the complaint with a view to discovering whether it is likely to result in a conviction, nor should the High Court go into the question of public policy as the withdrawal of complaint on that ground would be likely to prejudice the accused in taking away the chance of clearing his character. (*Campbell, J.*) **BEHRAM v. EMPEROR.** 95 I. C. 312 = 7 Lah. 108 = 27 Cr. L. J. 776 = 27 P. L. R. 314 = A. I. R. 1926 Lah. 305.

—A revision lies under S. 439 against an order dismissing an appeal from an order granting sanction. 49 I. C. 153 Dis. 5 P. R. 1908 Foll. (*Abdul Raof, J.*) **KHAZAN SINGH v. KIRPA SINGH.** 73 I. C. 779 = 4 Lah. 130 = 5 Lah. L. J. 372 = 24 Cr. L. J. 683 = A. I. R. 1923 Lah. 341.

**—S. 195—Sanction—Evasion of.**

*Condition as to sanction cannot be evaded.*

Where the law clearly says that it is a condition precedent to the prosecution that a sanction shall be obtained from the local Government, it is not open to any subordinate authority to override the provision of the law by saying that the offence falls under another section of the Indian Penal Code and if no sanction is necessary for the prosecution under that section, the offender may be prosecuted without any sanction. (*Mukerji, J.*) **RAM NATH v. EMPEROR.**

84 I. C. 714 = 47 All. 268 = 22 A. L. J. 1106 = 26 Cr. L. J. 362 = 6 L. R. A. Cr. 25 = A. I. R. 1925 All. 230.

**—S. 195—Sanction—Investigation under S. 202.**

*Sanction based on legality.*

The wording of S. 476 is wide enough to cover the consideration of other than strictly legal evidence and there is nothing illegal in granting a sanction under S. 195 based solely on an investigation conducted under S. 202 whether by a Police Officer or by the Magistrate himself. (*Macpherson, J.*) **BANSIDAR MARWARI v. KING-EMPEROR.** 74 I. C. 1054 = 24 Cr. L. J. 862 = A. I. R. 1924 Pat. 138.

**—S. 195—Sanction—Legality of.**

—A sanction to prosecute for perjury granted after 1st September 1923 i.e., when the new Code Act XVIII of 1923 came into force is illegal. A. I. R. 1924 Cal. 826, Foll. (*Marten and Fawcett, J.J.*) **GAFUR DAUD SAHEB In re.** 85 I. C. 64 = 26 Bom. L. R. 1235 = 26 Cr. L. J. 448 = A. I. R. 1925 Bom. 151.

*Omission of particulars.*

A sanction under S. 195 omitting to specify the particulars such as the Court or other place in which, and the occasion on which the offence was committed, is liable to be set aside in revision. The defect cannot be cured by S. 537. (*Moti Sagar, J.*) **JASWANT SINGH v. EMPEROR.** 81 I. C. 209 = 25 Cr. L. J. 721 = A. I. R. 1925 Lah. 139.

*Prosecution under S. 211. Penal Code—Only after dismissal under S. 203, Cr. P. Code.*

Where the trying Magistrate dismissed a complaint for criminal breach of trust without examining the

**CR. P. CODE (1898) S. 195—Sanction—Several offences.**

complainant in contravention of S. 203 and sanctioned his prosecution under I. P. C., S. 211 or 182,

*Held*, that as the complainant could not be convicted of bringing a false charge because the complaint was not dismissed according to law contained in S. 203 granting of sanction was illegal.

*Held*, also that the High Court could on an application in revision for setting aside the order granting sanction hold that the order dismissing the complaint had been wrongly made. (*Macleod, C. J. and Shah, J.*) *In re*, **NINGAPPA RAYAPPA.** 81 I. C. 608 = 48 Bom. 360 = 26 Bom. L. R. 183 = 25 Cr. L. J. 960 = A. I. R. 1924 Bom. 321.

—Sanction granted under S. 195 according to the old Code, after the new Code amending S. 195 and abolishing sanction came into force, was held as illegal. (*Greaves and Pantor, J.J.*) **BALDEO MISSER v. DY. I. G. OF POLICE, C. I. D., BENGAL.** 84 I. C. 62 = 51 Cal. 652 = 26 Cr. L. J. 238 = A. I. R. 1924 Cal. 826.

—A person commits no perjury when the assertions which he makes are, according to his affidavit, not from his personal knowledge but from what he had been told, and where there is nothing whatever to show that the assertions are not correct. The District Judge cannot possibly sanction prosecution for perjury in respect of an affidavit sworn before him as Dist. Registrar. (*Stuart, J.*) **DINA NATH v. NEK RAM.**

74 I. C. 75 = 21 A. L. J. 88 = 24 Cr. L. J. 747 = 4 L. R. A. Cr. 6 = A. I. R. 1923 All. 175.

**—S. 195—Sanction—Refusal.**

*Correction in cross-examination.*

Where a witness corrects, when cross-examined, his previous false statement, no sanction for his prosecution should be granted as no conviction can be sustained. 6 W. R. Cr. 92; 7 W. R. Cr. 49 and 19 Bom. L. R. 61, Foll. (*Bhide, J.*) **HUKAM CHAND v. EMPEROR.**

110 I. C. 231 = 10 A. I. Cr. R. 518 = 29 Cr. L. J. 679 = A. I. R. 1928 Lah. 862.

*Enmity—No ground for refusal.*

If the Magistrate after a consideration of evidence has found that the charge is false, there is no reason why the accused against whom the charge was brought should not be allowed, on the ground that the parties are on bad terms, to prosecute his accuser, for having brought a false charge. (*Martineau, J.*) **HARICHAND v. AYA RAM.** 77 I. C. 434 = 4 Lah. L. J. 321 = 25 Cr. L. J. 386 = A. I. R. 1922 Lah. 403.

**—S. 195—Sanction—Several offences.**

*That which does not require sanction can be proceeded with.*

When upon the facts the commission of several offences is disclosed, some of which require sanction, and others do not, it is open to the complainant if he so wishes, to proceed in respect of those only which do not require sanction. (*Suhrawardy and Graham, J.J.*) **SUPT. AND REMEMBRANCE OF LEGAL AFFAIRS, BENGAL v. BISWAMBHAR BRAHMIN.** 120 I. C. 449 = 33 C. W. N. 474 = 56 Cal. 1041 = 1929 Cr. C. 401 = 31 Cr. L. J. 125 = A. I. R. 1929 Cal. 633.

*That which does not require sanction can be proceeded with.*

No complaint, the institution of which requires sanction under S. 195, can be entertained unless that sanction exists. But when a complainant combines such a complaint with a complaint which does not require sanction, the Court must investigate the complaint which does not require sanction while refusing to investigate the complaint which requires it. (*Stuart, J.*) **TARSU BEG v. MUHAMMAD YAR.** 81 I. C. 176 =

CR. P. CODE (1898), S. 195—Sanction—Several offences.

21 A. L. J. 915 = 5 L. R. A. Cr. 53 =  
25 Cr. L. J. 688 = A. I. R. 1924 All. 296.

—S. 195—Sanction—Want of.

—Against abettor—Invalid.

In the case of offences to which reference is made in S. 195, clause (b), a Court taking cognizance of such an offence when that offence has been committed in, or in relation to, any proceeding in any Court or a Court taking cognizance of a criminal conspiracy to commit such an offence or of abetment or attempt to commit such an offence, cannot do so unless sanction has been given not only to the factum but to cover the case of each person who is charged with having committed it though such person is not a party to the proceeding. (*Stuart, J.*) RAM BILAS v. LACHMI NARAIN. 71 I. C. 684 = 20 A. L. J. 904 = 45 All. 140 = 24 Cr. L. J. 220 = A. I. R. 1923 All. 84.

—S. 195—Sanction—When necessary.

—Even where the use as genuine of a forged document under S. 471, Penal Code, is prior to the proceedings before the Court, the complaint of the Court before which that document was filed or used is necessary under S. 195 (*Krishnan Pandalai, J.*) THADI SUBBI REDDI v. KING-EMPEROR. 1930 M. W. N. 689 = 32 M. L. W. 273 = 1930 Cr. C. 1125 = A. I. R. 1930 Mad. 869 = 59 M. L. J. 229.

—Where a false information given to the police was followed by a complaint to the Magistrate on the same facts and the same charge the sanction of such Magistrate under the old S. 195 and a complaint in writing by such Magistrate under the present amended section is essential. It was immaterial whether the complaint subsequently presented by the accused had actually been proceeded with or not. (*Percival, J. C. and Rupchand, A. J. C.*) CHUHERMAL NIHALLMAL v. EMPEROR. 23 S. L. R. 285 = 117 I. C. 147 = 30 Cr. L. J. 732 = 1929 Cr. C. 160 = A. I. R. 1929 Sind 132.

—For the prosecution of a person under S. 193, Penal Code, for fabricating false evidence in relation to judicial proceedings, sanction under S. 195, Cr. P. Code, is necessary. (*Jackson, J.*) KUNJU v. EMPEROR. 99 I. C. 102 = 24 M. L. W. 725 = 28 Cr. L. J. 70 = 38 M. L. T. 187 = 7 A. I. Cr. R. 7 = A. I. R. 1927 Mad. 199 = 51 M. L. J. 800.

—Where a false complaint is lodged and dismissed, the Magistrate dismissing the complaint is not competent to proceed against the complainant under S. 211, Penal Code. He should make a complaint under S. 195, Cr. P. Code. (*Ross and Kulwant Sahay, J.J.*) AMBIKA SINGH v. EMPEROR. 96 I. C. 651 = 5 Pat. 450 = 7 P. L. T. 716 = 27 Cr. L. J. 987 = 7 A. I. Cr. R. 20 = A. I. R. 1926 Pat. 368.

—Where a document has been produced in a Court by a party to a proceeding before it, the sanction of such Court is necessary for his prosecution in respect of an antecedent forgery. 44 Cal. 1002, Foll. (*Martineau, J.*) KHAIRATI RAM v. MALWA RAM. 5 Lah. 550 = 26 Cr. L. J. 537 = 85 I. C. 377 = A. I. R. 1925 Lah. 266.

—Where an information to the police is followed by a complaint to the Court based on the same allegations and the same charge, the sanction of complaint of the Court itself under S. 195 (1) (b) of the Code is necessary before the Court could take cognizance of an offence punishable under S. 211 of the Indian Penal Code, in respect of the false charge made to the police, on the ground that it was an offence committed in relation to a proceeding in Court. The fact that the com-

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plaint was not investigated by the Court, does not make any difference. 43 Cal. 1152 and 44 Cal. 650, Followed. (*Bucknill and Ross, J.J.*) SHAIKH MUHAMMAD YASSIN v. EMPEROR. 86 I. C. 825 = 4 Pat. 323 = 6 P. L. T. 457 = 26 Cr. L. J. 889 = A. I. R. 1925 Pat. 483.

—Where an offence appeared to have been committed under S. 211 read with S. 109 or 120-B of the Penal Code,

Held, that the written sanction of the Court where the proceeding forming the subject of the offence took place was necessary for the prosecution not only of the actual complainant in that proceeding but also of the other accused who had been his accomplices. (*Held, J.*) P. N. S. M. SYED KHAN v. P. K. C. NAGOOR. 84 I. C. 326 = 3 Bur. L. J. 141 = 26 Cr. L. J. 262 = A. I. R. 1924 Rang. 369.

—S. 195—Sanction—When unnecessary.

—Complaint prior to suit.

Where the accused on the strength of a forged acknowledgment receipt instituted a suit in the original side of the High Court claiming equitable mortgage on the basis of it, and allowed the suit to be dismissed for non-prosecution, and where the complainant had lodged the complaint before the institution of the suit,

Held, that the accused can be prosecuted for offence under S. 471, I. P. C., though he may have used document prior to the institution of the suit and that no sanction was necessary under S. 195, the complaint having preceded the institution of the suit. 44 Cal. 1002, Dist. (*Suhrawardy and Graham, J.J.*) SUPT. & REMEMBRANCE OF LEGAL AFFAIRS, BENGAL v. BISWAMBHAR BRAHMIN. 33 C. W. N. 474 = 56 Cal. 1041 = 120 I. C. 449 = 1929 Cr. C. 401 = 31 Cr. L. J. 125 = A. I. R. 1929 Cal. 633.

—Offence completed before going to court.

P complained on 9th October 1927 to the police that certain persons committed an offence. Subsequently he lodged a complaint in the Court of a Magistrate on the same allegations on 17th October and the complaint was dismissed after inquiry. The Superintendent of Police, then sent a written complaint to the District Magistrate for the prosecution of P.

Held, the offence, if any, committed by P was complete before he went to Court with his complaint, and therefore it could not be said that the offence was committed in, or in relation to any proceeding in any Court. Sanction of the Court under S. 195 (1) (b) was therefore not necessary. A. I. R. 1924 All. 779, Foll.; A. I. R. 1926 All. 613, Dist.; 44 Cal. 650, Diss. from. (*Dalal, J.*) PRAG DATT TIWARI v. EMPEROR. 111 I. C. 858 = 29 Cr. L. J. 938 = 10 L. R. A. Cr. 19 = 51 All. 382 = 11 A. I. Cr. R. 152 = 1929 A. L. J. 68 = A. I. R. 1928 All. 765.

—Offence committed by receiver in excess of his authority.

There is no provision of the law which requires leave or sanction of the Court before prosecuting a receiver appointed by a Court, for offences alleged to have been committed by acts in excess of his authority. 46 Cal. 432, not Foll. (*Patkar and Baker J.J.*) KHEMCHAND NAROTTAM BHAVSAR, In re 115 I. C. 387 = 52 Bom. 898 = 30 Bom. L.R. 1273 = 30 Cr. L. J. 465 = A. I. R. 1928 Bom. 493.

—Offence complete before going to Court.

Where the accused made a complaint to the police regarding commission of an offence which was on investigation found to be false and whereupon the police obtained a B summary form from a Magistrate and lodged a complaint against the accused to Magistrate who com-

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mitted it to Sessions after hearing, but the accused repeated the complaint made to the police to the Magistrate and the Magistrate committed this case also to the Sessions, where the case regarding the complained commission of offence was tried first and ended in acquittal, whereafter the case against the accused was taken up and objected on the ground that no proceedings could be taken without the sanction of the Magistrate as the earlier complaint to the police had merged in the subsequent complaint to the Magistrate,

*Held*, that the committal order, when it was passed, was perfectly valid because at that time there had been no complaint made to the Magistrate which could supersede the complaint made to the police. 43 Cal. 1152; 44 Cal. 650 and A. I. R. 1925 Pat. 483, Dist. (*Fawcett and Mirza, J.J.*) **UKHA MAHADU v. EMPEROR.**

29 Bom. L. R. 1590 = 107 I. C. 54 = 29 Cr. L. J. 225 = 9 A. I. Cr. R. 481 = A. I. R. 1928 Bom. 22.

—Where a false charge is made to the police and not to a Court no sanction is required. The accused's having subsequently made a complaint in Court is no bar to the Court's proceeding with the trial of the offence under S. 182, I. P. C., without sanction. 17 A. L. J. 32, Foll. (*Daniels, J.*) **BAKSHI v. THE CROWN.**

81 I. C. 217 = 46 All. 43 = 21 A. L. J. 805 =

4 L. R. A. Cr. 207 = 25 Cr. L. J. 729 =

A. I. R. 1924 All. 187.

—Sanction under S. 195 is not necessary where the public servant against whom the offence has been committed is himself the complainant. (*Krishnan, J.*) **PUBLIC PROSECUTOR v. MARI MUDALI.**

76 I. C. 653 = 19 M. L. W. 30 = 1924 M. W. N. 145 = 25 Cr. L. J. 221 = A. I. R. 1924 Mad. 730.

**—S. 195—Scope of.**

—Where the offence under Penal Code, S. 211, has not been committed in, or in relation to a proceeding in any Court S. 195 (1) (b) is no bar to cognizance of a complaint of that offence. But it is impossible to hold that when a Magistrate has taken cognizance of a complaint, anything that can subsequently happen will suffice or anything in S. 195 (1) (b) can operate to deprive him of jurisdiction to proceed thereon in accordance with law. A. I. R. 1925 Pat. 717, Dist. and 1930 Pat. 30, Ref. (*Macpherson, J.*) **KANTIR MISSIR v. EMPEROR.**

117 I. C. 37 = 30 Cr. L. J. 710 = 11 P. L. T. 88 = 1930 Cr. C. 74 = A. I. R. 1930 Pat. 98.

**—Applicability.**

Section 195 (1) (c) applies only to forgery when committed or alleged to have been committed by a party to the proceedings before the Civil Court. (*Ran-kin, C. J. and Buchland, J.*) **AMBAR ALI v. EMPEROR.**

123 I. C. 739 = 31 Cr. L. J. 564 =

1929 Cr. C. 194 = A. I. R. 1929 Cal. 539.

**—Applicability.**

Section 195 (c) only applies to parties and does not cover the case of witnesses. (*Dalip Singh, J.*) **GANDE SINGH v. EMPEROR.**

112 I. C. 565 = 29 Cr. L. J. 1061 = A. I. R. 1929 Lah. 125.

—Section 195 is a limiting section providing an exception to the general rule that any one could make a complaint of a criminal offence. (*Addison and Coldstream, J.J.*) **EMPEROR v. BALMAKUND.**

110 I. C. 108 = 9 Lah. 678 = 10 A. I. Cr. R. 474 =

29 Cr. L. J. 652 = A. I. R. 1928 Lah. 510.

—Where the person at whose instance proceedings under S. 211, Penal Code, are initiated against a false complainant, is never charged in any Court, nor is he ever put upon his trial before any Magistrate, nor were any proceedings taken against him before the Court in which another person who was alleged by the false

**CR. P. CODE (1898), S. 195—Scope of.**

complainant to be his accomplice was involved, it cannot be said that the offence under S. 211, Penal Code, was an offence which was committed in or in relation to any proceeding in Court, though another person against whom also false complaint was made in the same transaction is tried in Court. A. I. R. 1924 All. 779, Foll.; 19 P. R. 1917 Cr. and 34 All. 522, no longer good law. 43 Cal. 1152 and 44 Cal. 650, Ref. to. (*Shadi Lal, C. J. and Agha Hardar, J.*) **MUHAMMADA v. EMPEROR.**

109 I. C. 685 =

10 Lah. L. J. 218 = 9 Lah. 408 =

29 Cr. L. J. 605 = 10 A. I. Cr. R. 313 =

29 P. L. R. 515 = A. I. R. 1928 Lah. 259.

—Offences under Ss. 467 and 471 committed in respect of an account book produced for the purpose indicated in O. 7, R. 17, C. P. Code, are offences of the kind described in S. 195 (1) (c) of the Criminal Procedure Code. (*Lindsay, J.*) **RAMESWAR LAL v. EMPEROR.**

103 I. C. 204 = 25 A. L. J. 555 =

8 A. I. Cr. R. 85 = 8 L. R. A. Cr. 113 =

28 Cr. L. J. 668 = 49 All. 898 = A. I. R. 1927 All. 571.

—There is distinct difference between the procedure to be adopted by the presiding officer of a Civil Court under the provisions of S. 195 (1) (a) and the provisions of S. 195 (1) (b) and (c). In the first case such an officer is in the position of an ordinary public servant. He exercises no quasi-judicial function of any kind. In the second case he is in the position of a presiding officer of a Court and exercises quasi-judicial functions. (*Stuart, C. J. and Rasa, J.*) **DORE SAH v. EMPEROR.**

103 I. C. 409 = 4 O. W. N. 640 =

28 Cr. L. J. 681 = 8 A. I. Cr. R. 400 =

A. I. R. 1927 Oudh 326.

—Offence under S. 409, Indian Penal Code, is not one of the offences referred to in S. 195 or S. 476, Cr. P. Code., and, therefore, no proceedings can be started against the accused under S. 476 in respect of an offence under S. 409. (*Rasa, J.*) **INDARJIT SINGH v. EMPEROR.**

96 I. C. 526 = 1 L. C. 527 =

13 O. L. J. 653 = 3 O. W. N. 618 = 27 Cr. L. J. 974 =

A. I. R. 1927 Oudh 210.

—S. 195 is really a provision of substantive law.

Section 195, though it forms a part of the Code of Procedure, in reality contains a provision of the substantive law of crimes. It does not deal with the competency of the Courts, nor lay down which of several Courts shall in any particular matter have jurisdiction to try the case. It in reality lays down that the offences therein referred to shall not be deemed to be any offences at all, except on the complaint to the persons or the Courts therein specified; it enhances the connotation of those offences and limits the scope of their definition. (*Kincaid and Tyabji, A. J. Cs.*) **FAKIR MAHOMED v. EMPEROR.**

97 I. C. 417 =

21 S. L. R. 1 = 27 Cr. L. J. 1105 =

A. I. R. 1927 Sind 10.

—Section 195 (c) is wide enough to include any document produced or given in evidence in the course of a proceeding whether produced or given in evidence by the party who is alleged to have committed the offence or by any one else. (*Macleod, C. J. and Coyajee, J.*) **BHAN VYANKATESH CHAKORKAR, In re.**

91 I. C. 245 = 27 Bom. L. R. 607 =

49 Bom. 608 = 27 Cr. L. J. 69 = A. I. R. 1925 Bom. 433.

—The petitioner himself planted a mould in respondent's house and gave information to the Police that Respondent was counterfeiting coin. The respondent was prosecuted but was discharged. Subsequently the Court granted an application for sanction to prosecute the Petitioner for an offence under S. 211, I. P. C. On application to revoke the sanction on the ground that



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the offence was not committed "in or in relation to any proceeding in the Court."

*Held*, that the facts alleged against the petitioner did constitute an offence in relation to the proceedings before the Magistrate. (*Carr, J.*) **ANI v. AH YONE.**

84 I. C. 868 = 2 Bur. L. J. 289 = 26 Cr. L. J. 383 = A. I. R. 1924 Rang. 211.

**—S. 195—Subordinate Court.**

Under sub-S. (3) the Court of the District Judge is the principal Court having original jurisdiction within the local limits in which a Court of Subordinate Judge exercising powers of a Judge of Small Cause Court is situate and the Court of Subordinate Judge is subordinate to it. Therefore, the District Judge has jurisdiction to entertain an appeal from the order of the Subordinate Judge passed under S. 476-B. 20 O. C. 223, Ref.; 1 Pat. L. J. 206 and 2 Pat. L. J. 1, Dist. (*Wazir Hasan, J.*) **PANCHU v. JUNMAN.**

121 I. C. 90 = 6 O. W. N. 48 = 1929 Cr. C. 589 = 31 Cr. L. J. 205 = A. I. R. 1929 Oudh 515.

**—Sub-Divisional officer—Subordinate to District Magistrate.**

A Sub-Divisional Officer granting sanction under sub-S. (1)(a) is subordinate to the District Magistrate and not the Sessions Judge for purpose of sub S. (5). Sub-S. (3) refers to the cases mentioned in Cls. (b) and (c) of S. 195 (1) where the complaint must be made by the Court and not to Cl. (a) where the complaint is to be made by a public servant. (*Dawson Miller, C. J. and Foster, J.*) **MAINI MISSIR v. KING-EMPEROR.**

100 I. C. 961 = 6 Pat. 39 = 28 Cr. L. J. 353 = 8 P. L. T. 488 = 7 A. I. Cr. R. 466 = A. I. R. 1927 Pat. 111.

**—Election commissioners.**

Election commissioners would not be considered to be subordinate to the principal Court of ordinary original civil jurisdiction under sub-clause (3) because neither appeals ordinarily lie thereto nor are the commissioners a Civil Court. (*Sulaiman and Daniels, J.J.*) **BILAS SINGH v. EMPEROR.**

89 I. C. 630 = 47 All. 934 = 23 A. L. J. 845 = A. I. R. 1925 All. 737.

District Magistrate revoking Sub-Magistrate's sanction to prosecute is not subject to the High Court. Where a Sub-Magistrate grants sanction to prosecute for giving false evidence before him, he acts as a Court, and an appeal from his order lies to the District Magistrate and from his order to the Sessions Judge and to the High Court. A Sub-Magistrate cannot grant sanction to prosecute for false information given to a Village Magistrate as the latter is not subject to his authority as a public servant. District Magistrate revoking Sub-Magistrate's sanction to prosecute under S. 182, Penal Code, acts in his capacity of the executive head of the district and is not therefore subject to the authority of the High Court. (*Krishnan and Wallace, J.J.*) **PALIKUDATHAN v. BUDDU GOUNDAN.**

76 I. C. 647 = 47 Mad. 229 = 1923 M. W. N. 745 = 25 Cr. L. J. 215 = A. I. R. 1924 Mad. 387 = 45 M. L. J. 553.

**—S. 195—Subordination.****—Constable and sub-inspector.**

No Court can take cognizance of an offence punishable under S. 182, Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate. Where the accused made a statement to the writer Head Constable at the Mokamah Railway Police Station charging a person with having stolen some property at Barh town and the next day the person was forwarded to the

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Barh Police Station with the statement of the accused who never appeared before the Sub-Inspector of Barh, who investigated the case and found it to be false and then made a complaint to the Sub-Divisional Magistrate asking that the accused might be prosecuted under Ss. 211 and 182, I. P. Code and he was tried by the Magistrate and convicted under S. 182,

*Held* that the Magistrate had no power under S. 195 (1), Cr. P. Code, to take cognizance of the case on the complaint of the sub-inspector to whom the writer constable was not a subordinate. (*Allanson and Sen, J.J.*) **BARHAMDEO SINGH v. EMPEROR.** 9 P. L. T. 151 = 28 Cr. L. J. 902 = 105 I. C. 230 = A. I. R. 1928 Pat. 102.

**—Superintendent of Police is Subordinate to District Magistrate.**

The words of the relevant section of the Police Act do make the Superintendent of Police of a District subordinate to the Magistrate of that District. (1905) 27 All. 292, Foll. (*Mears, C. J. and Piggott, J.*) **CHHOTAY LAL v. CHEDDI LAL.** 73 I. C. 341 = 45 All. 135 = 24 Cr. L. J. 597 = A. I. R. 1923 All. 149.

**—Police is not subordinate to District Magistrate.**

Where the District Magistrate granted sanction to prosecute accused for an offence under S. 182 for false report to police and the Sessions Judge refused to deal with it on the ground that District Magistrate passed the order as head of the Police, *held* that the Sessions Judge had the power to revoke it.

*Held*, further that the police are not subordinate to District Magistrate within the section. Although police officers in district are generally subordinate to the District Magistrate, the subordination contemplated by S. 195 of the Cr. P. Code, is not such subordination. That subordination contemplates some superior officer of police. (*Abdul Raouf, J.*) **KHAZAN SINGH v. KIRPA SINGH.** 73 I. C. 779 = 4 Lah. 130 = 5 L. L. J. 372 = 24 Cr. L. J. 683 = A. I. R. 1923 Lah. 341.

**—S. 195—Miscellaneous.**

There is no bar to cognizance being taken of an offence under Penal Code, S. 211 on the complaint of the investigating police officer though he is not also an officer referred to under S. 195 (1) (a), Cr. P. Code; but if the charge under Penal Code, S. 211 fails, there cannot by reason of Cr. P. Code, S. 195 (1) (a) be a conviction under Penal Code, S. 182. (*Macpherson, J.*) **KANTIR MISSIR v. EMPEROR.** 117 I. C. 37 = 30 Cr. L. J. 710 = 11 P. L. T. 88 = 1930 Cr. C. 74 = A. I. R. 1930 Pat. 98.

**—Complaint of forgery impleading certain persons—Complaint for the same offence against another.**

In a criminal prosecution a certain document produced in the defence was alleged to be the subject-matter of forgery within the meaning of the Penal Code. Thereupon the complainant in the case applied to the Magistrate to make a complaint against three persons. The Magistrate refused and in appeal the High Court made a complaint against two persons, which came on for hearing before another Magistrate who directed the public Prosecutor to make an application to the Court which had tried the case for a complaint against a third person under Ss. 193, 465, 471 and 100, I. P. Code.

*Held*, that under the circumstances the complaint against the third person was justified in public interest. (*Rankin, C. J. and Buckland, J.*) **SUJAUNDIN v. EMPEROR.** 33 O. W. N. 343 = 30 Cr. L. J. 1034 = 119 I. C. 381 = A. I. R. 1929 Cal. 242.

**—In relation to any proceeding—Test.**

Where a person is put on his trial under S. 211, I. P.

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Code, in respect of an alleged false accusation by him against another it is a question of fact to be decided in the particular circumstances of that case whether that person made such false accusation in contemplation of proceedings which he intended to take in a Court or not. Where the accused has made a false accusation at the same time in two documents one a petition addressed to the Assistant Superintendent of Police and the other a complaint posted to a Criminal Court it may be fairly presumed that he did so with the object of moving the Criminal Court to take proceedings. The offence committed by him, therefore, falls within the purview of the expression "in relation to criminal proceedings" within the meaning of the above section. (*Percival, J. C. and Rupchand, A. J. C.*) **CHUHERMAL NIHALMAL v. EMPEROR**. 23 S. L. R. 285 = 117 I. C. 147 = 30 Cr. L. J. 732 = 1929 Cr. C. 160 = A. I. R. 1929 Sind 132.

**—Applicability.**

The 'intention to use' contemplated in S. 474, Penal Code, should be fructified into an actual use to attract the provisions of S. 195, Cr. P. Code. (*Jackson, J.*) **VENKATA REDDY v. GADILINGA REDDY**. 28 Cr. L. J. 225 = 99 I. C. 1025 = A. I. R. 1927 Mad. 1060.

**—Production of document—What amounts to.**

The mere filing of a forged document as an annexure to a petition is a sufficient production of the document in Court. A.I.R. 1922 Mad. 495 and A.I.R. 1923 Mad. 136, Dist. It is not at all necessary that the proceedings must be "pending" before the Court from before. Filing of a forged document together with the report of a guardian appointed under the Guardians and Wards Act before the Court appointing the guardian is production within S. 195. The Court receiving such report acts as a "Court" and not in its administrative capacity; 22 Cal. 1004, Rel. on. (*Kinkhede, A. J. C.*) **TULARAM MARWADI v. EMPEROR**. 28 Cr. L. J. 388 = 100 I. C. 1044 = 7 A. I. Cr. R. 521 = A. I. R. 1927 Nag. 184.

**—Intervention of Crown.**

When the sanction has been obtained by a private individual and the earlier proceedings have been taken by Public Prosecutor, the Crown can take over the case at a later stage as the Crown is technically the complainant or the prosecutor in all criminal cases. (*Harrison, J.*) **EMPEROR v. AKBAR ALI SHAH**. 7 Lah. 99 = 8 I. L. J. 87 = 27 Cr. L. J. 724 = 95 I. C. 52 = 27 P. L. R. 181 = A. I. R. 1926 Lah. 131.

The order of sanction and the petition asking for sanction should be read together. (*Newbould and Sudrawardy, J.J.*) **KALI SINGH v. EMPEROR**. 75 I. C. 533 = 50 Cal. 461 = 24 Cr. L. J. 949 = A. I. R. 1924 Cal. 53.

**—S. 196—Applicability.**

**—Offence both under Municipalities Act and S. 196, Penal Code.**

Per *Reilly, J.*—Cognizance can be taken under the District Municipalities Act, of an offence made punishable under that Act, even though it is punishable also under Ch. 9-A, Penal Code, without the sanction required by S. 196, Cr. P. Code. A. I. R. 1924 Mad. 487, Foll. (*Madhavan Nair and Reilly, J.J.*) **NUNE PANAKALU v. SUBBA RAO**. 52 Mad. 695 = 30 M. L. W. 624 = 11 A. I. Cr. R. 556 = 30 Cr. L. J. 191 = 1928 M. W. N. 801 = 1 M. Cr. C. 328 = 113 I. C. 625 = A. I. R. 1928 Mad. 1158 = 57 M. L. J. 331.

A Magistrate has no jurisdiction to hold a judicial inquiry under rule 5 (4) of the Punjab Electoral Rule as to whether a candidate at an election had lod-

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ged a false return of his election expenses where there is no complaint by the Government in the matter. (*Harrison, J.*) **LABH SINGH v. NARINJAN DAS**.

88 I. C. 850 = 6 Lah. 188 = 26 P. L. R. 379 = 26 Cr. L. J. 1234 = A. I. R. 1925 Lah. 449.

**—S. 196—Contents of sanction.**

**—Name on the back—Valid—Presumption of validity.**

While sanctioning the prosecution of accused for an offence under Penal Code, S. 294-A the name of the accused was shown on the back of the paper instead of in the body of the sanction merely because there was not sufficient space left on the front side.

*Held*, that the initial presumption was that all the official acts were done in a regular manner and hence the sanction was valid. (*Zafar Ali and Bhude, J.J.*) **EMPEROR v. DIVAN CHAND**. 124 I. C. 347 = 1930 Cr. C. 97 = 31 Cr. L. J. 692 = A. I. R. 1930 Lah. 81.

**—Incorrect statement of facts—Not invalid.**

The provisions in the Anti-Boycott Act requiring the authority of the Government for a prosecution under the Act correspond to those in S. 196 Code of Criminal Procedure, which is less stringent than S. 195. Strictly the "order" or "authority" required by S. 196 is not the same as the "sanction" referred to in S. 195 and the classes of the offences dealt with by the two sections are quite distinct; moreover, in the latter section, there is no provision corresponding to sub-S. (4) of the earlier section. The intention of the legislature was to ensure that no prosecution for an offence falling within S. 196 or under the Anti-Boycott Act should be launched except on a complaint authorised by the Government, and where this intention is given effect to it, is immaterial whether or not all the facts on which the complaint was to be based were stated in the "authority" with meticulous precision. Indeed, it is doubtful if it is even necessary to set out any fact other than the alleged fact that the accused had committed an offence under a certain section of the Act. (*May Oung, J.*) **NGA AUNG HMAN v. KING EMPEROR**. 76 I. C. 561 = 2 Bur. L. J. 196 = 25 Cr. L. J. 193 = A. I. R. 1924 Rang. 65.

**—No form—Actual words used need not be set out.**

The section does not lay down any particular form in which the sanction should be accorded, and sanction must be deemed sufficient if it names the persons to be prosecuted and specifies the sections under which they are alleged to have committed the offence, as also the period of their activity. (*See 15 Cal. L. J. 517.*) The mere fact that the sanction does not specify the utterances made by the accused or the songs which they are alleged to have recited does not in any way affect its validity. (*Moti Sagar, J.*) **KISHEN SINGH v. THE CROWN**. 76 I. C. 871 = 25 Cr. L. J. 279 = A. I. R. 1923 Lah. 333.

**—Name of persons to whom addressed not given—Not illegal.**

Where the order ran as follows:—His Excellency the Governor in Council in exercise of the powers conferred on him by S. 196, Cr. P. Code, hereby sanctions the prosecution of the said persons before a Special Judge for offence punishable under S. 121, Indian Penal Code,

*Held*, the order was sufficient in law. Even if there was a defect due to want of specification of determinate persons to whom the order was given it was an irregularity not vitiating the conviction. (*Oldfield and Ramesam, J.J.*) *In re KUTTI MOOPAN*. 73 I. C. 155 = 24 Cr. L. J. 539 = 17 M. L. W. 100 = A. I. R. 1923 Mad. 328 = 44 M. L. J. 166.

**—Sections to be specified.**

"The sanction should be specifically directed to the

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particular section, in respect of which proceedings are to be taken, and that the order or authority should be preceded by and be the result of a deliberate determination that proceedings shall be taken in respect of a particular section or particular sections of the chapter and no other." "It would be opposed to the true intentment of S. 196 Cr. P. Code, for the Local Government, by its order to give its legal or other advisers, roving power to determine under what sections proceedings should be taken". (*Oldfield and Krishnan, J.J.*) U MAY YATHANTAGATH, *In re* 65 I.C. 859 =

15 M. L. W. 311 = 1922 M. W. N. 71 =

30 M. L. T. 125 = 23 Cr. L. J. 203 =

A. I. R. 1922 Mad. 126 = 42 M. L. J. 108.

**—S. 196—Initiation and cognizance.**

There is no bar under the Cr. P. Code, for a Magistrate who has taken part in the initiation of the proceedings to take mere cognizance of the Criminal case. (*Walmsley and Suhrwardy, J.J.*) MD. OZIULLAH v. BENI MADHAB CHOUDHARY. 71 I. C. 239 =

50 Cal. 135 = 36 C. L. J. 180 = 26 C. W. N. 878 =

24 Cr. L. J. 111 = A. I. R. 1922 Cal. 298.

**—S. 196—Objection.****—Stage.**

Any objection on ground of defect in granting sanction ought to be taken as early as possible. (*Odgers and Wallace, J.J.*) N. P. NARAYANA MENON, *In re*. 77 I. C. 481 = 25 Cr. L. J. 401 =

A. I. R. 1925 Mad. 106.

**—S. 196—Proper complaint.****—Speech not set out or deposed to.**

A complaint was filed under Penal Code, S. 124-A but no original or translation of alleged speech was attached to it. Sanction of the Local Government required under S. 196, Cr. P. Code, was attached. Although in the sanction order attached to the complaint a short abstract of the words used was given, it was not mentioned by the complainant in his statement.

*Held*, that there was no proper complaint and the Magistrate did not direct his mind to question of presence or absence of proper complaint. (*Dalip Singh, J.*) RAM CHAND v. EMPEROR. 120 I. C. 10 = 30 Cr. L. J. 1129 = A. I. R. 1929 Lah. 284.

**—S. 196—Validity of conviction—S. 237.**

**—Conviction for offence proved—S. 237 must be read subject to S. 196.**

The provisions of the Cr. P. Code, allowing the Court to frame a charge of the offence it finds to be proved, to alter the charge or to convict of an offence of which a charge has not actually been framed, *e. g.*, S. 237, must be read subject to the provisions of S. 196. That is, those powers can be exercised, in respect of offences falling within S. 196, when a prosecution for the offence of which it is proposed to charge or to convict the accused has been duly authorized under that section and cannot be exercised when the prosecution has not been so authorized. When on a prosecution instituted on an order directing prosecution for offence under S. 121-A, stating details the Court finds that the facts proved do not constitute the offence of conspiring to wage war punishable under S. 121-A, but that they do constitute an offence punishable under another section comprised in Chap. 6 of the said Code, the Court is not competent to take cognizance of such other offence and to convict the accused persons thereof. (*Carr and Duckworth, J.J.*) U NYAN NEIN DA v. KING-EMPEROR. 97 I. C. 51 = 4 Rang. 131 = 27 Cr. L. J. 1075 = 7 A. I. Cr. R. 70 = A. I. R. 1926 Rang. 169.

**—Conviction—Different offence—Bad.**

An order for prosecution having been ordered for an offence, the Courts have no jurisdiction at all to take

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cognizance of another offence. An authority to prosecute for a definite offence could not be any authority for a prosecution for an offence which quite clearly could not be within the terms of the order. (2 Bur. L. J. 196; 44 M. L. J. 166, Dist.; 37 C. 467, 489, *et seq.*, Ref. (*Brown, J.*) U PATHADA, U PADUMA AND U NANDIYA v. EMPEROR. 84 I. C. 245 =

3 Bur. L. J. 178 = 26 Cr. L. J. 245 =

A. I. R. 1924 Rang. 371.

**—S. 196 A—Applicability.**

The consent of Local Government under S. 196-A is necessary in the case of persons who are not parties to the proceedings when they may have conspired with the parties to commit an offence mentioned in sub-S. (1), S. 195 which applies merely to the parties to the proceeding. (*Jai Lal, J.*) BISHAMBHAR DAS v. EMPEROR. 1929 Cr. C. 417 = A. I. R. 1929 Lah. 785.

**—Complaint vague as to conspiracy**

Where the complaint does not disclose a charge of criminal conspiracy punishable under S. 120 (B), Cr. P. Code, but merely uses vaguely such terms as "conspire" and "conspiracy" no sanction of Government is required under S. 196-A, Cr. P. Code. (*Madhavan Nair and Reilly, J.J.*) NUNE PANAKALU v. SUBBA RAO. 52 Mad. 695 = 30 M. L. W. 624 =

11 A. I. Cr. R. 556 = 30 Cr. L. J. 191 =

1928 M. W. N. 801 = 1 M. Cr. C. 328 =

113 I. C. 625 = A. I. R. 1928 Mad. 1158 =

57 M. L. J. 331.

**—Accused not a party to any proceeding.**

No Court should take cognizance of an offence punishable under S. 120-B, I. P. C., and committed by a person who is not a party to any proceedings, without the consent of the Local Government if the case is one under the second sub-Section of S. 196 A, and, in respect of charge falling within the purview of sub-S. (1) of S. 196-A without a complaint by the Governor-General in Council or the Local Government. (*Robinson, C. J. and Godfrey, J.*) ABDUL RAHMAN v. EMPEROR. 89 I. C. 305 = 26 Cr. L. J. 1329 =

3 Rang. 95 = A. I. R. 1925 Rang. 296.

**—Proviso.**

A charge falling under the first sub-section of S. 196-A cannot be taken cognizance of without a complaint by the Governor-General in Council or of the Local Government even in respect of a person who was a party to a proceeding. (*Robinson, C. J. and Godfrey, J.*) ABDUL RAHMAN v. EMPEROR.

89 I. C. 305 = 26 Cr. L. J. 1329 = 3 Rang. 95 =

A. I. R. 1925 Rang. 296.

**—Abetment.**

S. 196-A, Cr. P. Code, applies only to a prosecution for conspiracy punishable under S. 120-B of the Penal Code, and not for abetment by conspiracy punishable under S. 109 of the Penal Code. (*Robinson, C. J. and Godfrey, J.*) ABDUL RAHMAN v. EMPEROR.

89 I. C. 305 = 26 Cr. L. J. 1329 = 3 Rang. 95 =

A. I. R. 1925 Rang. 296.

**—No sanction is necessary if S. 195 (3) applies.**

Under the proviso of S. 196-A of the Code of Criminal Procedure, a sanction under that section for prosecution for criminal conspiracy to commit a non-cognizable offence is not necessary where the provisions of sub-S. 3 of S. 195 are applicable. (*Newbold and Suhrwardy, J.J.*) KALI SINGH v. EMPEROR. 75 I. C. 533 =

50 Cal. 461 = 24 Cr. L. J. 949 =

A. I. R. 1924 Cal. 53.

**—S. 196 A—Forgery.****—Object of conspiracy.**

If the object of the conspiracy is to commit forgery, there can be no prosecution for such a criminal con-

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piracy without the sanction of the Local Government under S. 196-A of the Code. If cheating is carried out by means of forgery, it does not follow that the provisions of S. 196-A would apply. (*Dalal, J. C.*) **BISHAMBHUR NATH TANDON v. EMPEROR.**

2 O. W. N. 760 = 26 Cr. L. J. 1602 = 90 I. C. 706 = A. I. R. 1926 Oudh 161.

**—S. 196-A—Sanction.**

*—In the form of consent.*

Under S. 196-A, Cl. (2) it is only the existence of an order by Local Government consenting to the initiation of proceedings that is necessary to enable a Court to assume jurisdiction. (*Mukerji and Roy, J.J.*) **ALI MIA v. EMPEROR.**

54 Cal. 155 = 101 I. C. 594 = 28 Cr. L. J. 466 = 8 A. I. Cr. R. 62 = A. I. R. 1927 Cal. 296.

**S. 196-A—Trial without sanction.**

*—Some charges requiring sanction and some not.*

A Magistrate held trial of the accused on charges which did not require sanction along with such as were not cognizable without sanction under S. 196-A and convicted him although the necessary sanction had not been accorded. In his explanation the Magistrate suggested that the convictions against the accused under those sections only for which no sanction was required might be maintained and that the sentences passed on them may be treated as having been passed under those sections only.

*Held*, that, as the two charges could not thus be separated, the trial was vitiated. (*Mukerji, J.*) **NIBARAN CHANDRA BHATTACHARYA v. EMPEROR.**

126 I. C. 272 = 57 C. 99 = 31 Cr. L. J. 995 = 33 C. W. N. 834 = 1929 Cr. C. 409 = A. I. R. 1929 Cal. 754.

*—Validity—Sanction—Necessity—Test.*

If the facts disclosed on the evidence show a *prima facie* case only under S. 120 B, I. P. C., then the whole proceedings will be void *ab initio* having regard to the provisions of S. 196-A, Cr. P. Code, if the consent of the Local Government is not previously obtained. But if the facts disclosed show a *prima facie* case under S. 109, I. P. C., the proceedings are competent without such consent. It makes no difference that the summons to the accused was under the wrong section. The whole test is not under what sections the accused are summoned but whether the proceedings are competent or not. The accused was summoned under S. 120-B and charge was framed under that section. No previous consent of the Local Government was obtained. The facts disclosed an offence under S. 109.

*Held*, that the charge could be altered to one under S. 109. (*Greaves and Dwyal, J.J.*) (*SHEIKH*) **BIROO SARDAR v. Y. C. ARIFF.**

84 I. C. 446 = 26 Cr. L. J. 302 = A. I. R. 1925 Cal. 579.

*—Where a Court holds a trial of an offence requiring sanction of the Local Government, the trial is without jurisdiction and the proceedings cannot be validated by subsequently adding charges which require no sanction.* (*Robinson, C. J. and Godfrey, J.*) **ABDUL RAHMAN v. EMPEROR.**

89 I. C. 305 = 26 Cr. L. J. 1329 = 3 Rang. 95 = A. I. R. 1925 Rang. 296.

**—S. 197—Abuse of power.**

*—Immunity—Limits.*

A prosecution for an offence arising out of an abuse of official position by an act not purporting to be official does not require sanction. A liquidator who appropriates to himself money coming into his custody as liquidator cannot be said even to purport to act in the discharge of his duty. 31 Bom. L. R. 789; 30 Bom. L. R. 1018; (1916) 1 M. W. N. 384; 50 M. 754, Foll.; 52 M. 602 Ref. to.) (*Mirza and Broomfield, J.J.*)

**CR. P. CODE (1898), S. 197—Illegal acts.**

**EMPEROR v. GULABMIYA.** 32 Bom. L. R. 1134 = 1930 Cr. C. 1023 = A. I. R. 1930 Bom. 487.

*—Immunity—Limits.*

The privilege of immunity from prosecution without sanction only extends to acts which can be shown to be in discharge of official duty, or fairly purporting to be in such discharge. An offence arising out of abuse of official position by an act not purporting to be official, does not necessitate sanction under S. 197. (1916) 1 M. W. N. 384, Foll.; 2 Bom. 481, Disappr. (*Jackson, J.*) **RAJE RAO v. T. RAMASWAMY.**

50 Mad. 754 = 38 M. L. T. 338 = 25 M. L. W. 608 = 1927 M. W. N. 423 = 102 I. C. 347 = 28 Cr. L. J. 539 = 8 A. I. Cr. R. 170 = A. I. R. 1927 Mad. 566 = 52 M. L. J. 647.

**—S. 197—Applicability.**

*—Act done in the course of official duty.*

Section 197 (1) should be construed as widely as it is framed; and if it is found that the Judge, Magistrate, or a public servant has committed the act at a time when he was doing (or purporting to do) an official duty, this will be sufficient to attract the provisions of the section. A village Magistrate sent his talayari to fetch the complainant and told him that 'for not appearing when summons was sent, he sentenced him to imprisonment in the chavadi' and confined him in his chavadi. The complainant charged the Magistrate of wrongful confinement.

*Held*, that sanction under S. 197 was necessary for prosecuting the Magistrate. 17 Cr. L. J. 394, Appr.; 25 Mad. 15; A. I. R. 1929 Mad. 172, not Appr.; 9 Mad. 439, Dist. (*Waller and Anantha Krishna Ayyar, J.J.*) (*ANGARAJU v. VENKI.*) 52 Mad. 602 = 1929 M. W. N. 387 = 2 M. Cr. C. 138 = 30 M. L. W. 116 = 30 Cr. L. J. 864 = 118 I. C. 102 = 1929 Cr. C. 140 = A. I. R. 1929 Mad. 659 = 57 M. L. J. 31.

**—S. 197—Contents of sanction.**

*—Person and place.*

Not only the sanction of the Local Government is necessary, but the Local Government has to determine the person by whom and the manner in which the prosecution is to be conducted and may specify the Court before which the trial is to be conducted. (*Dalal, J.*) **BHAIRON PRASAD v. EMPEROR.** 9 L. E. A. Cr. 140 = 10 A. I. Cr. R. 450 = 113 I. C. 78 = 51 All. 377 = 30 Cr. L. J. 62 = 1929 A. L. J. 57 = A. I. R. 1928 All. 756.

*—Specification of offence.*

In granting a sanction Government need not specify the offences with the same degree of precision as in a charge. Where, throughout the question is only of a single offence, which is otherwise properly described and specified, the sanction is not bad merely because mistake has been committed, in specifying the date of offence by one day. 13 C. W. N. 1062, Rel. on. (*Crump and Madgwick, J.J.*) **EMPEROR v. JEHANCIAR ARDESHIR.** 8 A. I. Cr. R. 324 = 29 Bom. L. R. 996 = 28 Cr. L. J. 1012 = 106 I. C. 100 = A. I. R. 1927 Bom. 501.

**—S. 197—Excise Inspector.**

*—Sanction is not necessary for the prosecution for receiving bribe of an Excise Inspector as he is removable from his office by the Excise Commissioner.* (*Dalal and Boys, J.J.*) **JALALUDDIN v. EMPEROR.**

48 All. 264 = 24 A. L. J. 230 = 27 Cr. L. J. 345 = 7 L. E. A. Cr. 41 = 92 I. C. 857 = A. I. R. 1926 All. 271.

**—S. 197—Illegal acts**

*—Not protected.*

Where an act is done by a public servant which is illegal and there is no justification for it, it cannot be said to have been committed under colour or in excess

**CR. P. CODE (1898), S. 197—Illegal acts.**

of the duty or authority as public servant and the offence can be tried by a Magistrate without sanction of the Government under S. 197. A.I.R.—1928 Bom. 352 (F.B.). *Foll.*; A.I.R. 1927 Bom. 432, Dist.; 17 Cr.L.J. 394, Ref. (*Pattar and Baker, J.J.*) **HANMANT SHRINIVAS v. EMPEROR.** 122 I. C. 118 =

31 Cr. L. J. 353 = 31 Bom. L. R. 789 =  
1929 Cr. C. 322 = A. I. R. 1929 Bom. 375.

**—S. 197—Judge.**

—Village Court executing decree by distraint is Court and the Village Munsif if he himself distrained, is Judge so as to attract provisions of S. 197, Cr. P. Code. (*Jackson, J.*) **SUBBA NAIDU v. EMPEROR.** 115 I. C. 53 = 1929 M. W. N. 67 = 29 M. L. W. 579 = 2 M. Cr. C. 59 = 30 Cr.L.J. 402 = 12 A.I.Cr.R. 370 = A. I. R. 1929 Mad. 256 = 56 M. L. J. 600.

—When a president of a Union Board accepts or rejects nomination paper under R. 1 for the conduct of election of members of Taluk and Union Boards, he is giving a definitive judicial decision in a legal proceeding and is therefore, a Judge who cannot be proceeded against without sanction as required by S. 197. A.I.R. 1923 Mad. 475, Rel. on. (*Reilly, J.*) **ABHOY NAIDU v. KANNIAPPA CHETTIAR.** 114 I. C. 817 = 30 Cr. L. J. 365 = 2 M. Cr. C. 143 = A. I. R. 1929 Mad. 175.

**—S. 197—Local bodies.****—Action under the authority of.**

*R* was a Municipal Commissioner as well as the Honorary Secretary of the Committee. A resolution was passed directing that *R* should conduct certain prosecution against one *K*. During the trial *R* moved the Court for search warrant which turned out to be unnecessary. As a result *K* lodged a complaint against *R* under S. 500, Penal Code.

*Held* that *R* had filed the complaint under the authority of the Municipal Committee and *R* acted in his capacity of a Municipal Commissioner when he asked for a search warrant and whatever he did, he did as a public servant. His action regarding the search warrant could not, therefore, be called in question unless and until the provisions of S. 197 were complied with. (*Broadway, J.*) **MAHOMED RAFIQ v. EMPEROR.**

124 I. C. 345 = 31 Cr. L. J. 691 = 1930 Cr. C. 119 = 31 P. L. R. 479 = A. I. R. 1930 Lah. 147.

**—President of Union Board.**

President of a Union Board is not a public servant being removable under S. 44, Madras Local Boards Act and thus not entitled to protection under S. 197, Cr. P. Code. (*Reilly, J.*) **ABBOY NAIDU v. KANNIAPPA CHETTIAR.** 30 Cr. L. J. 365 = 114 I. C. 817 =

2 M. Cr. C. 143 = A. I. R. 1929 Mad. 175.

—A member of a Taluk Board is a public servant under S. 21, Penal Code, and cannot therefore be prosecuted without the sanction of the Government. (*Curguenven, J.*) **SIVASANKARAN PILLAI v. EMPEROR.**

52 Mad. 446 = 28 M.L.W. 695 = 2 M. Cr. C. 49 = 113 I. C. 462 = 30 Cr. L. J. 164 = 12 A. I. Cr. R. 103 = A. I. R. 1929 Mad. 8 = 56 M. L. J. 157.

**—Proceedings against member as such.**

A complaint was made to the District Magistrate against one *B* to the effect that he being a member of the Municipal Board acquired a share in a contract with the Board. Thereupon, the District Magistrate immediately took cognizance and started an enquiry under Ss. 190 and 202, Cr. P. Code. The account-books of *B* were taken possession of after a search of the house and examined under the order of the District Magistrate to discover whether the complaint as to his contract with the Municipality contrary to law was correct or not. No sanction of the Local Government was obtained.

**CR. P. CODE (1898), S. 197—Local bodies.**

*Held*, that the District Magistrate had no jurisdiction whatsoever to take cognizance as he had done. When the law has provided safeguards, there must be some reason for providing them and a Magistrate cannot be permitted to behave as if no safeguards had been provided by law. (*Dalal, J.*) **BHAIRON PRASAD v. EMPEROR.**

9 L. R. A. Cr. 140 = 10 A. I. Cr. R. 450 = 113 I. C. 78 = 51 All. 377 = 30 Cr. L. J. 62 = 1929 A. L. J. 57 = A. I. R. 1928 All. 756.

**—Elected chairman of municipality.**

An elected chairman of a Municipality under the Bengal Municipal Act is a public servant within the meaning of S. 197, Cr. P. Code, who is not removable from his office save by or with the sanction of the Local Government. A.I.R. 1925 Cal. 782, Dist. (*C. C. Ghose and Gregory, J.J.*) **RAM NARAYAN v. PAR-SWANATH SEN.** 114 I. C. 785 = 32 C. W. N. 1035 = 56 Cal. 227 = 30 Cr.L.J. 348 = A. I. R. 1928 Cal. 516.

**—Municipal Commissioner.**

Where a complaint was filed against a person, a member of the Municipal Committee, alleging that he had, by reason of his position as Municipal Commissioner, and member of the Public Works Sub-Committee, exercised undue influence upon a sub-overseer, a servant of the Committee, and had stopped that sub-overseer from purchasing bricks from a certain person and compelled him to give his assent to the purchase of the accused's bricks,

*Held*, that as the complaint did not allege that the accused obtained this advantage to himself by acting or purporting to act in the discharge of his official duty as a Municipal Commissioner or a member of the Sub-Committee, the case did not fall within the provisions of S. 197 and that therefore sanction was not required for his prosecution. (*Ffords and Addison, J.J.*) **MUHAMMAD ISMAIL v. CROWN,**

8 Lah. 647 = 29 P.L.R. 69 = 29 Cr. L. J. 511 = 109 I. C. 239 = A. I. R. 1928 Lah. 72.

—Although the Chairman of a Municipality is a public servant, if the offences alleged against him were not committed by him in the discharge of his official duties, no sanction of the Government under S. 197(1) is necessary for prosecuting him. A. I. R. 1927 Mad. 566, *Foll.* (*Madhavan Nair and Reilly, J.J.*) **NUNE PANAKALU v. R. SUBBA RAO.**

113 I. C. 625 = 1928 M. W. N. 801 = 1 Cr. C. 328 = 52 Mad. 695 = 30 M. L. W. 624 = 11 A. I. Cr. R. 556 = 30 Cr. L. J. 191 = A. I. R. 1928 Mad. 1158 = 57 M. L. J. 331.

—Sanction of Government under S. 197, Cr. P. Code is necessary for the prosecution of the president of the panchayat Court. (*Devadoss, J.*) **SUBBIAH v. MASTAN SAHIB.**

108 I. C. 66 = 29 Cr. L. J. 324 = 9 A. I. Cr. R. 575 = 1 M. Cr. C. 7 = A. I. R. 1928 Mad. 391.

**—Chairman threatening voter.**

A President of the Municipal Council was charged with an offence of threatening a voter with injury to his property with intent to induce such voter to vote for any candidate or to abstain from voting.

*Held*, that no sanction was necessary. It cannot be held that threatening the voter with injury could be committed by the public servant only, or such an offence involves as one of its elements that it was committed by a Chairman of a Municipality. (*Jackson, J.*) **RAJA RAO v. RAMASWAMY.** 102 I. C. 347 = 38 M.L.T. 338 = 25 M.L.W. 608 = 1927 M. W. N. 423 = 28 Cr.L. J. 539 = 8 A. I. Cr. R. 170 = 50 Mad. 754 = A. I. R. 1927 Mad. 566 = 52 M. L. J. 647.

—The President of a Municipality is a public servant within S. 197 where he is not removable except by

**CR. P. CODE (1898), S. 197—Local bodies.**

the Local Government. 33 I.C. 648. Dissented from. (*Carr, J.*) **EMPEROR v. U. MAUNG GALE,**

4 Rang. 128=27 Cr. L. J. 1088=97 I. C. 64=

A. I. R. 1926 Rang. 171.

—The sanction of the Local Government under S. 197 is not necessary for the prosecution of the chairman of a Union Committee of whom it cannot be said that he is not removable from his office save by the Local Government. (*Walmsley and Mukerjee, J.J.*)

**MOHAMMAD YASIN v. EMPEROR,**

88 I. C. 602=52 Cal. 431=29 C. W. N. 650=

26 Cr. L. J. 1178=A. I. R. 1925 Cal. 782.

—A member of District Board in U. P. legally appointed by that board to be an officer for the purpose of holding a sale by auction of an impounded Cattle under the provisions of S. 14 of the Cattle Trespass Act, 1871 is a public servant who is not removable from his office save by or with the sanction of the Local Government, within S. 197. (*Dalal, J. C. and Waur Hassan, A.J.C.*) **KING-EMPEROR v. KRISHNA KANT,**

88 I. C. 517=23 O. C. 155=12 O. L. J. 498=

2 O. W. N. 395=26 Cr. L. J. 1157=

A. I. R. 1925 Oudh 565.

—No sanction is necessary to prosecute a Municipal Secretary for any wrong done by the latter. 1 Wier 243, Dist. (*Abdul Qadir, J.*) **KISHEN SINGH v. GIKDHAKI LAL,**

69 I. C. 638=

23 Cr. L. J. 750=A. I. R. 1924 Lah. 310.

**—S. 197—Mukhtiarkar**

—It being the duty of Mukhtiarkar to keep his office compound in a sanitary condition, he fails in his duty as a Mukhtiarkar if he does not do so and his action purports to be in the discharge of his official duty. In a criminal complaint against him, sanction of Commissioner is necessary. (1916) 1 M. W. N. 384 and A.I.R. 1929 Mad. 172, Dist.; 25 Mad. 15 Appl. (*Percival, J.C. and Wild, A.J.C.*) **KARACHI MUNICIPALITY v. MUKHTIARKAR OF KARACHI,**

123 I. C. 701=1930 Cr. C. 527=31 Cr. L. J. 597=

24 S. L. R. 385=A. I. R. 1930 Sind 144.

**—S. 197—Object.**

—The object of S. 197 is to guard against vexatious proceedings against public servants and to secure the well-considered opinion of a superior authority before their prosecution. (*Patkar and Baker, J.J.*) **HANMANT SHRINIVAS v. EMPEROR,**

31 Bom. L. R. 789=1929 Cr. C. 322=

122 I.C. 118=31 Cr.L.J. 353=A.I.R. 1929 Bom. 375.

**—S. 197—Organiser of Co-operative Societies and liquidator.**

—An organizer of Co-operative Societies was appointed a liquidator of "M. Seed Society" by the Registrar. There was misappropriation of a certain sum of money by the liquidator.

*Held*, that the posts of the organizer and that of the liquidator, being quite distinct, no sanction under S. 197 is required for the prosecution of the liquidator on a charge of misappropriation. (*Mirza and Broomfield, J.J.*) **EMPEROR v. GULABMIYA,**

32 Bom. L. R. 1134=1930 Cr. C. 1023=

A. I. R. 1930 Bom. 487.

**—S. 197—Polling Officer.**

—*Tahsildar acting as.*

Where a Tahsildar acting as a polling officer in connection with a municipal election committed an offence under S. 58, Madras District Municipalities Act, and was prosecuted, therefore, without previous sanction of the local Government,

*Held*, that the person appointed to be a polling officer, though he was a public servant was for the time being not acting or purporting to act in the discharge of

**CR. P. CODE (1898), S. 198—Complaint.**

his official duty, as such and, therefore, S. 197 can have no application. (*Madhavan Nair and Curgemven, J.J.*) **JAGANNADHASWAMI NAIDU v. MANIKKAM,**

51 Mad. 259=1 M. Cr. C. 2=9 A. I. Cr. R. 200=

106 I. C. 222=28 Cr. L. J. 1038=27 M.L.W. 81=

A. I. R. 1928 Mad. 161=54 M. L. J. 570.

**—S. 197—Receiver.**

—There is no provision of the law which requires leave or sanction of the Court before prosecuting a receiver appointed by a Court, for offences alleged to have been committed by acts in excess of his authority. 46 Cal. 432, not foll. (*Patkar and Baker, J.J.*)

**KHIMCHAND NAROTTAM DAS, In re.**

52 Bom. 898=30 Bom. L. R. 1273=115 I. C. 387=

30 Cr. L. J. 465=A. I. R. 1928 Bom. 493.

**—S. 197—Revenue patil.**

—In a prosecution, under S. 420, I.P.C., for cheating Government, of a revenue patil, a previous sanction from Local Government is necessary. (*Shah and Percival, J.J.*) **KALU MAHADU v. EMPEROR,**

29 Bom. L.R. 707=102 I. C. 342=28 Cr. L.J. 534=

8 A. I. Cr. R. 161=A. I. R. 1927 Bom. 432.

**—S. 197—Sanction when necessary.**

—*Explanation as to.*

The expression "offence alleged to have been committed by him while acting or purporting to act in discharge of his official duties" implies something in nature of an official character attached to the act itself, that act being in fact done as an official act in pursuance of public office held by the public servant. Therefore, in order that S. 197 may be applicable to the complaint of the offence against a public servant it is essential that the criminal act constituting the offence should have been done as an official act or under the cloak of what purported to be an official act. It is not enough that his capacity of public servant put him in position to do the alleged act. (*Pearson and Mallick, J.J.*) **AMANAT ALI v. EMPEROR,**

33 C. W. N. 1058=

1929 Cr. C. 360=122 I. C. 627=

31 Cr. L. J. 430=A. I. R. 1929 Cal. 724.

**—Fabrication of record.**

Where a Judge fabricates an entire record, his act is such as can be done by a public servant only, *i.e.*, an essential ingredient of the act is that the author was a public servant; and the alleged offence is committed by him "purporting to act in the discharge of his official duty". Sanction under S. 197 is, therefore, necessary to proceed against him. 26 Cal. 852; 25 Mad. 15; (1916) M. W. N. 384; A. I. R. 1927 Mad. 566 Appr.; 32 Mad. 255 and No. 310 of 1925, Dist.; 2 Bom. 481 and No. 291 of 1916, Rel. on.; (1920) 1 M. W. N. 7, Ref.; 9 Mad. 439 and A. I. R. 1927 Mad. 566, not Appr. (*Curgemven, J.*) **SIVARAMAKRISHNA AYYAR v. SESHAPPA NAIDU,**

52 Mad. 347=

29 M. L. W. 17=1929 M.W.N. 53=

2 M. Cr. C. 67=115 I. C. 248=30 Cr. L. J. 396=

A. I. R. 1929 Mad. 172=56 M. L. J. 263.

**—S. 198—Abetment of Bigamy.**

—*Applicability.*

The charge of abetment of a marital offence referred to in S. 198 is not excluded from cognisance of Court without a complaint made by some person aggrieved by such abetment, though the principal offence requires such a complaint. (*Kanhaiya Lal, J.*) **MUNIR v. KING-EMPEROR,**

24 A. L. J. 155=

6 L. R. A. Cr. 209=27 Cr. L. J. 101=

91 I. C. 533=A. I. R. 1926 All. 189.

**—S. 198—Complaint.**

—A letter containing a charge of defamation addressed to the President of the First Class Bench of Magistrates with a request by the complainant that it



**CR. P. CODE (1898), S. 198—Complaint.**

should be forwarded to the District Magistrate can be treated as a complaint by an aggrieved person. (*Beasley, C. J., Sundaram Chetty and Walsh, J.J.*) **LORES SEQUEIRA v. EMPEROR. 1930 M. W. N. 855 (F. B.).**

**—S. 198—Defamation.**

**—Person aggrieved—Test—Adopted son.**

The question whether complainant is a person aggrieved within the meaning of S. 198 must be determined in each case on its own facts. The party "aggrieved" is not necessarily limited to the person directly defamed, but includes also other persons injured such as the husband and even the other relatives. Where the complaint was lodged by the adopted son with whom the person defamed, the adoptive mother was residing,

*Held*, that the adopted son was a person "aggrieved" within S. 198. 32 Cal. 425; A. I. R. 1924 Lah. 559; 25 Bom. 151 (F. B.); 14 Mad. 379, Foll. (*Kinkhede, A. J. C.*) **SURAJMAL v. RAMNATH.**

28 Cr. L. J. 996=105 I. C. 820=  
9 A. I. Cr. B. 204=A. I. R. 1928 Nag. 58.

**—Husband.**

Where a married woman is defamed by imputation of unchastity and the civil rights of the parties are not in question, her husband is a 'person aggrieved' under S. 198 of the Code of Criminal Procedure and has the right to prefer a complaint of defamation. (*Venkatasubba Rao, J.*) **B. APPANNA v. P. AKKANNA.**

85 I. C. 361=26 Cr. L. J. 521=  
20 M. L. W. 921=A. I. R. 1925 Mad. 320=  
47 M. L. J. 746.

**—In the case of defamation of a married woman her husband is a person aggrieved within the meaning of S. 198.** 14 Mad. 379; 25 Bom. 151 (F. B.); 15 M. L. J. 224; 32 Cal. 425, Foll.; 22 P. R. (Cr.) 1884, Dist. (*Scott-Smith and Harrison, J.J.*) **GURDIT SINGH v. THE CROWN.**

84 I. C. 646=5 Lah. 301=  
26 Cr. L. J. 342=A. I. R. 1924 Lah. 559.

**—Contents of complaint.**

No specific reference to every exhibit need be made in a complaint of defamation. (*Odgers and Hughes, J.J.*) **K. BURKE v. T. C. W. SKIPP.**

81 I. C. 129=18 M. L. W. 718=  
33 M. L. T. 168=1923 M. W. N. 913=  
25 Cr. L. J. 641=A. I. R. 1924 Mad. 340=  
45 M. L. J. 764.

**—S. 198—Procedure.**

**—Absence of complaint.**

Where in a case of defamation the Magistrate proceeded without a complaint and without examining the complainant on oath issued process against the accused and the accused pointed out the irregularity to the Court at the first opportunity but the objection was disallowed,

*Held*, that there was no acquiescence by the accused in the procedure followed and that the proceedings were vitiated by the irregularity. (*Pandalai, J.*) **GOLUSU APPALANARASIAH v. EMPEROR.**

1930 Cr. C. 763=1930 M. W. N. 413=  
125 I. C. 557=31 Cr. L. J. 859=1930 Cr. C. 763=  
A. I. R. 1930 Mad. 705.

**—S. 199—Contents of complaint.**

**—Absence in complaint oral or written, that the accused's purpose was to have illicit intercourse with her daughter or the statement as to puberty is fatal to conviction under S. 498, Penal Code.** (*Spencer, J.*) **ARUNACHALAM CHETTY, In re.**

74 I. C. 949=  
33 M. L. T. 268=1923 M. W. N. 876=  
24 Cr. L. J. 837=A. I. R. 1924 Mad. 323=  
45 M. L. J. 543.

**CR. P. CODE (1898), S. 200—Applicability.****—S. 199—Interpretation.**

**—"Some person who had care."**

The words of S. 199 do not imply that there should be any express delegation of trust by the husband to the person having care of the woman before the latter could be competent to file a valid complaint. It is sufficient if he had the care of the woman on the husband's behalf during the latter's absence. (*Kennedy, J. C. and Raymond, A. J. C.*) **SAHIBRAI v. EMPEROR.**

27 Cr. L. J. 414=93 I. C. 78=  
A. I. R. 1926 Sind 159.

**—S. 199—Leave of the Court.**

**—When to be granted.**

Where it was found that the Magistrate had in his mind that he must be satisfied that the nephew of the woman's husband was the proper person to file a complaint in the absence of the husband, and he interrogated him on his point and satisfied himself that in the absence of the husband the nephew was competent to file criminal proceedings, *Held*, that leave was granted to the nephew under the section. (*Kennedy, J. C. and Raymond, A. J. C.*) **SAHIBRAI v. EMPEROR.**

93 I. C. 78=27 Cr. L. J. 414=  
A. I. R. 1926 Sind 159.

**—Form.**

The section does not require for a valid complaint that the leave of the Court must expressly be given to the complainant. (*Kennedy, J. C. and Raymond, A. J. C.*) **SAHIBRAI v. EMPEROR.**

93 I. C. 78=  
27 Cr. L. J. 414=A. I. R. 1926 Sind 159.

**—Ch. 16 (Ss. 200 to 203)—Scope of—Procedure.**

**—The procedure which a Magistrate is required to adopt on a complaint being lodged before him is laid down by Ss. 200 to 203. S. 200 of the Code makes it incumbent on a Magistrate to examine the complainant forthwith at sufficient length to satisfy himself as to his veracity and as to any points on which the complaint is silent. If the result of such examination is that he finds no *prima facie* reason to distrust the complaint, and he is satisfied that the facts alleged before him constitute a criminal offence, it is incumbent on him to issue process forthwith. If, on the other hand, he distrusts the complaint altogether or comes to the conclusion that no offence is made out, it is equally his duty to dismiss the complaint. It is only in a case, where he distrusts the complainant, but his distrust is not sufficiently strong to warrant him to act upon it, that it is open to him to postpone the issue of process pending further inquiry as contemplated by S. 202.** 14 Cal. 141, Rel on. (*Rupchand Bilaram, A. J. C.*) **M. H. CROWDER v. L. A. MORRISON.**

94 I. C. 903=21 S. L. R. 293=27 Cr. L. J. 711=  
A. I. R. 1926 Sind 194.

**—S. 200—Applicability.**

**—Under the Calcutta Municipal Act any municipal officer is a public servant and apart altogether from any express provisions, a complaint for demolition of structure made by a buildings-surveyor of the Corporation is a complaint by a public servant in the discharge of his official duty and he need not be examined as to the complaint when lodging it.** (*Rankin, C. J. and Patterson, J.*) **RAM GOPAL GOENKA v. CORPORATION OF CALCUTTA.**

1930 Cr. C. 222=50 C. L. J. 527=  
124 I. C. 488=31 Cr. L. J. 670=A. I. R. 1930 Cal. 222.  
**—Provisions of S. 533, Calcutta Municipal Act, must be taken to be subject to the provisions of S. 200 (b), Cr. P. Code, and a Municipal Magistrate is bound to examine the complainant before recording conviction of a person under S. 291 (2), Calcutta Municipal Act.** (*C. C. Ghose and Gregory, J.J.*) **AMBICA PRASAD DAS v. CORPORATION OF CALCUTTA.**

## CR. P. CODE (1898), S. 200—Complaint by Police.

114 I. C. 82 = 48 C. L. J. 190 = 32 C. W. N. 1091 =  
30 Cr. L. J. 231 = 12 A. I. Cr. R. 204 =  
A. I. R. 1928 Cal. 483.

## —S. 200—Complaint by police.

—*Examination—Necessity.*

A complaint was lodged with the police with regard to an alleged offence under S. 379, I. P. C. An investigation was made and the police reported that the charge against the accused appeared to be false and that the complaint was under S. 379 on the ground that the complainant had some sort of grudge against the accused. On receipt of this report the Magistrate made an endorsement thereon, "False under S. 379. Action should be taken, under S. 211, I. P. C." As a result a complaint was ultimately lodged by the police with the Magistrate.

*Held*, that in lodging the complaint the police were purporting to act as police officers in the course of their duty even assuming that the duty which police officer in this case had taken upon himself to perform was not a duty which he was bound to perform within S. 200 (a-a); 1 P. L. T. 446, Dist. (*Wort, J.*) LALBIHARI SINGH v. EMPEROR. 120 I. C. 297 = 10 P. L. T. 601 = 1929 Cr. C. 274 = 31 Cr. L. J. 55 = A. I. R. 1929 Pat. 514.

—*Section 190.*

By virtue of S. 190 (1) (b) and S. 200 (a-a) Magistrates mentioned in S. 190 are entitled to take cognizance of even non-cognizable offences upon a report made in writing by a Police Officer without examining the officer upon oath. A. I. R. 1926 Mad. 865 (F. B.) Foll. (*Dalal, J.*) PRAG DUTT TIWARI v. EMPEROR. 111 I. C. 858 = 29 Cr. L. J. 938 = 10 L. R. A. Cr. 19 = 1929 A. L. J. 68 = 51 All. 382 = 11 A. I. Cr. R. 152 = A. I. R. 1928 All. 765.

—The report of police officer mentioned in S. 190 (1) (b) is not confined to a report of a cognizable offence. It includes even the police report in a non-cognizable case. His examination on oath is not necessary. A. I. R. 1925 Mad. 672, Overruled. (*Coutts-Trotter, C. J., Spencer and Krishnan, J.J.*) PUBLIC PROSECUTOR v. RATNAVELU CHETTY. 96 I. C. 983 = 49 Mad. 525 = 27 Cr. L. J. 1031 = 1927 M. W. N. 43 = 25 M. L. W. 248 = 38 M. L. T. 177 = A. I. R. 1926 Mad. 865 = 52 M. L. J. 210 (F. B.).

—S. 200—Cross complaints.  
—*No rule as to which should proceed first.*

The question as to which of the counter cases should proceed first or whether both of them should proceed simultaneously and contemporaneously is one which has to be decided according to circumstances in particular case. No absolute rule of law can be laid down that a particular course must be adopted. A. I. R. 1925 Cal. 1260, Ref.

There was a collision between the parties which resulted in the petitioners filing a complaint before the Magistrate against the opposite party under Ss. 147, 447 352, etc., Penal Code, and the opposite party making a similar complaint against the petitioner for similar offences. After recording the petitioner's complaint the trying Magistrate looked into the counter-case in which the information was first lodged with the police and as he found that there were injuries on some persons of the opposite party he directed that the case of the opposite party should proceed and deferred passing any order on the petitioner's complaint.

*Held*, that the Magistrate's discretion in the case should not be interfered with. (*Suhrawardy and Graham, J.J.*) RAM GOLAM SINGH v. SARAT

## CR. P. CODE (1898), S. 200—Powers of District Magistrate.

CHANDRA. 121 I. C. 414 = 49 C. L. J. 388 =  
31 Cr. L. J. 262 = A. I. R. 1929 Cal. 281.

## —S. 200—Failure to examine.

—*No prejudice—Irregularity.*

Non-examination of complainant before issuing summons against the accused is an irregularity which does not vitiate trial in the absence of any prejudice to the accused. (*Mukerji and Graham, J.J.*) ANIL KRISTA DAS v. BADAM SANKER. 116 I. C. 722 = 30 Cr. L. J. 706 = A. I. R. 1929 Cal. 175.

—*Not an illegality.*

The use of the "shall" in S. 200 does not render an omission to examine a complainant an illegality as distinguished from a mere irregularity. (30 Cal. 923 and 2 P. R. 1912, Appr.) (*Lumsden, J.*) MEHR CHIRAGH DIN v. THE CROWN. 76 I. C. 189 = 4 Lah. 359 = 25 Cr. L. J. 125 = A. I. R. 1924 Lah. 258.

—Omission to examine a complainant under S. 200 is a mere irregularity and not an illegality. The only person prejudiced by such an omission is the complainant and not the accused. (*Odgers and Wallace, J.J.*) AMBAYARA GOUNDAN v. PACHAMUTHU GOUNDAN. 81 I. C. 218 = 19 M. L. W. 461 = 25 Cr. L. J. 730 = A. I. R. 1924 Mad. 587.

—Section 537—Curable.  
Failure to examine the complainant is an error of procedure and where it has caused no injury to applicant and no failure of justice, under S. 537 it is curable. (*Pratt, J.*) GOPI CHAND v. THE CROWN. 76 I. C. 865 = 1 Rang. 517 = 25 Cr. L. J. 273 = A. I. R. 1924 Rang. 87.

—S. 200—Inquiry before examination.  
—*Illegality.*  
Direction for an enquiry before the complainant has been examined on oath is illegal. The law very properly enjoins that the Court having jurisdiction must examine the complainant so as to think out for itself whether the complaint is true or false. Such a decision cannot be left by the Court to some other Court or police authority. (*Dalal, J.*) REKHA CHAMAR v. EMPEROR. 83 I. C. 736 = 5 L. R. A. Cr. 86 = 26 Cr. L. J. 176 = A. I. R. 1924 All. 664.

—S. 200—Municipal servant.  
—*Complaint by—Procedure.*

Where the person who made the complaint was a conservancy overseer and purported to act in the discharge of his official duties under the Calcutta Municipal Act *Held*, that he is a public servant within the meaning of S. 21, I. P. C. and that it was not necessary to examine him before issuing process. (*Cuming, J.*) NANDI v. THE CORPORATION OF CALCUTTA. 34 C. W. N. 449 = 1930 Cr. C. 1057 = A. I. R. 1930 Cal. 665.

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—S. 200—Municipal servant.  
—*Complaint by—Procedure.*

As a Municipal Committee is empowered to delegate its authority of making complaint under S. 218(2), when such authority is delegated to a public servant by virtue of his office and not by name, he acts in his capacity as a public servant when making a complaint within the meaning of S. 200, proviso (a-a), Cr. P. Code and his personal attendance for examination is not necessary. (*Staples, A. J. C.*) NANHE v. MUNICIPAL COMMITTEE, JUBBULPORE. 122 I. C. 258 = 1930 Cr. C. 89 = 25 N. L. R. 194 = 12 N. L. J. 127 = 31 Cr. L. J. 382 = A. I. R. 1930 Nag. 33.

—S. 200—Powers of District Magistrate.

—The complaint was originally before a Deputy Magistrate. The Deputy Magistrate sent the case to the District Magistrate with a view to the District

**CR. P. CODE (1898), S. 200—Powers of District Magistrate.**

Magistrate transferring it to another court. Instead of transferring it to another court the District Magistrate after examining the record came to the conclusion that the complaint was wholly without foundation and dismissed it. *Held*, the order passed by him was not passed without jurisdiction. (*Daniels, J.*) GOVIND PRASAD *v.* RAM DAS. 81 I.C. 43=5 L.R.A. Cr. 70=25 Cr. L. J. 555=A. I. R. 1924 All. 666.

**—S. 200—Principle to be applied—S. 360.**

The principle underlying S. 360, cl. (1) should be made applicable on grounds of public policy to the substance of the examination of the complainant on oath, if the accuracy of the record of such examination is to be vouchsafed, particularly when it is to be utilized as a basis for a possible perjury in future; for it would be unsafe to use against a complainant what on the face of it purports to be only a substance and not the full version of his examination without some such sufficient and adequate safeguards as to its completeness and accuracy. (*Kinkhede, A. J. C.*) BHAGIRATHIBAI *v.* EMPEROR. 89 I. C. 713=26 Cr. L. J. 1401=A. I. R. 1926 Nag. 141.

**—S. 200—Principle underlying.**

—Ss. 200 and 203 merely lay down the elementary principle that before you decide against litigant you shall first hear him. If, on the other hand, the Magistrate merely reads a complaint then proceeds to dismiss it without hearing what the complainant may have to say, then that may be said to be in general a denial of elementary justice. (*Marten, and Coyajee, J.J.*) PAMPA BALLALROO DESAI, *In re*.

95 I. C. 68=28 Bom. L. R. 490=27 Cr. L. J. 740=A. I. R. 1926 Bom 284.

**—S. 200—Procedure.****—Courses open.**

Under the law four courses are open to the Magistrate on receipt of a complaint. He may either order an enquiry under S. 202 or dismiss the complaint under S. 203 or issue process under S. 204 or postpone the commencement of the proceeding under S. 344. (*Suhravardy and Graham, J.J.*) RAM GOLAM SINGH *v.* SARAT CHANDRA. 121 I. C. 414=31 Cr. L. J. 262=49 C. L. J. 388=A. I. R. 1929 Cal. 281.

—When a Magistrate takes cognizance of a complaint under S. 190 (1) (a) and examines the complainant under S. 200 and orders a police inquiry under S. 202, it is for him to pass the necessary order on the police report either under S. 203 or S. 204. His order directing the police to submit charge-sheet to some other Magistrate is without jurisdiction. (*Page and Graham, J.J.*) BASANTA KUMAR *v.* KHIRODE CHANDRA. 54 Cal. 303=8 A. I. Cr. R. 238=28 Cr. L. J. 577=102 I. C. 545=A. I. R. 1928 Cal. 24.

**—S. 200—Un-verified complaint.**

—*Cannot be acted upon—Examination on oath necessary.*

As a written complaint is not verified nor is it required by law to be verified it cannot by itself be used as a basis for prosecution for perjury. But the examination of the complainant under S. 200 being taken on oath and signed by the complainant can be so used though it does not bear any certificate by the Magistrate that the same was read over to the complainant. The evident object of getting this substance of the examination of the complaint signed by him or her is to make use of it in case of need, as against the complainant's subsequent deposition as a witness for starting against him, if need be a prosecution for perjury on the ground that the two statements contradict each other. (*Kinkhede, A. J. C.*) BHAGIRATHIBAI

**CR. P. CODE (1898), S. 202—Examination of Complainant.**

*v.* EMPEROR.

26 Cr. L. J. 1401=89 I. C. 713=A. I. R. 1926 Nag. 141.

**—S. 200—Vague complaint.****—Examination at length.**

When a complaint is in writing and is sufficiently clear, it would be a sufficient compliance of S. 200 if the Magistrate read it over to the complainant and the complainant on oath is asked to subscribe it. It is only when the written complaint is obscure or vague that the Magistrate is bound to examine the complainant at sufficient length for the purpose of clearly ascertaining the allegation on which the complaint is made. (*Kinkad, J. C. and Aston, A. J. C.*) MAHOMED *v.* MAHOMED IDRIS. 88 I. C. 189=26 Cr. L. J. 1101=18 S. L. R. 274=A. I. R. 1925 Sind 328.

**—S. 201—Magistrate acting under two jurisdictions.**

—Inspector General of Police, Bhopal, with the sanction of the Governor General in Council lodged a complaint in the Court of a Magistrate having two jurisdictions, that of a Headquarters Magistrate and that of a Magistrate exercising jurisdiction over railway lands in Bhopal State. The complaint was against the editor printer and publisher of an Urdu Weekly "Riyasar" for publishing an article tending to excite disaffection towards the Chief of Bhopal State or his Government or Administration in Bhopal. The Magistrate was subordinate to different High Courts in two different jurisdictions. The complainant applied for amplification of his complaint by the inclusion of Itarsi as one of the places of publication of the above offending article. The Magistrate passed the following order. "The result of this petition for amplification will be that the case will henceforward cease to be a railway case for State-administered areas if it was one and be transferred to my ordinary file of criminal cases of this Court. This be done." After this order the accused objected that the Magistrate had no jurisdiction to hear the case as he had transferred a case from a Court subordinate to one High Court to another Court subordinate to the other High Court, which the Governor-General in Council could alone do by a notification in the *Gazette of India*. *Held*, that the trying Magistrate in his capacity as the Railway Magistrate for Bhopal was incompetent to deal with the complaint of an offence committed at Itarsi but in his capacity as Headquarters Magistrate was competent to do so.

*Held further*, that as the original papers filed by the complainant contained material clearly amounting to an allegation of publication at Itarsi, the Railway Magistrate for Bhopal was no longer bound to dismiss the complaint in its entirety, he was entitled to return the complaint for presentation to the Court that could try the offence committed at Itarsi and this was in effect what he did. (*Jackson, A. J. C.*) DIWAN SINGH *v.* EMPEROR. 1930 Cr. C. 1101=A. I. R. 1930 Nag. 291.

**—S. 202.****Examination of complainant:****Fresh complaint.****Inquiry when ordered****Notice to show cause.****Object and scope.****Procedure.****Revision.****Summons.****Transfer.****Miscellaneous.****S. 202—Examination of complainant.****—For issuing process.**

It is not correct that in every case where a complaint

**CR. P. CODE (1898), S. 202—Examination of Complainant.**

in writing has been lodged it is the duty of a Magistrate to treat that as complaint and to take cognizance invariably upon that and not upon any other source of information permitted by S. 190. Section 200 and S. 202 which impose upon the Magistrate the duty of examining the complainant on oath are only applicable where the Magistrate proposes to take proceedings upon the information supplied by the complainant. If he intends to issue process upon that basis then it is incumbent upon him to examine the complainant on oath, but not otherwise. 2 P. L. J. 657 : 41 I. C. 1002 Overruled, (*Courtney Terrell, C. J., Dhawle and James, J.J.*) BHARAT KISHORE v. JUDHISTIR. 10 P. L. T. 779 = 30 Cr. L. J. 1056 = 119 I. C. 413 = 1929 Cr. C. 341 = A. I. R. 1929 Pat. 473 (F.B.).

**—Omission—Not an illegality.**

Omission to examine a complainant on oath is not illegality but is merely an irregularity, in which case the Court has to see whether the accused by reason of the irregularity has been put to any substantial injustice. (*Courtney Terrell, C. J., Dhawle and James, J.J.*) BHARAT KISHORE v. JUDHISTIR. 10 P. L. T. 779 = 30 Cr. L. J. 1056 = 119 I. C. 413 = 1929 Cr. C. 341 = A. I. R. 1929 Pat. 473 (F.B.).

**—S. 202—Fresh complaint.****—Applicability—Procedure under.**

If an accused is discharged and a fresh complaint is made for the same offence the Magistrate in dealing with such complaint is bound to proceed in manner laid down in S. 200 *et seq* that is after examining the complaint, and if necessary after a preliminary enquiry or local investigation to decide whether there is sufficient ground for proceeding. In coming to this decision he is bound to examine a proper discretion, and a discretion improperly exercised would be a ground for interference by a Court of revision. 1 U. B.R. Cr.P. 19, Rel. on. (*Brown, J.*) DHANA REDDY v. EMPEROR. 8 Rang. 1 = 1930 Cr. C. 588 = 125 I. C. 341 = 31 Cr. L. J. 824 = A. I. R. 1930 Rang. 156.

**—Notice to accused.**

Where accused is discharged it is not necessary to give notice to him before a Magistrate takes cognizance of a fresh complaint of the same offence against him. (*Brown, J.*) DHANA REDDY v. EMPEROR. 8 Rang. 1 = 1930 Cr. C. 588 = 125 I. C. 341 = 31 Cr. L. J. 824 = A. I. R. 1930 Rang. 156.

**—S. 202—Inquiry when ordered.**

—Sending a case to police for investigation is not desirable where a member of the police themselves is accused. (*Fforde, J.*) JAGINDAR SINGH v. AGHA SABDAR ALI KHAN. 29 Cr. L. J. 958 = 111 I. C. 878 = A. I. R. 1928 Lah. 88.

—A Magistrate is entitled after taking cognizance of a complaint to order a police investigation and to take that investigation into consideration when considering under what sections the accused should be put on their trial. (*Ashworth, J.*) NAUBAT v. EMPEROR. 8 L. B. A. Cr. 11 = 28 Cr. L. J. 140 = 99 I. C. 548 = 7 A. I. Cr. B. 130 = A. I. R. 1927 All. 136.

**—To ascertain truth.**

A Magistrate is empowered to hold an enquiry into a complaint of an offence in order to ascertain whether there is sufficient foundation for it to issue process against the person or persons complained against under S. 202. (*Broadway, J.*) GULABKHAN v. GHULAM MD. KHAN. 8 L. L. J. 524 = 27 P. L. R. 779 = 99 I. C. 58 = 28 Cr. L. J. 26 = 7 A. I. Cr. B. 214 = A. I. R. 1927 Lah. 30.

**—Complaint.**

Complaint against Police-officer should be handled

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with the greatest care. In such cases the complainant should be given every facility to prove his allegations. (*Venkatasubba Rao, J.*) DEVASIKAMANI MUDALIAR v. NARAYANA PRASAD. 27 Cr. L. J. 107 = 91 I. C. 539 = A. I. R. 1926 Mad. 288.

**—S. 202—Notice to show cause.****—Not illegal.**

What is ordinarily contemplated by S. 202, Cr. P. Code, is merely a preliminary examination of the complainant and his witnesses, or such of them as a Magistrate deems fit to examine in the absence of the accused, but that section is not limited to an inquiry of that kind; and if the Magistrate deems it desirable for the purpose of his inquiry to give the accused an opportunity of appearing before him and stating what he has to say about the accusation by issuing a notice to him, and even accepts and considers documentary evidence which the accused produces, he is not thereby committing an illegality, 6 Bom. L. R. 91, Foll., A.I.R. 1927 Bom. 363, A.I.R. 1927 Mad. 19 (F.B.), and 40 Cal. 444, Ref. (*Fawcett and Mirza, J.J.*) VIRBHAN BHAGAJI, *In re*. 52 Bom. 448 = 30 Bom. L. R. 642 = 29 Cr. L. J. 975 = 11 A. I. Cr. B. 237 = 112 I. C. 63 = A. I. R. 1928 Bom. 290.

**—Examination after.**

A Magistrate acts beyond the scope of S. 202 in examining the accused before a *prima facie* case is made out. (*Fforde, J.*) JAGINDAR SINGH v. AGHA SAFDAR ALI KHAN. 29 Cr. L. J. 958 = 111 I. C. 878 = A. I. R. 1928 Lah. 88.

**—Unusual.**

It is a little incongruous to call on a person accused of an offence to show cause against process being issued against him when proceedings under S. 202, Cr. P. Code are in contemplation. (*Broadway, J.*) MOTI LAL v. EMPEROR. 9 L. L. J. 508 = 29 Cr. L. J. 39 = 106 I. C. 455 = 9 A. I. Cr. B. 328 = 9 A. I. Cr. B. 399 = A. I. R. 1928 Lah. 97.

**—Practice unfair.**

The procedure that when a complaint is put in and sworn to, the Magistrate, without hearing the complainant's case or his witnesses, should issue notice to the accused to appear and show cause against the issue of process, hear what the accused has to say, examine any witness he wishes to have examined and then decide whether the complaint shall be received or not, though not prohibited by the letter of S. 202, is clearly contrary to the spirit of that section and to the general principles of the Code. It is a procedure most unfair to the accused. He is in effect compelled not only to state, but to substantiate his defence, before the prosecution has substantiated any case against him, and this is the exact opposite of the principle underlying the prescribed procedure. 37 Mad. 181, Foll. Also, the procedure is no less unfair to the prosecution. (*Wallace, J.*) VARADARAJULU NAIDU v. KUPPUSWAMI NAIDU. 99 I. C. 321 = 49 Mad. 926 = 28 Cr. L. J. 113 = 7 A. I. Cr. B. 273 = A. I. R. 1927 Mad. 18 = 51 M. L. J. 602.

99 I. C. 321 = 49 Mad. 926 = 28 Cr. L. J. 113 = 7 A. I. Cr. B. 273 = A. I. R. 1927 Mad. 18 = 51 M. L. J. 602.

**—Procedure is condemnable.**

The procedure of calling upon an accused person to render an explanation to enable the Magistrate to decide if he should issue process is condemnable. It is not fair to the accused that he should be called upon to state his defence before the prosecution have laid all their cards on the table. Though there is no obligation on him either to appear or to render an explanation in the preliminary inquiry a refusal or failure on his part to attend in answer to a rule nisi issued by a Magistrate is likely to prejudice the mind of the Magistrate and a compliance therewith to expose him to serious risks.

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21 C. W. N. 127 and A. I. R. 11923 Cal. 198, Rel. on. (*Rupchand Bilaram, A. J. C.*) M. H. CHOWDER v. L. A. MORRISON. 21 S. L. R. 293 = 27 Cr. L. J. 711 = 94 I. C. 903 = A. I. R. 1926 Sind 194.

**—S. 202—Object and scope.****—Explanation as to.**

An enquiry or an investigation under S. 202 is designed to afford the Magistrate an opportunity of either confirming or removing such hesitation as he may feel in respect of issuing process against the accused. The nature of the enquiry varies with the circumstances of each case and it is certainly not contemplated that it should always be exhaustive. Frequently all that is required is the elucidation of some minor point or the summary determination of the sufficiency of the available evidence, but least of all is the enquiry—a preliminary trial of the accused at which he is entitled to adduce his evidence before process can issue upon him. The degree of formality of the proceedings and the width and the depth of the enquiry is entirely in discretion of the Magistrate (so long at least as he confines himself to the simple question of issue of process or dismissal of the complaint). The provision is enabling and not obligatory. As soon as he has satisfied himself that process should issue its object is fulfilled and it is certainly not incumbent upon him or ordinarily expedient that he should practically enter upon a trial of the case. (*Macpherson, J.*) PARMANAND BRAHAMACHARI v. EMPEROR. 116 I. C. 46 =

10 P. L. T. 618 = 12 A. I. Cr. R. 427 = 1930 Cr. C. 6 = 30 Cr. L. J. 554 = A. I. R. 1930 Pat. 30.

—Sections 202 and 203, Cr. P. Code, are applicable only to complaints and a proceeding under S. 171 cannot be regarded a complaint within the meaning of cl. (k), sub-S. (1), S. 4 of the Code. (*Shadi Lal, C. J.*) HARI SINGH v. JAGTA. 111 I. C. 450 =

29 P. L. R. 666 = 29 Cr. L. J. 866 = 11 A. I. Cr. R. 183 = A. I. R. 1928 Lah. 694.

—It is perfectly open to a Magistrate who is asked to set in motion S. 107 to avail himself of the help which is available to him under S. 202, when complaint of an offence of which he is authorized to take cognizance is made to him. Apart from S. 202 it is competent to a Magistrate to refer the matter to the police, and the police are entitled to hold the investigation, and it is the duty of the complainant to assist in the investigation, and so any statement made by the complainant during the investigation is absolutely privileged. (*Coutts-Trotter, C. J. and Viswanatha Sastri, J.*) SANJIVI REDDI v. KONDAGERI KONDRI REDDI. 93 I. C. 8 = 49 Mad. 315 = 23 M. L. W. 327 = A. I. R. 1926 Mad. 521 = 50 M. L. J. 460.

—The enquiry contemplated by S. 202 by the Magistrate himself does not necessarily mean an enquiry by examining witnesses or by holding an investigation into the case. It is open to the Magistrate to investigate into the matter in order to ascertain the truth or falsity of the complaint in any way he thinks proper. The enquiry contemplated by S. 202 is not limited to any particular form of enquiry. The Magistrate is at perfect liberty to look into the police records and if he is satisfied that the complaint is groundless can dismiss the complaint. (*Kulwant Sahay, J.*) RAMAUD LAL v. ALI HASSAN. 83 I. C. 689 = 1924 P. H. C. C. 226 = 26 Cr. L. J. 129 = A. I. R. 1924 Pat. 797.

**—S. 202—Procedure.****—Courses open—Detention in custody—Not power.**

Where a Magistrate receives a complaint, he should either himself examine one or more complaints and

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take action under S. 202, or if he is taking action on his own knowledge he should transfer the proceedings completely to another Magistrate so that Magistrate may proceed to enquiry or trial after recording the statement of the complainant. It is also open to him to make report to police who can take action under S. 167. But so far as can be gathered from provisions of the Code, a Magistrate has not the powers of a police-officer to investigate and keep an accused person in custody for the purposes of such investigation; custody can only follow where definite charge has been made and complainant has been examined. (*Dalal, J.*) ANAND BEHARI LAL v. EMPEROR. 11 L. B. A. Cr. 33 = 52 A. 457 = 1930 Cr. C. 371 = 126 I. C. 256 = 31 Cr. L. J. 998 = 13 A. I. Cr. R. 213 = 1930 A. L. J. 635 = A. I. R. 1930 All 259.

**—Personal knowledge.**

There is nothing which prohibits a person to whom a complaint is sent for enquiry under S. 202 from importing his own personal knowledge into it or examining witnesses whom he knows to be able to throw light on the matter: A. I. R. 1927 Mad. 19, Ref. (*Wallace, J.*) NAGI REDDY v. EMPEROR. 120 I. C. 69 = 30 Cr. L. J. 1160 = 3 M. Cr. C. 18 = 1930 Cr. C. 495 = A. I. R. 1930 Mad. 443.

**—Police can only report.**

When a Magistrate has referred a complaint for investigation under S. 202, the police are not entitled after investigation to send up the accused for trial under a charge-sheet as if they had taken cognizance of the case under their ordinary powers of investigation. The only action they can take is to make a report to the Magistrate: A. I. R. 1928 Cal. 24, Foll.; 8 Bom. L. R. 589, Dist.; (1911) 2 M. W. N. 74, Appl. (*Mirza and Baker, J.J.*) NURMAHOMED RAJMAHOMED v. EMPEROR. 117 I. C. 329 = 53 Bom. 339 =

31 Bom. L. R. 84 = 30 Cr. L. J. 781 = A. I. R. 1929 Bom. 72.

**—Investigation by Magistrate and police.**

Where a Magistrate instead of either disposing of the case himself or referring it for investigation, partly investigated the matter himself and had it partly investigated by a police-officer and did not state in writing his reasons for referring the matter to the police-officer:

*Held*, that procedure adopted was not in accordance with the provisions of S. 202. (*Fford, J.*) JAGINDAR SINGH v. AGHA SAFFDAR ALI KHAN.

111 I. C. 878 = 29 Cr. L. J. 958 = A. I. R. 1928 Lah. 88.

**—Complaint not a first information.**

Having once taken cognizance on a complaint, the Magistrate cannot act otherwise than under Ss. 200 to 203, Cr. P. Code. He can direct the police to make an inquiry under S. 202, but he cannot direct the police to treat the complaint as first information. (*Jwala Prasad, J.*) ULFAT KHAN v. EMPEROR. 108 I. C. 333 = 29 Cr. L. J. 374 = 10 A. I. Cr. R. 31 =

A. I. R. 1928 Pat. 359.

—It is certainly not a correct procedure to defer the issue of process and order an enquiry without recording reasons. It is also as a rule undesirable that the enquiry should be prolonged by cross-examination and arguments *inter partes*, the reason being that if this is necessary it is obviously advisable to follow the procedure of a trial and for that purpose to issue process at once. At the same time if a Magistrate having the duty of making an enquiry under S. 202 can make his enquiry more complete and can inform himself of the facts more fully, by having the accused in Court, there is no reason either in common sense or

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in law why the accused should not be called to the enquiry. (*Foster, J.*) **RAM SARAN SINGH v. MAHAM-MAD JAN KHAN.** 89 I. C. 706 = 7 P. L. T. 36 = 26 Cr. L. J. 1394 = A. I. R. 1926 Pat. 34.

**Accused—No Right to be present.**

The accused has no right to be present while a Magistrate is holding an enquiry under S. 202. It may often be a matter of convenience both to allow the accused to be present and to allow any legal adviser to watch the proceedings. But the grant of such a concession is on the part of the Magistrate a mere act of grace and the accused has no innate right to it. Proceedings under S. 202 are not proceedings *inter partes* but they are instituted and conducted by the Magistrate in order that he may be able to satisfy himself whether there is or whether there is not any ground for issuing process, and it is not until process is issued that the matter becomes a case. It is, therefore, obviously irregular and most often extremely troublesome to allow legal advisers of persons against whom there is a complaint to cross-examine witnesses or to allow legal advisers of complainant to examine witnesses. (*Kincaid, J. C. and Kennedy, A. J. C.*) **ATMARAM UDHOWDAS v. TOPANDAS.** 93 I. C. 894 = 20 S. L. R. 43 = 27 Cr. L. J. 494 = A. I. R. 1926 Sind 188.

**Presence of accused irregular—Further enquiry—Powers.**

Holding an enquiry under S. 202, Cr. P. Code, while the accused were before the Magistrate by pleader, though they had not been summoned, and their arguments were heard is a procedure highly condemnable. The Sessions Judge cannot when ordering a further enquiry in respect of a complaint which has been dealt with by the Magistrate under S. 202, Cr. P. Code direct that the accused be summoned. The revising officer may direct that by way of further inquiry he shall cause an investigation to be made, or if one has been made which he considers insufficient or unsatisfactory or if he considers that the complainant has not been sufficiently examined, may order that the complainant be recalled and his examination continued. But a further inquiry cannot be ordered in any but one of these three cases. The inquiry is preliminary to the issue of process and the next step to take, if the inquiry as far as collection of materials is complete, is the issue of process. 15 Cal. 608, Foll. (*Greaves and Diwal, J. J.*) **BACHOO MIA v. ANWAR NABI.** 84 I. C. 449 = 26 Cr. L. J. 305 = 30 C. W. N. 312 = A. I. R. 1925 Cal. 576.

**Recording of evidence.**

Where the Magistrate, in an enquiry under S. 202 did not record the statements of witnesses but he had before him the final report of the police a detailed account of the statements of the witnesses before the police and the witnesses repeated the same statements before him.

*Held*, that it cannot be asserted that there has been an error of law since the Code makes no provision with regard to the manner in which the evidence in an inquiry under S. 202 should be recorded. The case would be different had the deposition of any witness deviated from the record of the previous statements. (*Macpherson, J.*) **TILAKDHARI SINGH v. MISRI SINGH.** 89 I. C. 386 = 3 Pat. L. R. Cr. 77 = 26 Cr. L. J. 1346 = A. I. R. 1925 Pat. 584.

**S. 202—Revision.****Inadequate enquiry.**

The High Court will not ordinarily interfere with the details of an enquiry or investigation under S. 202 and particularly will not do so on the ground that it was inadequate. (*Macpherson, J.*) **PARMANAND BRAHMACHARI v. EMPEROR.** 116 I. C. 46 =

**CR. P. CODE (1898), S. 202—Summons.**

10 P. L. T. 618 = 12 A. I. Cr. R. 427 = 1930 Cr. C. 6 = 30 Cr. L. J. 554 = A. I. R. 1930 Pat. 30.

—The practice of issuing a notice to show cause is unusual but does not justify interference in revision unless there is reason to believe that it has occasioned a miscarriage of justice. 6 Bom. L. R. 91, Rel. on; A. I. R. 1923 Cal. 198 and A. I. R. 1928 Lah. 88, Dist. (*Broadway, J.*) **MOTILA v. EMPEROR.**

9 L. L. J. 508 = 29 Cr. L. J. 39 = 106 I. C. 455 = 9 A. I. Cr. R. 328 = 9 A. I. Cr. R. 399 = A. I. R. 1928 Lah. 97.

**On refusal of Process—Notice unnecessary.**

There is nothing in the Code to make it necessary for a superior Court to give any notice to any person against whom a Magistrate has refused to issue process under S. 202, when proceedings are being taken to revise that order. Although one Magistrate may refuse to issue process another Magistrate may do so and process may thus be issued without the necessity of upsetting the order of the first Magistrate. The view that once any Magistrate has refused to issue process that gives such criminal immunity from all processes for ever, would be perverse. (*Kennedy, J. C. and Tyabji, A. J. C.*) **L. A. MARRISON v. H. M. CROWDER.** 27 Cr. L. J. 302 = 92 I. C. 590 = A. I. R. 1926 Sind 198.

**S. 202—Summons.****Complaint by public servant.**

Where a public servant acting in discharge of his duties makes a complaint to the Magistrate under S. 211, Penal Code, it is open to the Magistrate to issue summons without any notice to accused if on reading the complaint he found sufficient ground for proceeding or to proceed under S. 202 for the purpose of ascertaining the truth or falsity of the complaint. (*Macpherson, J.*) **PARMANAND BRAHMACHARI v. EMPEROR.** 116 I. C. 46 = 10 P. L. T. 618 = 12 A. I. Cr. R. 427 = 1930 Cr. C. 6 = 30 Cr. L. J. 554 = A. I. R. 1930 Pat. 30.

**No reasons—irregularity.**

Per *Graham, J.*—Section 202 requires that reasons should be given when the issue of process is postponed. But the failure to do so would at most be an irregularity and would not justify the setting aside of an order for issue of search warrant. (*Mukerji and Graham, J. J.*) **AJOY KRISHNA v. S. G. BOSE.** 49 C. L. J. 164 = 33 C. W. N. 369 = 116 I. C. 721 = 30 Cr. L. J. 705 = A. I. R. 1929 Cal. 176.

—Magistrate who receives a complaint may at his option either issue process at once, or he may make a preliminary enquiry under S. 202 and thereafter issue process. (*Courtney Terrell, C. J., and Dhaule, J.*) **HEMA SINGH v. EMPEROR.** 9 Pat. 155 = 1929 Cr. C. 372 = 126 I. C. 146 = 31 Cr. L. J. 961 = A. I. R. 1929 Pat. 644.

**Inquiry after process.**

If a Magistrate asks the police to make an enquiry under S. 156(3) after he has issued process to the accused, his order is without jurisdiction and the police enquiry started under such an order is illegal. (1911) 2 M. W. N. 74, Foll.

But the mere fact that the Magistrate orders issue of process to complainant, accused and prosecution witnesses, does not take away from him the power to direct the police to enquire into the case. (*Devadoss, J.*) **VIJAYARAGHAVACHARIAR v. EMPEROR.** 114 I. C. 365 = 30 Cr. L. J. 328 = 1 M. Cr. C. 341 = A. I. R. 1928 Mad. 1268.

**At the stage marked by S. 202, not proper.**

Although allowing a proposed accused person to



**CR. P. CODE (1898), S. 202—Summons.**

appear and to hear what he has to say while the proceedings are at the stage contemplated by S. 202, might turn the scale and satisfy the Magistrate that there was no case for issuing process under S. 204 yet such a procedure is entirely unwarranted by the Code and the practice of summoning accused person at the stage marked by S. 202, has much greater dangers than safeguards to the accused. (*Coutts Trotter, C.J. Devadoss and Wallace, J.J.*) APPARAO MUDALIAR v. JANAKI AMMAL.

99 I. C. 337 = 49 Mad. 918 =  
24 M. L. W. 613 = 28 Cr. L. J. 129 =  
A. I. R. 1927 Mad. 19 (F.B.).

**—Prior to report.**

Where a Magistrate distrusting the truth of a complaint, directed an investigation under S. 202, but instead of waiting for the report issued summons against the petitioner under S. 323, I. P. C. as he thought that the case could no longer be kept pending.

*Held*, that the order was not regular and should be set aside, as the action of the Magistrate was not the result of a proper exercise of judicial discretion on his part. (*Suhrawardy and Mukerji, J.J.*) KRISHNA BALA DAS v. NIRODA BALA DAS.

41 C. L. J. 170 = A. I. R. 1925 Cal. 989.

**—S. 202—Transfer.****—On receipt of report.**

Where on a reference under S. 202, Cr. P. Code, the Police sent a charge-sheet to the Referring Sub-Magistrate who accepted it and sent it up under S. 346, to the Sub-Divisional Magistrate as in his opinion the case was a first class one,

*Held*, that the Sub-Magistrate had jurisdiction to do so. (*Wallace, J.*) BALKRISHNA REDDIAR v. EMPEROR.

100 I. C. 992 = 28 Cr. L. J. 384 =

7 A. I. Cr. R. 545 = A. I. R. 1927 Mad. 591.

**—Being dealt with for under S. 203.**

The provisions of S. 192 or S. 202, do not entitle a Magistrate after he has proceeded under the latter section to make an order under the provisions of the former section transferring the case for the purpose of being dealt with under S. 203 or S. 204 without a fresh investigation as contemplated by S. 203, Cr. P. Code. (*Suhrawardy and Mukerjee, J.J.*) MAHABIR SINGH v. GIRIBALA DASSI.

87 I. C. 526 =

29 C. W. N. 508 = 26 Cr. L. J. 990 =

A. I. R. 1925 Cal. 742.

**—S. 202—Miscellaneous.****—Opportunity to complainant.**

It is open to a Magistrate to hold a preliminary enquiry under S. 202, Cr. P. Code, but in holding such enquiry if evidence, which is opposed to the complainant's allegations, is brought before him, he should give opportunity to the complainant to explain or to meet such evidence. (*Devadoss, J.*) MACCARTHY v. LORD SHANNEN.

106 I. C. 464 =

29 Cr. L. J. 48 = 9 A. I. Cr. R. 297 =

1 M. Cr. C. 55 = A. I. R. 1928 Mad. 135.

**—Beginning of enquiry.**

Where a Magistrate directs under S. 202 an inquiry by another Magistrate or Police Officer or other person, he is doing so in the course of his own inquiry into the offence and his inquiry therefore has already begun within the meaning of S. 346 of the Code. (*Wallace, J.*) BALKRISHNA REDDIAR v. EMPEROR.

100 I. C. 992 = 28 Cr. L. J. 384 =

7 A. I. Cr. R. 545 = A. I. R. 1927 Mad. 591.

**—Defence need not be disclosed.**

There is no duty cast upon an accused person to disclose his defence in the course of a preliminary enquiry, and no inference can be drawn against the accused for non-disclosure of his defence at that stage. (*Sen, J.*)

**CR. P. CODE (1898), S. 203—Fresh complaint.**

KUMAR PRASAD v. KING-EMPEROR.

102 I. C. 899 = 28 Cr. L. J. 611 =

8 P. L. T. 656 = 8 A. I. Cr. R. 297 =

A. I. R. 1927 Pat. 292

**—S. 203—Applicability.****—Dismissal by Village Magistrate.**

A dismissal of a complaint by a Village Magistrate for default of appearance does not amount to a dismissal of a complaint under S. 203 of the Cr. P. Code, as S. 203 has no application to proceedings before him. (*Waller, J.*) RAMA NAIDU v. VENKATASWAMI NAIDU.

101 I. C. 891 = 28 Cr. L. J. 507 =

8 A. I. Cr. R. 178 = A. I. R. 1927 Mad. 695 =

53 M. L. J. 102.

**—S. 203—Complaint against Police.****—Safeguards.**

When a complaint is made against a Police Officer it should be enquired into with care and every opportunity given to the complainant to prove his complaint. If the complaint is false the Magistrate has considerable power of granting compensation by inflicting a fine on the complainant and of prosecuting him for perjury. (*Dalal, A. J. C.*) BALDA PASI v. M. NASIR ALI KHAN.

74 I. C. 718 = 24 Cr. L. J. 814 =

A. I. R. 1924 Oudh 174.

**—S. 203—Defamation.****—Dismissal without any evidence.**

Dismissal of a complaint for defamation by a Magistrate under S. 203 without taking any evidence on the ground that Exception 8 to S. 499, Indian Penal Code, applied to the case is not justified. (*Fawcett and Patkar, J.J.*) DHONDU BAPU v. EMPEROR.

102 I. C. 511 = 29 Bom. L. R. 713 =

28 Cr. L. J. 575 = 8 A. I. Cr. R. 228 =

A. I. R. 1927 Bom. 436.

**—S. 203—Dismissal.****—Nature.**

An order of discharge passed on withdrawal of the case by the Public Prosecutor does not amount to an acquittal. There is no difference in law in the case of a person discharged by a Magistrate on a consideration of the evidence tendered against him and of a person discharged at the instance of the Public Prosecutor under S. 494. (*Jai Lal, J.*) HATA v. EMPEROR.

114 I. C. 50 = 30 P. L. R. 58 = 30 Cr. L. J. 233 =

12 A. I. Cr. R. 113 = A. I. R. 1929 Lah. 315.

**—S. 203—Dismissal of complaints.****—Effect.**

The effect of an order dismissing a complaint under S. 203 is to restore the case to the stage under S. 202 and the further inquiry directed should be taken up from that point. 4 P. L. J. 456 and 5 P. L. J. 47, Ref. to. (*Jwala Prasad, J.*) RADHA PRASAD BHAGAT v. EMPEROR.

104 I. C. 633 = 28 Cr. L. J. 857 =

9 P. L. T. 12 = 9 A. I. Cr. R. 61 =

A. I. R. 1928 Pat. 12.

**—S. 203—False complaint.****—Prosecution for—Disposal necessary.**

Where a complaint is found to be false, it is improper, if not illegal, to prosecute the complainant before the complaint, in respect of which he was to be prosecuted, was finally disposed of under S. 203, or otherwise. (*Macpherson, J.*) GOKHI MIAN v. MAHMAD DAFADAR.

115 I. C. 882 = 10 P. L. T. 77 =

30 Cr. L. J. 545 = 12 A. I. Cr. R. 363 =

A. I. R. 1929 Pat. 92.

**—S. 203—Fresh complaint.****—When and before whom.**

Though no doubt, there is no absolute bar to an accused person being put in peril of a fresh trial in respect of the same offence in a case where the first

**CR. P. CODE (1898), S. 203—Fresh complaint.**

trial has ended in an order of discharge, it is a well-recognised and salutary rule of law that a Magistrate of co-ordinate jurisdiction should not entertain a fresh complaint in respect of the same offence when it is based on facts which are known to the complainant and on evidence which was available when the trial was held. (*Percival, J. C. and Rupchand Bilaram, A. J. C.*) **PARSRAM BHAGWANDAS v. EMPEROR.**

115 I. C. 309=30 Cr. L. J. 444.

**—If and when.**

A second complaint for an alleged offence is entertainable by a Magistrate and is not absolutely necessary to get a previous order of dismissal under S. 203 set aside by a superior Court before lodging such complaint. It is entertainable even when the previous order of dismissal is confirmed by superior Court in revision.

But although a previous dismissal under S. 203 may not be legally a bar to the institution of a fresh complaint it is only in exceptional circumstances that a second complaint can be entertained *e.g.*, where the previous order was passed on an incomplete record or where the previous order was manifestly absurd or foolish. 10 P. R. 1911 and 36 Cal. 415, Rel. on; 5 I. C. 991, not Foll. (*Bhide, J.*) **ALLAH DITTA v. KARAM BAKSH.** 1930 Cr. C. 923=127 I. C. 15= A. I. R. 1930 Lah. 879.

**—When and before whom.**

It is not open to a Magistrate to entertain a complaint when a similar complaint has been dismissed by another Magistrate of co-ordinate jurisdiction and the dismissal has not been set aside by higher authority. 23 Cal. 983; 22 All. 106; 29 All. 7; 36 All. 129; A. I. R. 1922 Sind 23 and A. I. R. 1928 Sind 49, Foll. (*Wild, J. C. and Milne, A. J. C.*) **MT. TIRATHBAI v. MT. SUGNI-BAL.**

112 I. C. 681=23 S. L. R. 43=29 Cr. L. J. 1097=11 A. I. Cr. R. 366= A. I. R. 1929 Sind 61.

**—If lies.**

Where a complaint is dismissed under S. 203 and the order dismissing the complaint is not set aside under S. 437, fresh complaint on the same facts is not barred. 22 All. 106, not Foll; 36 All. 129 and 36 All. 53, Foll. (*Daniels, J.*) **PURAN v. EMPEROR.**

92 I. C. 895=27 Cr. L. J. 383=7 L. R. A. Cr. 89=A. I. R. 1926 All. 298.

**—When and by whom.**

Where an accused person has been once discharged by a Magistrate under S. 203, the same case can be enquired into by other Magistrate again. But the complainant is bound to inform the Magistrate before whom he makes a fresh complaint that his previous complaint was dismissed. (*Macleod, C. J. and Crump, J.*) **MAHADEO LAXMAN SAFARDEKER, In re.** 87 I. C. 527=

26 Cr. L. J. 991=27 Bom. L. R. 352=A. I. R. 1925 Bom. 258.

**—When lies.**

On dismissal of complaint under S. 203 a new complaint on the same facts should not be entertained unless new facts, which could not, with reasonable diligence, have been brought forward in the previous proceedings, would be adduced or unless there was some manifest error or manifest miscarriage in the previous proceedings. (*Brown, J.*) **U. SHWE KYAW v. MA SEIN BROIN.** 84 I. C. 348=26 Cr. L. J. 284=3 Bur. L. J. 228=A. I. R. 1925 Rang. 114.

**—S. 203—Further inquiry.**

**—Summons to accused—Magistrate has jurisdiction to issue summons to accused.**

Apart from any order of the revisional Court for further enquiry a Magistrate has jurisdiction to issue summons against the accused person in spite of the fact that he has already dismissed the complaint under

**CR. P. CODE (1898), S. 203—Procedure.**

S. 203. 36 Cal. 415, Foll. (*Adami and Wort, J.J.*) **JANAKDHARI SINGH v. EMPEROR.** 120 I. C. 632=8 Pat. 537=10 P. L. T. 725=1929 Cr. C. 353=A. I. R. 1929 Pat. 469.

**—S. 203—Legality.**

**—Dismissal on previous police enquiry.**

Under the Cr. P. Code unless the Magistrate dismisses complaint at once after perusing the complaint itself and the examination of the complainant made on oath, he is bound either to issue process against the accused or else to hold an enquiry himself under S. 202 or direct an enquiry to be held under the section. When a Magistrate examines the complainant and then dismisses the complaint under S. 203 on the result of a previously made police enquiry, the order dismissing is incorrect as there is no provision in the Code for this being done. (*Baguley, J.*) **MAUNG KO v. MAUNG SET.** 1930 Cr. C. 656=126 I. C. 534=

31 Cr. L. J. 1064=A. I. R. 1930 Rang. 226.

**—Opportunity to substantiate.**

A complaint was filed under S. 500, Penal Code. The Magistrate *suo motu* dismissed the complaint.

*Held*, that the Magistrate was wrong in law in dismissing the petition of complaint without giving an opportunity to the complainant to substantiate the charge by adducing evidence. (*Chotzner and Gregory, J.J.*) **MAHIMCHANDRA v. A. H. WATSON.**

55 Cal. 1280=115 I. C. 35=30 Cr. L. J. 407=12 A. I. Cr. R. 271=A. I. R. 1929 Cal. 191.

**—A Magistrate sent a case for preliminary inquiry under S. 202 to a zaildar and on his report dismissed the application under S. 203.**

*Held*, that the Magistrate should not have dismissed the case upon the report of the zaildar. (*Shadi Lal, J.*) **MAUSA NEKI v. MT. MAM KAUR.**

9 L. L. J. 548=29 Cr. L. J. 267=107 I. C. 603=29 P. L. R. 271=

9 A. I. Cr. R. 453=A. I. R. 1928 Lah. 119.

**—The fact that besides the complainant other persons could complain against an accused is no ground for refusing to enquire into a complaint.** (*Banerji, J.*) **BEHARI LAL v. GANGADIN.** 97 I. C. 368=

27 Cr. L. J. 1104=A. I. R. 1927 All. 69.

**—Examination of complainants—Witnesses essential.**

A complaint cannot be dismissed without examining the witnesses of the complainant who are present in Court. A complainant should be given an opportunity of establishing the truth of his allegations by having the witnesses' evidence tested by the Magistrate. (*Sanderson, C. J. and Chotzner, J.*) **PUROSATTAM v. RAM DAS.** 85 I. C. 705=26 Cr. L. J. 561=

A. I. R. 1925 Cal. 1031.

**—S. 203—Powers of District Magistrate.**

**—Appreciation of evidence.**

Where there are serious discrepancies existing in the evidence of the important eyewitnesses for the prosecution it is perfectly within the trying Magistrate's competence to disbelieve these witnesses and hold that there was no *prima facie* case as against the accused and the District Magistrate has, therefore, no power under S. 436 to interfere with the order of discharge which is based on a careful appreciation of the evidence on record. 8 A. L. J. 45, Rel. (*Subhedar, A. J. C.*) **BAGESHWAR v. EMPEROR.** 122 I. C. 434=31 Cr. L. J. 417=

1930 Cr. C. 316=A. I. R. 1930 Nag. 108.

**—S. 203—Procedure.**

**—Reasons.**

Under S. 203, Cr. P. Code it is incumbent upon the Magistrate to record briefly his reason for dismissing the complaint. (*Kulwant Sahay, J.*) **HARNANDAN DAS**

## CR. P. CODE (1898), S. 203—Procedure.

*v. ATUL KUMAR PRASAD.* 90 I. C. 158 =  
7 P. L. T. 481 = 26 Cr. L. J. 1502 =  
A. I. R. 1926 Pat. 57.

—The Magistrate ought only to see whether the complainant has *prima facie* made out a true case. (*Adami, J.*) CHHEDI UPADHYA *v.* KING-EMPEROR.

72 I. C. 76 = 4 P. L. T. 703 = 1 Pat. L. R. Cr. 50 =  
24 Cr. L. J. 316 = A. I. R. 1924 Pat. 379.

## —S. 203—Revision.

—*Notice in.*

Magistrate dismissed the complaint under S. 203—In a revision against the order, the Sessions Judge, after notice to the accused and hearing them, ordered further enquiry.

*Held*, that the accused persons have no *locus standi* in enquiries under Chap. 16, and the Sessions Judge's action in issuing notice to the accused is improper, if not illegal. (*Wallace, J.*) RAMABHADRA ODAYAR *v.* EMPEROR. 1 M. Cr. C. 313 = 29 Cr. L. J. 1059 =  
112 I. C. 563 = 11 A. I. R. Cr. R. 379 =  
A. I. R. 1928 Mad. 1198.

## —S. 203—Scope of power.

—Section 203 is not dependent on the provisions for the postponement of the issue of process, contained in S. 202. The use of the word "any" clearly implies that an investigation or enquiry under S. 202 may or may not be made. (*Bucknill and Ross, J.J.*) DUKHIRAM RAUT *v.* JAMUNA KUER. 86 I. C. 985 =  
6 P. L. T. 727 = 26 Cr. L. J. 921 =  
A. I. R. 1925 Pat. 704.

## —S. 204—Arrest.

—*In the middle of trial.*

A Magistrate is not bound under the Code at any stage of the trial to stop the proceedings and to arrest any person against whom he thinks there exists a chance of getting a conviction and to start *de novo* the original trial. 16 N. L. R. 9 and 25 Mad. 61, P.C. Explained. (*Baguley, J.*) A. V. JOSEPH *v.* EMPEROR. 85 I. C. 236 = 26 Cr. L. J. 492 = 3 Bur. L. J. 265 =  
3 Rang. 11 = A. I. R. 1925 Rang. 122.

## —S. 204—Cost of process.

—*For witnesses.*

In the case of non-cognizable warrant cases, neither the complainant nor the accused can be compelled to pay process fees for the production of witnesses although the complainant must, under S. 204 in the ordinary course of events, pay process-fees for the summoning of the accused. (*Doyle, J.*) EMPEROR *v.* MG. SAN NYEIN. 4 Bur. L. J. 187 = 27 Cr. L. J. 415 =  
93 I. C. 79 = A. I. R. 1926 Rang. 13.

—*To secure accused's presence for judgment—Not proper.*

It is nowhere laid down in the Code that the complainant must file a process fee to enforce the attendance of the accused not on the date of trial nor on the date of arguments but on the date fixed for delivery of judgment.

Where on the date fixed for delivery of judgment in a summons case the complainant was present but the accused was absent and the Magistrate had ordered the complainant to file a process fee to secure the attendance of the accused, but the complainant did not file the process fee required, and the case was dismissed for default of prosecution and accused was acquitted.

*Held*, that the order on the complainant to pay process fees was without jurisdiction and must be set aside. (*Walsh, J.*) BHIMMI *v.* PERSHADI. 87 I. C. 419 =  
23 A. L. J. 304 = 26 Cr. L. J. 963 =  
6 L. R. A. Cr. 105 = A. I. R. 1925 All. 392.

## —S. 204—Discretion.

—*Competing complaints.*

## CR. P. CODE (1898), S. 204—Legality.

When there are competing complaints it is manifestly within the discretion of the Magistrate on a consideration of the circumstances of the particular case to determine in which he should issue process first and not less so when he has made an enquiry under S. 202 in one of them which necessarily involves also consideration of the other. (*Macpherson, J.*) PARMANAND BRAHMACHARI *v.* EMPEROR. 116 I. C. 46 = 30 Cr. L. J. 554 =  
10 P. L. T. 618 = 1930 Cr. C. 6 =  
12 A. I. Cr. R. 427 = A. I. R. 1930 Pat. 30.

—*Caution necessary.*

Except as otherwise provided by statute, anybody is entitled to prefer a complaint in a Criminal Court, and in India, where the Grand Jury system does not exist as an additional shield to innocent persons against whom unfounded complaints are laid in a Criminal Court, it is specially necessary that caution and discretion should be used in issuing summonses. An accused person ought not to be dragged off to answer a charge merely because a complaint has been lodged against him.

In determining whether process ought to issue, a Magistrate must proceed according to the provisions of the Code, and if, after carrying out the instructions therein contained, he is of opinion upon the materials before him that a *prima facie* case has been made out, he ought to issue process, and in such circumstances he is not entitled to refuse to issue process merely because he thinks that it is unlikely that the proceedings will result in a conviction.

In each case the Magistrate, in deciding whether process should issue, must exercise a judicial discretion having regard to the materials duly placed before him. (*Page and Mukerji, J.J.*) SUBAL CHANDRA *v.* AHADULLA SHEIKH. 95 I. C. 388 = 53 Cal. 606 =  
44 O. L. J. 114 = 27 Cr. L. J. 788 =  
30 C. W. N. 546 = A. I. R. 1926 Cal. 795.

—*Prima facie case.*

In determining whether a Magistrate should exercise his criminal jurisdiction, he should apply his mind to see if there is *prima facie* evidence for the alleged offender to answer irrespective of what the motive of the complainant is. *R. v. Adamson*, (1876) 1 Q. B. D. 201 and 13 Bom. 590, Rel. on. (*Rupchand Bilaram, A.J.C.*) M. H. CROWDER *v.* L. A. MORRISON. 94 I. C. 903 = 21 S. L. R. 293 = 27 Cr. L. J. 711 =  
A. I. R. 1926 Sind. 194.

## —S. 204—Legality.

—*Order for further enquiry—Process without additional evidence.*

Complaint was dismissed under S. 203. Order of dismissal was set aside and further enquiry was ordered by the Sessions Judge. The Magistrate issued notice to the accused under S. 204 without any evidence being added to the evidence which he had already rejected.

*Held*, that the action of the Magistrate may not be illegal but was very undesirable. The enquiry under Chap. 16, and that the notice issued under S. 204 ought to be cancelled. (*Wallace, J.*) RAMABHADRA ODAYAR *v.* EMPEROR. 112 I. C. 563 = 1 M. Cr. C. 513 =  
29 Cr. L. J. 1059 = 11 A. I. Cr. R. 379 =  
A. I. R. 1928 Mad. 1198.

—A complaint was dismissed by the Sub-Divisional Magistrate. The District Magistrate ordered further inquiry of the matter in dispute on appeal. The Sub-Divisional Magistrate summoned the accused without holding an inquiry under S. 203.

*Held*, that the order was premature. (*Jwala Prasad, J.*) SITARAM TEWARI *v.* MT. KAUSILIA.

109 I. C. 508 = 10 A. I. Cr. R. 326 =  
29 Cr. L. J. 572 (Pat.)

**CR. P. CODE (1898).****—S. 204—Piecemeal process.****—Not irregular.**

In a complaint case under S. 363, Penal Code, the Magistrate examined the complainant and issued a bailable warrant for one accused only who was the principal offender. On the date fixed for hearing, that warrant was found to have been returned with the report that the accused had disappeared with the girl. The Magistrate thereupon ordered warrants to issue for the other three accused.

*Held*, that there was nothing irregular or illegal for a Magistrate to issue process piecemeal for the various accused persons. (*Harrison, J.*) *ALAM v. EMPEROR*.  
107 I. C. 778 = 29 Cr. L. J. 293 =  
10 A. I. Cr. R. 10 = A. I. R. 1928 Lah. 541.

**—S. 204—Postponement.****—S. 344.**

S. 344 is applicable to cases even before the issue of process under S. 204 and the Magistrate is entitled under S. 344, if there be reasonable cause for doing so, to postpone any enquiry or trial and to postpone the issue of process under S. 204 even if the cause be a warrant case. (*Kulwant Sahay, J.*) *RAM SAPAN SINGH v. NIKHAD NARAIN SINGH*,  
88 I. C. 603 =  
6 P. L. T. 477 = 3 Pat. L. R. Cr. 134 =  
26 Cr. L. J. 1179 = A. I. R. 1925 Pat. 619.

**S. 204—Revision.****—Interference in.**

If the Magistrate having followed the procedure laid down in the Code, has exercised a judicial discretion as to whether he ought to issue process or not, High Court will respect his decision, and will be slow to disturb the order that he has passed. (*Page and Mukerji, J.J.*) *SUBAL CHANDRA v. AHADULLAH SHEIKH*.  
95 I. C. 388 = 53 Cal. 606 = 44 C. L. J. 114 =  
27 Cr. L. J. 788 = 30 C. W. N. 546 =  
A. I. R. 1926 Cal. 795.

**—S. 205—Applicability.**

Personal attendance accused can be exercised in all cases where a summons is issued in the first instance to him irrespective of the fact whether he appears in answer to the summons or has to be brought in by a warrant of arrest issued subsequently. A. I. R. 1924 Pat. 46, Dist. (*Munje, A. J. C.*) *MT. SAJI v. MT. BHINI*.  
121 I. C. 651 = 1930 Cr. C. 149 =  
26 N. L. R. 50 = 12 N. L. J. 180 =  
30 Cr. L. J. 284 = A. I. R. 1930 Nag. 61.

—S. 205, Cr. P. Code, applies only to cases in which the Magistrate has issued a summons in the first instance. It does not apply to a case where accused has been arrested without or after the issue of a warrant. (*Mullick and Bucknill, J.J.*) *ABDUL HAMID v. KING-EMPEROR*.  
75 I. C. 72 = 2 Pat. 793 =  
4 P. L. T. 648 = 1923 P. H. C. C. 239 =  
2 Pat. L. R. Cr. 1 = 24 Cr. L. J. 872 =  
A. I. R. 1924 Pat. 46.

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A. I. R. 1924 Pat. 46.

**—S. 205—Conviction in absence.**

—Where a co-accused is absent throughout the proceeding and a co-accused was allowed to represent him, the conviction of the absent accused should be set aside. Magistrate can dispense with absence of accused only where he is represented by a pleader. (*Baguley, J.*) *MA KIN v. EMPEROR*.  
86 I. C. 669 =  
3 Bur. L. J. 182 = 26 Cr. L. J. 845 =  
A. I. R. 1924 Rang. 383.

**—S. 205—Jurisdiction.****—Defect—Curability.**

Where the Magistrate allowed the accused to be present through pleader at his request,  
*Held*, the defect in jurisdiction would not have been cured even if there had been an express request on his

**CR. P. CODE (1898), S. 207—Concurrent jurisdiction.**

part; for jurisdiction could not be conferred by any consent and the defect is not curable under S. 537. (*Bucknill, J.*) *ABDUL HAMID v. KING-EMPEROR*.

75 I. C. 72 = 2 Pat. 793 = 4 P. L. T. 648 =  
1923 P. H. C. C. 239 = 2 Pat. L. R. Cr. 1 =  
24 Cr. L. J. 872 = A. I. R. 1924 Pat. 46.

**—S. 205—Pardanashin lady.**

—Where a Magistrate has refused to excuse the personal attendance of a pardanashin lady, High Court will interfere in a proper case. (*Kendall, J.*) *MT. TIRBENI v. MT. BHAGWATI*.  
99 I. C. 126 =  
8 L. R. A. Cr. 23 = 28 Cr. L. J. 94 =  
7 A. I. Cr. R. 160 = A. I. R. 1927 All. 149.

—There is nothing in the Code of Criminal Procedure to prevent the Sessions Judge from dispensing with the attendance of the accused in a Sessions Trial. 17 C. W. N. 1248; 14 Bom. L. R. 236; Referred to. (*Kunaraswami Sastri, J.*) *KANDAMANI DEVI v. EMPEROR*.  
66 I. C. 330 = 45 Mad. 359 =  
1922 M. W. N. 165 = 15 M. L. W. 560 =  
30 M. L. T. 346 = 23 Cr. L. J. 266 =  
A. I. R. 1922 Mad. 79 = 42 M. L. J. 337.

—S. 205—Procedure.  
—Record of reasons.

Where the Court dispenses with the personal attendance of the accused it should not leave such a point to mere implication, but should note upon the record that permission under S. 205 has been given. However, the mere omission to do so amounts to an irregularity. (*Fawcett and Madgavkar, J.J.*) *DORABSHAH v. EMPEROR*.  
93 I. C. 232 = 50 Bom. 250 =  
28 Bom. L. R. 102 = 27 Cr. L. J. 440 =  
A. I. R. 1926 Bom. 218.

—S. 205—Proceedings in absence.  
—Pleader to be engaged.

All that S. 205 provides is that, when the Magistrate sees fit, a person against whom a summons has issued may be exempted from personal appearance, provided he engages a pleader to attend and see that the proceedings are properly and legally conducted. (*Buckland, Sukrawardy and Cammide, J.J.*) *HARI NARAYAN CHANDRA v. EMPEROR*.  
106 I. C. 545 =  
46 C. L. J. 368 = 29 Cr. L. J. 49 =  
9 A. I. Cr. R. 228 = A. I. R. 1928 Cal. 27.

—Where a Court dispenses with the personal attendance of an accused under S. 205, the Court can act upon the plea given by his pleader in a case falling under Ss. 242 and 243. 6 S. L. R. 206, Appr.; *Rex v. Thompson*, (1909) 2 K. B. 614, Foll.; 6 Bom. L. R. 861, Dist. (*Fawcett and Madgavkar, J.J.*) *DORABSHAH v. EMPEROR*.  
93 I. C. 232 = 50 Bom. 250 =  
28 Bom. L. R. 102 = 27 Cr. L. J. 440 =  
A. I. R. 1926 Bom. 218.

—S. 205—Statements.  
—To be made by pleaders.

Where personal attendance of the accused has been excused under S. 205, there should be no objection to allowing them to leave it to their pleader to make statements under S. 342, if any, on their behalf and this personal attendance should not be insisted upon. (*Maung Ba, J.*) *MAUNG PO NYEIN v. HAKA SINGH*.  
4 Rang. 506 = 99 I. C. 1026 = 28 Cr. L. J. 226 =  
A. I. R. 1927 Rang. 73.

**—S. 207—Concurrent jurisdiction.****—Commitment—Reasons necessary.**

In committing cases not exclusively triable by the Court of Sessions, Magistrates should exercise a proper discretion and give adequate reasons for making commitment to the Court of Session. Reasons should be such as to show whether the commitment is made in the

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sound exercise of the discretionary power vested in the Magistrate by law, and if he does not give adequate reasons, the commitment may be quashed. 15 Bom. L. R. 998; 3 A. L. J. 74 and 8 S. L. R. 23, Ref. (*Shadi Lal, C. J.*) **EMPEROR v. KARAM SINGH.**

120 I. C. 677=31 Cr. L. J. 178=  
1930 Cr. C. 344=A. I. R. 1930 Lah. 312.

**—S. 207—Connected cases.**

A case triable by a Magistrate and not exclusively triable by a Court of Sessions should not be committed to the Court of Sessions merely to avoid a possible conflict of decision and proper course in such cases is to await the result of the Sessions trial. (*Shadi Lal, C. J.*) **EMPEROR v. KARAM SINGH.**

120 I. C. 677=31 Cr. L. J. 178=  
1930 Cr. C. 344=A. I. R. 1930 Lah. 312.

**—S. 208—Appeal.****—Reasons can be examined.**

The jurisdiction of High Court is not ousted under S. 208 on the Magistrate recording a reason for his refusal. The reason recorded by the Magistrate should be one which the High Court would regard as valid and acceptable. The Court, however, would not interfere in the matter unless the reason recorded by the Magistrate appears on the face of it to be illegal or untenable. A. I. R. 1927 Pat. 243, Diss. from; 36 Mad. 321 and 42 Cal 608, Ref. (*Mirza and Murphy, J.J.*) **EMPEROR v. YELLAPPA DURGAJI.**

119 I. C. 647=  
31 Bom. L. R. 523=30 Cr. L. J. 1066=  
A. I. R. 1929 Bom. 269.

**—S. 208—Complainant.**

S. 208 (1) enjoins that the complainant (if any) shall be heard. It is not the examination of the complainant that is necessary but only that he shall be heard. (*Mukerji and Graham, J.J.*) **SANTIRAM MANDAL v. EMPEROR.**

118 I. C. 572=  
30 Cr. L. J. 942=A. I. R. 1929 Cal. 229.

**—S. 208—Cross-examination.**

It is a clear right of the parties to cross-examine prosecution witnesses before the committing Court makes up its mind as to whether there is a case to be committed. In addition to that there is the right to call evidence for the defence. (*Rankin, C. J. and Patterson, J.*) **NANOORAM GOENKA v. FULCHAND JAYPURIA.**

57 Cal. 945=1930 Cr. C. 1154=A. I. R. 1930 Cal. 754.

**—Right of—Exercise—Limits.**

The provisions of chapters dealing with enquiry into cases triable by Court of Sessions and those relating to summons cases and warrant cases are not interchangeable and provisions appearing in a particular chapter relating to "trial" cannot safely be imported into that relating to "enquiry". The wording of Cl. 2, S. 208, does not lend support to the view that it assumes that the accused shall be at liberty to cross-examine the witnesses for the prosecution after all the witnesses have been examined in-chief. A Magistrate may be justified in allowing the accused even in a trial under Chap. 18, to reserve cross-examination for a future occasion in the special circumstances of a case and in the interests of justice. That will, however, not be under any express enactment but in the exercise of the inherent power of the Court in administering justice. But the Magistrate is justified in refusing a prayer for cross-examination of prosecution witnesses when the defence had declined to cross-examine them after the examination-in-chief of each was over. 36 Cal. 48, Diss. from; 39 Cal. 885, Diss. from; 5 C. W. N. 110, Expl.; A. I. R. 1927 Pat. 243, Appr.; 36 Mad. 321=A. I. R. 1924 Cal. 780; 16 C. L. J. 45, Ref. (*Suhrwardy and Graham, J.J.*) **G. V. RAMAN v. EMPEROR.**

33 C. W. N. 585=

**CR. P. CODE (1898), S. 208—Cross-examination.**

30 Cr. L. J. 1107=119 I. C. 808=57 Cal. 44=  
1929 Cr. C. 222=A. I. R. 1929 Cal. 593.

**—Should not be lengthy.**

Where in committal proceedings the trial was being unduly delayed by long cross-examination, the Magistrate was not justified in allowing long cross-examination of witnesses as he had only to find whether there was a *prima facie* case for committing to the Sessions or not. (*Percival, J. C. and Barlee, A. J. C.*) **EMPEROR v. WALIDINO.**

23 S. L. R. 340=117 I. C. 773=  
30 Cr. L. J. 845=1929 Cr. C. 337=  
A. I. R. 1929 Sind 137.

**—No time given to get copies to cross-examine—Violation of right.**

Where a Magistrate allowed accused to obtain copies of statements of prosecution witnesses under S. 162 but refused to adjourn the case for giving time to accused to obtain copies and then to allow cross-examination.

Held, that the refusal was a direct violation of the statutory provision contained in Cl. (2) of S. 208. (*Das and Scroope, J.J.*) **NABIN CHANDRA GANGULI v. MUNSHI MANDER.**

101 I. C. 707=  
8 P. L. T. 590=6 Pat. 606=  
A. I. R. 1927 Pat. 248.

**—Right to postpone.**

The ordinary rule as laid down in the Evidence Act is that the witnesses will be examined in chief, cross-examined and re-examined. There is no express provision for postponing the cross-examination of witnesses till all the prosecution witnesses are examined in chief. A special provision has been made under certain circumstances with respect to trials in warrant cases (Chap. 21) entitling the accused to postpone the cross-examination of witnesses till a certain stage. No such provision has been made with respect to an inquiry into the cases triable by a Court of Sessions in Chap. 18 of the Code. The Magistrate, however, has the discretion to allow the accused to postpone the cross-examination of witnesses in suitable circumstances. He cannot of course throw any obstacle in the exercise of the liberty by an accused to cross-examine the witnesses for the prosecution. (*Jwala Prasad and Macpherson, J.J.*) **SASDAT MIAN v. KING-EMPEROR.**

6 Pat. 329=  
103 I. C. 597=28 Cr. L. J. 709=  
8 A. I. Cr. R. 383=8 P. L. T. 780=  
A. I. R. 1927 Pat. 243.

**—Postponement for copies—Principle.**

It is advisable for the Magistrate holding an inquiry under Chap. 18 to indicate when directing under the proviso that a copy of a witness's statement to the police be furnished to the accused, whether the contradictions between that statement and the deposition of the witness are or are not so important as to render it expedient to postpone the cross-examination of the witness under S. 208 (2). If the defence is informed forthwith that the contradictions, if any, are not material, the mere grant of a copy of the statement of the witness to the police will not be any ground for failure on the part of the accused to avail himself forthwith of the liberty to cross-examine the witness then accorded to him. (*Jwala Prasad and Macpherson, J.J.*) **SASDAT MIAN v. KING-EMPEROR.**

6 Pat. 329=103 I. C. 597=  
28 Cr. L. J. 709=8 A. I. Cr. R. 383=  
8 P. L. T. 780=A. I. R. 1927 Pat. 243.

**—Request—Stage.**

Where the application by the accused to cross-examine the prosecution witnesses was made before the charge was framed and before the committing Magistrate had decided to commit the case to the Court of Sessions.

**CR. P. CODE (1898), S. 208—Cross-examination.**

*Held*, the Magistrate was bound to allow the accused to cross-examine the prosecution witnesses and that he had no discretion in the matter. (*Greaves and Panton, JJ.*) *JYOTSNA NATH SIKDAR v. EMPEROR.*

83 I. C. 591=15 Cal. 442=26 Cr. L. J. 63=  
A. I. R. 1924 Cal. 780.

**—S. 208—Evidence.**

*—In entirety not necessary.*

Per *Percival, J. C.*—In committal proceedings there is no obligation on the part of the prosecution to get recorded by the committing Magistrate every jot and tittle of the evidence which they intend to place before the Sessions Court. (*Percival, J. C. and Barlee, A. J. C.*) *NURKHAN v. EMPEROR.*

120 I. C. 520=  
1930 Cr. C. 282=24 S. L. R. 96=  
31 Cr. L. J. 117=A. I. R. 1930 Sind 99.

*—Removal from.*

It is mistake to remove from record the evidence recorded under S. 208 after it had been filed as an exhibit in the case without objection on behalf of the accused. (*Percival, J. C. and Barlee, A. J. C.*) *EMPEROR v. MAHRAB.*

120 I. C. 524=  
1930 Cr. C. 70=31 Cr. L. J. 121=  
A. I. R. 1930 Sind 54.

**—S. 208—Procedure.**

*—Non-compliance with—Trial not vitiated.*

Where after the charge was framed, the investigating police officer and the Sub Deputy Magistrate who recorded the dying declaration were examined, probably under S. 219, Cr. P. Code.

*Held*, the procedure though contrary to the provisions of S. 208 would not be a sufficient ground for setting aside conviction. It is not clear that the word complainant in this section applies to the person who laid the first information; such procedure, however, is not desirable. (*Newbould and B. B. Ghose, JJ.*) *KASEM MOLLA v. EMPEROR.*

90 I. C. 440=42 C. L. J. 114=  
26 Cr. L. J. 1560=A. I. R. 1926 Cal. 410.

**—S. 208—Refusal to examine.**

*—After summons—Powers.*

Where summons was issued to a witness but on the application of the complainant, the Magistrate declined to send for and examine him together with certain other witnesses, as they in his opinion appeared to have been included with a view to cause vexation to those witnesses themselves.

*Held*, that though he should not have acted on the representation of the complainant, he was perfectly justified; when the matter was brought to his notice that certain witnesses were cited only for the purpose of causing vexation and delay, in ordering that they should not be compelled to appear in his court. (*Devadoss, J.*) *SAMINATHA v. KUPPUSWAMI.*

1 M. Cr. C. 149=  
29 Cr. L. J. 725=110 I. C. 581=  
A. I. R. 1928 Mad. 652.

*—Defence witnesses—Illegality.*

The provision of S. 208, to take evidence on behalf of the accused is mandatory and cannot be disregarded. It is essential that the defence evidence, if tendered, is considered because the Magistrate has got the power to cancel the charge if he is satisfied that there are not sufficient grounds for committing the accused. The failure to comply with the requirements of this section is an illegality and is more than an irregularity. (*Maung-Ba, J.*) *EMPEROR v. NGA KHAING.*

6 Bang. 531=  
112 I. C. 769=11 A. I. Cr. R. 423=  
30 Cr. L. J. 1=A. I. R. 1928 Bang. 299.

*—It is obligatory on a committing Magistrate to record such evidence as the accused wants.* (*Kanhaiya Lal, J.*) *JASWANT SINGH v. EMPEROR.*

81 I. C. 112=46 All. 137=21 A. L. J. 911=

**CR. P. CODE (1898), S. 209—Commitment.**

5 L. R. A. Cr. 50=25 Cr. L. J. 624=  
A. I. R. 1924 All. 317.

**—S. 208—Refusal to summon.**

*—Reasons necessary—Reasons must be recorded.*

If a Magistrate refuses to summon witnesses for the prosecution under S. 208 (3), he is bound to record reasons. His order refusing to summon without record of reasons is liable to be set aside. (*Wallace, J.*)

*KANDA RAJA v. SANGAIYA THEVAN.*

98 I. C. 399=24 M. L. W. 713=38 M. L. T. 14=  
27 Cr. L. J. 1327=A. I. R. 1927 Mad. 162.

**—S. 208—Revision.**

*—Interference in.*

Under Cl. (1) of S. 208 of the Code it is imperative upon the Magistrate to examine any witness produced on behalf the accused, but where a Magistrate refused to issue process to defence witnesses and gave reasons for such refusal.

*Held*, that the High Court in revision is not at all concerned as to whether the reasons given by him would have appealed to another person or not. The High Court has only to see if the procedure adopted by the Magistrate has contravened any of the statutory provisions in the Code. (*Jwala Prasad and Macpherson, JJ.*) *SASDAT MIAN v. KING-EMPEROR.*

6 Pat. 329=  
103 I. C. 597=28 Cr. L. J. 709=  
8 A. I. Cr. R. 383=8 P. L. T. 780=  
A. I. R. 1927 Pat. 243.

**—S. 209—Commitment.**

*—When safe.*

A Magistrate not disbelieving the evidence for the prosecution, which tends to show that an offence under S. 302, Penal Code, has been committed, should better commit the accused to the Sessions, and leave the Sessions Judge to decide upon the value of the evidence led. (*Dalip Singh, J.*) *EMPEROR v. WAFADOR.*

114 I. C. 58=30 P. L. R. 36=30 Cr. L. J. 234=  
12 A. I. Cr. R. 116=A. I. R. 1929 Lah. 403.

*—Duty of Magistrates—Adequate evidence—Conflicting evidence—Alternative charge.*

*Obiter.*—If the evidence is *prima facie* adequate, the duty of the committing Magistrate is to commit and leave the ultimate judicial decision to the trial Court but if he has reason to think and is prepared to state, for judicial reasons, in the exercise of his discretion in the committal order that there is a possibility of an alternative view to that which is set out in the charge originally made, he can always commit the accused for trial on two or more alternative charges. Further where the evidence is conflicting and lays itself open to suspicion but where it may be true, and may commend itself to certain tribunals, the Magistrate, even though he may have reason to doubt whether if he were trying the case, he would convict, has no right to substitute his judgment for the final judgment of the Court indicated by law for the trial, and to arrive at a final decision dismissing the case. (*Walsh, A. C. J. and Banerji, J.*) *EMPEROR v. ALLA MAHR.*

49 All. 443=  
25 A. L. J. 191=8 L. R. A. Cr. 43=  
28 Cr. L. J. 281=100 I. C. 361=7 A. I. Cr. R. 275=  
A. I. R. 1927 All. 279.

*—Principles governing.*

What the enquiring Magistrate has got to try and determine is not whether the case has been made out but only whether there is a case for trial. There is always a case for trial when the evidence is of such a nature that the guilt of the accused can be held to be proved or disproved only as the result of the valuing and the weighing of the evidence. But if the evidence be of such a nature that no reasonable person and no tribunal, Judge or Jury would ever on that evidence hold the



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accused guilty, it follows that there is no case for trial and it is then a case for the enquiring Magistrate to discharge. 15 Cr. L. J. 373; 1915 M. W. N. 233, Foll. 10 L. W. 630, Dist. (*Srinivasa Ayyangar, J.*)  
 M. MANICKA PADAYACHI, *In re.* 90 I. C. 530 =  
 49 M. L. J. 155 = 48 Mad. 874 =  
 22 M. L. W. 755 = 26 Cr. L. J. 1570 =  
 A. I. R. 1925 Mad. 1061

**Unreliable evidence.**

A Magistrate holding a preliminary enquiry should not commit a person for trial if he is of opinion that notwithstanding direct evidence, the evidence is unreliable and the case is improbable and a preliminary enquiry made by him in a case triable by Sessions Court is not beyond his jurisdiction if he examined the credibility of the testimony. (*Ross, J.*) MUNSHI MANDER v. KARU MANDER. 81 I. C. 913 = 6 P. L. T. 146 = 25 Cr. L. J. 1089 = A. I. R. 1925 Pat. 279.

**S. 209—Committing.****Magistrate—Duties.**

A Magistrate is competent to consider the credibility and weigh the probabilities of the evidence. If he finds that there is no *prima facie* case against the accused he should discharge him. But in a matter of reasonable doubt, he must not rely upon his own opinion; in fact, he must not encroach upon the functions of a Court of trial. Furthermore, he must keep before him the question whether there are fair grounds for concluding that the accused is guilty upon the evidence. In other words, where there is a *prima facie* case, upon evidence reasonably credible by Court of trial, he should commit. In all cases, whether a Magistrate discharges or commits, he should give his reasons for so doing, and it will be proper to consider these reasons when deciding whether he has exercised his discretion correctly. Case-law discussed. (*Otter, J.*) MAUNG HTIN GYAW v. MAUNG PO SEIN. 4 Rang. 471 = 99 I. C. 1019 = 28 Cr. L. J. 219 = 7 A. I. Cr. R. 373 = A. I. R. 1927 Rang. 74.

**S. 209—Conviction and commitment.****Grounds—Distinction.**

The intention of the Legislature clearly is to make a distinction between grounds for conviction and grounds for committing for trial. Satisfactory proof of the guilt of the accused is the ground for conviction. Satisfactory evidence to go to trial must be regarded as the ground for committing for trial. (*Srinivasa Ayyangar, J.*) M. MANICKA PADAYACHI, *In re.* 90 I. C. 530 = 49 M. L. J. 155 = 48 Mad. 874 = 22 M. L. W. 755 = 26 Cr. L. J. 1570 = A. I. R. 1925 Mad. 1061.

**S. 209—Discretion.**

*Case triable by First Class Magistrate as well as by Sessions—Commitment is discretionary.*

Where a case is triable by Sessions as well as by First Class Magistrate, Magistrate has a discretion to commit the case or to try it himself. In view of the maximum sentence, however, which the Magistrate cannot inflict, a commitment would only be justifiable on very special grounds. Where a Magistrate in his discretion considered that a commitment would result in an unwarrantable waste of public time without any advantage to anybody.

*Held*, that he exercised a sound discretion in rejecting the idea of commitment to the Sessions. (*Macpherson, J.*) B. N. RY. CO. LTD., SHAIKH v. MAKBUK.

92 I. C. 697 = 7 P. L. T. 343 = 27 Cr. L. J. 313 = 1926 P. H. C. 74 = A. I. R. 1925 Pat. 755.

**S. 209—Examination of the accused—Object of.**

In both Ss. 209 and 342, the examination of the accused is stated to be "for enabling him to explain any circumstances appearing in the evidence against him". It is not proper for the Court in examining the

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accused to seek in any way to entrap him into admissions which may fill gaps in the prosecution case but the answers given to the accused in answer to straightforward questions put by the Court may no doubt be taken into consideration for convicting the accused under S. 342 (3). (*Courtney Terrel, C. J. and Rowland, J.*) PHURLAI MANJHI v. EMPEROR. 9 Pat. 504 =

11 Pat. L. T. 706 = 1930 Cr. C. 926 = A. I. R. 1930 Pat. 498.

**S. 209—Fresh complaint.****After discharge.**

Where an order of discharge under S. 209 has been confirmed by a higher authority, it is not competent for a Magistrate to entertain a fresh complaint on the same charge. A. I. R. 1922 Sind 23, Foll. (*Kincaid, J. C. and Barlee, A. J. C.*) SHAH MOHOMED v. EMPEROR. 21 S. L. R. 127 = 7 A. I. Cr. R. 225 = 28 Cr. L. J. 57 = 99 I. C. 89 = A. I. R. 1928 Sind 49.

**S. 209—Grounds for discharge.****False evidence.**

It is the duty of the Magistrate when enquiring into a Sessions case, to consider whether the evidence is credible or not; and though in case of doubt he may be justified in leaving it for the jury to decide, when he is convinced that the evidence is false, it is his duty to discharge the accused. (*Newbould and Mukerji, J.J.*) KASIM ALI v. SARADA KRIPA.

30 C. W. N. 336 = 27 Cr. L. J. 509 = 93 I. C. 973 = A. I. R. 1926 Cal. 528.

When a committing Magistrate in a case triable by Sessions Court finds that the prosecution evidence is totally unworthy of credit, it is his duty to discharge the accused. 35 Bom. 163 and A. I. R. 1924 All. 664, Foll. (*Daniels, J.*) RATAN MANI v. HANS RAM.

92 I. C. 450 = 7 L. R. A. Cr. 31 = 27 Cr. L. J. 274.

**No foundation for the charge.**

It is not correct to say if the prosecution makes statements which if accepted at their face value might make out a case against the accused he is bound to commit him to Sessions even though he is satisfied that no grounds for so doing exist and that the charge is a baseless one. It is now settled law that if a Magistrate is satisfied that the charge is without foundation and that there are no sufficient grounds for committing the accused person for trial he is entitled and indeed it is his duty to discharge him. (1904) A. W. N. 5, Diss.; 26 All. 564; 12 A. L. J. 150; 37 All. 355; 19 A. L. J. 831, Foll. (*Daniels, J.*) GANPAT LAL v. EMPEROR.

81 I. C. 315 = 46 All. 537 = 22 A. L. J. 411 = 5 L. R. A. Cr. 174 = 25 Cr. L. J. 795 = A. I. R. 1924 All. 664.

**No prima facie case.**

The District Magistrate cannot commit the accused for the trial to the Sessions relying on the judgments of the Civil Court by reversing the order of a Deputy Magistrate dismissing a complaint where the Deputy Magistrate disbelieves the witnesses who were cross-examined in his presence. The Deputy Magistrate is entitled to form his opinion about the credibility of the witnesses though he is not bound to closely criticise the evidence. If a *prima facie* case is made out he should leave the case to the jury at the Sessions to form their own view of the credibility of the evidence. In every other case, he is entitled to discharge the accused. (*Graques and Panton, J.J.*) TARAPADA BISWAS v. KALIPADA GHOSH. 83 I. C. 677 =

51 Cal. 849 = 28 C. W. N. 587 = 26 Cr. L. J. 117 = A. I. R. 1924 Cal. 639.

## CR. P. CODE (1898).

## —S. 209—New accused.

—*Discovery during evidence—Procedure.*

One *A* was challanged by the police for murder. In the course of committal proceedings the Magistrate found that there were some witnesses who said that the murderer was not *A* but *M*. The Magistrate therefore proposed to suspend further proceedings against *A* and directed that proceedings on the charge of murder should be started against *M* with the intention of committing one or the other to the Sessions Court.

*Held*, that the procedure, though not illegal, was not suitable. The Magistrate should either commit *A* to the Sessions Court or, if he is not satisfied that there are sufficient grounds for committing him to the Sessions Court, should discharge him, and that further proceedings should not be taken against *M* until *A* is either convicted, acquitted, or discharged. (*Wild, J. C. and Aston, A. J. C.*) *SHER MAHOMED v. EMPEROR*.

115 I. C. 335 = 30 Cr. L. J. 459 =  
12 A. I. Cr. R. 372 = A. I. R. 1929 Sind 17.

## —S. 209—Powers of District Magistrate.

—A Magistrate of the first class acquitted certain persons who were charged before him under Ss. 424 and 506 (1) of the Penal Code. The complainant afterwards made several applications to the Magistrate to frame a charge against the accused under S. 305 of the Penal Code and commit the accused to Sessions. The Magistrate recorded the applications but declined to entertain them. Upon this the District Magistrate was moved by the complainant and acting under S. 437 of the Cr. P. Code framed a charge against the accused and committed them to take their trial before the Sessions Court. It was contended in revision that the District Magistrate's order was illegal because the accused had been acquitted and not discharged.

*Held*, that the First Class Magistrate's order was substantially one discharging the accused in respect of an alleged offence under S. 395 of the Penal Code and that the District Magistrate had jurisdiction to pass the order in question. (*Kincaid and Aston, A. J. C.*) *KHANU v. EMPEROR*.

82 I. C. 760 = 19 S. L. R. 353 =  
25 Cr. L. J. 1368 = A. I. R. 1925 Sind 190.

## —S. 209—Probabilities.

—*Should not be considered.*

In all Sessions cases it is for the Sessions Judge to weigh the evidence and come to a conclusion. The committing Court has only to see whether there is evidence which if believed would sustain conviction. It is not the function of the committing Court to consider the probabilities and the evidence in the case as if it is a trying Court. (*Devadoss, J.*) *CHINNAMMAL v. KONDA REDDI*.

38 M. L. T. 135 =  
28 Cr. L. J. 120 = 99 I. C. 328 =  
7 A. I. Cr. R. 266 = A. I. R. 1927 Mad. 277.

## —S. 210—Combined offences.

—*Procedure.*

When an accused person is charged with two offences one of which is triable by a Court of Session, the Magistrate should adopt the procedure provided in Chapter XVIII of the Criminal Procedure Code, *inter alia*, giving the accused an opportunity of cross-examining the witnesses for the prosecution. (*Teunon and Ghose, J.J.*) *PROBODH KUMAR DATTA v. MOHIM CHANDRA ROY*.

61 I. C. 1008 = 22 Cr. L. J. 480.

## —S. 210—Court witnesses.

—*When prosecution fails to examine all.*

It is not sufficient for committing Magistrates to say that a *prima facie* case has been made out and thus to relieve themselves of further responsibility. If the prosecution did not send up all the material witnesses it is the committing Magistrate's duty to examine them

## CR. P. CODE (1898), S. 213—Interpretation.

himself in order to determine which side was speaking the truth. (*Mullick and Jwala Prasad, J.J.*) *PARSHAD TEWARI v. EMPEROR*.

26 Cr. L. J. 1589 =  
90 I. C. 661 = A.I.R. 1926 Pat. 5.

## —S. 211—Putting in List.

—*Point of time.*

It is ordinarily incumbent on the accused to put in his list of defence witnesses at once, that is to say, on the day when the order of commitment is made, and that if he does not do so, the Magistrate will have a discretion to allow or not to allow any such application if it is made on any subsequent date. If, however, such an application is made and is allowed, then the application whether under sub-S. (1) or sub-S. (2) will be governed by the same principle. (*Graham and Lort Williams, J.J.*) *KALI BILASH HAZRA v. EMPEROR*. 1930 Cr. C. 145 = A.I.R. 1930 Cal. 188 =  
124 I. C. 513 = 31 Cr. L. J. 695.

## —S. 211—Rights of accused.

—*To have all his witnesses present at the Sessions Court.*

An accused, who has complied with the requirements of S. 211 of the Code, and has put in at once his list of defence witnesses, is entitled as of right to have the attendance of those witnesses at the Sessions trial enforced in the event of their ignoring, or failing to comply with the summons. Failure to enforce such attendance when not prejudicial to accused does not vitiate conviction. (*Graham and Lort Williams, J.J.*) *KALI BILASH HAZRA v. EMPEROR*. 1930 Cr. C. 145 =  
124 I. C. 513 = 31 Cr. L. J. 695 = A.I.R. 1930 Cal. 188.

## —S. 213—Discharge.

—*Grounds for.*

If a Magistrate hearing a charge triable by the Court of Sessions comes to the conclusion that the evidence before him is totally untrustworthy and there is no reasonable possibility of the case resulting in a conviction, he is entitled and it is, indeed, his duty, to discharge the accused under S. 209, Criminal Procedure Code. The same result follows if he comes to a similar conclusion after framing a charge and hearing witnesses for the defence under S. 213 (2). Of course this discretion is to be carefully exercised, and wherever there is a possibility of the evidence, the Magistrate, even though he may himself not think the evidence sufficient for a conviction, should leave it to the Sessions Court to decide. 40 All. 615, not foll.; 1922 All. 168, foll. (*Sulaiman and Daniels, J.J.*) *AKBAR ALI v. RAJAH BAHADUR*.

91 I. C. 34 =  
24 A. L. J. 133 = 27 Cr. L. J. 2 =  
6 L. R. A. Cr. 185 = A. I. R. 1925 All. 670.

## —S. 213—Interpretation.

—*"Witnesses for the defence."*

The expression "witnesses for the defence" does not include witnesses for the prosecution who are cross-examined. The witnesses for the defence referred to in Cl. 2, S. 213, are witnesses whom the Court may, in its discretion, summon and examine under S. 212 out of the list of witnesses given by the accused under S. 211 to be examined on his behalf at the trial in the Court of Sessions. (*Suhrawardy and Graham, J.J.*) *G. V. RAMAN v. EMPEROR*.

33 C. W. N. 535 =  
30 Cr. L. J. 1107 = 119 I. C. 808 =  
57 Cal. 44 = 1929 Cr. C. 222 = A. I. R. 1929 Cal. 593.

—*"Not sufficient grounds for committing the accused"*.

S. 213 uses the expression "not sufficient grounds for committing the accused". This expression is quite different from such expressions as "the case not proved" or "the accused are innocent". (*Sulaiman and Daniels,*

## CR. P. CODE (1898), S. 213—Interpretation.

J.J.) AKBAR ALI v. RAJA BAHADUR.

91 I. C. 34=24 A. L. J. 133=27 Cr. L. J. 2=  
6 L. R. A. Cr. 185=A. I. R. 1925 All. 670.

## —S. 213—Revision.

—*Interference in principles.*

To test whether there is or is not evidence for a Judge to decide and to quash a commitment it is necessary to accept the evidence for the prosecution. Whether the evidence is believed or disbelieved at the trial is a matter with which High Court is not concerned.

The real test deciding as to whether there is evidence which could fairly be acted upon it is whether a Judge at a trial held with the aid of jurymen could say that there was no evidence which could go before a jury. Whether an accomplice can be believed or whether the evidence of an accomplice has been corroborated is a matter for decision at the trial. The function of a Court of revision is not to sit in judgment over the order of a Magistrate committing a case to the Court of Session. 5 All. 161, Dist. (Bamerji, J.) BAL CHAND v. KING-EMPEROR 98 I. C. 489=

24 A. L. J. 1050=7 L. R. A. Cr. 197=  
27 Cr. L. J. 1369=49 All. 181=A.I.R. 1927 All. 90.

## —S. 215—Appeal.

—*Commitment—Not challenged—No ground of appeal.*

A commitment once made stands, unless quashed by the High Court, and if it is not quashed the trial of the persons must take place in pursuance thereof. Where, in an appeal against conviction, it was contended that the order of the District Magistrate directing further enquiry which resulted in commitment was illegal, but the High Court was not moved at all to quash the commitment.

*Held*, that the trial was perfectly in order. A commitment is quashed with only one object, namely, that the trial of the persons committed may not take place. If a trial has already taken place it serves no purpose to impugn the commitment. (Martineau and Zafar Ali, J.J.) NAZIR SINGH v. EMPEROR.

91 I. C. 806=7 Lah. L. J. 428=26 P. L. R. 767=  
27 Cr. L. J. 134=A. I. R. 1925 Lah. 557.

## —S. 215—Effect of quashing.

—*No discharge—Superseding of action under S. 210.*

Primary effect of the order quashing the commitment is to supersede any action taken by the Magistrate under S. 210 and his proceedings subsequent thereto, and in such a case it is necessary for the Magistrate to go back to the point at which he took cognizance of the complaint. The order does not amount to discharge and no fresh complaint is necessary. (Rankin, C. J., C. C. Ghose, Buckland, B. B. Ghose and Mukerji, J.J.) GRISH CHANDRA v. EMPEROR. 50 C. L. J. 408=

34 C. W. N. 13=1929 Cr. R. C. 468=  
A.I.R. 1929 Cal. 756 (F.B.).

## —S. 215—Grounds for quashing.

—Where during the trial before the committing Magistrate, the cross-examination of the prosecution witness by the accused was, with the permission of the Magistrate, reserved, but ultimately the case was committed to the Sessions without affording the accused the promised opportunity, the commitment should be quashed. (Rankin, C. J. and Patterson, J.) NANOORAM GOENKA v. FULCHAND JAYPURI. 57 Cal. 945=

1930 Cr. C. 1154 (2)=A.I.R. 1930 Cal. 754.

—*No evidence.*

Where there is no evidence to support an order of commitment, the commitment must be quashed because absence of evidence is a question of law and not of fact. 5 C.W.N. 411; 9 C.W.N. 829; 6 All. 98 and 38 All. 29,

## CR. P. CODE (1898), S. 215—Grounds for quashing.

Foll. (Zafar Ali, J.) GANSHAM DAS v. EMPEROR.

125 I. C. 324=31 P. L. R. 348=31 Cr. L. J. 814=  
1930 Cr. C. 593=A. I. R. 1930 Lah. 545.—*Competency of Magistrate to deal with offence.*

There is no reason to commit to the Sessions cases where the Magistrate can adequately deal with the offence himself and no overriding reason exists for committal to the higher Court, even if the death of person is involved therein. 11 S. L. R. 79; A. I. R. 1924 Sind 61 and 15 Bom. L. R. 998, Rel. on. (Percival, J.C.) EMPEROR v. ALLAHADAD. 123 I. C. 702=

1930 Cr. C. 528=31 Cr. L. J. 596=  
24 S.L.R. 157=A. I. R. 1930 Sind 145.—*Case of doubt—Committal no error of law.*

A distinction must be made between a case where the Magistrate has discharged an accused under S. 209, Cr. P. Code, refusing to commit him, and one, where, in fact, he has directed a committal, although he disbelieves the main prosecution evidence. In the former case High Court will not interfere with the order of discharge, but in the later High Court will not quash the committal. Where a Magistrate in an order committing the accused to the Sessions Court says that, although he has some doubts about the evidence, he thinks it better that the case should go before a jury, he cannot be said to have committed an error of law, which would justify the quashing of the commitment. A. I. R. 1924 Rang. 165, Foll.; 17 Bom. L.R. 910, Dist. (Fauzett and Mirza, J.J.) SECRETARY OF STATE v. YELLO RAMCHANDRA. 30 Bom. L. R. 639=

29 Cr. L. J. 987=112 I.C. 107=11 A. I. Cr. R. 241=  
A.I.R. 1928 Bom. 220.—*Violation of right under S. 208 (2).*

Where a Magistrate allowed accused to obtain copies of statements of prosecution witnesses under S. 162 but refused to adjourn the case for giving time to accused to obtain copies and then to allow cross-examination.

*Held*, that the refusal was a direct violation of the statutory provision contained in Cl. (2) of S. 208 and it was a point of law which vitiates the commitment made by the Magistrate and such a commitment can be quashed under S. 215 of the Code. (Jwala Prasad and Macpherson, J.J.) SASDAT MIAN v. KING-EMPEROR.

103 I. C. 597=6 Pat. 329=28 Cr. L. J. 709=  
8 A. I. R. 383=8 P. L. T. 780=  
A. I. R. 1927 Pat. 243.—*Request of accused—Sensational case.*

An order of committal to Sessions is improper if it is made in pursuance of a request by the accused or because the case has created sensation in accused's community or on the ground that the amount involved, the offence being of cheating, is large. Such an order is liable to be set aside by the High Court. (Case-law referred to.) (Marten and Madgavkar, J.J.) EMPEROR v. ACHALDAS JETHAMAL. 28 Bom. L. R. 293=

93 I.C. 703=27 Cr. L.J. 479=A.I.R. 1926 Bom. 251.

—Where the allegations for the prosecution even if they were proved by the evidence were not sufficient to constitute an offence, commitment was quashed. (Stuart, C. J.) EMPEROR v. JAGANNATH

99 I.C. 345=3 O.W.N. 308 (Sup.)=28 Cr. L. J. 137.

—*Manifest and fatal flaw in prosecution.*

Commitments should only be quashed when on the face of it there is something of the nature of a fatal flaw in the prosecution. The accused were railway clerks who, under the orders of the station master, altered certain entries in the registers which were maintained by them. The action of the station master was held by a Civil Court to be wrong. But the error was due to the honest mistake of the station master in his view as to some railway rules. The accused had no animus in the

**CR. P. CODE (1898), S. 215—Grounds for quashing.**

matter, and were only acting on the orders of their superior officer.

*Held*, that the proceedings which had been taken against the accused for forgery must be quashed. (*Stuart, J.*) **GULAB SINGH v. EMPEROR.**

88 I. C. 849 = 26 Cr. L. J. 1233 =

6 L. R. A. Cr. 148 = A. I. R. 1925 All. 751.

—*Non-observance of S. 360.*

During the commitment proceedings the provisions of S. 360, Cr. P. Code, were not at all observed. During the trial the said provisions were not complied with in the case of the majority of the witnesses. Public Prosecutor applied to the Sessions Judge for a *de novo* trial. This was about a month after the ruling of the Calcutta High Court in 1924 Cal. 889 regarding Cr. P. Code, S. 360 was published. On the basis of the application by the Public Prosecutor the Sessions Judge recommended to the High Court that the commitments themselves should be quashed. The accused opposed this. Most, if not all, of the accused persons were in *hajat*, and some of them had been in *hajat*, for about a year and a half or so.

*Held*, that in the circumstances of the case the commitments should not be quashed, but that the trying Court should recall the witnesses in respect of whom S. 360 was not complied with and take steps to comply with those provisions so far as these witnesses were concerned. (*Suhrawardy and Mukerji, J.J.*) **ABDUR RAHAIM v. EMPEROR.**

88 I. C. 1052 =

29 C. W. N. 698 = 26 Cr. L. J. 1276 =

A. I. R. 1925 Cal. 928.

—*Only on a point of law.*

A commitment can be quashed on a point of law only. It cannot be quashed on the ground that there is no evidence on the committing Magistrate's record to sustain the charges. 13 Bom. L. R. 201 and 27 M. L. J. 593, Foll. (*Baker, J. C.*) **ISMAIL v. EMPEROR.**

87 I. C. 965 = 26 Cr. L. J. 1045 =

A. I. R. 1925 Nag. 409.

—*Two trials for same act.*

While it is not desirable that there should be two trials in respect of the same act, namely the giving of false evidence, one for giving false evidence under S. 193 and another for abetment of the fraudulent use of a forged document under Ss. 471/109 it is no ground to quash a commitment. (*Simpson, A. J. C.*) **EMPEROR v. GAJADHAR PRASAD.**

90 I. C. 447 =

2 O. W. N. 707 = 26 Cr. L. J. 1567 =

A. I. R. 1925 Oudh 610.

—*Doubts as to credibility of evidence—No ground.*

The High Court has no power to quash the commitment merely because of doubts as to the credibility of the evidence of the prosecution, if there is, in fact, some evidence which would justify the Sessions Judge in leaving the decision of guilt or innocence to the jury. 7 Bur. L. T. 26, 27 M. L. J. 593, 15 A. L. J. 756, 13 Bom. L. R. 203 and 9 C. W. N. 829, Foll.; 9 L. B. R. 208, Dist. (*Lentaigne, J.*) **MOHOMED MOIDIN v. EMPEROR.**

1 Rang. 526 = 25 Cr. L. J. 261 =

76 I. C. 821 = A. I. R. 1924 Rang. 165.

—*Error of law.*

Where the case was not one exclusively triable by the Sessions Court and the Committing Magistrate who was the First Class Magistrate was empowered to pass an adequate sentence,

*Held*, the commitment by the Magistrate to the Sessions was an error of law and the quashing of commitment was justified. 14 C. L. J. 304, Dist. 1 S. L. R. 31, 8 S. L. R. 23, 14 S. L. R. 85 and 15 B. L. R. 98, Foll. (*Raymond and Madgawkar, A. J. C.*) **UTILIBAI v. EMPEROR.**

83 I. C. 708 = 17 S. L. R. 188 =

**CR. P. CODE (1898), S. 215—Scope.**

26 Cr. L. J. 148 = A. I. R. 1924 Sind 61.

—**S. 215—Irregularity.**

—*In commitment—Trial not vitiated.*

The Sessions Judge has jurisdiction to try a case which has been committed for trial to him, and if the trial is legally held it is doubtful if an irregularity in the commitment would vitiate the proceedings in the Sessions Court. 12 C. L. R. 120, Foll. When a person has been put on his trial and pleads to the charge, the commitment cannot be quashed, as it is too late to object to the commitment after the accused has pleaded to the charge before the Sessions Court. (*Newbould and B. B. Ghose, J.J.*) **KASEM MOLLA v. EMPEROR.**

42 C. L. J. 114 = 26 Cr. L. J. 1560 =

90 I. C. 440 = A. I. R. 1926 Cal. 410.

—**S. 215—Powers to quash.**

—Under S. 215 the Judge of the High Court exercising original criminal jurisdiction has jurisdiction to quash a commitment made to it. 36 Cal. 48, Ref. (*Buckland, J.*) **EMPEROR v. GIRISH CHANDRA KUNDU.**

1929 Cr. C. 521 = 56 Cal. 785 =

120 I. C. 813 = 31 Cr. L. J. 184 =

A. I. R. 1929 Cal. 777.

—*B. B. Ghose, J.*—A commitment may be quashed by the High Court under S. 215 under its appellate or revisional jurisdiction, but a Judge exercising original criminal jurisdiction cannot quash a commitment on the ground that it was illegal. (*Walmesley, Rankin, Cuming, B. B. Ghose, and Chakravarty, J.J.*) **EMPEROR v. COLIN MACKENZIE.**

53 Cal. 350 =

30 C. W. N. 276 = 27 Cr. L. J. 385 =

43 C. L. J. 310 = 93 I. C. 83 =

A. I. R. 1926 Cal. 470 (F.B.).

—The Judicial Commissioner when sitting in the Sessions Division is not divested of his dual capacity as a High Court Judge and he has full power to make an order under S. 215, Cr. P. Code, even when sitting as a Sessions Judge. 32 Cal. 379, Dist. (*Raymond and Madgawkar, A. J. C.*) **UTILIBAI v. EMPEROR.**

83 I. C. 708 = 17 S. L. R. 188 =

26 Cr. L. J. 148 = A. I. R. 1924 Sind 61.

—**S. 215—Revision.**

—*Interference in.*

Where a Magistrate, in making an order of commitment, has contravened any provision of law, the High Court is entitled and ought to set aside the commitment on the ground; but where he has not violated any provision of law and has only erred in the exercise of the discretion vested in him, the High Court will seldom interfere in such a case. (*Suhrawardy and Graham, J.J.*) **G. V. RAMAN v. EMPEROR.**

33 C. W. N. 535 = 30 Cr. L. J. 1107 = 119 I. C. 808 = 57 Cal. 44 = 1929 Cr. C. 222 = A. I. R. 1929 Cal. 593.

—**S. 215—Scope.**

—*Negative and restrictive:*

Section 215 is a negative or restrictive section. It is intended to negative the existence in Sessions Courts to quash commitments and it is intended to restrict a High Court to cases in which it can be said that the commitment is bad in law. This last restriction is a restriction upon all powers which the High Court might otherwise possess, and it attaches to revisional powers as well. However, it does not take away by implication any other power to quash commitment which is *prima facie* incident to any superior Court receiving commitments from lower Courts as the basis of its own jurisdiction. (*Rankin, C. J., C. C. Ghose, Buckland, B. B. Ghose and Mukerji, J.J.*) **GIRISH CHANDRA v. EMPEROR.**

50 C. L. J. 408 =

34 C. W. N. 23 = 1929 Cr. C. 468 =

A. I. R. 1929 Cal. 756 (F.B.)

**CR. P. CODE (1898).****—S. 215—Test for quashing.**

High Court under S. 215 would not ordinarily interfere with an order of committal unless it is satisfied from the record that there was an illegality in the order. The test in a matter of this nature is to see from the judgment of the Magistrate what his findings on the evidence are and whether those findings are capable *prima facie* of sustaining the charges he has framed and on which the committal to the Court of Session is made. (*Mirza and Murphy, J.J.*) **EMPEROR v. YELLAPPA DURGAJI.** 119 I. C. 647 = 31 Bom. L. R. 523 = 30 Cr. L. J. 1066 = A. I. R. 1929 Bom. 269.

**—S. 216—Serious offences.****—Opportunity should be given.**

Where the accused are tried for offences under Ss. 363 and 367, I. P. C. every opportunity should be given to them to adduce evidence on behalf of the defence either oral or documentary and in refusing such evidence the Judge does not exercise proper discretion. If the Judge is of opinion that the evidence adduced by the accused is inadmissible or irrelevant or that such evidence is adduced for the purpose of vexation or delay or to defeat the ends of justice he can refuse to receive such evidence. (*Suhrwardy and Page, J.J.*) **MUKTAL HOSSEIN v. EMPEROR.** 1930 Cr. C. 538 = 126 I. C. 720 = 31 Cr. L. J. 1077 = A. I. R. 1930 Cal. 362.

**—S. 221—Charge—Material facts to be stated.**

In order to convict a man of an offence, all the material facts which constitute the offence, and which are necessary to enable the parties to avail themselves of the verdict and judgment, should the same charge be again brought forward, must be stated upon the indictment, and all these requisite allegations must be satisfied in evidence, and proved as laid. But allegations not essential to such purpose, which might be entirely omitted without affecting the charge against the person and without detriment to the indictment are considered as mere surplusage and may be disregarded in evidence. The indictment may be good or bad, but it cannot depend upon the facts which will ultimately be found by the jury and it must be good or bad at the beginning of the trial. A. I. R. 1922 Cal. 107, Rel. on. (*Rankin, C. J. and Cholsner, J.*) **SATYA NARAIN v. EMPEROR.** 55 Cal. 858 = 32 C. W. N. 319 = 29 Cr. L. J. 1022 = 112 I. C. 350 = A. I. R. 1928 Cal. 675.

**—S. 221—Cheating.****—Manner of cheating must be given.**

An accused person is entitled to know with certainty and accuracy the exact value of the accusation brought against him. In a case of cheating the charge must set out the manner in which the offence was committed. Whether the orders of the charge are reasonably sufficient to give the accused notice of the accusation which he has got to meet depends upon the circumstances of each particular case. The omission to state the manner of the cheating is regarded as material or not accordingly as the accused has or has not in fact been misled by the omission and the omission has or has not occasioned a failure of justice. In the charges framed in the case the manner of the cheating was set out as follows:—"By deceiving with false representations and promises as well as by conduct."

*Held*, that the expression used was too vague and indefinite to give the accused proper notice of the manner of the deceit and was so dangerously wide as might include almost anything. (*Newbould and Mukerjee, J.J.*) **KEDAR NATH CHAKRAVARTI v. EMPEROR.** 86 I. C. 705 = 26 Cr. L. J. 849 = 29 C. W. N. 408 = 41 C. L. J. 172 = A. I. R. 1925 Cal. 603.

**CR. P. CODE (1898), S. 221—Mistake in the form of charge.****—S. 221—Conspiracy.****—Specific acts need not be stated.**

A charge for conspiracy need not state in all its details the actual specific acts which the conspirators are alleged to have agreed to do or to cause to be done. In most conspiracies the agreement amongst the conspirators is of a general nature, and there is no agreement as to the specific act to be done by each conspirator. (*Damel O'Connell v. Reg.*, 80 E. R. 155, Dist. (*Mya Bu and Brown, J.J.*) **HTIN GYAW v. EMPEROR.** 6 Rang. 6 = 109 I. C. 491 = 29 Cr. L. J. 555 = 10 A. I. Cr. R. 249 = A. I. R. 1928 Rang. 118.

**—Special responsibility—Section necessary.**

Where a conspirator is present at the commission of the offence he may under the provisions of Section 114, I. P. C., be deemed to have committed the offence, but if that is the way in which the accused is to be made responsible for the offences he should be specifically charged with such offence as read with the provisions of S. 114, I. P. C. Where the only evidence of the accused being a conspirator was his presence at the commission of the offence, there may arise a further question, *viz.*, whether it would be permissible to infer conspiracy from mere presence, and again to make him liable as principal by taking into account the fact that he was present at the commission of the offence. (*Walmsley and Mukerjee, J.J.*) **ALIMUDDI NASKAR v. EMPEROR.** 85 I. C. 231 = 40 C. L. J. 541 = 29 C. W. N. 173 = 52 Cal. 253 = 26 Cr. L. J. 487 = A. I. R. 1925 Cal. 341.

**—S. 221—Contents of charge.**

A charge-sheet should never contain more than what is necessary for the prosecution to prove. (*Wazir Hasan and Simpson, A.J.Cs.*) **BHULAN v. EMPEROR.** 27 Cr. L. J. 57 = 91 I. C. 233 = A. I. R. 1926 Oudh 245.

**—Specific acts of accused and specific sections of Penal Code.**

The charge-sheet corresponds to the English indictment, and it is very much more than a mere form. An accused person is entitled to be informed with the greatest precision what acts he is said to have committed, and under what sections of the Penal Code these acts fall. (*Simpson, A. J. C.*) **SHEO SHANKAR v. EMPEROR.** 2 O. W. N. 862 = 27 Cr. L. J. 62 = 91 I. C. 238 = A. I. R. 1926 Oudh 148.

**—Curability.**

The failure to enter in the charge the actual words used in the deposition is at most an irregularity cured by S. 537, Cr. P. Code. (*Prideaux A.J.C.*) **MIRABUX v. EMPEROR.** 68 I. C. 36 = 18 N. L. R. 192 = 23 Cr. L. J. 500 = A. I. R. 1923 Nag. 39.

**—S. 221—Irregularity.**

A plea that though there was publication of the statement, there was no publication to person mentioned in the charge is a highly technical plea and the defect in the charge is curable under S. 537, Cr. P. Code. (*Kincaid, J.C.*) **TIKAMDAS v. EMPEROR.** 96 I. C. 499 = 27 Cr. L. J. 947 = 7 A. I. Cr. R. 21 = A. I. R. 1927 Sind 58.

**—S. 221—Mistake in the form of charge.**

Where in the form of the charge there was a mere slip, the word "or" being used for "and" between two charges framed under Ss. 221 and 242, Penal Code, and none of the accused was in any way prejudiced by the fact that in form the charge was in the alternative whereas in substance two quite distinct offences were charged,

**CR. P. CODE (1898), S. 221—Mistake in the form of charge.**

*Held*, that the conviction of the accused in respect of both the charges was not bad. (*Jack and Pancridge, J.J.*) NABAB ALI v. EMPEROR. 1930 Cr. C. 1108 = 34 C. W. N. 1151 = A. I. R. 1930 Cal. 708.

**—S. 221—Murder.**

A charge under S. 302, I. P. C., should follow the language of S. 300, I. P. C., which contains the definition of murder. (*Simpson, A. J. C.*) SHEO SHANKAR v. EMPEROR. 2 O. W. N. 862 = 27 Cr. L. J. 62 = 91 I. C. 238 = A. I. R. 1926 Oudh 148.

**—S. 221—Objection to charge.****—Stage—Curability.**

Where the wording of a charge was neither accurate nor clear but the accused and his counsel understood the real charge and an objection as to the validity of the charge was raised by the counsel for the accused for the first time during his arguments, *held*, that the defect in the charge was cured by S. 537, Cr. P. Code. (*Baguley, C. J.*) K. C. V. REDDY v. EMPEROR. 8 Rang. 25 = 1930 Cr. C. 661 = 125 I. C. 266 = 31 Cr. L. J. 793 = A. I. R. 1930 Rang. 201.

**—S. 221—Rioting.****—Ingredients unnecessary.**

It is not necessary in a charge of rioting to set out the allegation that there were five or more persons actuated by a common object. Rioting is an offence with a specific name and it is sufficient to describe the offence by that name and that name only. S. 221, cl. (2) contemplates a case of this description and is enacted to meet a case of this kind. When a person is charged with rioting, it means that the prosecution alleges that all necessary ingredients constituting the offence of rioting are present. It is not necessary for the prosecution to set out what these ingredients are. (*Cuming and Gregroy, J.J.*) EMPEROR v. RAMCHANDRA. 55 Cal. 879 = 10 A. I. Cr. B. 456 = 29 Cr. L. J. 823 = 111 I. C. 327 = A. I. R. 1928 Cal. 732.

**—Common object—Necessary.**

In the case of rioting it is necessary that the common object of the unlawful assembly should have been clearly stated in the charge. (*Zafar Ali, J.*) ALLAH DAD v. THE CROWN. 75 I. C. 731 = 25 Cr. L. J. 43 = A. I. R. 1924 Lah. 667.

**—S. 221—Two offences.****—Mention of one.**

Where the accused was separately charged under S. 325 (grievous hurt) and S. 149 (unlawful assembly), but there was no mention of S. 149 in the charge under S. 325.

*Held*, that the irregularity was curable under S. 537. 16 Cal. 442, Appr. (*Findlay, O. J. C.*) DEOJI v. KING-EMPEROR. 95 I. C. 606 = 27 Cr. L. J. 830 = A. I. R. 1926 Nag. 459.

**—S. 221—Vague charge.****—Not proper.**

It is not proper to frame a charge that the accused did a certain act with a view to commit a certain offence or any other offence punishable with imprisonment. The reason is that the accused must know the specific offence charged against him. (*Greaves and Duval, J.J.*) BALARAM KUNDU v. EMPEROR. 82 I. C. 50 = 25 Cr. L. J. 1186 = A. I. R. 1925 Cal. 160.

**—S. 221—Words used.****—Adherence to words of Statute is desirable.**

An accused is entitled to know with certainty and accuracy the exact value of the charge brought against him for unless he has this knowledge he may be seriously prejudiced in his defence. In framing charges it is always a sound rule for the Court to adhere to the

**CR. P. CODE (1898), S. 222—Misappropriation.**

language of the statute as far as possible. A departure from the words of the Statute benefits nobody and only introduces complications in many instances. (*Newbould and Mukerji, J.J.*) CHHAKARI SHAIK v. EMPEROR. 26 Cr. L. J. 567 = 85 I. C. 711 = A. I. R. 1926 Cal. 439.

**—S. 222—Charge.****—Inaccuracy as to time—Accused, if prejudiced.**

The accused are not prejudiced because the charge stated that they committed an offence in September whilst the evidence showed that the offence was completed before. (*Brown, J.*) U. PATHADA, U. PADUMA AND U. NANDIYA v. EMPEROR. 84 I. C. 245 = 3 Bur. L. J. 178 = 26 Cr. L. J. 245 = A. I. R. 1924 Rang. 371.

**—S. 222—Contents of charge.****—Charge of abetment by being present at offence of mischief—No particulars as to any act before the offence—Effect.**

Where the charge against the accused was "you abetted by being present in the commission of the offence of mischief and thereby committed an offence punishable under Ss. 430 and 114, I.P.C." but no acts were alleged against the accused relating to a point of time previous to the time of the commission of the offence and the case ought to be made out against him was that he was present where the offence was committed and instigated the co-accused to commit the offence at the time when they committed it.

*Held*, that the accused was misled by the charge and failure of justice was caused. (*Venkatasubba Rao, J.*) AMMANI v. EMPEROR. 82 I. C. 262 = 21 M. L. W. 19 = 25 Cr. L. J. 1254 = A. I. R. 1925 Mad. 364.

**—S. 222—Dacoity.****—A single general charge without dates is bad.**

The accused were under trial for waging war. One of the counts in the charge was that "you and others did loot the Police Stations above mentioned" (of which there were eight) on dates not specified and that you did extract supplies of food and other articles by force or threats from the villagers of various villages on dates not specified.

*Held*, (*Per Spencer, Offg. C. J.*) that the count was too vague. Each looting of a village or Police Station should have been treated as a separate offence if it was intended to try any or all of the accused for dacoity apart from waging war. Otherwise the convictions for dacoity must be quashed on the ground of the charges not giving the accused sufficient notice and particulars of what they had to meet. (*Krishnan, J., on difference between Spencer, Offg. C. J. and Reilly, J.*) GAM MALLU DORA. *In re*. 90 I. C. 297 = 49 Mad. 74 = 1925 M. W. N. 192 = 26 Cr. L. J. 1513 = A. I. R. 1925 Mad. 690 = 48 M. L. J. 308.

**—S. 222—Misappropriation.**

Where an accused person is charged under S. 408, I.P. Code, with having committed criminal breach of trust in respect of a gross sum of money misappropriated by him within the period of one year and the charge not only specifies the gross sum taken and the dates between which it was taken, but also sets out the items composing such gross sum giving the dates and the amounts alleged to have been misappropriated, the charge comes within the provisions of cl. (2), S. 222, Cr. P. Code, and that if by specifying the items composing the gross sums the charge went beyond what was necessary instead of prejudicially affecting the accused it is to that extent favourable to the accused. (*Sukrawady and Costello, J.J.*) RAHIM BAKSHA SARKAR v. EMPEROR. 84 C. W. N. 901 = 1930 Cr. C. 1117 = A. I. R. 1930 Cal. 717.



**CR. P. CODE (1898), S. 222—Misappropriation.**

—A who was B's clerk and sold rice for him was charged with having received Rs. 60 on 10—8—28 and two other sums on 24—9—28 and having misappropriated the same without properly bringing them to account and was convicted. A similar complaint was subsequently filed in respect of an amount collected on 14—8—28. It was contended that A having been previously convicted for criminal breach of trust in respect of sums collected on 10th and 24th of September, 1928, could not again be tried in respect of an amount collected on an intermediate date, 14—8—28.

*Held*, that the trial was not illegal. The former case against A was not for a gross sum misappropriated within two dates but was for misappropriation of specific sums of money received on specific dates and S. 222 (2) did not come into operation. The charge pending against A could therefore be heard. That the trial could not be stopped under S. 561-A unless it was shown that there was an abuse of process of the Court. (*Krishnan Pandalai, J.*) **KANAKAYYA v. KING-EMPEROR.**

32 L. W. 789 = 1930 Cr. C. 1194 =  
1930 M. W. N. 1097 = A. I. R. 1930 Mad. 978 =  
59 M. L. J. 854.

**—Specific sum during a certain period.**

Accused was employed as a pay clerk in complainant's office and his duties were to receive from his master cheques in respect of certain amounts which had become due and payable on certain bills. He had to cash the cheques, keep the proceeds with him and from time to time make payments thereout as and when those bills were presented to him. He was charged with criminal breach of trust in respect of a specific sum misappropriated during a certain period.

*Held*, that the provisions of S. 222, sub-S. (2) were satisfied. (*Mirza and Patkar, J.J.*) **VINAYAK LAXMAN v. EMPEROR.** 30 Bom. L.R. 1530 = 12 A.I. Cr. R. 73 = 30 Cr. L. J. 185 = 53 Bom. 119 = 113 I. C. 612 = A. I. R. 1928 Bom. 557.

**—S. 222—Object and scope.**

—The object of S. 222 is to ensure that the accused may have as full particulars as possible of the accusations made against him. (*Suhrawardy and Costello, J.J.*) **RAHIM BAKSHA SARKAR v. EMPEROR.**

34 C. W. N. 901 = 1930 Cr. C. 1117 =  
A. I. R. 1930 Cal. 717.

—Section 222 (2) is an enabling provision which permits what otherwise would be a large number of separate charges to be joined together for the purpose of convenience. Nowhere is it prescribed that separate charges in respect of separate amounts misappropriated shall not be resorted to and that if an accused has misappropriated several sums within a year they all should be added together and made into one gross sum and tried as one charge. (*Pandalai, J.*) (**SEEMAKURTI**) **KANAKAYYA v. EMPEROR.**

32 L. W. 789 =  
1930 Cr. C. 1194 = A. I. R. 1930 Mad. 978 =  
1930 M. W. N. 1097 = 59 M. L. J. 854.

—The object of the amendment made by the introduction of Sub-sec. (2) to Section 222, Cr. P. Code, was not to amend the Penal Code, but merely to get rid of a technical difficulty in framing a formal document, *viz.*, the charge. By this amendment the procedural law was altered to meet two difficulties. Under the law as it stood before, there was very great difficulty in convicting where there was a running a count and where the prosecution was unable to put their hands on a specific item of which the particular sum was embezzled or to which it was attributable. The other difficulty was that under Section 234, Cr. P. Code, it was not allowed to have more than three offences of the same kind, and so the charge could not legally stand. The law on these two

**CR. P. CODE (1898), S. 222—Time and place of offence.**

points was altered and altered for the better. It was not intended either to throw the onus on the accused by bringing a charge against him of a deficiency in his accounts or to do away with the necessity of proving the elements of the offence as laid down in the Indian Penal Code. (*Walsley and Mukerji, J.J.*) **KHIRODE KUMAR MOOKERJEE v. EMPEROR.** 85 I. C. 372 = 29 C. W. N. 54 = 40 C. L. J. 555 = 26 Cr. L. J. 532 = A. I. R. 1925 Cal. 260.

—S. 222 (2) only dispensed with the particulars which otherwise would be required but it does not say that the gross sum is to include every act of misappropriation committed within the dates specified in the charge. The essence of the offence is the misappropriation and not the time within which it took place. (*Graever, J., on difference between Newbould and Suhrawardy, J.J.*) **NOGENDRA NATH BOSE v. EMPEROR.** 76 I. C. 300 = 27 C. W. N. 578 = 50 Cal. 632 = 38 C. L. J. 286 = 25 Cr. L. J. 156 = A. I. R. 1923 Cal. 654.

**—S. 222—Particulars.**

—A charge under S. 193 was as follows: "That you intentionally gave false evidence in answer to certain of the following questions put to you in the course of your evidence before the said Court." Then followed the 50 questions and the answers thereto which answers were alleged to be false did not appear in the charge sheet.

*Held*, that no accused person reading such a charge could say that he was called on to answer. (*C. C. Ghose and Cumming, J.J.*) **R. H. E. OATES v. EMPEROR.**

76 I. C. 416 = 25 Cr. L. J. 177 = 38 C. L. J. 163 =  
A. I. R. 1924 Cal. 104.

**—S. 222—Perjury.****—False answers to be set out.**

A charge under S. 193, was as follows: "That you intentionally gave false evidence in answer to certain of the following questions put to you in the course of your evidence before the said Court." Then followed the 50 questions and the answers thereto. Which answers were alleged to be false did not appear in the charge sheet.

*Held*, that no accused person reading such a charge could say that he was called on to answer. (*C. C. Ghose and Cumming, J.J.*) **R. H. E. OATES v. EMPEROR.**

76 I. C. 417 = 25 Cr. L. J. 177 = 38 C. L. J. 163 =  
A. I. R. 1924 Cal. 104.

**—S. 222—Several offences.**

—Trial involving offences under S. 406, I. P. Code, committed on five distinct dates is not bad. (*Mukerji and Graham, J.J.*) **ANIL KRISTA DAS v. BADAM SANTRA.** 116 I. C. 722 = 30 Cr. L. J. 706 =

A. I. R. 1929 Cal. 175.

**—S. 222—Time.****—Mistake as to.**

The accused are not prejudiced because the charge stated that they committed an offence in September whilst the evidence showed that the offence was completed before. (*Brown, J.*) **U. PATHADA. U. PADUMA AND U. NANDIYA v. THE KING-EMPEROR**

84 I. C. 245 = 8 Bur. L. J. 178 = 26 Cr. L. J. 245 =  
A. I. R. 1924 Bang. 371.

**—S. 222—Time and place of offence.****—Different from that in the charge, proved—Conviction—If valid.**

Where the accused is charged with having beaten the complainant at a particular place and at a particular time and the prosecution fails to establish that charge the accused cannot on that evidence be convicted of having beaten the complainant at a different place on a different occasion. (*Broadway, J.*) **JALALUDDIN v.**

CR. P. CODE (1898), S. 222—Time and place of offence.

EMPEROR. 77 I. C. 823=25 Cr. L. J. 471=6 L. L. J. 572=A. I. R. 1924 Lah. 616.

—S. 223—Cheating.

—*Manner of cheating misdescribed—Defect is material but can be condoned if accused is not prejudiced.*

The alleged facts of the case were that the complainant paid a certain amount to the accused for redeeming certain jewel pledged with the accused, that the accused received the money and, saying that he would get the jewels, absconded. The charge under S. 420, I. P. Code, was to the effect that the accused dishonestly induced the complainant to part with several gold and silver ornaments on false representation and thereby committed the said offence.

*Held*, the charge did not correctly set out the facts of the case for the prosecution upon which it was founded, and that the real charge under S. 420 I. P. Code, which could be framed upon the case as presented on behalf of the prosecution was that the accused dishonestly induced the complainant to part with the sum, dishonestly concealing from the complainant the fact that he never intended to return the ornaments for the return of which the amount was being paid.

*Held*, further that this defect in the framing of the charge, though a material one, did not prejudice the accused in any way as it was clear from the answer which the accused gave to the Court when examined under the provisions of S. 342, Cr. P. Code, that he understood exactly what the case against him was. (Mukerji, J.) GOKUL KHATIC v. EMPEROR.

86 I. C. 970=26 Cr. L. J. 906=29 O. W. N. 483=A. I. R. 1925 Cal. 674.

—S. 223—Conspiracy.

—For a charge of conspiracy only an agreement is sufficient, so it is sufficient to include in the charge the agreement which is alleged to have been arrived at between the conspirators. (Dalal, J. C.) BISHAM-BHAR NATH KUNDON v. EMPEROR.

26 Cr. L. J. 1602=2 O. W. N. 760=90 I. C. 706=A. I. R. 1926 Oudh 161.

—S. 223—Defective charge.

—*Curable*

A trial *de novo* must not be ordered when no charge has been framed or when a defective charge has been framed. In such a case what must be done is to order a fresh trial from the stage at which the illegality occurred. Ss. 225 and 537 of the Cr. P. Code, remedy any defect due to the omission in the charge of the particulars required by S. 223 of the Code. (Hallifax, A. J. C.) GANGADHAR v. BHANGI SAO.

81 I. C. 976=25 Cr. L. J. 1152=A. I. R. 1925 Nag. 147.

—S. 223—Mode of offence.

—The accused had been convicted *inter alia* of an offence under S. 126, Railways' Act, the conviction being by force of S. 149, Penal Code. The charge framed against them made no mention of S. 149, Penal Code. *Held*, the conviction by force of S. 149, Penal Code was illegal. (Ramesam and Wallace, J.J.) THAIKOTTATHIL KUNHAEN, *In re*. 76 I. C. 644=18 M. L. W. 946=33 M. L. T. 210=1924 M. W. N. 47=25 Cr. L. J. 212=A. I. R. 1924 Mad. 338.

—S. 223—Non-mentioning charge.

—The accused had been convicted, *inter alia*, of an offence under S. 126, Railways Act, the conviction being by force of S. 149, Penal Code. The charge framed against them made no mention of S. 149, Penal Code. *Held*, the conviction by force of S. 149, Penal Code, was illegal. (Ramesam and Wallace, J.J.)

CR. P. CODE (1898), S. 227—Addition of charge.

THAIKOTTATHIL KUNHAEN, *In re*. 76 I. C. 644=18 M. L. W. 946=33 M. L. T. 210=1924 M. W. N. 47=25 Cr. L. J. 212=A. I. R. 1924 Mad. 338.

—S. 223—Unlawful assembly.

—A charge of being a member of an unlawful assembly with the common object of committing assault is the usual form of charge when the common object is to do violence to some person. It is immaterial whether the offence, to commit which there was a common object was assault, simple hurt or grievous hurt. (Allanson and Sen, J.J.) CHHANKA DHAUNK v. EMPEROR.

104 I. C. 97=6 Pat. 832=8 A. I. Cr. R. 570=8 P. L. T. 825=28 Cr. L. J. 769=A. I. R. 1927 Pat. 398.

—S. 225—'Error,' what is.

—Setting out the details of the charges in one comprehensive sentence instead of stating the substance in separate sentences is not an error in law. (Miller, C. J. and Mullick, J.) JAMUNA PRASAD v. EMPEROR.

107 I. C. 826=9 A. I. Cr. R. 483=29 Cr. L. J. 287.

—S. 225—No prejudice.

—*Curability.*

Where a Magistrate acts irregularly in specifying three distinct offences in one head of charge, the accused are not misled or prejudiced by the defective form of the charge as they knew perfectly well what offences they were charged with, there is no substantial defect in the charge sheet as to render the trial or conviction illegal; such irregularities are cured by Ss. 225 and 537 where they have not occasioned any failure of justice. (King, J.) BACHCHU v. MT. PIVARA. 101 I. C. 185=2 Luck. 430=4 O. W. N. 341=28 Cr. L. J. 409=8 A. I. Cr. R. 9=A. I. R. 1927 Oudh 235.

—S. 225—Unlawful assembly.

—*Omission to state common object not fatal.*

Where the common object of an unlawful assembly is specified in the complaint and found by the Court, its omission in the charge does not vitiate trial. 21 Cal. 827, Appl.; 22 Cal. 276, Dist. (Macleod, C. J. and Crump, J.) YESHVANT v. EMPEROR. 95 I. C. 72=28 Bom. L. R. 497=27 Cr. L. J. 744=A. I. R. 1926 Bom. 314.

—S. 226—Addition of charges.

—*Ground.*

The fact that the learned Public Prosecutor might have examined witnesses had he not been of opinion that they had been tampered with is not a reasonable ground for adding a charge of conspiracy to a charge of an offence under S. 314, Penal Code in the absence of any evidence of such a conspiracy. (Aston, A. J. C.) WAHID BUX v. EMPEROR. 120 I. C. 81=1929 Cr. C. 678=30 Cr. L. J. 1121=A. I. R. 1929 Sind 250.

—Under proper circumstances a Sessions Judge can add charges distinct from the charges raised by the committing Magistrate. Thus where some accused were charged with murder of one person and hurt to another person the Sessions Judge can add a charge of murder of the latter person also. (Newbould and C. C. Ghose, J.J.) HASSENULLA SHEIKH v. EMPEROR. 83 I. C. 485=26 Cr. L. J. 5=28 O. W. N. 561=A. I. R. 1924 Cal. 625.

—*Power—Exercise—Limits.*

Where seven persons were committed for trial to Sessions under S. 302 and at the commencement of the Trial the Sessions Judge added charges under Ss. 326, 325 and 323 Penal Code in connection with the injuries inflicted on three of the prosecution witnesses.

**CR. P. CODE (1898), S. 226—Addition of charges.**

*Held*, that the Sessions Judge acted within his powers in adding the charges relating to the injuries. So long as the facts appearing in the Magisterial inquiry warrant the framing of the charge omitted by the committing Magistrate, the Sessions Court has power to add the charge so omitted. It is not quite correct to say that the Sessions Court is not a Court of original jurisdiction. It has original jurisdiction which it can exercise on commitment made by a Magistrate 9 S. L. R. 37 Foll., 4 I. C. 993; 32 C. 22 Dist. (*Broadway, J.*) MULA SINGH v. EMPEROR. 71 I. C. 593=

24 Cr. L. J. 177=A. I. R. 1924 Lah. 413.

**—S. 227—Alteration.**

Where an accused is sent up on a police report for trial for an offence punishable under S. 122 of the Bombay City Police Act, the trying Magistrate can alter the charge and convict him of an offence under S. 352, I.P.C.; 36 Cal. 869, Foll. (*Marten and Madgavkar, J.J.*) FRAMJI BOMANJI v. EMPEROR.

93 I. C. 896=28 Bom. L. R. 291=27 Cr. L. J. 496=A. I. R. 1926 Bom. 255.

**—S. 227—Alteration after conviction.**

*Burma Excise Act, Sr. 30 (a) and 37.*

An illegal conviction under S. 30 (a) cannot be altered to a conviction under S. 37 if the accused is not called upon to answer a charge under the latter section. (*Heald, J.*) EMPEROR v. NGA PO SEIK.

119 I. C. 223=7 Rang. 316=30 Cr. L. J. 990=1929 Cr. C. 451=A. I. R. 1929 Rang. 256.

**—S. 227—Amendment.**

Sessions Judges, when they receive an indictment, should compare the charge sheet with the section, and, when necessary, amend the charge sheet, using so far as possible the words of the section. (*Wazir Hasan and Simpson, A. J. Cs.*) BHULAN v. EMPEROR.

91 I. C. 233=27 Cr. L. J. 57=A. I. R. 1926 Oudh 245.

**—S. 227—Appeal.**

*Interference in—Discretion of trial Court.*

An appellate Court should be very slow to interfere with the discretion of a trial Court if not exercised in a perverse or arbitrary manner. 26 All. 238 (P. C.) and 42 Bom. 380 P. C., Rel. on. Where the trial Court feared that the recasting of the charges would embarrass the jury and possibly prejudice the accused in his trial.

*Held*, that it cannot be said that such a reason was capricious or involved any disregard of any legal principle and certainly does not call for interference by High Court in appeal. (*Kincaid, J. C. and Rupchand Bilaram, A. J. Cs.*) EMPEROR v. STEWART.

97 I. C. 1041=27 Cr. L. J. 1217=21 S. L. R. 55=A. I. R. 1927 Sind 28.

**—S. 227—Conspiracy for forgery.**

*Charge—Contents—Validity—Test.*

Where the main charge was that of cheating, where it was not necessary at all to mention forgery as the object of the conspiracy, because forgery was committed not for its own sake but in order to cheat a bank and obtain money from it in a way in which, if it had known the fact, it would not have parted with the money; where there was no attempt to circumvent the law regarding sanction, and where the object of the conspiracy as to cheating was also mentioned from the very beginning.

*Held*, that the omission, though at a late stage of the proceedings, of the head of forgery as an object of the conspiracy charged did not vitiate the rest of the charge. The matter would have been different if commitment had been made on a charge of committing criminal conspiracy for the purpose of forging documents and subsequently, on discovering that such a

**CR. P. CODE (1898), S. 227—Information of alteration to accused—S. 237.**

charge required sanction, another object, *viz.*, that of cheating the bank, had been substituted. Where the trial starts for an object of the conspiracy which is beyond the cognizance of the Court, but where at the same time other objects of the conspiracy are within the cognizance of that Court, the omission of one head which is beyond the cognizance of the Court cannot affect the jurisdiction as regards the rest of the charge. (Case law discussed.) (*Dalal, J. C.*) BISHAMBHAR NATH TANDON v. KING EMPEROR. 90 I. C. 706=

2 O. W. N. 760=26 Cr. L. J. 1602=A. I. R. 1926 Oudh 161.

**—S. 227—Effect of alteration.**

*Deprivation of right to be tried by jury—It is bad in law.*

Where by a notification the Government had directed that in a particular district certain offences, including an offence under S. 436, I. P. C. were to be tried by a jury and not with the aid of assessors, and the S. J., of that district upon a commitment of the accused with charge under S. 436 altered the charge to one under S. 149 read with S. 436 and tried the case with the help of assessors.

*Held*, that the trial was void as being without jurisdiction. The trial of an offence under S. 149 read with S. 436 is a trial under S. 436 as the Court must always first determine whether the offence under S. 436 has been committed by an individual and next whether S. 149 makes the participants responsible. Exactly same is the case with S. 34, I. P. C.

*Held*, further that the Sessions Judge ought not to have withdrawn the charge under S. 436 and substituted that under S. 149 read with S. 436 which put the accused under a disadvantage as they were deprived of the right of trial by jury, the assessor's opinion being less final on a question of fact than the verdict of a jury. (*Mullick and Kulwant Sahay, J.J.*) RAMSUNDER ISSER v. EMPEROR. 93 I. C. 976=5 Pat. 238=

7 P. L. T. 178=27 Cr. L. J. 512=A. I. R. 1926 Pat. 253.

**—S. 227—Further charge.**

*More aggravated offence found—Further charge should be made.*

It is the duty of a Magistrate to see what offence has been committed if any, and if an offence more aggravated than the one complained of is discovered, it is no less his duty to charge the accused with the more aggravated offence. (*Johnstone, J.*) MANGAL SEN v. EMPEROR.

118 I. C. 653=1929 Cr. C. 566=

30 Cr. L. J. 957=A. I. R. 1929 Lah. 838.

**—S. 227—Information of alteration to accused—S. 237.**

Section 227 deals with alteration of a charge, but it requires that the alteration shall be read and explained to the accused. The accused must know what he is charged with and what offence he has to answer. S. 237 must be read with S. 227. A Court cannot convict an accused person of an offence of which he has not been told anything. (*Mears, C. J.*) RAGHUNATH KHANDU v. EMPEROR.

91 I. C. 888=24 A. L. J. 168=

7 L. B. A. Cr. 11=27 Cr. L. J. 152=A. I. R. 1926 All. 227.

An accused is entitled to know what offence he has to answer, Ss. 237 and 227, Cr. P. Code necessarily go together. It is not the intention of the legislature to empower a Court to convict an accused person of an offence of which he has not been told anything. (*Banarji, J.*) DHUM SINGH v. EMPEROR. 88 I. C. 1=

23 A. L. J. 436=6 L. R. A. Cr. 143=

26 Cr. L. J. 1057=A. I. R. 1925 All. 446.

## CR. P. CODE (1898).

## —S. 227—Proper procedure

—*Acquittal and fresh charge.*

Besides asking for an amendment which is likely to prejudice the prisoner, it is always open to the Crown to have the prisoner acquitted upon the original charge and to have him charged anew before the Magistrate according to the new facts. (*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*) EMPEROR v. STEWART.

97 I. C. 1041=21 S. L. R. 55=  
27 Cr. L. J. 1217=A. I. R. 1927 Sind 28.

## —S. 227—Scope.

It is doubtful if S. 227, Cr. P. Code, intended to confer jurisdiction on the Sessions Court to add or substitute a new charge or fresh evidence led or to be led in the Sessions Court for the first time. 3 Mad. 351, Rel. on. (*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*) EMPEROR v. STEWART. 97 I. C. 1041=21 S. L. R. 55=27 Cr. L. J. 1217=A. I. R. 1927 Sind 28.

## —S. 227—Time of alteration.

Where the Magistrate inquired into the complaint and framed a charge under Ss. 352 and 504, but at the time of writing the judgment he discovered that the occurrences were different and that the charges under Ss. 504 and 352 could not be tried together, and finding the illegality of the charges, he struck out the charge framed, and framed a charge under S. 504 alone against the accused and asked the accused whether the prosecution witnesses were to be recalled and examined and whether he had any defence witnesses to examine, but the accused stated that he did not want to examine witnesses and the Magistrate convicted him under S. 504.

*Held*, that such procedure was not sanctioned by S. 227, Cr. P. Code. What could be done under S. 227, was only to alter or modify the charge at any time before judgment. But the section does not permit the Court, to try in the same trial two distinct offences which are in no way connected with one another and that the procedure was illegal and the conviction must be set aside. 29 Mad. 569, Foll. (*Devadoss, J.*) KRISHNAMURTHI AIYAR v. NARAYANASWAMI AIYAR. 90 I. C. 914=22 M. L. W. 402=1925 M. W. N. 746=26 Cr. L. J. 1618=A. I. R. 1925 Mad. 1065=49 M. L. J. 93.

## —S. 228—Re-call of witnesses.

## —S. 231.

Even where S. 228 applies the accused has the right to re-call prosecution witness although alteration in the charge did not affect his evidence. (*Reilly, J.*) RAMALINGA ODAYAR v. EMPEROR. 118 I. C. 672=52 Mad. 346=29 M. L. W. 111=1928 M. W. N. 838=1 M. Cr. C. 312=30 Cr. L. J. 223=12 A. I. C. R. 247=A. I. R. 1929 Mad. 200=56 M. L. J. 600.

## —S. 231—Duty to ask accused.

—*No such duty of court.*

There is no duty laid on the Court under S. 231 to ask the accused if he wishes to re-call or resubmit prosecution or defence witnesses and so there is no breach of any provisions in S. 231 if the Court does not so enquire. It is essential that the accused should ask for permission: A. I. R. 1924 All. 665, Ref. (*Datal, J.*) KONMAL v. EMPEROR. 1930 Cr. C. 194=11 L. B. A. Cr. 31=1930 A. L. J. 572=52 All. 456=127 I. C. 587=A. I. R. 1930 All. 215.

## —S. 231—Omission to recall.

—*Illegality.*

Originally the accused was tried under S. 324, I. P. Code, and the charge was framed after the evidence of the prosecution was recorded. The Magistrate after the

## CR. P. CODE (1898), S. 233—Cross-cases.

defence was concluded altered the charge into one under S. 307, I. P. Code and did not give an opportunity to the accused to re-examine the witnesses for the prosecution with reference to the altered charge or to produce further defence evidence but committed him to the Court of Sessions on the altered charge. *Held*, that the procedure was entirely illegal and was likely to prejudice the accused. The order of commitment is therefore set aside. (*Kanhaiya Lal, J.*) MOHAN LAL v. EMPEROR. 81 I. C. 318=22 A. L. J. 239=25 Cr. L. J. 798=5 L. B. A. Cr. 79=A. I. R. 1924 All. 665.

## —S. 231—Re-call of witnesses.

—*Peremptory.*

The provisions of S. 231 are peremptory and therefore when a charge is altered, the Court is bound to re-call any witness which the prosecution or the accused desire. (*Allanson and Sen, J.*) CHHAUKA DHAUNK v. EMPEROR. 104 I. C. 97=6 Pat. 832=8 A. I. C. R. 570=8 P. L. T. 825=28 Cr. L. J. 769=A. I. R. 1927 Pat. 398.

If a charge is amended the accused is entitled to re-call and cross-examine any of the prosecution witnesses and not only those witnesses on the basis of whose evidence the charge was amended. (*Martineau, J.*) HAZARA SINGH v. EMPEROR. 90 I. C. 153=26 Cr. L. J. 1497=A. I. R. 1926 Lah. 60.

## —S. 232—Scanty evidence.

In a charge framed under S. 498 against the accused in the trial Court, it was alleged that he had taken the woman away from the complainant's custody, but the nature of the evidence showed that the charge was intended to relate to the alleged taking away of the complainant's wife from one B's house. There was, however, no finding that B had the care of the woman on behalf of her husband, the complainant, nor was there any evidence on the record that would justify such a finding.

*Held*, that from the very scanty nature of the evidence connecting the accused with the offence, it would not be proper to order a re-trial on an amended charge. (*Rankin, C. J. and Patterson, J.*) SUNNAT MANDAL v. MAKAR SHEIKH. 124 I. C. 520=31 Cr. L. J. 697=1930 Cr. C. 138=A. I. R. 1930 Cal. 138.

## —S. 232—Scope and applicability.

The rule of law that if any person is misled in his defence by the absence of any charge or an error in the charge a retrial is to be ordered, applies as well to cases in which the conviction was in compliance with the terms of the law as to cases in which the conviction was irregular. But mere defect or irregularity in procedure is not sufficient, the prejudice to the accused being the real test. (*Courtney Terrell, C. J. and Rowland, J.*) MALLU GOPA v. EMPEROR. 118 I. C. 323=30 Cr. L. J. 891=10 P. L. T. 875=1929 Cr. C. 584=9 Pat. 642=A. I. R. 1929 Pat. 712.

## —S. 233—Alternative charges.

There is no misjoinder in charging the accused with the main offence namely murder, and under Ss. 201 to 203, I. P. Code. (*Wallace and Jackson, J.J.*) CHINNA GANGAPPA v. EMPEROR. 1930 Cr. C. 1126=1930 M. W. N. 489=32 M. L. W. 389=A. I. R. 1930 Mad. 870=59 M. L. J. 677.

## —S. 233—Cross-cases.

—*Joint trial—Illegal.*

There were two cross-cases arising out of a riot and although two separate records were prepared, only one joint trial was held and the prosecution evidence in each case was treated as defence evidence in the other case.

## CR. P. CODE (1898), S. 233—Cross-cases.

*Held*, that the procedure was illegal and the trials must be quashed. (*Abdul Raouf, J.*) MUHAMMAD v. EMPEROR. 81 I. C. 39=25 Cr. L. J. 551=A. I. R. 1925 Lah. 149.

## —S. 233—Distinct offences.

—Sharfuddin and Nanhe accused were detected while stealing the crop of the complainant Chiddu Chamar, who objected to the theft and was compelled to run away to his house. After this, Sharfuddin and Nanhe hearing that the complainant intended to go to the police station to make a report, went along with the other persons to the complainant's *chaupal* and there caused hurt to Chiddu, and grievous hurt to his father Nanhe.

*Held*, that the two offences were obviously quite distinct and separate, and there was also an interval of time between their commission. *Held*, further, that they were not so connected together as to form the same transaction. (*Sulaiman, J.*) SHAFI v. EMPEROR.

81 I. C. 612=21 A. L. J. 859=4 L. B. A. Cr. 4=25 Cr. L. J. 964=A. I. R. 1924 All. 211.

## —S. 233—Joinder.

—Persons who abet in offence of helping others to escape from lawful custody could be tried along with those who escaped and all together could be tried also for offences under Penal Code, Ss. 147 and 323—where the whole thing formed one transaction. (*Krishnan, J.*) ARUMUGA GOUNDAN v. THE CROWN.

81 I. C. 312=18 M. L. W. 818=25 Cr. L. J. 792=A. I. R. 1924 Mad. 384.

## —S. 233—Joinder of accused.

## —Applicability.

There is no provision in the Cr. P. Code requiring a separate inquiry in respect of each accused person. The provision contained in S. 233 relates to separate trials only. Hence no question of illegal joint trial arises when the accused persons are discharged under S. 253; 9 N. L. R. 42, Rel. on; 4 N. L. R. 71 and 13 N. L. R. 35, Dist. (*Mohiuddin, A. J. C.*) MANBODH SINGH v. JHAROOAL. 115 I. C. 164=30 Cr. L. J. 404=1929 Cr. C. 261=12 A. I. Cr. R. 368=A. I. R. 1929 Nag. 237.

## —S. 233—Joinder of charges.

## —S. 537—Curability—Principle underlying.

It cannot be assumed that if a mandatory provision of the Code has been infringed in framing the charge, the Court must of necessity be held to have failed in administering justice to the accused. S. 537 affords no real grounds for any such assumption. The impugned procedure must be one that is not only prohibited by the Code but also works actual injustice to the accused. A. I. R. 1927 P. C. 44, Foll. (*Wallace and Jackson, J.J.*) K. RAMARAJA TEVAN v. EMPEROR.

1930 Cr. C. 1033=127 I. C. 654=53 Mad. 937=1930 M. W. N. 377=A. I. R. 1930 Mad. 857.

## —Mischief and riot—Bad.

In a case where the act of mischief is quite a separate transaction from that of riot, and the same persons are not accused in both transactions, the trial is bad for misjoinder of charges. (*Shadi Lal, C. J.*) BABU MAL v. GHASI. 106 I. C. 450=29 Cr. L. J. 34=9 A. I. Cr. R. 321=A. I. R. 1928 Lah. 185.

—A joinder of charges for offences under S. 20 of the Cattle Trespass Act and S. 504, Penal Code, is not illegal where the insult complained of was so near in point of time and place that it may reasonably be held to have formed part of the same transaction. (*Wallace, J.*) DEENADAYALU NAIBU v. RATNA PADAYCHI. 100 I. C. 381=50 Mad. 841=25 M. L. W. 282=1927 M. W. N. 167=28 Cr. L. J. 301=A. I. R. 1927 Mad. 396=52 M. L. J. 251.

## CR. P. CODE (1898), S. 233—Joint charge.

—Joint trial for the offence under S. 379 and 411, Indian Penal Code is illegal. (*Abdul Raouf, J.*) SOHEM SINGH v. THE CROWN. 76 I. C. 866=25 Cr. L. J. 274=A. I. R. 1923 Lah. 394.

## —S. 233—Joint charge.

## —Curable.

The joinder of two offences in a single charge is only an irregularity cured by S. 537, Cr. P. Code, and not an illegality. 40 Cal. 846, Diss. from; A. I. R. 1922 Cal. 573; A. I. R. 1925 Cal. 341; and A. I. R. 1927 Cal. 17, Dist.; 19 C. W. N. 972, Foll. (*Cuming and Lort Williams, J.J.*) AJGAR SHAIKH v. EMPEROR.

117 I. C. 596=30 Cr. L. J. 799=48 C. L. J. 138=32 C. W. N. 839=A. I. R. 1928 Cal. 700.

—The joinder of two offences in a single charge is an irregularity and not an illegality. 41 Cal. 66 and A. I. R. 1922 Cal. 573, Rel. on. (*Cuming and Gregory, J.J.*) TAMZ KHAN v. RAJJABALI MIR. 100 I. C. 827=45 C. L. J. 591=31 C. W. N. 337=28 Cr. L. J. 347=7 A. I. Cr. R. 553=A. I. R. 1927 Cal. 330

—Where in the course of one transaction three murders were committed and only one charge was framed against all accused.

*Held*, that three separate heads of charge should have been employed. A. I. R. 1922 Cal. 573, Ref. (*Rankin and Duval, J.J.*) AZIMODDY v. EMPEROR.

99 I. C. 227=54 Cal. 237=28 Cr. L. J. 99=44 C. L. J. 253=A. I. R. 1927 Cal. 17.

## —Irregularity—Test—Prejudice to defence.

Where offences under S. 416 were committed in respect of two separate attachment warrants but in the same transaction and the Magistrate framed one charge in respect of both the offences.

*Held*, the offences formed part of the same transaction, and the law allows that they can be tried together. It is immaterial whether the two offences were included in one charge or whether they were separated and each of them was made the basis of a charge. Assuming it was an irregularity, the main consideration should be whether any error, omission or irregularity would cause any embarrassment either to the defence or to the Court, whether it would prejudice the accused in his defence, and whether it had caused a miscarriage of justice. 25 Mad. 61 (P. C.) and 19 C. W. N. 972, Ref. (*Maung Ba and Doyle, J.J.*) ABDUL RAHMAN v. EMPEROR. 94 I. C. 717=4 Bur. L. J. 213=27 Cr. L. J. 669=A. I. R. 1926 Rang. 53.

## —Murder of several by one act.

Where several persons are murdered by setting fire to the hut in which they are sleeping, to frame one charge of murder comprising the names of all the victims instead of a separate charge being framed with regard to each is a defect but is only a technical defect.

Per *Mukherji, J.*—The first part of S. 233, Cr. P. Code, lays down that for each distinct offence shall be a separate charge. The provision is mandatory and a number of different charges should have been framed for these several offences of murder which appear to have been huddled into the first count as it stands. Whether this provision of the law is obligatory or merely directory, or whether the failure to comply with it is an illegality which vitiates the trial or is a mere irregularity, is a question with regard to which there is a clear conflict of judicial opinion in the Calcutta High Court. (*Walsley and Mukerji, J.J.*) ALIMUDDI NASKAR v. EMPEROR. 85 I. C. 231=40 C. L. J. 544=52 Cal. 253=29 C. W. N. 173=26 Cr. L. J. 487=A. I. R. 1926 Cal. 344.

## CR. P. CODE (1898).

## —S. 233—Omission of charge.

—Under S. 149, Penal Code—Not illegal.

S. 149 creates no offence but is like S. 34 merely declaratory of a principle of the common law and its object is to make it clear that an accused who comes within that section cannot put forward as a defence that it was not his hand which inflicted the grievous hurt. A person cannot be tried and sentenced under S. 149 alone, no punishment being provided by the section. Therefore the omission of S. 149 from a charge does not create an illegality by reason of S. 233, Cr. P. Code, which provides that for every distinct offence of which any person is accused there shall be a separate charge. (*Spencer, Krishnan and Ramesam, J.J.*) THEETHUMALAI GOUNDAR, *In re*.

82 I. C. 465=47 Mad. 746=20 M. L. W. 261=

35 M. L. T. 21=25 Cr. L. 1297=

A. I. R. 1925 Mad. 1=47 M. L. J. 221 (F.B.)

## —S. 233—Omission of separate charges.

—Where the accusation that the murder and looting were committed in pursuance of the common object was in no way frivolous but the common object was ultimately negatived and the objection was subsequently raised on the ground that separate charges had not been framed in respect of the offences alleged. *Held*, that under those circumstances the omission to frame separate charges was not fatal. (*Wallace and Jackson, J.J.*) RAMARAJA THEVAN, *In re*. 1930 M. W. N. 377=

1930 Cr. C. 1033=127 I. C. 654=

53 M. 937=A. I. R. 1930 Mad. 857.

## —S. 233—One transaction.

—Persons who abet in offence of helping others to escape from lawful custody could be tried along with those who escaped and all together could be tried also for offences under Penal Code, Ss. 147 and 323—where the whole thing formed one transaction. (*Krishnan, J.*) ARUMUGA GOUNDAN V. CROWN.

81 I. C. 312=18 M. L. W. 818=

25 Cr. L. J. 792=A. I. R. 1924 Mad. 384.

## —S. 233—Vague charge.

—Where there are as many as seven instances when the complainant is said to have been defamed and it is not clear from the charge as to which incident each one of the two accused was called upon to meet the accused cannot be said to have had an opportunity to meet the charge as required by law, nor can such a charge be in compliance with S. 233; 11 Cal. 106, Rel. on; 30 Cal. 102, Ref. (*Barlee, J. C. and Kalumal, A. J. C.*) ALI MAHOMED V. EMPEROR.

119 I. C. 532=30 Cr. L. J. 1073=

1930 Cr. C. 126=A. I. R. 1930 Sind 62.

## S. 234—Breach of trust.

—Separate transactions.

A person was accused of committing theft of eight necklaces in the possession of a temple under his management, on different occasions extending over a year—A charge was framed under S. 381, I.P.C. It was contended that the trial was vitiated owing to misjoinder of charges.

*Held*, that the offence in regard to the necklaces being one of criminal breach of trust and the transaction in regard to each necklace being a separate one, it was necessary to charge the accused separately with each offence and every such offence must be tried separately. Although it may be said that there was technically no misjoinder of charges, as only one charge was drawn, the trial was vitiated in the same way as if there had been misjoinder of charges and this was not a mere irregularity. 25 Mad. 61 (P. C.) and 38 All. 42, Rel. on. (*Kendall, J.*) RAMAN LAL V. EMPEROR.

## CR. P. CODE (1898), S. 234—Distinct offences.

49 All. 312=25 A. L. J. 217=8 L. E. A. Cr. 35=

28 Cr. L. J. 171=7 A. I. Cr. R. 260=

99 I. C. 603=A. I. R. 1927 All. 223.

—Though the amount in respect of which breach of trust is committed is composed of different sums payable in respect of four different amounts realized at the same time under one receipt, one charge in respect of all such items is not bad. (*Suhrawardy and Luval, J.J.*)

HARENDRA KUMAR V. EMPEROR. 45 C. L. J. 207=

101 I. C. 597=28 Cr. L. J. 469=

A. I. R. 1927 Cal. 409.

## —S. 234—Cheating.

—Where the accused was tried jointly at one trial for cheating two persons within the space of one month.

*Held*, that one trial for the two offences was not illegal. 40 Cal. 846, considered as no longer good law. (*Buckmill, J.*) FARZAND ALI V. EMPEROR.

1926 P. H. C. C. 207=27 Cr. L. J. 909=

96 I. C. 221=A. I. R. 1926 Pat. 347.

## —S. 234—Continuing offence.

—Applicability.

The offence of waging war, punishable under S. 121, Penal Code, is a continuing offence. A charge under the section is not illegal by reason of contravening S. 234, Cr. P. Code, by mentioning more than three offences spread over a period longer than a year. (*Krishnan, J., on difference between Spencer, O.C. J. and Reilly, J.*) Gammallu Dora *In re*. 90 I. C. 297=

49 Mad. 74=1925 M.W.N. 192=26 Cr. L. J. 1513=

A. I. R. 1925 Mad. 690=48 M.L.J. 308.

## —S. 234—Defective charge—Illegality of trial.

—Where a charge for an offence under S. 406, I.P. C., was made about fifteen months after the offence was committed,

*Held*, that the charge was defective so as to vitiate the trial as it violated the provisions of S. 234, and that the matter cannot be treated as a mere irregularity. (*Pearson and Jack, J.J.*) KALU MIAN V. EMPEROR.

34 C. W. N. 959.

## —S. 234—Different transactions.

—The operation of the two Ss. 234 and 235 cannot be combined and therefore a joint trial in respect of two sets of separate and independent transactions, in which different offences have been committed is not permissible. (*Mukerji, J.*) FAUJDAR MAHTO V. KING EMPEROR.

48 All. 236=24 A. L. J. 239=7 L. E. A. Cr. 32=

27 Cr. L. J. 143=91 I. C. 815=

A. I. R. 1926 All. 261.

—Illegal.

Where the accused is charged jointly with having stolen six specific animals belonging to five specific persons by five different acts of theft from those five specific persons.

*Held*, that the error is not a mere technicality which can be set right under S. 537. The trial is wholly illegal. 25 Mad. 61 (P. C.), Foll. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) HYDER V. EMPEROR.

91 I. C. 64=20 S.L.R. 3=27 Cr. L. J. 32=

A. I. R. 1926 Sind 129.

## —S. 234—Distinct offences.

—Procedure—There is no presumption as to date of receipt of stolen property where several articles of stolen property are found in possession of accused—Procedure to be adopted for trial is to charge the accused for 3 offences regarding 3 parcels on the assumption that each offence is independent.

Where no evidence, one way or other, exists as to whether receipt of various parcels of stolen property took place at the same or different dates no presumption can be drawn or assumption made as against the accused either that the offence of retention by the receiver con-



**CR. P. CODE (1898), S. 234—Distinct offences.**

stitutes one or more than one connected transaction. The prosecution cannot base its case or justify its procedure upon any presumption or assumption operating against an accused unless such presumption or assumption is grounded upon evidence. If the prosecution frames a charge on the presumption that the retentions constituted a set of independent offences, it must include only three parcels in respect of which the charge is made and the prosecution may then be met with the plea that these retentions in fact constituted one transaction and one offence, in which case the charge could be amended accordingly and the whole of the stolen property included in one single charge and the accused tried at one single trial. Similarly, if the prosecution chooses to prosecute on several separate charges in several separate proceedings, directly one case is concluded and the accused is convicted or acquitted, the plea will, of course, at once be put forward, namely, that the accused can take the benefit of the provisions of S. 403, of Cr.P. Code on the ground that the retentions constituted a single transaction and a single offence and no presumption or assumption to the contrary can be raised as against the accused. It is obvious, therefore, that the only safe course to adopt, in cases of this character where no date of reception is known or can be proved by the prosecution, is to take advantage of the first course indicated above. This course whilst giving the accused the advantage of not being injured by the inclusion in the count of a very large number of parcels of stolen property a course which might affect him prejudicially if his case was being tried before assessors or a jury and the avoidance of which is really the object of S.234 of the Cr. P. Code prevents the accused from objecting respectively in any way to the trial, for if he contends that the whole matter is but one transaction and one offence then the charge can at once be amended to include the whole of the property. Where two accused had already been tried for the offence of the retention of stolen property (carpets) found in their possession at the same time as were the stamps the subject matter of the second trial, and their plea at the second trial was that they had already been tried at the first trial with the same offence as that with which they were charged in the second trial.

*Held*, they, in effect, claim the presumption in their favour that their retention of all these goods was one offence and one transaction, and to the benefit of this presumption they are entitled. The fact that one has been acquitted and the other convicted makes no difference. The contention that as the articles recovered from their possession were of very diverse character, the offences of the dishonest retention of each set of articles were distinct offences is negatived by the definition of what is the same offence as defined in sub-S. (2) of S. 234 of the Cr. P. Code. It is there prescribed that offences are of the same kind when they are punishable with the same section of the Indian Penal Code. (1888) 15 Cal. 511; (1893) 15 All. 317; 1923 Cal. 557; (1905) 9 C. W. N. 1023, Disc. (*Adami and Bucknill, JJ.*) KING-EMPEROR v. BISHUN SINGH.

81 I. C. 226=3 Pat. 503=5 P. L. T. 319=  
1924 P. H. C. C. 126=2 Pat. L. R. Cr. 131=  
25 Cr. L. J. 738=A. I. R. 1925 Pat. 20.

**—S. 234—False entries.**

*—Semble*: If the accused is charged with making false entries only, it may reasonably be said that the making of each false entry is a distinct offence. (*Suhrawardy and Costello, JJ.*) PRAFULLA CHANDRA v. EMPEROR. 34 C. W. N. 925.

*—Each entry 'separate offence.'*

Each false entry which amounts to an act of falsification constitutes a separate offence, although a number

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of false entries might be proved to cover one defalcation. (*Spencer and Ramesam, JJ.*) SHAMA SHASTRI v. EMPEROR. 72 I. C. 622=1922 M. W. N. 476=  
24 Cr. L. J. 462=A. I. R. 1922 Mad. 435=  
44 M. L. J. 67.

**—S. 234—Falsification of accounts.**

*—When a person is charged with falsification of accounts any number of false entries or omission of entries may be proved in order to prove falsification. Such a course is not contrary to S. 234 Cr. P. Code. (Suhrawardy and Costello, JJ.) PRAFULLA CHANDRA v. EMPEROR. 34 C. W. N. 925.*

**—S. 234—Legality, determination of.**

*—Per Krishnan, J.*—The question of the legality of a joint trial really depends upon the accusation made and not upon the result of the trial; provided, of course, that the accusation is a real one and not a mere excuse for a joinder of charges which cannot be otherwise charged. (*Krishnan, J.*) (*On difference between Spencer, Offg. C. J. and Reilly, J.*) GAM MALLU DORA *In re*. 90 I. C. 297=49 Mad. 74=1925 M. W. N. 192=  
26 Cr. L. J. 1513=A. I. R. 1925 Mad. 690=  
48 M. L. J. 308.

**—S. 234—Misappropriation.**

*—Where an accused person is charged under S. 408, Penal Code with having committed criminal breach of trust in respect of a gross sum of money misappropriated by him within the period of one year and the charge not only specifies the gross sum taken and the dates between which it was taken, but also sets out the items composing such gross sum giving the dates and the amounts alleged to have been misappropriated, the charge comes within the provisions of Cl. (2), S. 222, Cr. P. Code and that if by specifying the items composing the gross sums the charge went beyond what was necessary instead of prejudicially affecting the accused it is to that extent favourable to the accused. 31 Cal. 928, Foll.; 24 All. 254; 29 Mad. 558 and 33 All. 36, Ref. (*Suhrawardy and Costello, JJ.*) RAHIM BUX SARKAR v. EMPEROR. 34 C.W.N. 901=1930 Cr. C. 1117=  
A. I. R. 1930 Cal. 717.*

**—S. 234—More than three offences.**

*—Illegality.*

Where an accused is charged with and tried at one trial for four offences it is not merely an irregularity but an illegality which vitiates the trial. 25 Mad. 61 (P. C.), Foll.; A.I.R. 1927 P. C. 44, Dist.; 28 M. L.J. 397 and 5 P. L. J. 11, Ref. (*Curgenven, J.*) VIRASWAMI NAIDU v. EMPEROR. 52 Mad. 999=121 I.C. 617=  
31 Cr. L.J. 273=A. I. R. 1930 Mad. 508.

*—Illegality—Charge.*

The accused was charged under S. 477-A, Penal Code for making false entries in the pay bill and monthly cash accounts. In the charge framed, there were six distinct and separate charges of falsification of six separate and distinct documents, *viz.*, three pay bills and three monthly cash accounts.

*Held*, that the trial was illegal as being a trial of more than three offences together. (*Chotzner and Duval, JJ.*) KRISHNA LAL v. EMPEROR.

7 A. I. Cr. R. 426=45 C. L. J. 1=28 Cr. L.J. 291=  
100 I. C. 371=A. I. R. 1927 Cal. 946.

*—Law as to.*

S. 234 permits the joinder of three charges against one accused, and S. 239, read with S. 234, permits the joinder of two charges against one accused with the charges of abetment of those two offences against another accused. But there is no provision which permits the joinder of a third charge against the one accused with either or both of the first two charges against the

**CR. P. CODE (1898), S. 234—More than three offences.**

other accused. Therefore where one accused was charged with three separate offences and the other accused was charged with abetment of two of these offences, but not of abetment of the third,

*Held*, that S. 233, governed the case, and that the trial was illegal. (*Carr, J.*) **AH KIL v. EMPEROR.**  
84 I. C. 463 = 26 Cr. L. J. 319 =  
3 Bur. L. J. 254 = A. I. R. 1925 Rang. 198.

**—Twenty-six items.**

A conviction for criminally misappropriating 26 different sums amounting to Rs. 91-2 between the 4th of August, 1921, and 12th of January, 1922, cannot be upheld. 25 M. 61, Foll. (*Stuart, J.*) **GANGA PRASAD v. EMPEROR.**  
76 I. C. 652 = 25 Cr. L. J. 220 =  
A. I. R. 1923 All. 483.

**—S. 234—Offences of different kinds.****—Three acts of criminal breach of trust and three acts of falsification of accounts—Applicability.**

It is illegal to try a person on a charge which alleges three distinct acts of criminal breach of trust and three distinct acts of falsification of accounts though in respect of the same items. 30 Mad. 328 and 41 Cal. 722, Appr.; 33 Bom. 221, Dist. The case is not covered by S. 234 of the Code, inasmuch as the offences of criminal breach of trust and of falsification of accounts are not offences of the same kind. (*Fauzett and Coyajee, J.J.*) **EMPEROR v. MANANT K. MEHTA.** 49 Bom. 892 =  
27 Bom. L. R. 1343 = 27 Cr. L. J. 305 =  
92 I. C. 689 = A. I. R. 1926 Bom. 110.

**—Not justified.**

Six accused were tried at one trial for offences under Ss. 147, 323, 342 alleged to have been committed on 25th January.

*Held*, that their joint trial cannot be justified under S. 234 or 239, Cr. P. Code 25 M. 61 P.C. Foll.; 40 Cal. 318 and 30 A. 351, Ref. (*Daniels, J.*) **POTTO LAL v. THE CROWN.**  
77 I. C. 818 = 46 All. 54 =  
21 A. L. J. 820 = 4 L. R. A. Cr. 203 =  
25 Cr. L. J. 466 = A. I. R. 1924 All. 316.

**—S. 234—Scope.**

(*Obiter.*) Ss. 234, 235 and 236 are mutually exclusive. (*Dalal, J.*) **JANESHR DAS v. EMPEROR.**  
116 I. C. 794 = 51 All. 544 = 1929 A. L. J. 329 =  
10 L. B. A. Cr. 53 = 11 A. I. Cr. R. 355 =  
30 Cr. L. J. 687 = A. I. R. 1929 All. 202.

Three offences of the same kind within the meaning of the section committed within the space of one year can be tried at one trial. 40 Cal. 846, Diss. from. A. I. R. 1926 Pat. 347, Rel. on. (*Miller, C. J. and Mullick, J.*) **JAMUNA PRASAD v. EMPEROR.**

107 I. C. 826 = 9 A. I. Cr. R. 483 = 29 Cr. L. J. 287.  
—S. 235.

The two Ss. 234 and 235, must be construed apart and there is nothing in the Code which would allow the two to be added together, so to speak, in order to provide for a trial of one person for more than three charges even though some of the charges may have formed one series of acts so connected together as to form the same transaction. In other words, there is nothing in Chap. 19 which would validate the trial of an accused on six separate charges. (*Mitchell, Offg. A. J. C.*) **EMPEROR v. DHANESHRAM.** 27 Cr. L. J. 1099 =  
97 I. C. 363 = 7 A. I. Cr. R. 162 =  
A. I. R. 1927 Nag. 22.

**—S. 234 does not control S. 239.**

The "former part" referred to in the direction at the end of S. 239 means the part prior to the part headed "joinder of charges" i.e., the part under the heading "form of charge". S. 234, therefore, will not control the provisions of S. 239. (*Dalal, J. C.*) **BISHAMBHAR**

**CR. P. CODE (1898), S. 235—Different transactions—234.**

**NATH TANDON v. KING-EMPEROR.** 2 O. W. N. 760 =  
26 Cr. L. J. 1602 = 90 I. C. 706 =  
A. I. R. 1926 Oudh 161.

**—S. 234—Single charge.****—Series of embezzlements.**

Where the accused was prosecuted for an offence under S. 409, Penal Code, and only one charge was framed in which four sums of money said to have been embezzled were specified and the Magistrate convicted the accused but passed sentence for each embezzlement and directed that the sentences should run concurrently,

*Held* that there was no misjoinder of charge and that the separate sentences though invalid did not prejudice the accused so as to render the conviction liable to be set aside. (*Meers, C. J. and King, J.*) **EMPEROR v. PREM NARAIN.** 1930 A. L. J. 1130.

**—S. 235—Addition of charge.****—Charge of conspiracy—Addition of another disclosed in evidence—Proper.**

Where the Magistrate, acting on the facts disclosed in the evidence for the prosecution, added a second charge in respect of an act alleged to have been done in pursuance of the conspiracy which was the only offence alleged in the complaint,

*Held*, that Magistrate's action was not only justified under S. 235, Cr. P. Code, but such initiation taken by him was on the original complaint and not upon his own knowledge or suspicion, because when a Magistrate has taken cognizance of an offence upon complaint, it is competent for him to take cognizance of any offence that is disclosed by the evidence and therefore S. 191 does not apply. A. I. R. 1922 Cal. 107, Foll. (*Maung Ba and Doyle, J.J.*) **ABDUL RAHMAN v. EMPEROR.**  
94 I. C. 717 = 4 Bur. L. J. 213 =  
27 Cr. L. J. 669 = A. I. R. 1926 Rang. 53.

**—S. 235—Applicability.**

Theft of two articles belonging to two different persons committed in one enterprise constitutes only one offence of theft and not two. (*Hallifax, A. J. C.*) **BHUZA v. EMPEROR** 90 I. C. 151 =  
26 Cr. L. J. 1495 = A. I. R. 1926 Nag. 89.

**—S. 235—Community of purpose.****—What is.**

Though community of purpose or design and continuity of action are essential elements in determining whether or not the number of acts are so connected together as to form part of the same transaction, yet to constitute community of purpose the mere existence of some general purpose or design is not sufficient. There can be no continuity of action where each act is a completed act in itself and the original design is accomplished so far as that act is concerned. Joint trial of the accused for falsely inducing various people at different times to pay money to the accused, for securing employment at handsome wages in a foreign country is illegal. (*Moti Sagar, J.*) **NANAK CHAND v. CROWN.**

81 I. C. 796 = 25 Cr. L. J. 1020 =  
A. I. R. 1924 Lah. 734.

**—S. 235—Different transactions—S. 234.**

The accused was charge-sheeted by the police in connection with two separate occurrences. It was alleged first that he had run into three rickshaws containing several bandsmen and caused injuries to them and secondly that about a miles further on he ran into four persons carrying a bier and injured them, so severely that some of them died.

*Held*, that the two charges could not be tried together. They were not parts of the same transaction within the meaning of S. 235. (1) Cr. P. Code, nor were they offences of the same kind within the meaning of

**CR. P. CODE (1898), S. 235—Different transactions—234.**

S. 234. (*Waller and Anantakrishna Iyer, J.J.*) COLLET v. EMPEROR. 1929 M. W. N. 395.

—*False statements in one deposition.*

Per *Crump and Fawcett, J.J.*—Where a witness makes deliberate false statements on different subjects and at different times, though during the same deposition, each of such false statements constitutes a separate offence. The mere fact that they are included in one deposition does not make it any the less different offences (*Crump, J. on difference between Shaw and Fawcett, J.J.*) SEJMAL PUNAMCHAND v. EMPEROR.

51 Bom. 310 = 29 Bom L. R. 170 = 28 Cr. L. J. 373 = 100 I. C. 981 = 7 A. I. Cr. R. 505 = A. I. R. 1927 Bom. 177.

—Where there were four distinct acts on different dates relating to four different documents charged under S. 477-A. *Held*, that as the offences did not come within a series of acts so combined together as to form the same transaction, they could not be tried together at one trial either under S. 235 or S. 234. (*Addison, J.*) FITZ MAURICE v. EMPEROR. 27 Cr. L. J. 793 = 95 I. C. 393 = A. I. R. 1926 Lah. 193.

—Joint trial of the accused for different offences is illegal if the offences were not committed in the same transaction. (*Zafar Ali, J.*) NUR KHAN v. THE CROWN. 7 L.L.J. 64 = 26 Cr.L.J. 1167 = 88 I. C. 527 = A. I. R. 1925 Lah. 326.

—S. 235—Disconnected charges.

—*Combining of, when can be questioned.*

If in any case either the accused are likely to be bewildered in their defence by having to meet many disconnected charges or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters and tending by its mere accumulation to induce an undue suspicion against the accused, then the propriety of combining the charges can be questioned. (*Nanavutty, J.*) KASUL v. EMPEROR. 29 Cr.L.J. 801 = 3 Luck. 664 = 11 A. I. Cr. R. 32 = 5 O.W. N. 612 = 111 I. C. 305 = A. I. R. 1928 Oudh 401.

—S. 235—Distinct offences.

—*Rioting and hiring for rioting.*

The offence of hiring a person to take part in a riot is a separate and distinct offence from the riot itself and ordinarily the hiring and the riot would be separate transactions. There may, however, be circumstances which might justify the Court in holding that the alleged hiring or employing and the riot were part of the same transaction. (*Newbould and Mukerji, J.J.*) NAYAN ULLAH v. EMPEROR. 85 I. C. 818 = 26 Cr. L. J. 594 = A.I.R. 1925 Cal. 903.

—S. 235—Doubt about offences.

—*Procedure.*

The fact that the offence under S. 352, I.P.C. is punishable with less than six months' imprisonment, and is ordinarily triable as a summons case, does not avail to support the proposition that no charge is required to be framed in respect of the offence under S. 352, if an accused is tried for it along with other offences under the provisions of S. 235. But if the series of acts committed is of such a nature that it is doubtful which of several offences the facts proved constitute, the accused can be convicted under S. 352, I.P.C. even though he can be charged under S. 149, provided the absence of charge under S. 342, does not mislead the accused in his defence. 29 Cal. 481, Dist.; A.I.R. 1925 P.C. 130, Rel. on. (*Courtney Terrell, C. J. and Rowland, J.*) MALLU GORA v. EMPEROR. 118 I. C. 323 = 30 Cr. L. J. 891 = 10 P.L.T. 875 = 9 Pat 642 = 1929 Cr. C. 584 = A.I.R. 1929 Pat. 712.

**CR. P. CODE (1898), S. 235—Offence of different kinds.**

—S. 235—Embarrassing joinder—S. 239.

—*Enabling provisions—should not be resorted to if it embarrasses defence.*

In a case of a charge of conspiracy, and nine separate charges of murder and one of arson, upon the allegation that all these offences were committed in pursuance of the conspiracy or at any rate in the course of the same transaction and applying the exceptions laid down in Ss. 235 and 239, Cr. P. Code, all these charges could no doubt be legally joined; but the provisions of these sections are merely enabling ones and if there is risk of embarrassing the defence such joinder of charges should not be resorted to. There was evidence against all the accused together, only of conspiracy to commit murder. A number of murders and an offence of arson were committed. Though all the accused were present, there was only evidence against some of them as regards these the latter offences. All the accused were charged with conspiracy, murder and arson and the jury returned a verdict of guilty against all the accused on all the charges.

*Held*, that the jury were embarrassed and the accused were prejudiced in their defence and that a re-trial must be ordered. (25 Mad. 61, (P.C.) Foll.) (*Walmsley and Mukerji, J.J.*) ALIMUDDI NASKAR v. EMPEROR.

85 I. C. 231 = 40 C.L.J. 541 = 29 C.W.N. 173 = 52 Cal. 253 = 26 Cr. L. J. 487 = A. I. R. 1925 Cal. 341.

—S. 235—Independence of charges.

—*Striking off of the conviction for a component offence—Effect.*

One of the counts in the charge against the accused under trial for waging war was that they had committed dacoity. This count failed as being too vague.

*Held*, (Per *Spencer, Offg. C.J.*) that the validity of the conviction under S. 121 was not affected by the striking off of the convictions for other offences forming component parts of the offence of waging war, and the accused cannot be said to have been prejudiced in their defence on the charge for waging war, as the acts of dacoity were all merely some of a series of incidents which went to make up the continuing offence of waging war, within the meaning of S. 235 (3). (*Krishnan, J. on difference between Spencer, Offg. C.J. and Reilly, J.*) GAM MALA DORA, *In re.* 90 I. C. 297 = 49 Mad. 74 = 1925 M.W.N. 192 = 26 Cr L.J. 1513 = A.I.R. 1925 Mad. 690 = 48 M. L. J. 308.

—S. 235—Offences against properties.

—*Rioting resulting in damage—Separate offences for separate holdings—Though transaction same, separate offences can be charged in respect of separate holdings.*

An offence against property is not an offence against the property in the abstract. It is an offence against the property of a particular owner or possessor and so although unlawful assembly may consist of the same persons throughout, where alleged rioting results in damage to crops of a number of raiyats even though the transaction of rioting may be the same, a separate offence of rioting is committed in respect of each separate holding and separate offences can be charged in respect of each separate holding. (*James, J.*) GHANA MAHAPATRA v. EMPEROR. 123 I. C. 78 = 31 Cr L. J. 472 = 1929 Cr. C. 582 = A. I. R. 1929 Pat. 710.

—S. 235—Offences of different kinds.

—*Three acts of criminal breach of trust and three acts of falsification of accounts—Applicability.*

It is illegal to try a person on a charge which alleges three distinct acts of criminal breach of trust and three distinct acts of falsification of accounts though in res-

**CR. P. CODE (1898), S. 235—Offences of different kinds**

pect of the same items. 30 Mad. 328 and 41 Cal. 722, Appr. 33 Bom. 221, Dist. The case cannot fall under S. 235 because there are three defalcations committed on different occasions, and the false entries connected with one defalcation cannot be said to form part of the same transaction with the other defalcation and falsifications. (*Fawcett and Coyajee, J.J.*) **EMPEROR v. MANANT K. MEHTA.**

49 Bom. 892=27 Bom.L.R. 1343=27 Cr.L.J. 305=92 I.C. 689=A.I.R. 1926 Bom. 110.

**—S. 235—One offence.**

—Theft of two articles belonging to two different persons committed in one enterprise constitutes only one offence of theft and not two. (*Hallifax, A. J.C.*) **BHURA alias TURAB v. EMPEROR.**

26 Cr. L.J. 1495=90 I.C. 151=A.I.R. 1926 Nag. 89.

**—S. 125—One transaction.**

—Where the accused formed themselves into a body with the intention of looting and shooting the deceased and frightening any one who tried to prevent them and the accused were tried for the offences of murder, attempted murder and hurt, *Held*, that the whole affair from the formation to the disruption of the assembly formed one transaction and that separate charges were not necessary. (*Wallace and Jackson, J.J.*) **RAMA-RAJU THEVAN, In re.**

1930 Cr. C. 1035=127 I.C. 654=53 Mad. 937=1930 M. W. N. 377=A. I. R. 1930 Mad. 857.

**—Test for legality.**

Conviction for offences committed outside the scope of the common object mentioned in the charge of rioting under S. 147 is not illegal and void, if the offences of which the accused stand charged constitute one transaction. (*Nanavutty, J.*) **RASUL v. EMPEROR.**

111 I. C. 305=5 O. W. N. 612=11 A. I. Cr. R. 32=3 Luck. 664=29 Cr.L.J. 801=A.I.R. 1928 Oudh 401.

—The offences of conspiracy and offences committed in pursuance of that conspiracy form one and the same transaction. 19 C. W. N. 672, Rel. on, (*Maug Ba and Doyle, J.J.*) **ABDUL RAHMAN v. EMPEROR.**

94 I. C. 717=4 Bur. L. J. 213=27 Cr. L. J. 669=A. I. R. 1926 Rang. 53.

**—S. 235—Procedure.**

—*Rioting with hurt—Found against—Trial for hurt bad.*

A man cannot be convicted of hurt unless he is charged with hurt and hence if from the charge as originally framed, accused are charged with rioting with the common object of causing hurt, and the Court finds the charge of rioting with the said common object unsustainable, on acquitting the accused of the said charge of rioting, the Court cannot proceed to find them severally guilty of grievous or simple hurt without framing a direct charge. The omission to frame a direct charge vitiates the trial. 27 Cal. 566; A. I. R. 1925 Mad. 1 (F. B.), Ref., 47 Mad. 746, Dist. (*Jackson, J.*) **RAMI REDDY v. EMPEROR.**

1930 Cr. C. 576=127 I. C. 298=A. I. R. 1930 Mad. 631.

**—Number of charges.**

It is better to have too many charges than to have too few and once a charge has been framed it should not be dropped until the conclusion of the trial unless on the face of it, it is wholly inappropriate or the trial is open to attack on the ground of misjoinder or multifariousness of charges. (*Courtney Terrel, C. J. and Fazl Ali, J.*) **RUNJ SUBDUDHI v. EMPEROR.**

111 I. C. 770=8 Pat. 289=10 P. L. T. 549=30 Cr. L. J. 675=1929 Cr. C. 62=

13 A. I. Cr. R. 143=A. I. R. 1929 Pat. 275.

**CR. P. CODE (1898), S. 235—Same transaction.**

—*Trial for charges under Ss. 304/149 and S. 304/34 is not illegal.*

Although under the law there cannot be any objection to one charge under Section 304 read with Section 149 and another under Section 304 read with Section 34 being put forward against the accused persons at one and the same trial, in some instances they may cause embarrassment inasmuch as they proceed upon an assumption of facts which may not be identical so far as the two charges are concerned and it is desirable that, in framing charges with regard to matters of this description, attention should be paid to the case as put forward on behalf of the prosecution and the matter should then be dealt with strictly in accordance with the allegations which the prosecution desires to prove. (*Walmesley and Mukerji, J.J.*) **SURENDRA LAL DAS v. EMPEROR.**

85 I. C. 147=40 C. L. J. 559=26 Cr. L. J. 487=A. I. R. 1925 Cal. 413.

**S. 235—Same transaction.****—Instances of.**

A series of falsifications of accounts made to cover a single act of defalcation may be laid in one charge under S. 477-A, Penal Code. Where the real falsification consists in making a false entry and the other falsifications have their source in that one entry, the series of falsifications can be included in one charge. So also a charge of criminal breach of trust of a sum of money can be tried under S. 235 at the same time with one of the falsification of accounts made to conceal the act of misappropriation as part of the same transaction. 41 Cal. 722 and 40 Cal. 318, Rel. on. (*Johnstone, J.*) **MANGAL SEN v. EMPEROR.**

118 I. C. 654=1929 Cr. C. 571=30 Cr. L. J. 958=A. I. R. 1929 Lah. 843.

**—Applicability and procedure.**

The accused made an application to the District Magistrate containing allegations of ill-treatment by the police and certain police patels in the course of a police inquiry. The District Magistrate examined her on this application, and she then stated that she could not give the name of the police officers by whom she had been beaten for certain reasons. Subsequently she made a statement to a Sub-Divisional Magistrate, in which she alleged that a certain Sub-Inspector and a certain head constable had beaten her in this inquiry. A complaint was made against her at the instance of the Sub-Divisional Magistrate under S. 193, I. P. C. A charge was framed against the accused in that case, which first of all charged her with having made two contradictory statements, one of which statements she either believed to be false or did not believe to be true. The Magistrate, on withdrawal by the Public Prosecutor, acquitted the accused under S. 494 (b), Cr. P. Code. Meanwhile, a complaint had been made in the same Court by the District Magistrate against the accused, charging her with having furnished false information to a public servant in the first application so that she had committed an offence under S. 182, I. P. C.

*Held*, that the case is one where there can be said to have been a series of acts so connected together as to form the same transaction, within the meaning of sub-S. (1). S. 235; that in that series of acts more offences than one were committed by the same person; that the wording of sub-S. (1), S. 235, did cover the case and that the previous acquittal did not bar the subsequent prosecution. (*Fawcett and Mirza, J.J.*) **DAGDI DAGDYA BHIL v. EMPEROR.**

109 I. C. 346=29 Cr. L. J. 522=10 A. I. Cr. R. 187=30 Bom. L. R. 342=A. I. R. 1928 Bom. 177.

**—Continuous acts directed towards same object.**

Accused were charged under Ss. 147, 325 and 344.

**CR. P. CODE (1898), S. 235—Same transaction.**

They had all the common object of taking away the complainants and confining them until they agreed to work for one *H* who was one of the accused. *H* was not present at the place from where the complainants were taken away but he was present at the place where they were subsequently confined. The complainants were confined with his knowledge.

*Held*, that all the facts formed part of one and the same transaction being continuous and directed towards the same object, and that the accused could all be tried at one trial for the different offences. (*Adami and Wort, J.J.*) **HABIB KHAN v. EMPEROR.**

110 I. C. 584 = 29 Cr. L. J. 728 =  
A. I. R. 1928 Pat. 634.

—*Test—Proximity of time, community of intention and continuity of action.*

What does or does not form part of the same transaction may be considered to be a question of fact in each particular case. Acts may be considered to form part of the same transaction if there are between these acts proximity of time, community of intention and continuity of action. (*Cumt.ig and Gregory, J.J.*) **TAMEZKHAN v. RAJJABALI MIR.**

100 I. C. 827 =  
45 C. L. J. 591 = 31 C. W. N. 337 = 28 Cr. L. J. 347 =  
7 A. I. Cr. B. 353 = A. I. R. 1927 Cal. 330.

—*Joinder of charges under S. 121-A and S. 120-B, I. P. C., is not illegal.*

Where several accused persons were all charged with conspiring to deprive His Majesty the King of the sovereignty of British India, of conspiracy to wage war against the Government, and of conspiring to overawe the Government by means of criminal force, and apart from the conspiracy to effect these objects, there was disclosed on the evidence a conspiracy to commit dacoities either accompanied by murder or not accompanied by murder, and thus certain of the conspirators were liable to punishment under S. 120-B for being party to a criminal conspiracy to commit offences punishable with death or transportation for life.

*Held*, that the joinder of charges under S. 121-A and S. 120-B, I. P. C., was regular and legal, as all these offences formed part of the same transaction. (*Stuart, C. J. and Raza, J.*) **RAM PRASAD v. EMPEROR.**

106 I. C. 721 = 2 Luck. 631 = 1 L. C. 339 =  
8 A. I. Cr. B. 449 = A. I. R. 1927 Oudh 369.

—The offences of conspiracy and offences committed in pursuance of that conspiracy form one and the same transaction. 19 C. W. N. 672, Rel. on. (*Mauing Bn and Doyle, J.J.*) **ABDUL RAHMAN v. EMPEROR.**

94 I. C. 717 = 4 Bur. L. J. 213 27 Cr. L. J. 669 =  
A. I. R. 1926 Rang. 53.

—*Test—Different offences should be connected in point of purpose or cause and effect or as principal and subsidiary acts—Proximity of time is not essential.*

Whether several offences are so connected together as to form one transaction depends upon whether they are related together in point of purpose or as cause and effect or as principal and subsidiary acts so as to constitute one continuous act. A. I. R. 1925 Sind 233, Foll. Proximity of time between the different acts is not an essential factor for holding that such acts form part of the same transaction. 27 Bom. 135, Rel. on.

Where the evident object of the accused in decoying a girl was to make money by giving her away in marriage in consideration for money on the pretext that she was her lawful guardian and she after about a fortnight or so cheated another man by inducing him to marry the girl for consideration falsely representing that she was the guardian of the girl.

*Held*, both offences, one under S. 366 and another under S. 420, I. P. C., were committed in the same trans-

**CR. P. CODE (1898), S. 235—Same transaction.**

action. (*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*) **HUSSAINBIBI v. EMPEROR.**

93 I. C. 243 = 20 S. L. B. 74 = 27 Cr. L. J. 456 =  
A. I. R. 1926 Sind 151.

—*Close connection by continuity of purpose is enough.*

Whether a transaction is the same or not is a question of fact depending on the facts and circumstances of the particular case. It is not necessary for the purposes of Ss. 235 and 239 that the acts should have been committed all on the same occasion, but it is sufficient that, though separated by a distinct interval of time, they are closely connected by continuity of purpose or as progressive acts towards a single object.

Under the decree of a Civil Court certain lands had been given to the complainant. The accused went on these lands and cut and took away paddy from some of the plots. On the next day they went on the other plots and cut and took away other paddy.

*Held*, that the events of the two days really formed one transaction, for in each case the object of the accused was to assert their rights or alleged rights over the lands which had been awarded by the decree of the Civil Court to the complainant and that the accused were rightly tried together in respect of the offences on both the days. (*Graves and Panton, J.J.*) **PATIT PABAN RAY v. EMPEROR.**

26 Cr. L. J. 369 = A. I. R. 1925 Cal. 580.

—*Series of acts forming same transaction.*

Per *Spencer, Offg. C. J.*—When a series of acts are so connected by community of purpose and continuity of action as to form not only one transaction but a single offence, proximity of time between the performance of the various acts composing that offence not being the sole test of the unity of the transaction, S. 235 authorises persons accused of doing these acts to be charged and tried at one trial for them all. (*Krishnan, J.*; on difference between *Spencer, Offg. C. J. and Reilly, J.*) **GANMALLA DORA, In re.**

90 I. C. 297 = 49 Mad. 74 = 1925 M. W. N. 192 =  
26 Cr. L. J. 1513 = A. I. R. 1925 Mad. 690 =  
48 M. L. J. 308.

—*Test—Connection by same purpose, as cause and effect or as principal and subsidiary act.*

The expression "same transaction" is incapable of exact definition. The arena of facts covered by the expression "same transaction" varies with the circumstances of each case. The real and substantial test for determining whether several offences are so connected together as to form one transaction depends upon whether they are so related together in point of purpose or as cause and effect or as principal or subsidiary acts as to constitute one continuous action.

Where the accused was charged under Ss. 304-A, 337 and 338 and under Ss. 465 and 471 or S. 193, I. P. C., in the alternative for forging entries in order to conceal his offence of criminal neglect,

*Held*, that there was misjoinder of charges. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) **FRANK CROSSLEY WOODWARD v. CROWN.**

92 I. C. 433 = 18 S. L. B. 199 = 27 Cr. L. J. 257 =  
A. I. R. 1925 Sind 233.

—*Continuity of action and purpose rather than proximity of time.*

The word "transaction" suggests not necessarily proximity in time so much as continuity of action and purpose, i.e., it is not necessary that the acts should have been committed all on the same occasion but it is sufficient that, though separated by a distinct interval of time they are closely connected by continuity of purpose or progressive action towards a single object. Where

**CR. P. CODE (1898), S. 235—Same transaction.**

the accusation against all the accused persons is that they carried out a single scheme by successive acts done at intervals, and there was a complete unity of project and the whole series of acts were so linked together by one motive and design as to constitute one transaction within the meaning of S. 239, a joint trial is not only legal but is demanded in the interest of public time and convenience. In all these cases, however, the foundation for the procedure is the association of two or more persons concurring from start to finish to attain the same end.

Where four accused were engaged in the crime from the 25th June but the 5th did join them only on the 7th July next, *held*, that the trial has not been vitiated by reason of the four accused being tried together with the 5th accused in respect of the occurrences before the 7th July and that illustration (b) to S. 239 shows that such a trial is permitted by law. (*C. C. Ghose and Cuming, J.J.*) **KUSHAI MALIK v. EMPEROR.**

81 I. C. 906 = 50 Cal. 1004 = 25 Cr. L. J. 1082 = A. I. R. 1924 Cal. 389.

—The offence of abduction is a continuing offence. (*C. C. Ghose and Cuming, J.J.*) **KUSHAI MALIK v. EMPEROR.**

81 I. C. 906 = 50 Cal. 1004 = 25 Cr. L. J. 1082 = A. I. R. 1924 Cal. 389.

—Acts done in pursuance of a common object are parts of the same transaction.

The word "transaction" in S. 235, Cr. P. Code, has a very wide connotation and covers a series of acts connected together, e.g., when a proposal for a boycott is made by the President of an Association and shortly afterwards the Secretary and a member take joint action to boycott the person against whom the resolution is directed, the inference is that they are acting in furtherance of a common purpose or, in other words, that they are taking part in a conspiracy. Acts done in pursuance of such a conspiracy must be deemed to be part of the same transaction. 37 Cal. 467, Foll.

Though to establish a charge of conspiracy there must be agreement, there need not be proof of direct meeting or combination, nor need the parties be brought into each other's presence; the agreement may be inferred from circumstances raising a presumption of a common concerned plan to carry out the unlawful design. The term "transaction" is not synonymous with "offence". 19 C. W. N. 707, Foll. (*Pratt, J.*) **EMPEROR v. NGA AUNG GYAW.**

76 I. C. 830 = 1 Rang. 604 = 2 Bur. L. J. 224 = 25 Cr. L. J. 270 = A. I. R. 1924 Rang. 98.

—Illustration as to.

The accused was the Sub-Inspector in charge of the Netrokana Police Station. On the 7th February last a prostitute named Kamini died in Netrokana town at 2 P. M. in the afternoon. She had executed a registered deed of gift covering most of the properties to one Purna. On her death the Sub-Inspector took charge of the properties left by Kamini and removed them to the Thana shortly after her death. A telegram was sent to Purna who was 17 miles away and he came to the Thana on the morning of the 8th between 10 and 11. In the evening he took away the properties claimed by him except three specific ornaments, gold *Gopahar*, a pair of gold *ananta*, and silver *rates*, which were retained by the Sub-Inspector. Entries had been made in the Police General Diary recording that this property of Kamini had been taken charge of, but the pages containing those entries were torn out and fresh pages were written from which it will appear that the property was never taken to the Thana and that it was made over to Purna at 10 P. M. on the 7th of February. On these allegations, the accused was charged firstly, with having

**CR. P. CODE (1898), S. 235—"Series of acts."**

committed criminal misappropriation of the three ornaments belonging to Kamini which had not been delivered to Purna. He was, secondly, charged with having framed the record in a manner which he knew to be incorrect, namely, the entry No. 173 which related to the delivery of Kamini's property to Purna. He was, thirdly, charged under S. 477-A with having destroyed the original entries in the General Diary and with having altered the entry No. 173 already referred to. Further there were three charges of criminal breach of trust by a public servant punishable under S. 409, the first relating to the properties left by Kamini and not covered by the deed of gift in favour of Purna, the second relating to the three specific ornaments already mentioned and the third relating to the properties mentioned in the deed of gift.

*Held*, that as regards these charges, i.e., under Ss. 218 and 477-A they fall under two separate definitions of the law and the accused can be jointly charged and tried at one trial for these offences under S. 235, and that the joinder of the other charges is covered by the provisions of that section, as all the charges relate to acts which are so connected together as to form one transaction. (*Newbould and Sukraward, J.J.*) **BILAS CHANDRA BANERJEE v. KING-EMPEROR.**

77 I. C. 231 = 27 C. W. N. 626 = 25 Cr. L. J. 343 = A. I. R. 1923 Cal. 647.

—S. 235—Scope.

—A case under sub-S. (2), S. 235, is covered by the main provisions of S. 403. 9 N. L. R. 26, Foll. (*Fawcett and Mirza, J.J.*) **DAGDI DAGDYA BHIL v. EMPEROR.**

109 I. C. 346 = 29 Cr. L. J. 522 = 10 A. I. Cr. B. 187 = 30 Bom. L. R. 342 = A. I. R. 1928 Bom. 177.

—Sub-S. (2), S. 235 contemplates a totality of acts, some of which bring the case under one definition of an offence and some under another. (*Fawcett and Mirza, J.J.*) **DAGDI DAGDYA v. EMPEROR.**

109 I. C. 346 = 30 Bom. L. R. 342 = 10 A. I. Cr. B. 187 = 29 Cr. L. J. 522 = A. I. R. 1928 Bom. 177.

—Enabling section.

S. 235 of the Code is an enabling section and does not necessitate the inclusion of all the charges triable under that section, in one trial. (*Ross and Kulwant Sahay, J.J.*) **ABDUL HAMID v. KING-EMPEROR.**

97 I. C. 364 = 6 Pat. 208 = 8 P. L. T. 12 = 27 Cr. L. J. 1100 = 7 A. I. Cr. B. 164 = A. I. R. 1927 Pat. 13.

—S. 235—Separate charge necessary.

—S. 238 (2-a).

Where the accused was charged under S. 420 but convicted under S. 420 read with S. 114, I. P. Code,

*Held*, that it was necessary to frame a charge for abetment to convict the accused under S. 420 read with S. 114. (*Duval and Graham, J.J.*) **HULASCHAND v. EMPEROR.**

99 I. C. 34 = 44 C. L. J. 216 = 28 Cr. L. J. 2 = A. I. R. 1927 Cal. 63.

—S. 235—"Series of acts."

—Per *Crumph and Fawcett, J.J.*—Where a witness makes deliberate false statements on different subjects and at different times, though during the same deposition, each of such false statement constitutes a separate offence.

The mere fact that they are included in one deposition does not make it any the less different offences. (*Crumph, J.* on difference between *Shah and Fawcett, J.J.*) **SEJMAL PUNAMCHAND v. EMPEROR.**

100 I. C. 981 = 7 A. I. Cr. B. 505 = 28 Cr. L. J. 373 = 51 Bom. 310 = 29 Bom. L. R. 170 = A. I. R. 1927 Bom. 177.



## CR. P. CODE (1898).

## —S. 236—Abetment and offence.

—It cannot be laid down as a universal rule that in no circumstances whatsoever, where there is a charge of a substantive offence and there is no charge of abetment of that substantive offence, can the person so charged with the substantive offence be convicted of abetment of that offence. The answer to the question really depends on the facts of each case and it must be seen in each case whether or not prejudice has been caused to the accused by reason of the conviction for abetment of the substantive offence in the absence of a charge therefor. (*Rankin, C. J. and C. C. Ghose, J.*) KADIRA v. EMPEROR. 112 I. C. 677 =

29 Cr. L. J. 1093 = A. I. R. 1928 Cal. 466.

—Where the charge was abetment of forgery—an offence which is complete when the document was written and signed—but the conviction was for a subsequent act, viz., that the document was presented for registration and used,

Held, the user is a distinct and different offence for which the accused is entitled to be separately charged. (*C. C. Ghose and Duval, J.J.*) HARUN RASHID v. EMPEROR. 94 I. C. 270 = 53 Cal. 466 =

30 C. W. N. 432 = 27 Cr. L. J. 606 = A. I. R. 1926 Cal. 581.

## —S. 236—Alienation charge.

—Charge under S. 302, I. P. Code—Alternatively under Ss. 201 and 203. I. P. Code—No misjoinder.

There is no misjoinder in charging an accused in the alternative with the main offence and under Ss. 201 and 203. (*Wallace and Jackson, J.J.*) CHINA GANGAPPA v. EMPEROR. 1930 M. W. N. 489 =

32 M. L. W. 389 = 1930 Cr. C. 1126 = A. I. R. 1930 Mad. 870 = 59 M. L. J. 677.

## —S. 236—Alternative charges.

—In a case under S. 366, Penal Code, if the age of girl is in dispute one count of charge setting out both kidnapping and abduction in alternative or together does not vitiate the charge to jury. A. I. R. 1927 Cal. 200, Ref. (*Mukerji and Jack, J.J.*) PRAFULLA KUMAR BOSE v. EMPEROR. 125 I. C. 656 =

31 Cr. L. J. 903 = 57 C. 1074 = 50 C. L. J. 593 = 1930 Cr. C. 209 = A. I. R. 1930 Cal. 209.

—Offences under Ss. 395 and 457, Penal Code.

Offence under S. 457 is really in some cases a minor offence to offence under S. 395 and there can be no reason why there should not be alternative charges of these two offences. (*Cuming and Lort Williams, J.J.*) BIKRAM ALI PRAMANIK v. EMPEROR. 57 C. 801 = 124 I. C. 66 =

50 C. L. J. 467 = 1930 Cr. C. 139 = 31 Cr. L. J. 610 = A. I. R. 1930 Cal. 139.

—Charges under S. 52 of the Post Offices Act and S. 201, Penal Code.

M, a servant of K, having discovered a number of letters lying in a khola opposite a post office, handed them over to his master. One of the letters was addressed to P and K took it to the addressee who stated that the letter had never been delivered to him. The matter was reported to the Postmaster F who took possession of the letters saying that he would take necessary action in the matter. No action being taken by F, the matter was reported to the Postmaster-General with the result that F was sent up for trial. The Magistrate framed two alternate charges against him, first under S. 52, Post Office Act and the other under S. 201, Penal Code. The Magistrate found F guilty only under S. 201. It was contended that the charge framed by the Magistrate was defective and prejudicial to the accused, the alternate

## CR. P. CODE (1898), S. 236—Charge in alternative

charge was illegal and contravened the provisions of S. 236, Cr. P. Code.

Held, that the first charge was not defective, as the postal articles in question were "in course of transmission by post" according to S. 3, Post Office Act, when they were made over to F by K and, therefore, the mere fact that the letters had been posted when F was not the Postmaster of the Post Office was immaterial. The framing of the charge in the alternative under S. 201 did not contravene S. 236, Cr. P. Code. (*Broadway, J.*) EMPEROR v. FAIZUL HASSAN. 1930 Cr. C. 564 = A. I. R. 1930 Lah. 460.

—Procedure.

Alternative charges under two sections cannot be combined together in one head of charge. If the Magistrate desires to charge the accused in the alternative he must frame two separate alternative charges. While the facts are in doubt there is no objection to the Magistrate framing alternative charges, but at the conclusion of the case he is not entitled to compromise his doubts as to the true facts of the case by convicting in the alternative. He is bound to come to a distinct finding as to the facts, and then only if the law applicable to the facts which he considers to have been proved is doubtful, he may convict in the alternative. (*Maung Ba, J.*) EMPEROR v. PO THIN GYI. 117 I. C. 244 = 7 Rang. 96 = 30 Cr. L. J. 750 =

1929 Cr. C. 356 = A. I. R. 1929 Rang. 209.

—Alternative charges may be properly run against an accused person on the same set of facts, but alternative charges which include offences which do not arise out of the same set of facts as those with which they are linked, even though tried in the same proceedings, ought to be made clear to the accused before the trial and clearly dealt with in the Judge's final decision. (*Walsh, J.*) JODHA SINGH v. EMPEROR. 81 I. C. 80 = 4 L. R. A. Cr. 83 = 25 Cr. L. J. 592 =

A. I. R. 1923 All. 285.

## —S. 236—Applicability.

—Section 236 is only applicable where there is doubt as to which of several offences has been committed. (*Boys and Young, J.J.*) EMPEROR v. KANHAIYA. 124 I. C. 553 =

1930 Cr. C. 701 = 31 Cr. L. J. 716 = A. I. R. 1930 All. 481.

—Section 236 does not apply where there is any doubt as to the facts, but applies where there is a doubt as to the law applicable to a certain set of facts which have been proved. (*Maung Ba, J.*) PO THIN GYI v. EMPEROR. 117 I. C. 244 =

7 Rang. 96 = 30 Cr. L. J. 750 = 1929 Cr. C. 356 = A. I. R. 1929 Rang. 209.

—Section 236 does not apply where there is any doubt as to the facts but applies where there is a doubt as to the law applicable to a certain set of facts which have been proved. (*Cunliffe, J.*) KING-EMPEROR v. NGA PO WUN. 103 I. C. 839 =

6 Bur. L. J. 83 = 8 A. I. Cr. R. 568 = 28 Cr. L. J. 759 = A. I. R. 1927 Rang. 254.

## —S. 236—Charges in alternative.

—The joinder of charges of murder, or in the alternative of causing disappearance of the evidence of murder is legal under S. 236, Cr. P. Code.

Where, notwithstanding the circumstances of grave suspicion, it is impossible on the record to hold that a person is the murderer or one of the murderers, his conviction under Ss. 201 and 203, I. P. C., is not vitiated by the existence of such circumstances. (*Kennedy, J. C. and Raymond, A. J. C.*) ANDAL SHAH v. EMPEROR. 86 I. C. 973 =

CR. P. CODE (1898), S. 236—Charge in alternative.

18 S. L. R. 185 = 26 Cr. L. J. 909 =  
A. I. R. 1925 Sind 306.

—S. 236—Conviction without alteration.  
—S. 237.

If on the facts proved of which the accused may be taken to have notice, another offence appears to have been committed by him and if on those facts it seems doubtful as to which offence the accused has committed he may be convicted under Ss. 236 and 237 of the other offence. (*Suhrawardy and Cammade, J.J.*)  
*DEBAKAR v. SAKLIDHAR KABIRA*.

101 I. C. 180 = 54 Cal. 476 = 31 C. W. N. 527 =  
28 Cr. L. J. 404 = 8 A. I. Cr. R. 56 =  
A. I. R. 1927 Cal. 520.

—S. 236—Duty of Court,

It is the duty of the Court in all cases under Ss. 236 and 237 to satisfy itself that the accused has not been misled in his defence. (*Courtney-Terrell, C. J. and Rowland, J.*) *MALLU GOPA v. EMPEROR*.

118 I. C. 323 = 30 Cr. L. J. 891 =  
10 P. L. T. 875 = 1929 Cr. C. 584 =  
A. I. R. 1929 Pat. 712.

—S. 236—Interpretation.

“Doubt.”

It is a settled law that the doubt referred to in S. 236 must be a doubt as to application of the law to the proved facts and the Section has no application where there may be a doubt as to the facts which constitute one of the elements of the offence. (*Neubould and Mukerji, J.J.*) *NAVAN ULLAH v. EMPEROR*.

85 I. C. 818 = 26 Cr. L. J. 594 =  
A. I. R. 1925 Cal. 903.

—S. 236—Legality.

It is entirely for the jury to decide whether charges under Ss. 147 and 304 spring out of one and the same incident or out of two entirely different incidents and thus ultimately the legality of the charges under both the sections depends on the decision of the jury. (*Rankin, C. J. and C. C. Ghose, J.*) *TORA MEAH v. EMPEROR*.

119 I. C. 139 =  
56 Cal. 1106 = 30 Cr. L. J. 1015 =  
A. I. R. 1929 Cal. 298.

That the accused is charged both under Ss. 380 and 414, Penal Code, does not vitiate the trial. 6 Bom. L. R. 725, Dist. (*Adami and Chatterji, J.J.*) *DAMODAR RAM MAHURI v. EMPEROR*.

122 I. C. 146 =  
31 Cr. L. J. 362 = 11 Pat. L. T. 481 = 8 Pat. 731 =  
1929 Cr. C. 413 = A. I. R. 1929 Pat. 660.

—S. 236—One offence.

A packet containing a loose diamond and a diamond-ring was lost and was found with accused two years later.

Held, only one offence of retaining stolen property was committed under S. 411 and not two offences under S. 403 one in respect of diamond and the other in respect of the ring. (*Lentaigne, J.*) *RAM PERSHAD v. EMPEROR*.

81 I. C. 443 = 25 Cr. L. J. 907 =  
2 Rang. 80 = A. I. R. 1924 Rang. 256.

—S. 236—Series of acts.

Statements made under S. 164, Cr. P. Code, in a case under police investigation and diametrically opposite statements made in an inquiry before a competent Magistrate constitute a series of acts on which an alternative charge under S. 236 of the Code of Criminal Procedure can be framed. 45 Bom. 834 (*F. B.*), Foll. (*Wasir Hasan, A. J. C.*) *MT. PATRAJI v. KING-EMPEROR*.

89 I. C. 1025 =  
2 O. W. N. 637 = 12 O. L. J. 644 =  
26 Cr. L. J. 1457 = A. I. R. 1925 Oudh 660.

What constitutes.

CR. P. CODE (1898), S. 237—Abetment and offence.

To attract the applicability of the section and justify a charge in the alternative it is essential to remember that it is only when the statements constitute a “series of acts” that an alternative charge can be framed under S. 236. As there is a common relation between a police investigation, an inquiry by the Magistrate preliminary to commitment and a final trial in the Sessions Court, to the statements made at these different stages the words “series of acts” would be applicable. A series of acts means two or more acts connected together by some common relation. 45 Bom. 834, Expl. and Dist. (*Kennedy, J. C. and Raymond, A. J. C.*) *SALEH SHAH v. EMPEROR*.

82 I. C. 59 =  
16 S. L. R. 285 = 25 Cr. L. J. 1195 =  
A. I. R. 1924 Sind 1.

—S. 237—Abetment.

No charge for—Charged with substantive offence  
—Conviction for—Validity of.

Obiter: A man charged with a substantive offence can be convicted of that offence read with S. 114 of the Penal Code although not charged with it. (*Marten and Kincaid, J.J.*) *KING-EMPEROR v. RANCHOD SURSANG*.

49 Bom. 84 = 26 Bom. L. R. 954 =  
26 Cr. L. J. 1000 = 87 I. C. 600 =  
A. I. R. 1924 Bom. 502.

—S. 237—Abetment and offence.

A person charged with substantive offence may be convicted of abetment although the offence of abetment was not separately charged against him provided on the facts charged the two charges, namely, the commission of the substantive offence and abetment would be framed. 23 M. L. J. 722, Rel. on; 33 Mad. 264 and A. I. R. 1927 Cal. 63, Ref. (*Prideaux, A. J. C.*) *PUNAMCHAND AMARCHAND v. EMPEROR*.

1930 Cr. C. 501 = 113 I. C. 881 = 30 Cr. L. J. 224 =  
12 A. I. Cr. R. 216 = A. I. R. 1930 Nag. 145.

No bar to conviction for abetment though not charged.

It cannot be definitely laid down that a person having been charged with the substantive offence cannot be convicted for abetment thereof when he is not charged with it originally. Every case depends upon its own facts and if the facts justify the conviction for abetment, though the person be charged with the commission of the offence itself, there is no bar in law to such conviction provided he is not prejudiced by the absence of such charge. 11 B. H. C. R. 240; 42 Cal. 1094; A. I. R. 1928 Cal. 466; A. I. R. 1927 All. 35; A. I. R. 1927 Cal. 35; A. I. R. 1925 P. C. 130 and A. I. R. 1927 Cal. 63, Ref.; 33 Mad. 264 and A. I. R. 1924 Bom. 432, Dist. (*Suhrawardy and Jack, J.J.*) *JANANANDA CHARAN v. EMPEROR*.

50 C. L. J. 472 =  
34 C. W. N. 198 = 1929 Cr. C. 595 =  
A. I. R. 1929 Cal. 807.

—Sustainability for abetment.

A woman A was induced to sell her property to W under circumstances which made it a clear case of cheating. She told that she was to execute a kabala in favour of someone else for Rs. 300. As a matter of fact the kabala was written in favour of W to the knowledge of J, the writer of the instrument, and a bundle of money purporting to be Rs. 300 was made over to A. It was subsequently found to contain small coins and pice worth Rs. 5. On these facts as elaborated in the evidence the accused were charged under Ss. 120 B and 420, Penal Code. J was convicted under S. 420 read with S. 114, Penal Code. There was no charge framed under S. 114. Facts deposed by the complainant and the evidence of the witnesses, proved that J wrote the kabala in the name of W, and the circum-

**CR. P. CODE (1898), S. 237—Abetment and offence.**

stances under which money was handed over show that J was privy to the commission of the substantive offence.

*Held*, that the conviction for abetment could be sustained and absence of charge did not prejudice him (*Suhrawardy and Jack, J.J.*) JANANANDA CHARAN v. EMPEROR. 50 C. L. J. 472=34 C. W. N. 198=1929 Cr. C. 595=A. I. R. 1929 Cal. 807.

**—Appeal—S. 423.**

The only section under which the appellate Court can base a conviction for abetment on acquitting the accused of the main charge is S. 423. (*Pullan, J.*) MAHABIR PRASAD v. EMPEROR. 97 I. C. 430=24 A. L. J. 998=7 L. R. A. Cr. 180=27 Cr. L. J. 1118=49 All. 120=A. I. R. 1927 All. 35.

—Abetment is not a minor offence. It cannot come within S. 238 and it can only come under S. 237 if there is no element in the abetment which is not included in the charge. (*Pullan, J.*) MAHABIR PRASAD v. EMPEROR. 49 All. 120=24 A. L. J. 998=7 L. R. A. Cr. 180=27 Cr. L. J. 1118=97 I. C. 430=A. I. R. 1927 All. 35.

**—S. 237—Alteration of charge.****—S. 227—Procedure.**

S. 227 deals with alteration of a charge, but it requires that the alteration shall be read and explained to the accused. The accused must know what he is charged with and what offence he has to answer. S. 237 must be read with S. 227. A Court cannot convict an accused person of an offence of which he has not been told anything. (*Mears, C. J.*) RAGHUNATH KANDU v. EMPEROR. 24 A. L. J. 168=27 Cr. L. J. 152=7 L. R. A. Cr. 11=91 I. C. 888=A. I. R. 1926 All. 227.

**—S. 196—Rules governing.**

The provisions of the Cr. P. Code, allowing the Court to frame a charge of the offence it finds to be proved, to alter the charge or to convict of an offence of which a charge has not actually been framed, *e.g.*, S. 237, must be read subject to the provisions of S. 196. That is, those powers can be exercised, in respect of offences falling within S. 196, when a prosecution for the offence of which it is proposed to charge or to convict the accused has been duly authorized under that section and cannot be exercised when the prosecution has not been so authorized. When on a prosecution instituted on an order directing prosecution for offence under S. 121-A stating details the Court finds that the facts proved do not constitute the offence of conspiring to wage war punishable under S. 121-A, but that they do constitute an offence punishable under another section comprised in Chap. 6 of the said Code, the Court is not competent to take cognizance of such other offence and to convict the accused persons thereof. (*Carr and Duckworth, J.J.*) U. NYAN NEINDA v. EMPEROR. 4 Rang. 131=27 Cr. L. J. 1075=7 A. I. Cr. R. 70=97 I. C. 51=A. I. R. 1926 Rang. 169.

**—S. 237—Alternative charges.****—Ss. 302 and 201—Penal Code.**

Where an accused is charged under S. 302, I. P. Code for murder and in the alternative under S. 201, I. P. Code, for concealing or disposing of the evidence of commission of that offence, he can be convicted under S. 201 when the charge under S. 302 is not made out; A. I. R. 1925 P. C. 130, Expl. and Foll. (*Suhrawardy and Dival, J.J.*) UMED SHEIKH v. EMPEROR.

**CR. P. CODE (1898), S. 237—Applicability.**

96 I. C. 867=30 C. W. N. 816=27 Cr. L. J. 1011=45 C. L. J. 581.

**—S. 237—Appellate Court, powers of.**

—*Acquittal on a charge under S. 302, Penal Code only—High Court can in appeal convict the accused under S. 193, Penal Code.*

The appellate Court, under S. 423 at least, has the power of the original Court which tried the case under S. 237, provided no prejudice was given to the defence. Therefore, the appellate Court in an appeal from acquittal cannot only find the accused guilty of the offence with which he was charged and for which he was tried but of which he was acquitted, but also can convict an accused of some other offence. Where the accused was charged under S. 302, Penal Code, and was acquitted and Government appealed,

*Held*, that the appellate Court could convict him for an offence under S. 193, Penal Code even though the opinions of the assessors were not recorded in regard to the charge under S. 193. A. I. R. 1924 Bom. 246, held no longer good law; A. I. R. 1925 P. C. 130, Foll.; 19 Bom. 51, Not Foll.; A. I. R. 1925 Sind 105, Appr. (*Fawcett and Mirza, J.J.*) EMPEROR v. ISMAIL KHADIR SAB. 108 I. C. 501=29 Cr. L. J. 403=52 Bom. 385=10 A. I. Cr. R. 118=30 Bom. L. R. 330=A. I. R. 1928 Bom. 130.

—S. 149 does not provide for a separate offence but merely is a declaration that persons found in certain circumstances cannot set up as a defence the fact that they themselves did not commit that offence by their own hands. Certain persons were originally charged under Ss. 147 and 353 for assaulting a constable with a view to resist him and to rescue a certain prisoner. But evidence did not disclose which of the accused actually struck the constable and at whose hands he received the injuries. In consequence, conviction from one under S. 147 and S. 353 was altered to a conviction under Ss. 149 and 323 in appeal. It was contended that the conviction was bad because they were not charged under S. 149.

*Held*, that the conviction was right. (*Adami and Wort, J.J.*) RAMASRAY AHIR v. EMPEROR. 110 I. C. 104=7 Pat. 484=9 P. L. T. 738=10 A. I. Cr. R. 424=29 Cr. L. J. 648=A. I. R. 1928 Pat. 454.

**—Substitution of conviction for lesser offence.**

A Court can substitute a conviction for a lesser offence in appeal than that which has been held to have been committed by the Court of first instance. Where it is found that there was no actual assault, but merely a threat of assault, an alteration of conviction from one under S. 353 to one under S. 189 may be made by a court of appeal. A. I. R. 1925 P. C. 130, Foll.; A. I. R. 1927 All. 35, Dist. (*Pullan, J.*) JAWAD HUSSAIN v. EMPEROR. 2 Luck. 503=1 L. C. 159=103 I. C. 401=8 A. I. Cr. R. 321=28 Cr. L. J. 873=A. I. R. 1927 Oudh 296.

**—Limit.**

Where the accused was specifically charged that he "caused such bodily injury to R as resulted in the man's death and thereby committed an offence punishable under S. 325, I. P. Code."

*Held*, that in appeal the charge could not be altered to another one for which the evidence is ample. (*Boys, J.*) CHEDA SINGH v. EMPEROR. 82 I. C. 864=5 L. R. A. Cr. 133=25 Cr. L. J. 1292=A. I. R. 1924 All. 766.

**—S. 237—Applicability.**

—S. 237 applies only to cases mentioned in S. 236 and not to cases where it is not doubtful what offence is committed. A. I. R. 1925 All. 448, Relied on. (*Mears,*

**CR. P. CODE (1898), S. 237—Applicability.**

*C.J.*) RAGHUNATH KONDU *v.* EMPEROR.

24 A.L.J. 168 = 7 L.R.A. Cr. 11 = 27 Cr.L.J. 152 = 91 I.C. 888 = A.I.R. 1926 All. 227.

**—S. 237—Attempt and offence.**

*—Attempt to commit not charged, conviction for it is legal.*

Where the accused presented the bills to the Government of India knowing that they contained false representations as regards the number of gallons of linseed oil supplied.

*Held*, the presentation of each of the bills was an application for the payment of money under false pretences. It was done dishonestly and with the object of deceiving the officials of the Government of India and inducing the Government of India to issue cheque or cheques for the amounts of the bills. As soon as each of the bills was presented the offence of the attempt was committed. The accused may be convicted of the attempt although it is not charged. (*Sanderson, C.J. and Richardson, J.*)

P. E. BILLINGHURST *v.* KING-EMPEROR.

82 I.C. 545 = 25 Cr. L.J. 1313 = 27 C. W. N. 821 = A.I.R. 1924 Cal. 18.

**—S. 237—Charge and conviction.**

*—Charge under S. 302 I.P.C.—Conviction without a further charge under S. 201, I. P. C.*

A person charged with an offence of murder can be convicted under S. 201 Penal Code without a further charge being made against him under that section and such a conviction is warranted by S. 237 of the Cr. P. Code, A.I.R. 1925 P.C. 130, Foll. (*Shadi Lal, C.J. and Addison, J.*) RANNUN *v.* KING-EMPEROR.

94 I.C. 901 = A.I.R. 1926 Lah. 88.

**—S. 237—Conviction as accessory.**

*—Conviction of an accused under S. 201 as accessory to an offence known and believed to have been committed by him, although evidence does not sufficiently or definitely prove that he was present at and had taken part in the offence is not illegal.* 22 Cal. 638; 8 All. 252; 2 All. 713 and 6 Cal. 789, Diss. from; A.I.R. 1925 P.C. 130, Rel. on. (*Stuart, C.J. and Rasa, J.*) MATA DIN *v.* EMPEROR.

123 I.C. 886 = 31 Cr. L.J. 575 = 6 O. W. N. 1017 = A.I.R. 1930 Oudh 113.

**—S. 237—Conviction for lesser offence.**

*—Acquittal on charge of murder—Conviction on the alternate charge under Ss. 201 and 203 I. P. C.—If irregular.*

There is nothing irregular or improper in a Judge holding that while the accused, though acquitted, is himself not free from the suspicion of being the actual murderer, he can be none the less convicted under Ss. 201 and 203. (1908) P. R. Judl. Cr. L. J. 1, Foll. Bom. H. C. R. 120; 2 All. 713; 8 All. 252; 22 Cal. 638; 4 Cr. L.J. 89. Not Appr. 46 Cal. 427 and A.I.R. 1928 Bom. 262, Rel. on. (*Wallace and Jackson, JJ.*) CHINA GAN-GAPPA *v.* EMPEROR.

1930 M. W. N. 489 = 32 M. L. W. 89 = 1930 Cr. C. 1126 = A.I.R. 1930 Mad. 870 = 59 M. L. J. 677.

**—S. 237—Conviction without alteration.**

*—If a person is charged under S. 397 on the fact that he was found in possession of the stolen property, which possession he has failed to account for, it is not improper to convict the person under S. 412, if the charge under S. 397 fails for want of identification or any reliable evidence for the presence of the person at the dacoity.* A.I.R. 1925 P.C. 130, Ref. (*Rasa and Manabhai, JJ.*) HAZARI *v.* EMPEROR.

127 I.C. 247 = 7 O.W.N. 527 = A.I.R. 1930 Oudh 353.

*—No prejudice.*

A Magistrate found that the kalai that was cut and taken away was unripe and convicted the accused for

**CR. P. CODE (1898), S. 237—Conviction without alteration.**

mischief under S. 426, Penal Code, while he was charged with an offence under S. 379.

*Held*, that the conviction, for an offence with which the petitioner was not charged, has not been to the prejudice of the petitioner. (*Mukerji, J.*) KULUCHAND GHOSH *v.* JATU (JAHIR SHAIK). 1929 Cr. C. 517 = 50 C. L. J. 285 = A.I.R. 1929 Cal. 773.

*—Charge under S. 326 read with S. 149, Penal Code—Conviction under S. 326, read with S. 34.*

If the facts which it was necessary to prove and on which evidence was given on the charge upon which the accused is actually tried are the same as the facts upon which he is to be convicted of the substantive offence, and if the accused is put to no disadvantage and would have had to adduce no further evidence, then he may be rightly convicted of the substantive offence notwithstanding that the charge was originally framed under Ss. 147, 148 or 149. The evidence which was given under the charge based upon S. 326 read with S. 149 was directly relevant to the issue under S. 326 read with S. 34. It was proved that the accused being present and armed with a deadly weapon gave an order to other persons armed with deadly weapons to assault the complainant. Although the element of an unlawful common object in the assembly as a whole which would be required to convict the accused persons under S. 326 read with S. 149 was missing, yet the accused formed an assembly within a wider assembly which smaller assembly had a common intention to cause grievous hurt and the complainant suffered injury at their hands. All the necessary ingredients for a conviction under S. 326 read with S. 34 were present before the Magistrate.

*Held*, that the lower Court was right in convicting the accused under S. 326 read with S. 34, even in the absence of a specific charge in the original charge under those Ss. 34 and 326. 34 Cal. 698 and 16 C.W.N. 1077, Dist.; 5 Cal. 871; 15 C.W.N. 244; and 12 Bom. H. C. R. 1, Rel. on. (*Courteney Terrell, C.J. and Adami, J.*) BHONDU DAS *v.* EMPEROR.

7 Pat. 758 = 113 I.C. 676 = 30 Cr. L.J. 205 = 12 A.I. Cr. E. 6 = 11 P. L. T. 111 = A.I.R. 1929 Pat. 11.

*—Where the accused could have been charged with dacoity, theft and criminal misappropriation but is charged with dacoity under S. 395, Penal Code, it is legal to convict him under S. 403, Penal Code according to S. 237, Cr. P. Code. Such a finding is also justified by S. 238, Cr. P. Code, where the offence charged under S. 395 consists of several elements and combination of some of which amounts to an offence under S. 403. (*Barlee, J.C. and Aston, A.J.C.*) HAROON *v.* EMPEROR.*

118 I.C. 193 = 30 Cr. L.J. 875 = 1929 Cr. C. 315 = A.I.R. 1929 Sind 147.

*—Where a person charged under S. 302, Penal Code, is proved to have committed an offence punishable under S. 201, but no charge under that section was made against him at the trial, he can still be convicted under that section.* A.I.R. 1925 P.C. 130, Foll. (*Broadway and Goldstream, JJ.*) DAL SINGH *v.* EMPEROR.

108 I.C. 905 = 29 Cr. L.J. 457 = 10 A.I. Cr. E. 90 (Lah.).

**—Applicability.**

When a man is charged with an offence punishable under S. 302, he cannot, without a charge being framed against him, be convicted of an offence punishable under S. 194 of the Indian Penal Code. (*Banerji, J.*) ACHHUT RAI *v.* EMPEROR.

8 L.R.A. Cr. 1 = 27 Cr.L.J. 1351 = 98 I.C. 471 = 7 A.I. Cr. E. 27 = A.I.R. 1927 All. 75.

*—Where the accused was charged with the offence of kidnapping only, and the Judge left it to the jury to*

**CR. P. CODE (1898), S. 237—Conviction without alteration.**

convict the accused of the offence of abduction under the same section, namely 366, Indian Penal Code,

*Held*, that notice of the charge of kidnapping is not a fair, proper or sufficient notice of the charge of abduction. (*Rankin and Dival, J.J.*) ISU SHEIKH v. EMPEROR.

45 C. L. J. 584 = 31 C.W.N. 171 = 28 Cr. L. J. 201 = 7 A. I. Cr. R. 459 = 99 I. C. 937 = A. I. R. 1927 Cal. 200.

—A conviction under S. 160, I. P. C. (committing affray) is maintainable though the accused were charged only under S. 147, I. P. C. (rioting). A.I.R. 1924 Mad. 375 and 8 Bom. L. R. 120, Dist. A.I.R. 1921 All. 261, Appr. (*Findlay, J.C.*) GULABCHAND v. EMPEROR. 28 Cr. L. J. 189 = 99 I.C. 861 = A.I.R. 1927 Nag. 163.

—Although an accused is charged with one offence and it appears in evidence that he has committed a different offence for which he might be charged, it is not necessary to frame a separate charge in order to justify a conviction. Where therefore the accused were charged with dacoity under S. 395, I.P.C. and from the circumstances it was open to charge them with Ss. 457, 395 or 392.

*Held*, that a conviction under S. 457 is maintainable. A. I. R. 1925 P.C. 130, Foll. (*Stuart, C.J.*) MATHURA v. EMPEROR.

2 Luck. 444 = 4 O. W. N. 442 =

101 I. C. 492 = 28 Cr. L. J. 460 =

A. I. R. 1927 Oudh 196.

—*Charge under Penal Code—Conviction under Arms Act—Improper.*

An accused charged under Penal Code, S. 452 for house trespass with preparation to cause hurt cannot be convicted under Arms Act, S. 19 (r) without a specific charge under the latter and with no opportunity to the accused to meet the altered charge. (*Chari, J.*) NGA SHWE ZON v. KING-EMPEROR.

4 Rang. 355 = 98 I. C. 480 = 27 Cr. L. J. 1360 = A. I. R. 1927 Rang. 32.

—A person charged with an offence of murder can be convicted under S. 201 Penal Code without a further charge being made against him under that section and such a conviction is warranted by S. 237 of the Cr. P. Code. A.I.R. 1925 P.C. 130 Foll. (*Shadi Lal, C. J. and Addison, J.*) RANNUN v. EMPEROR.

7 Lah. 84 = 27 Cr. L. J. 709 = 27 P. L. R. 583

94 I. C. 901 = A. I. R. 1926 Lah. 88.

—Where the accused were charged under S. 302, and on evidence they were found to be guilty of an offence under S. 201 (causing the evidence of crime to disappear) and so were convicted under the latter section.

*Held*, that the conviction was proper. (*Viscount Haldane, J.*) BEGU v. EMPEROR.

88 I. C. 3 =

6 Lah. 226 = 27 Bom. L. R. 707 =

41 C. L. J. 437 = 2 O. W. N. 447 = 23 A.L.J. 636 =

7 L.L.J. 324 = 3 Pat. L. R. Cr. 95 = 52 I. A. 181 =

1925 M. W. N. 418 = 26 Cr. L. J. 1059 =

26 P. L. R. 284 = 30 C. W. N. 581 =

A. I. R. 1925 P. C. 130 = 48 M. L. J. 643 (P. C.).

—*Should not prejudice.*

Where the accused were not charged under the sections under which they are convicted and sentenced, and if from the perusal of the charge as a whole the Court is of the opinion that the accused have been prejudiced by the fact that they have been convicted on charges which had not been framed against them the conviction must be set aside and a re-trial must be directed. (*Greaves and Pantom, J.J.*) SHEIK ABDUL v. EMPEROR.

84 I. C. 708 = 26 Cr. L. J. 356 =

A. I. R. 1925 Cal. 581.

—*Legality—Absence of prejudice.*

**CR. P. CODE (1898), S. 237—Legality of conviction.**

When a charge has been framed under Ss. 326 and 149, I. P. Code, conviction under S. 326, I. P. Code, is not necessarily bad, the legality of the conviction depending on whether the accused has or has not been materially prejudiced by the form of the charge. (*Spencer, Krishnan and Ramesam, J.J.*) THEETHU-MALAI GOUNDAR, *In re*.

82 I. C. 465 =

47 Mad. 746 = 20 M.L.W. 261 = 35 M.L.T. 21 =

25 Cr. L. J. 1297 = A. I. R. 1925 Mad. 1 =

47 M. L. J. 221 (F.B.).

—*Appeal—Legality—Absence of prejudice.*

When the accused was charged and convicted by the trial Court under S. 468, I.P.C. and the appellate Court convicted the accused under S. 471, I.P.C.

*Held*, that the conviction was wrong as it was impossible to postulate that the accused was not prejudiced by having no notice that he was to be convicted of the offence under S. 471. (*Findlay, Offg. J. C.*) AKBAR HUSSAIN v. KING EMPEROR.

89 I. C. 398 = 8 N. L. J. 87 = 26 Cr. L. J. 1358 =

A. I. R. 1925 Nag. 294.

—*With charge under S. 304 conviction can be under S. 304-A.*

As it is open to the prosecution to bring the accused to trial on charges under S. 304 and S. 304-A, it follows under S. 237, Cr.P. Code that although the charge under S. 304-A, is not formally made it is open to the Court to convict under that section. (*MacLeod, C. J. and Fawcett, J.*) KING-EMPEROR v. C. J. WALKER.

26 Bom. L. R. 610 = 26 Cr. L. J. 211 =

83 I. C. 995 = A. I. R. 1924 Bom. 450.

—S. 238.

A charge of murder cannot be converted into one of robbery. The essentials of the two offences are so widely different that neither S. 237 (1) nor S. 238 (2) can be applied. 20 All. 107 Ref. (*Shadi Lal, C.J. and Campbell, J.*) WALLU v. EMPEROR.

77 I. C. 433 = 4 Lah. 373 = 6 L. L. J. 59 =

25 Cr. L. J. 385 = A. I. R. 1924 Lah. 109.

—Where an accused person, about the time of the theft, made large payments to the creditors and gave a goldsmith old ornaments to be melted down under suspicious circumstances,

*Held*, a charge under S. 54-A of the Calcutta Police Act (IV of 1866) could be joined, properly with that of theft under S. 236, Cr. P. Code, and therefore, under S. 237 Cr. P. Code the accused could be convicted of an offence under the former, though she was not charged with it. (*Newbold and Sukrawardy, J.J.*) TULSI TOLIVI v. EMPEROR.

72 I. C. 372 = 24 Cr. L. J. 372 =

50 Cal. 564 = A. I. R. 1923 Cal. 596.

—S. 237—Legality of conviction.

—*Acquittal of principal offence — No bar to conviction under minor offence proved.*

When an accused person has been acquitted of a charge of committing a crime, the fact that he had been suspected and tried of the principal offence would not prevent his conviction under S. 201 if there is clear proof that he has caused the evidence to disappear in order to screen some unknown offender from legal punishment. 6 P. R. 1902 Cr.; 1 P. R. 1904 Cr.; 46 Cal. 427; A. I. R. 1926 All. 737; A. I. R. 1923 Bom. 262; 1 L. B. R. 316; and A. I. R. 1925 P. C. 130, Foll. 22 Cal. 638; 3 C.L.J. 333, and A. I. R. 1925 Nag. 407, Diss. from; A. I. R. 1926 Lah. 209, Dist. (*Agha Haidar, J.*) DITTA v. EMPEROR.

10 Lah. 213 =

30 P. L. R. 402 = 10 A. I. Cr. R. 562 =

28 Cr. L. J. 746 = 110 I. C. 682 =

A. I. R. 1928 Lah. 906.

**CR. P. CODE (1898), S. 237—Legality of conviction.**

—Principal offence suspected, not proved—Conviction for accessory offence—Not illegal.

A conviction for the necessary offence under S. 201 is not illegal merely because it is suspected but not proved or admitted, that the accused committed or was one of several persons who committed the principal offence. A.I.R. 1925 P.C. 130 and Rat. Un. Cr. C. 799, Foll. 6 Cal. 789 and 22 Cal. 638, Ref. (*Rupchand Bilaram and Lobo, A.J.Cs.*) **TAJAN v. EMPEROR.**

21 S. L. R. 206=8 A. I. Cr. R. 353=  
28 Cr. L. J. 674=103 I. C. 402=  
A. I. R. 1927 Sind 241.

**—S. 237—Minor offence**

—Under S. 237 it is open to the Magistrate to convict the accused of a lesser offence than that with which he had charged him. (*Nanavutty, J.*) **EMPEROR v. SHIVA DATTA.** 5 O. W. N. 641=29 Cr. L. J. 893=  
111 I. C. 573=3 Luck 680=  
A. I. R. 1928 Oudh 402.

**—S. 237—Right of accused—S. 227.**

—To know the offence charged.

An accused is entitled to know what offence he has to answer; Ss. 237 and 227, Cr. P. Code necessarily go together. It is not the intention of the legislature to empower a Court to convict an accused person of an offence of which he has not been told anything. (*Banerji, J.*) **DHUM SINGH v. EMPEROR.**

88 I. C. 1=23 A. L. J. 436=6 L. R. A. Cr. 143=  
26 Cr. L. J. 1057=A. I. R. 1925 All. 448.

**—S. 237—Scope of S. 238.**

Ordinarily a person cannot be convicted at a Sessions trial of an offence with which he has not been charged. There are some exceptions to this rule which are to be found in Ss. 237 and 238 of the Cr. P. Code. (*Newbould and Mukerji, J.*) **NAYAN ULLAH v. EMPEROR.**

85 I. C. 818=26 Cr. L. J. 594=  
A. I. R. 1925 Cal. 903.

**—S. 238—Abetment and offence.**

—When a person is charged with an offence, he cannot be convicted of abetment of such offence, when abetment is not separately charged. (1874) 11 B. H. C. R. 240, Foll. (*Macleod, C. J. and Shah, J.*) **EMPEROR v. RAGHYA NAGHYA.**

81 I. C. 959=  
26 Bom. L. R. 323=25 Cr. L. J. 1135=  
A. I. R. 1924 Bom. 432.

**—S. 238—Alternative conviction.**

—A person had a license to fell only aulenathat teak marked by a Forest Range Officer. But the Range Officer marked certain growing teak trees and allowed them to be felled by the licensee. The Officer was charged under S. 409, I. P. C. The Magistrate found him guilty of an offence under S. 409, Penal Code or an offence under S. 427, I. P. C. and convicted him.

*Held:* that alternative conviction under S. 427, I. P. C. was bad inasmuch as mischief is not a minor form of criminal breach of trust but is quite distinct from it. (*Reguley, J.*) **U. KA DOE v. EMPEROR.**

8 Rang 13=1930 Cr. C. 590=125 I. C. 271=  
31 Cr. L. J. 799=A. I. R. 1930 Rang. 158.

**—S. 238—Applicability.**

—In a trial on a charge of an offence under S. 413, I. P. C., which involved ten or eleven separate incidents of the receipt of stolen property, only three of them were proved and these were found by the Judge not to constitute a sufficient basis for the finding of "habit" necessary to a conviction under S. 413.

*Held:* that the section really applicable was S. 238, according to which in such a case the accused can be convicted under S. 411 as to the three minor offences even though he had not been charged with them. A

**CR. P. CODE (1898), S. 238—Dropping of charge.**

conviction of minor offences each of which was an ingredient of the major offence, is clearly not to be regarded as a conviction to which S. 238 is applicable. (*Boys and Iqbal-Ahmad, J.J.*) **HAR PRASAD v. KING EMPEROR.**

107 I. C. 241=9 A. I. Cr. R. 4=  
8 L. R. A. Cr. 170=29 Cr. L. J. 232=  
A. I. R. 1928 All. 139.

**—Abetment and offence.**

Abetment is not a minor offence. It cannot come within S. 238 and it can only come under S. 237 if there is no element in the abetment which is not included in the charge. (*Pullan, J.*) **MAHABIR PRASAD v. EMPEROR.**

97 I. C. 430=49 All. 120=  
24 A. L. J. 998=7 L. R. A. Cr. 180=  
27 Cr. L. J. 1118=A. I. R. 1927 All. 35.

**—S. 238—Attempt.**

—The new amendment of S. 238, cl. 2 A. allows an accused person charged with a substantial offence, to be convicted of an attempt to commit that offence, without a separate charge and trial. (*Krishnan, J.*) **DORAISWAMY AIVAR, In re.**

86 I. C. 339=  
26 Cr. L. J. 755=48 Mad. 774=21 M.L.W. 174=  
1925 M. W. N. 113=A. I. R. 1925 Mad. 480=  
48 M. L. J. 190.

**—S. 238—Conviction without alteration.**

—Where the accused could have been charged with dacoity, theft and criminal misappropriation but is charged with dacoity under S. 395, Penal Code it is legal to convict him under S. 403, Penal Code, according to S. 237, Cr. P. Code. Such a finding is also justified by S. 238, Cr. P. Code, where the offence charged under S. 395 consists of several elements and combination of some of which amounts to an offence under S. 403. (*Barlee, J.C. and Aston, A. J. C.*) **HAROON v. EMPEROR.**

118 I. O. 193=30 Cr. L. J. 875=  
1929 Cr. C. 315=A. I. R. 1929 Sind 147.

**—S. 238—Dacoity and hurt.**

—Held, that on a charge of dacoity a conviction for hurt cannot legally be sustained. (*Coutts-Trotter, C. J. and Mackay, J.*) *In re* **PONNIAH ROWTHER.**

1929 M. W. N. 185=A. I. R. 1928 Mad. 1186.

**—S. 238—Different Offences.**

—A charge of rioting does not include as a minor offence any specific act of violence so as to authorise, on failure of the charge of rioting, a conviction under S. 352 of the Penal Code when no charge of assault has been framed against the accused. 9 I. C. 455, Referred to. But such a conviction may, nevertheless, be justified by Ss. 236 and 237 of the Code where the accused has not been misled in his defence. (*Courtney, Terrell, C. J. and Rowland, J.*) **MALTU GOPE v. EMPEROR.**

118 I. C. 323=30 Cr. L. J. 891=  
1929 Cr. C. 584=10 P. L. T. 875=9 Pat. 642=  
A. I. R. 1929 Pat. 752.

—The offence charged was one under S. 304, 149 for having caused the death of a certain person.

*Held:* that a conviction for an offence under S. 325, 34 for assault on some other person was illegal. (*Martineau, J.*) **ROHELA v. EMPEROR.**

86 I. C. 468=6 L. L. J. 630=26 Cr. L. J. 820=  
A. I. R. 1925 Lah. 286.

**—S. 238—Dropping of charge.**

—When a charge has been framed under Ss. 326 and 149, I. P. Code conviction under S. 326, I. P. Code is not necessarily bad, the legality of the conviction depending on whether the accused has or has not been materially prejudiced by the form of the charge. (*Spencer, Krishna and Ramisam, J.J.*) **THEETHU MALAI GOUNDAN, In re.**

82 I. C. 465=  
25 Cr. L. J. 1297=47 Mad. 743=20 M.L.W. 261=



## CR. P. CODE (1898), S. 238—Error in Charge.

35 M. L. T. 21 = A. I. R. 1925 Mad. 1 =  
47 M. L. J. 221 (F.B.).

## —S. 238—Error in charge.

—Some particulars combining to constitute a complete offence—No charge thereon—Conviction—Validity of—Error in charge—Effect.

Where an accused person has been charged with one offence consisting of several particulars a combination of some of which only constitutes a complete offence and such combination is proved but the remaining particulars are not proved and he is convicted of such offence although not charged with it, he cannot be said to have been misled on his defence by an error in the charge nor can it be said that such an error in the charge occasioned a failure of justice. (*Marten and Kinsaid, JJ.*) KING-EMPEROR v. RANCHHOD SURSANG. 87 I. C. 600 = 49 Bom. 84 = 26 Bom. L. R. 954 = 26 Cr. L. J. 1000 = A. I. R. 1924 Bom. 502.

## —S. 238—Minor offence.

—The offence of receiving stolen property cannot be considered a minor one as compared with that of dacoity or of house-breaking by night. (*Scott-Smith and Fford, JJ.*) ACHPAL v. EMPEROR. 89 I. C. 449 = 26 Cr. L. J. 1361 = A. I. R. 1926 Lah. 132.

—S. 238, Sub-S. 2 justifies conviction under S. 426 where the original charge was under S. 452 of the Penal Code. (*Wazir Hasan, J. C.*) M. MUNNAY MIRZA v. KING-EMPEROR. 81 I. C. 911 = 25 Cr. L. J. 1087 = A. I. R. 1925 Oudh 89.

—When the charge is under I.P.C., S. 430, the conviction can be under S. 426. (*Foster, J.*) BANAMALI KUMAR v. EMPEROR. 86 I. C. 58 = 3 Pat. L. R. Cr. 25 = 6 P. L. T. 39 = 26 Cr. L. J. 682 = A. I. R. 1925 Pat. 389.

## —S. 238—Offence of different kind.

—Where a person is charged under one offence he cannot be charged under another offence which is not a minor one without amendment.

Where the Magistrate frames a charge against an accused under S. 392, I. P. C., and does not charge him specifically under S. 75, I. P. C. though he admits previous convictions, but eventually holding the offence to fall more properly under S. 369, I. P. C. convicts the accused under S. 369, I. P. C. without amending the original charge, S. 238 (2), Cr. P. C. cannot be applied as an offence under S. 369, I. P. C. can scarcely be held to be a minor offence in relation to S. 392, I. P. C. the circumstances attending the two kinds of offences having considerable elements of difference between them. The accused cannot also be convicted under S. 379-75 I. P. C. in such a case, there being no formal charge under S. 75. (*Currie, J.*) MANGLOO v. EMPEROR. 1930 Cr. C. 692 = 31 Punj. L. R. 731 = A. I. R. 1930 Lah. 544.

## —S. 238—Procedure—Witnesses.

—The witnesses for the prosecution ought, as far as possible, to be called, in the order of events which they are called to prove; and in chronological order. The trying Judge may suggest to those who are responsible for the conduct of the prosecution that the proper method and order of calling witnesses should be observed. (*Sanderson, C. J. and B. B. Ghose, JJ.*) KING-EMPEROR v. AHIRANNESA BIBI. A. I. R. 1923 Cal. 579.

## —S. 238—Specific charge necessary.

—A charge of rioting does not include as a minor offence any specific act of violence by an individual accused so as to authorize under S. 238 a conviction under S. 352, Penal Code, 12 Cr. L. J. 82, Foll. 34 Cal.

## CR. P. CODE (1898), S. 239.

698; 34 Cal. 325 and A. I. R. 1922 Mad. 110, Ref. (*Courtney Terrell, C. J. and Rowland, J.*) MALLU GOPA v. EMPEROR. 118 I. C. 323 = 30 Cr. L. J. 891 = 10 P. L. T. 875 = 1929 Cr. C. 584 = A. I. R. 1929 Pat. 712.

—Constructive culpable homicide cannot be said to be a minor offence compared with actual culpable homicide. Hence conviction under S. 304, I. P. C. read with S. 149, I. P. C. when the accused was not charged with such an offence is bad in law. (*Newbould and Mukerji, JJ.*) NAYAN ULLAH v. EMPEROR. 6 L. R. A. Cr. 71 = 85 I. C. 818 = 26 Cr. L. J. 594 = A. I. R. 1925 Cal. 903.

—S. 238—Trial by jury.

—Accused charged with major offence—Jury returning verdict of guilty in respect of minor offence—Verdict of jury is right and is covered by S. 537 (a).

An accused was convicted by a jury of an offence under S. 325, I. P. C., and the verdict of the jury was accepted by the Sessions Judge. It was contended that the Judge used the jury as assessors in accepting the verdict for an offence with which the accused was not specifically charged and that therefore the High Court could go into the facts as if the verdict amounted to an opinion of the assessors.

Held, that the effect of S. 238, was to invest a jury trying an offence under S. 307, I. P. C., with authority to find that the facts proved only constitute a minor offence and to return a verdict of guilty of such offence. It cannot be disputed that, in view of the charge under S. 307, I. P. C., the fact that no charge under S. 325 was framed is not even a defect or irregularity and, as such, curable under S. 537 (a), Cr. P. C., for the simple reason, that, under S. 238 (1), Cr. P. C. the accused was liable, without separate charge, to be convicted incidentally of the minor offence under S. 325 I. P. C. The High Court could not interfere and go into the question of facts on which the jury delivered the verdict they did. 26 Mad. 243, Foll. (*Findlay, J. C.*) NARAYAN SINGH CHHATRI v. EMPEROR. 123 I. C. 477 = 31 Cr. L. J. 557 = 1929 Cr. C. 410 = A. I. R. 1929 Nag. 295.

—An accused charged under S. 412 (triable by jury) can be convicted under S. 411 (triable with aid of assessors) though not separately charged. 22 Bom. L. R. 1241 and 26 Mad. 243, Rel. on. (*Fawcett and Madgavkar, JJ.*) EMPEROR v. GULABCHAND. 27 Bom. L. R. 1416 = 27 Cr. L. J. 650 = 94 I. C. 602 = A. I. R. 1926 Bom. 134.

## —S. 239.

Applicability.  
Conspiracy.  
Defamation.  
False evidence.  
Gambling.  
Interpretation.  
Joint trial.  
Misjoinder of Parties.  
Offences under Penal Code.  
Principal and abettor.  
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Rioting.  
Same transaction.  
Sedition.  
Separate offences.  
Separate transactions.  
Separate trials.  
Theft.  
Miscellaneous.

## CR. P. CODE (1898).

## —S. 239—Applicability.

Several accused were tried together and fined under Ss. 379 and 447 stealing fish in the course of the same transaction; they were all separately engaged in fishing and there was no evidence of common object or common intention. They were merely several poachers gathered in the same place at the same time.

*Held*, that their joint trial was not a mere irregularity and that their conviction must be set aside. A. I. R. 1926 All. 334 and 33 Mad. 502, Ref. (*Jackson, J.*) SAMIULLAH SAHIB v. EMPEROR. 98 I. C. 597 = 50 Mad. 735 = 24 M. L. W. 848 = 38 M. L. T. 37 = 27 Cr. L. J. 1381 = A. I. R. 1927 Mad. 177 = 51 M. L. J. 692.

## —S. 239—Conspiracy.

There is no misjoinder where the accused persons are charged as being parties to a criminal conspiracy to steal Government timber for a term of years and also with habitually receiving and dealing with that timber knowing or believing it to be stolen property during the same period in pursuance of the conspiracy. But if the charge is for habitually receiving stolen timber outside the said conspiracy, the trial will be bad and must be set aside as void. 25 Mad. 61 (P.C.), Dist. (*Brown, J.*) MAUNG BA CHIT v. EMPEROR. 122 I. C. 273 = 7 Rang. 821 = 31 Cr. L. J. 387 = 1930 Cr. C. 402 = A.I.R. 1930 Rang. 114.

*Combination of charges is justified when the object all the accused had in view was common.*

Accused 4 to 10 extorted from one S an agreement of sale. S then lodged a complaint in the matter with accused 3, a Police Inspector and gave him a bribe of Rs. 200 for creating interest to investigate this complaint. For the same purpose S also bribed accused 1 and 2 who were Deputy Superintendents of Police and Police Inspectors. But in the meantime accused 4 to 10 approached accused 3, who was bribed by paying Rs. 1,000 to hush up the matter. S's complaint was accordingly reported to be false. On these facts accused 1 to 3 were charged under Penal Code, Ss. 120-B, 161 and 163 for having conspired to take bribes from S and accused 4 to 10 in the course of police investigation; while accused 4 to 10 were charged under Penal Code, Ss. 120-B, 161, 163 and 114 for conspiring to offer bribe to accused 1 to 3.

*Held*, that the law punished the giver as well as the taker of the bribe, and the transaction must be regarded as one although there were two parties to it and separate offences might be said to be committed in respect of it. The mere fact that the sums received were different and were received at different times and places would not split up the transactions into so many separate transactions so as to require separate trials in respect of each of them. The common object which all the accused had in view was that the police investigation which accused 3 had in hand should be conducted by him not on its merits in the discharge of his public duty but corruptly in accordance with the illegal gratification paid. The prosecution were therefore justified in combining the four charges in one trial. (*Mitra and Murphy, J.J.*) EMPEROR v. C. E. RING. 120 I. C. 340 = 58 Bom. 479 = 31 Bom. L. J. 545 = 1929 Cr. C. 114 = 31 Cr. L. J. 65 = A. I. R. 1929 Bom. 296.

*Joinder of charges is not illegal when all charges as alleged by prosecution formed one transaction although they were not proved.*

One G, M and D were jointly tried on charges: (1) of conspiracy to collect and possess materials for counterfeiting currency notes and of counterfeiting currency notes and of using such notes as genuine, under Ss. 489, A, B, D read with S. 120-B, Penal Code; (2) of conspiracy

## CR. P. CODE (1898), S. 239—False Evidence.

tively, under S. 489-D that they all had in their possession materials for the purpose of being used or knowing or having reason to believe that it would be used for counterfeiting currency notes; (3) G and M counterfeited notes of Rs. 100 (S. 489-A); and (4) accused G used as genuine a counterfeit note of Rs. 100 knowing or having reason to believe that the same was counterfeit. At the trial, the charges of conspiracy and the charges laid against M and D were not proved and therefore, they were acquitted. G was found guilty of an offence under S. 489-B and sentenced to suffer rigorous imprisonment for five years. On appeal to High Court,

*Held*, that although the prosecution in the result failed to prove conspiracy that of itself did not necessarily make the trial illegal, the test being, not what the prosecution has proved in the end, but what they alleged at the beginning in the charges. The offence of which G was found guilty formed part of the same transaction of conspiracy in the sense that it was the working, the fruit and the result of the alleged conspiracy and if so, the separate act done by any of the conspirators in pursuance of that conspiracy could be joined in the same trial. 30 Bom. 49; 42 Cal. 957, Rel. on. (*Madgavkar and Baker, J.J.*) EMPEROR v. GOPAL RAGHUNATH. 116 I. C. 243 = 53 Bom. 344 = 31 Bom. L. R. 148 = 30 Cr. L. J. 588 = A. I. R. 1929 Bom. 128.

Where there was a conspiracy to molest a particular caste of money-lenders and traders,

*Held*, all persons who had joined in the conspiracy to molest those people and to cause them injuries could, if their common aims and objects were once established, be tried at the same trial. (*Pradeaux, A. J. C.*) BAJI RAO, *In re*. 76 I. C. 228 = 25 Cr. L. J. 132 = A. I. R. 1924 Nag. 166.

## —S. 239—Defamation.

Where both the father and son associate together in circulating on different occasions the defamatory statement the object of both being to defame a person about the same matter a joint trial is competent under S. 239 (d). (*Barlee, J. C. and Kalumal, A. J. C.*) ALI MAHOMED v. EMPEROR. 119 I. C. 532 = 30 Cr. L. J. 1073 = 1930 Cr. C. 126 = A. I. R. 1930 Sind 62.

## —S. 239—False evidence.

*False deposition by several witnesses in one suit in common interest of all*—(*Shah, J.*)—*Joint trial is illegal in absence of charge of abetment*—(*Fawcett and Crump, J.J.*)—*Joint trial is legal*—(*Fawcett, J.*)—*No charge for abetment is necessary*—*Abetment can be found from facts of the case.*

Two persons were charged under S. 193, Penal Code. Accused No. 1 was the plaintiff in a suit on a pro-note executed by the defendant. The defendant pleaded that Rs. 750 had been deducted as interest at the time of execution. Both the accused swore that Rs. 750 had not been deducted as interest. It was found that the evidence so given was untrue to their knowledge. The Magistrate found that the two accused were partners in this transaction, and accused No. 2 was interested in the sense that he had advanced part of the consideration to accused No. 1. In the complaint of the Court, which tried the suit, reference was made to offences under Ss. 193, 209 and 210 Penal Code, or attempt to commit offences under Ss. 209 and 210 read with S. 511; Penal Code, as regards accused No. 1. As regards accused No. 2 the offence referred to was one under S. 193 Penal Code. There was no reference there to any abetment of the offence of one accused by another, nor was there any reference to any conspiracy between the two as regards the giving of false evidence.

## CR. P. CODE (1898), S. 239—False Evidence.

*Held*, (Per *Shah, J.*)—That the mere fact that the evidence is given by two or more witnesses with reference to the same purpose or to the same point involved in any judicial proceedings, either a suit or a criminal case, is not sufficient to justify the joint trial of different persons as to statements made by them separately in that proceeding. The deposition in the course of which the statement is made is a transaction by itself, and each witness making a statement in the witness box acts on his own account, and it is that act of his for which he is to be prosecuted. There may be cases in which the prosecution may allege abetment of perjury or conspiracy to commit perjury, and the evidence may be given as a part of the conspiracy formed by several persons together. In such a case on proper allegations it may be possible to secure a joint trial in respect of charges relating to making false statements in the course of depositions by different persons.

(Per *Fawcett, J.*)—On the allegations of the prosecution, and on the facts found, there is no sufficient reason for saying that the case does not properly fall within Cl. (1) of S. 239, Cr. P. Code, namely, that the two accused are persons accused of the same offence, committed in the course of the same transaction, *i.e.*, the transaction in which there was an attempt by a suit to obtain a fraudulent decree for an amount not due. There was continuity of purpose, which satisfies the test as to what is the same transaction. That there is no allegation in the complaint of the charges of conspiracy or abetment is immaterial. There need not be a distinct accusation of abetment or attempt to bring the case under S. 239 (a).

(*Crump, J.*)—As there was a common purpose to make out a false claim so far was concerned the sum of Rs. 750, from the point of view of these two persons there was one transaction and their joint trial was not illegal. (*Crump, J.* no difference between *Shah and Fawcett, J.J.*) *SEJMAL PUNAMCHAND v. EMPEROR.*

100 I. C. 981=51 Bom. 310=29 Bom. L. R. 170=  
28 Cr. L. J. 373=7 A. I. Cr. R. 505=  
A. I. R. 1927 Bom. 177.

## —S. 239—Gambling.

—Persons accused under U. P. Public Gambling Act, Ss 3 and 4 can be tried together.

No cast iron rule of law can be laid down on the question as to whether the keeper of a gambling den, if he frequents the said den and gambles there, could not be said to do so in the course of the same transaction within the meaning of S. 239. The words "same transaction" are not defined in the Code. The offences under Ss. 3 and 4, Public Gambling Act are interdependent and "are the complements of one another." A Court, therefore, is justified in trying two accused persons under Ss. 3 and 4 in the course of the same trial. A. I. R. 1922 Lah. 458; 6 P. R. 1919 Cr. and A. I. R. 1923 All. 88, Rel. on; 5 P. W. R. 1910 and 35 P. R. 1914 Cr. Not Foll. (*Sen, J.*) *RURE MAL v. EMPEROR.*

120 I. C. 266=31 Cr. L. J. 35=1930 A. L. J. 229=  
13 A. I. Cr. R. 138=11 L. R. A. Cr. 21=  
1929 Cr. C. 665=A. I. R. 1929 All. 937.

—Where some persons are charged with offences punishable under Ss. 3 and 4 of the Act and others are charged under S. 4 only, their joint trial is legal if the offences alleged to have been committed by all the persons are committed in the course of the same transaction. 5 W. R. Cr. 1910 and 35 P. R. Cr. 1914, Diss. from. (*Iqbal Ahmad, J.*) *DARAB v. EMPEROR.*

105 I. C. 825=50 All. 412=26 A. L. J. 78=  
28 Cr. L. J. 1001=8 L. R. A. Cr. 145=  
8 A. I. Cr. R. 406=A. I. R. 1928 All. 20.

## —S. 239—Interpretation.

—The "former part" referred to in the direction at

## CR. P. CODE (1898), S. 239—Joint trial.

the end of S. 239 means the part prior to the part headed "joinder of charges," *i.e.*, the part under the heading "form of charge." S. 234, therefore, will not control the provisions of S. 239. (*Dalal, J. C.*) *BISHAMBHAR NATH TANDON v. EMPEROR.*

90 I. C. 706=  
2 O. W. N. 760=26 Cr. L. J. 1602=  
A. I. R. 1926 Oudh 161.

—The words "as the Court thinks fit" in S. 239 of the Cr. P. Code are of the widest possible import. It is to be presumed that the Court will "think fit" to adopt, in each particular case, whichever course it regards as most conducive to the ends of justice. (*Mears, C. J. and Piggott, J.*) *EMPEROR v. HAR PRASAD BHARGAVA.*

77 I. C. 961=21 A. L. J. 42=4 L. R. A. Cr. 19=  
45 All. 226=25 Cr. L. J. 497=A. I. R. 1923 All. 91.

## —S. 239—Joint trial.

—When further inquiry against the abettor of an offence who was previously discharged was directed, joint trial could not be held.

A complaint was filed against five persons under S. 325, Penal Code, the 1st being included as an abettor. Accused 1 was discharged on the ground of not being identified and charge was framed against the other four accused. On revision further inquiry was directed which was to give further opportunity to the prosecution witness to identify accused 1. Meanwhile proceedings against the other four accused had proceeded and prosecution witnesses had been cross-examined after the charge.

*Held*, that though ordinarily the correct course is to try an abettor with the primary offender yet in this particular instance the proceedings had reached such a stage that a joint trial could not be ordered. A. I. R. 1926 Mad. 638, Ref. (*Curguen, J.*) *SUBBAYA PILLAI v. SETHA IYER.*

122 I. C. 786=1930 Cr. C. 9=  
2 M. Cr. C. 212=1929 M. W. N. 796=  
30 M. L. W. 736=31 Cr. L. J. 457=  
A. I. R. 1930 Mad. 102=57 M. L. J. 754.

—Joint trial of two sets of offences is bad when they do not form one transaction.

Where owners of field finding that some 4 persons are uprooting crops in their field, capture one of the thieves and after they walked a short distance are attacked and assaulted by a mob of 20 persons with deadly weapons, the joint trial of some of the offence of theft and some of the offence of rioting and use of deadly weapons is bad unless there is evidence that the rescuers had been in collusion with the thieves committing the theft and had stood by with the object of effecting a rescue to establish a connexion between the two sets of offences so as to make one and the same transaction. (*Courtney-Terrell, C. J. and Macpherson, J.*) *RAGHU DASADH v. EMPEROR.*

127 I. C. 571=1930 Cr. C. 202=  
A. I. R. 1930 Pat. 159.

—It is sufficient for purposes of S. 239 (d) that the offences were committed in the course of the same transaction. Whether the charge is an alternative one or is a distinct charge is obviously immaterial. (*Cuming and Lort Williams, J.J.*) *KALI KUMAR v. NAWABALI.*

116 I. C. 369=30 Cr. L. J. 619=  
13 A. I. Cr. R. 4=A. I. R. 1929 Cal. 160.

—The legality of the joint trial depends upon the accusation and not on the trial. A. I. R. 1922 Cal. 107, Rel. on; (*Cuming and Lort Williams, J.J.*) *KALI KUMAR v. NANUVALI.*

116 I. C. 369=  
30 Cr. L. J. 619=13 A. I. Cr. R. 4=  
A. I. R. 1929 Cal. 160.

—Joint complicity, or which one is undoubtedly guilty must be established.

Where two or more persons are jointly charged with an offence, either the joint complicity of all must be

## CR. P. CODE (1898), S. 239—Joint trial.

proved or it must be left in no doubt which out of two or more actually committed the offence. (*Zafar Ali and Coldstream, J.J.*) MOHAMED ALI v. EMPEROR.

112 I. C. 212 = 10 L. J. 525 = 29 Cr. L. J. 996 = A. I. R. 1929 Lah. 61.

—A was charged with harbouring two absconding offenders L and N and S with the same offence with respect to two different persons H and P. They were tried together though there was no conspiracy alleged between A and S and they had not been accused of committing the same offence in the course of the same transaction.

Held, that the trial was illegal. (*Dalal, J.*) SEW-  
AK v. EMPEROR. 113 I. C. 721 = 26 A. L. J. 623 =  
9 A. I. Cr. R. 531 = 9 L. R. A. Cr. 80 =  
30 Cr. L. J. 214 = A. I. R. 1928 All. 417.

—Joint trial of several persons for offences under Ss. 366 and 368, Penal Code, is not illegal. A. I. R. 1924 Cal. 389, Rel. on. (*Dalip Singh, J.*) DOSA v. EMPEROR. 109 I. C. 224 = 10 A. I. Cr. R. 217 =  
29 Cr. L. J. 496 = A. I. R. 1928 Lah. 751.

—A case of joint trial of several persons of acts not committed in the course of the same transaction is not a mere case of irregularity which can be cured by the provisions of S. 537 but on the other hand, it is a case of illegality and vitiates the whole trial. 25 Mad. 61 (P. C.), Foll. (*Agha Haider, J.*) MAHOMEDI v. EMPEROR. 100 I. C. 965 = 28 Cr. L. J. 357 =  
7 A. I. Cr. R. 558 = A. I. R. 1927 Lah. 274.

—Where in a joint trial the proceedings have been illegal from the very beginning, to quash the charges against one accused would not validate the trial. (*Mitchell, Offg. A. J. C.*) EMPEROR v. DHANESAHARAM. 97 I. C. 363 = 27 Cr. L. J. 1099 =  
7 A. I. Cr. R. 162 = A. I. R. 1927 Nag. 22.

—Under S. 239 identity of purpose is alone sufficient for a joint trial but community of purpose in the sense of conspiracy is not in any way a necessary element though if it is present, its presence will be a further element supporting a finding that the offences were committed in the same transaction. If the several acts of the accused were committed in the same transaction there is an end of the matter, and there can legally and properly be a joint trial. (*Dalal and Boys, J.J.*) RAFIZ-UZ-ZAMAN v. CHHOTAY LAL. 93 I. C. 237 =  
48 All. 325 = 24 A. L. J. 472 = 7 L. R. A. Cr. 66 =  
27 Cr. L. J. 445 = A. I. R. 1926 All. 334.

—Charge under S. 376, I. P. C.—Rape committed by both accused in one place—The woman was taken by one of them to another place where he alone committed rape—Joint charge of rape at different places against both is improper. (*Newbould and B. B. Ghose, J.J.*) KERAMAT MANDAL v. EMPEROR. 92 I. C. 439 =  
42 C. L. J. 524 = 27 Cr. L. J. 263 =  
A. I. R. 1926 Cal. 320.

—A person cannot be tried upon a charge under S. 412, jointly with others who are being tried for the offence of dacoity under S. 396, Penal Code. (*Scott-Smith and Fforde, J.J.*) ACHPAL v. EMPEROR. 89 I. C. 449 = 26 Cr. L. J. 1361 =  
A. I. R. 1926 Lah. 132.

—A festival was being celebrated along a public road. An agreement had been previously arrived at amongst certain members of the community to the effect that the firing of fire-works should be stopped till the procession of *Dulendi* passed off but the accused along with some others fired off fire-works at random thereby causing injury to passers-by. They were all tried together and convicted.

Held, that the joint trial was illegal. (*Mukherji, J.*) TUFAS AHMAD v. EMPEROR. 86 I. C. 222 =

## CR. P. CODE (1898), S. 239—Joint trial.

23 A. L. J. 5 = 6 L. R. A. Cr. 53 =  
26 Cr. L. J. 734 = A. I. R. 1925 All. 301.

—Trial of accused both under Cls. (d) and (e) but also under cl. (f) of S. 110 is bad.

Joint trial must be condemned as prejudicial to the accused, where proceedings are taken against the accused not only for conduct coming within S. 110, Cls. (d) and (e) but also under Cl. (f) for the reason that they are so desperate and dangerous as to make their being at large without security hazardous to the community, and where the accused are tried jointly and evidence pertaining exclusively to the nefarious acts of each of the accused is let in addition to the evidence as to the events in which it is alleged that they are associated together and the Magistrate passes an order against them on a consideration of the entire evidence thus introduced into the record against all the accused. (*Madhavan Nair, J.*) KUTTI GOUNDAN, *In re*. 86 I. C. 49 =  
26 Cr. L. J. 673 = 1925 M. W. N. 57 =  
A. I. R. 1925 Mad. 189 = 47 M. L. J. 689.

—Joint trial of two accused both charged under S. 412, I. P. C. is illegal. 18 O. C. 92 Ref. (*Dalal, A. J. C.*) BEHARI v. KING-EMPEROR. 89 I. C. 155 = 12 O. L. J. 339 = 2 O. W. N. 330 =  
26 Cr. L. J. 1291 = A. I. R. 1925 Oudh 452.

—Legality depends on accusation.

The legality of the joint trial depends on the accusation and not on the result of the trial and the discretion of the Court to try accused persons separately is not improperly exercised by holding a joint trial in conspiracy cases. A. I. R. 1922 Cal. 107, Foll. (*Robinson, C. J. and Godfrey, J.*) ABDUL RAHMAN v. EMPEROR. 89 I. C. 305 = 26 Cr. L. J. 1329 = 3 Rang. 95 =  
A. I. R. 1925 Rang. 296.

—Sessions Court has to look to the case for the prosecution as set forth in the charges themselves and if according to that case the offences are such as could be regarded as parts of the same transaction, the Court would be justified in entering upon the trial of all the accused on the charges as framed. It need not consider what the position would be if it finally comes to the conclusion that no offence had been committed or that the offence committed was one which was excluded from its cognizance by S. 196-a. (*Mears, C. J. and Piggott, J.*) ABDULLAH v. EMPEROR. 92 I. C. 145 =  
4 L. R. A. Cr. 145 = 27 Cr. L. J. 193 =  
A. I. R. 1924 All. 233.

—Persons who abet in offence of helping others to escape from lawful custody could be tried along with those who escaped and all together could be tried also for offences under Penal Code, Ss. 147 and 323. (*Krishnan, J.*) ARUMUGA GOUNDAN v. EMPEROR. 81 I. C. 312 = 18 M. L. W. 818 =  
25 Cr. L. J. 792 = A. I. R. 1924 Mad. 384.

—Joinder of charges of dacoity and receiving stolen property is permissible.

It is always for the prosecution to justify a joint trial. A separate trial is the rule and a joint trial is the exception.

Where upon the evidence the offence of a dacoity and the two offences of dishonest possession of stolen property knowing it to have been stolen in the commission of dacoity or dishonest reception of such property knowing it to be stolen from a known dacoit were committed in the same transaction, a joint trial was held to be permissible under the provisions of S. 239, inasmuch as this is not a case of separate charges of receiving stolen property each in itself forming a separate transaction and unlinked by something which brings them into the same transaction. (*Stuart, J.*) DURGAPRASAD v. EMPEROR. 71 I. C. 501 =

## CR. P. CODE (1898), S. 239—Joint trial.

20 A. L. J. 981 = 24 Cr. L. J. 149 =  
45 All. 223 = A. I. R. 1923 All. 126.

—It seems very hard, almost oppressive, to any set of defendants to charge them together unless the whole of the evidence against all of them is precisely the same, and they are to be dealt with on the same facts, and compel them to fight each his own individual battle during a prolonged enquiry, a great deal of which concerns for the moment only one, out of the general body. (*Walsh, J.*) **ANGNOO SINGH v. KING-EMPEROR.**

71 I. C. 865 = 45 All. 109 =  
20 A. L. J. 881 = 24 Cr. L. J. 257 =  
A. I. R. 1923 All. 35.

—Where a number of persons are tried for offences committed in the same transaction it is a question for the Court in the exercise of its judicial discretion to say whether there should be a joint trial or not. (*Maclean, C. J., Pinsep, Hill, Harrington and Brett, JJ.*) **EMPEROR v. CHARU CHANDER MUKERJEE.**

38 C. L. J. 309 = 76 I. C. 966 =  
25 Cr. L. J. 294 (F. B.)

## —S. 239—Misjoinder of parties.

—*Alternate charge under S. 302 and Ss. 201—203, I.P.C.*

There is no misjoinder in charging the accused in the alternative with the main offence and under Ss. 201 to 203, I.P.C. nor is there anything irregular in a Court holding that while the accused is not free from the suspicion of being the actual murderer he can be none the less convicted under Ss. 201 to 203, I. P. C. (*Wallace and Jackson, JJ.*) **CHINNA GANGAPPA v. EMPEROR.**

1930 M. W. N. 489 = 32 L. W. 389 =  
1930 Cr. C. 1126 = A. I. R. 1930 Mad. 870 =  
59 M. L. J. 677.

—Four persons were convicted in a joint trial. Accused 1 of three offences of theft under S. 381, I. P. C. in respect of property alleged to have been stolen on three different dates. Accused 2 of three offences of theft under S. 379, I. P. C., in respect of property alleged to have been stolen on three different dates. Accused 3 under S. 411, I.P.C., of dishonestly receiving or retaining stolen property. Accused 4 under S. 414, I. P. C., of assisting in disposal of stolen property;

*Held*, that there had been both a misjoinder of charges and of persons and the trial was illegal. (*Fforde and Addison, JJ.*) **EMPEROR v. JASCHUDDIN.**

101 I. C. 491 = 9 Lah. L. J. 100 = 8 A. I. Cr. R. 78 =  
28 Cr. L. J. 459 = A. I. R. 1927 Lah. 737.

—Where there is a misjoinder of four charges the illegality of trial is not cured by the Judge striking out one charge when the trial is practically over. (*Addison, J.*) **FITZMAURICE v. EMPEROR.**

27 Cr. L. J. 793 = 95 I. C. 393 = A. I. R. 1926 Lah. 193.

## —S. 239—Offences under Penal Code.

—*When periods during which accused were members of the offending gang are not same—Joint trial is legal (Reilly, J., dissenting).*

Six persons were accused of waging war under S. 121 of the I. P. C. The sixth accused joined the gang after the first and the second accused had been arrested. But the gang to which the accused belonged continued under the leadership of the same man and was actuated by the same purpose.

*Held* (by *Spencer, Offg. C. J., and Krishnan, J., Reilly, J., dissenting*) that the joint trial of the sixth accused with the 1st and 2nd accused was legal.

*Per Spencer, Offg. C. J.*—S. 239, Cr. P. Code, (as amended); cl. (d) authorises the trial of more persons than one on one charge and under one trial if they are accused of different offences committed in the course of

## CR. P. CODE (1898), S. 239—Receiving Stolen property.

the same transaction. If an offence is a continuing one, it can be regarded as a continuous transaction.

*Per Reilly, J.*—An offence cannot be treated as necessarily one transaction merely because it is a continuing offence.

*Per Krishnan, J.*—The question whether the various incidents in a war form parts of the same transaction or must necessarily be held to be different transactions has to be judged on the facts of each case. (*Krishnan, J.*; on difference between *Spencer, Offg. C. J. and Reilly, J.*) **GAM MALLU DARA, In re.** 90 I. C. 297 = 49 Mad. 74 =  
1925 M. W. N. 192 = 26 Cr. L. J. 1513 =  
A. I. R. 1925 Mad. 690 = 48 M. L. J. 308.

—A joint trial of the accused is legal under S. 239 where a large number of persons are tried for the offence of wilful murder committed by the members of an unlawful assembly at a time when each of the persons is alleged to be a member of that assembly. (*Mears, C. J. and Piggott, J.*) **ABDULLAH v. EMPEROR.**

92 I. C. 145 = 4 L. R. A. Cr. 145 =  
27 Cr. L. J. 193 = A. I. R. 1924 All. 233.

## —S. 239—Principal and abettor.

—The provisions of S. 239 stand by themselves and the scope thereof cannot be extended by use of the provisions of sections not referred to in S. 239. The joint trial of two persons in three separate cases when they are charged in the alternative with embezzlement or abetment thereof is illegal as they have to meet six distinct sets of circumstances. 33 Bom. 221, Expl. and Dist.; A. I. R. 1921 All. 246 and 32 All. 219 Cons. (*Dalal, J.*) **JANESHAH DAS v. EMPEROR.**

116 I. C. 794 = 51 All. 544 = 1929 A. L. J. 329 =  
10 L. R. A. Cr. 53 = 11 A. I. Cr. R. 355 =  
30 Cr. L. J. 687 = A. I. R. 1929 All. 202.

—S. 239 is controlled by "jurisdiction" Chap. 15.

Jurisdiction, being the foundation of the charge, is to be imported or understood as present in all the subsequent procedure set out in the Code, and thus clearly must govern S. 239; so that in an offence of breach of trust a Magistrate has clearly no jurisdiction to try the abetment and the receiving which take place out of his territorial jurisdiction. A. I. R. 1924 Cal. 1034, Rel. on, (*Odgers, J.*) **SACHIDANANDAM v. GOPALA AYYANGAR.**

52 Mad. 991 = 30 M. L. W. 501 =  
1929 M. W. N. 578 = 2 M. Cr. C. 246 =  
120 I. C. 75 = 30 Cr. L. J. 1161 = 1929 Cr. C. 487 =  
A. I. R. 1929 Mad. 839 = 57 M. L. J. 518.

## —S. 239—Procedure Condemned.

—The improper procedure of the Sessions Court of allowing the principal accused to remain untried while a charge of murder is proceeded with against those who are supposed to have played a minor part in the crime should be condemned. There is no reason why all the accused should not be tried together at the trial. Even if some of them are principal offenders, and the others accomplices, S. 239, Cl. (b) Cr. P. C. permits them all to be tried together in one trial. (*Spencer, Offg. C. J.*) **SOGIAMUTHU PADAYACHI, In re.** 50 Mad. 274 =  
27 Cr. L. J. 394 = 93 I. C. 42 = A. I. R. 1926 Mad. 638.

## —S. 239—Receiving stolen property.

—Joint trial of several persons for the offence of receiving stolen property is legal provided the articles are stolen in the course of one and the same theft. (*Mullick and Scroope, JJ.*) **MT. GULJANIA v. EMPEROR.**

6 Pat. 583 = 105 I. C. 674 =  
28 Cr. L. J. 962 = 9 A. I. Cr. R. 107 =  
A. I. R. 1928 Pat. 38.

—Joint trial of the receiver of the stolen property and of the person to whom it was sold afterwards is illegal as the acts do not form part of the same trans-



**CR. P. CODE (1898), S. 239—Receiving Stolen property.**

action. (*Greaves and Chotanar, J.J.*) DALSUK ROY AGARWALLA v. EMPEROR. 81 I. C. 343 =

25 Cr. L. J. 807 = A. I. R. 1925 Cal. 248.

**—S. 239—Rioting.**

—Joint trial of one charged under S. 201 and another under S. 304, I. P. C. was held illegal.

A riot took place over a dispute relating to a *Go-pat* and in the course of the riot one J was wounded with a bamboo staff at his knee and one B was also assaulted—the result of which was that he died on the spot and thereafter the appellant along with one other person took away the dead body and the corpse was not recovered since then.

Held, that the offence under S. 201, Indian Penal Code, alleged to have been committed by the appellant was not committed in the course of the same transaction in which the offence of rioting was committed and therefore the trial of appellant on the charge under S. 201, Indian Penal Code, along with the other accused who were charged for rioting and murder was vitiated by misjoinder of charges. (*Wulmsley and Mukerji, J.J.*) SURENDRA LAL DAS v. EMPEROR.

85 I. C. 147 = 40 C. L. J. 559 = 26 Cr. L. J. 467 = A. I. R. 1925 Cal. 413.

**—S. 239—Same transaction.**

—Where persons are accused of different offences committed in the course of the same transaction. it is not necessary that all such persons must have a common object in order to render their joint trial valid. (*Wallace and Jackson, J.J.*) K. RAMARAJU THEVAN v. EMPEROR. 127 I. C. 654 = 1930 M. W. N. 377 =

1930 Cr. C. 1033 = 53 Mad. 937 = A. I. R. 1930 Mad. 857.

—A transaction of abduction for which two persons have been convicted cannot be said to be part of the same transaction when a third person, not alleged to have taken part in the abduction, proceeds to cheat by false representation as to caste, etc., of the girl, a person who buys the girl, there being no continuity of purpose, nor any contiguity of time. (*Dalip Singh, J.*) MANGHA RAM v. EMPEROR. 1930 Cr. C. 524 =

1930 Cr. C. 992 = 31 Punj. L. R. 811 = A. I. R. 1930 Lah. 896.

—The expression "in the course of the same transaction" used in S. 239 must be understood as including both the immediate cause and effect of an act or event and also its collocation, or relevant circumstances, the other necessary antecedents of its occurrence, connected with it at a reasonable distance of time, space, and cause and effect. (*Mirza and Murphy, J.J.*) EMPEROR v. C. E. RING. 120 I. C. 340 = 53 Bom. 479 =

31 Bom. L. R. 545 = 1929 Cr. C. 114 = 31 Cr. L. J. 65 = A. I. R. 1929 Bom 296.

—It is entirely for the jury to decide whether charges under Ss. 147 and 304, I. P. C., spring out of one and the same incident or out of two entirely different incidents and thus ultimately the legality of the charges under both the sections depends on the decision of the Jury. (*Rankin, C. J. and C. C. Ghose, J.*) TOTA MEAH CHOWDHURY v. EMPEROR. 119 I. C. 139 =

56 Cal. 1106 = 30 Cr. L. J. 1015 = A. I. R. 1929 Cal. 298.

—Sub-Cl. (d) contemplates all the offences committed by persons, whether substantive offences or abettment of those offences; being tried together provided they were committed by the persons in the course of the same transaction. (*Cuming and Lort-Williams, J.J.*) KALI KUMAR v. NAWABALI. 116 I. C. 869 =

30 Cr. L. J. 619 = 13 A. I. Cr. R. 4 = A. I. R. 1929 Cal. 160.

**CR. P. CODE (1898); S. 239—Same transaction.**

—S. 368 only applies where abduction or kidnapping has been completed and the wrongful concealment follows upon such completed abduction. Joint trial, therefore, of different persons under Ss. 368 and 366 I. P. C., is bad, the two acts not forming part of the same transaction. A. I. R. 1928 Lah. 751 and A. I. R. 1924 Cal. 389, Expl. and Dist. (*Harrison, J.*) NAWAB KHAN v. EMPEROR.

1929 Cr. C. 57 = A. I. R. 1929 Lah. 496.

—Where a person commits forgery and another abets forgery and uses the forged document as genuine, the offences are parts of the same transaction, and both of them can be tried together. (*Waller and Jackson, J.J.*) SRIRAMULU NAIDU v. EMPEROR.

119 I. C. 63 = 52 Mad. 532 = 29 M. L. W. 559 =

1929 M. W. N. 279 = 2 M. Cr. C. 87 =

30 Cr. L. J. 983 = A. I. R. 1929 Mad. 450 = 56 M. L. J. 554.

—Common purpose must be seen—Unity of time and place are not always safe guides.

—Before different offences can be said to have been committed "in the course of the same transaction" by the various persons charged with the same, the Court must see whether such persons had a common purpose, resulting in actions which constituted a concatenation of events ultimately leading to the commission of such offences. The tests of unity of time and the unity of place as regards the offences with which the various accused persons may be charged, are not always safe criteria for the purpose of determining whether or not these offences were committed "in the course of the same transaction." Each case must depend on its own facts and circumstances. (*Agha Haider, J.*) MAHOMEDI v. EMPEROR. 23 Cr. L. J. 357 =

100 I. C. 965 = 7 A. I. Cr. R. 558 = A. I. R. 1927 Lah. 274.

—Proximity of time, continuity of action and purpose, and such subsidiary acts as would make the co-accused *particeps criminis* or an accessory after the fact are the tests to determine whether an offence was committed in the same transaction. 1 S. L. R. 73, Foll. (*Kincaid, J.C. and Rupchand Bilaram, A.J.C.*) EMPEROR v. LUKMAN. 21 S. L. B. 107 = 27 Cr. L. J. 1238 =

98 I. C. 49 = A. I. R. 1927 Sind 39.

—Three witnesses giving evidence on same point in same case to prove same fact can be tried together.

Where three accused persons, witnesses on the same side in a case of communal riot, all give evidence on the same point and to the same effect, to prove the same fact, viz., the manner in which a certain man met his death.

Held, that the evidence in the case of the three witnesses was given in the course of the same transaction within S. 239. (*Dalal and Boys, J.J.*) RAFIZ-UZ-ZAMAN v. CHHOTAY LAL. 48 All. 325 = 24 A. L. J. 472 = 27 Cr. L. J. 445 = 7 L. R. A. Cr. 66 = 93 I. C. 237 = A. I. R. 1926 All. 334.

—Where the four accused lived in four separate houses although the houses adjoined one another and a notice was directed to each separately to take certain steps in connection with the building occupied by each of them, the failure to obey the notice issued cannot be regarded as one transaction. The joint trial of the four accused is illegal. (*Broadway, J.*) AISHA v. CROWN. 7 Lah. 168 = 8 Lah. L. J. 80 = 27 Cr. L. J. 465 =

27 P. L. R. 188 = 93 I. C. 689 = A. I. R. 1926 Lah. 248.

—Each act if it is a completed act so far as that act is concerned will not go to form continuity of action.

Though community of purpose or design and continuity of action are essential elements in determining



**CR. P. CODE (1898), S. 239—Same transaction.**

whether or not the number of acts are so connected together as to form part of the same transaction, yet to constitute community of purpose the mere existence of some general purpose or design is not sufficient. There can be no continuity of action where each act is a completed act in itself and the original design is accomplished so far as that act is concerned. Joint trial of the accused for falsely inducing various people at different times to pay money to the accused for securing employment at handsome wages in a foreign country is illegal. (*Moti Sagar, J.*) **NANAK CHAND v. CROWN.**

81 I. C. 796 = 25 Cr. L. J. 1020 =

A. I. R. 1924 Lah. 734.

—The question, whether certain offences specified in different charges were or were not so connected together that it might fairly be said that they had been committed in the same transaction, is after all substantially one of fact, and admissions on a question of fact which go to determine whether there should be a joint trial made by accused persons may undoubtedly be received and acted upon by a Trial Court. (*Paggott and Walsh, J.J.*) **GAYAN SINGH v. EMPEROR.**

83 I. C. 509 =

26 Cr. L. J. 29 = A. I. R. 1923 All. 277.

**—S. 239—Sedition.**

—In cases of sedition the printer and publisher are concerned in the same transaction in regard to the publication of the seditious matter and they may be tried jointly in proper cases. (*Ravetti, J.*) **SHAN-TARAM MIRAJKAR v. EMPEROR.**

110 I. C. 235 =

30 Bom. L. R. 320 = 10 A. I. Cr. R. 367 =

29 Cr. L. J. 683 = A. I. R. 1923 Bom. 139.

**—S. 239—Separate offences.**

—Where a number of villagers were tried jointly for disobedience of a lawful order, held that each of the accused committed a separate offence and their joint trial is illegal. (*MacColl, A. J. C.*) **KING-EMPEROR v. NGA SEIN.**

76 I. C. 1039 = 4 U. B. R. 127 =

25 Cr. L. J. 319 = A. I. R. 1923 Rang. 132.

**—S. 239—Separate transactions.**

—Where the accused was charged under S. 413, I. P. C., with other persons who were charged under S. 401, I. P. C.

Held, that the accused cannot be tried with others as Cl. (d) does not apply, as the offence of receiving stolen property and the offence of belonging to a gang of thieves relate to separate transactions. Cl. (c) also does not apply, as an offence under S. 401, I. P. C., cannot be said to include theft, for it is committed as soon as a gang of persons associated for the purpose of habitually committing theft is formed and before any theft is actually committed by them. (*Martineau, J.*) **CHHAJJU v. EMPEROR.**

88 I. C. 185 = 26 Cr. L. J. 1097 =

26 P. L. R. 470 = A. I. R. 1925 Lah. 537.

**—S. 239—Separate trial.**

—Whenever the applicability of S. 239 is doubtful, it is far better that it should not be applied and that accused should be tried separately. (*Jackson, J.*) **SAMIULLAH SAHIB v. KING-EMPEROR.**

98 I. C. 597 = 50 Mad. 785 = 24 M. L. W. 848 =

38 M. L. T. 37 = 27 Cr. L. J. 1381 =

A. I. R. 1927 Mad. 177 = 51 M. L. J. 692.

**—S. 239—Theft.**

—Where the theft is completed and later on an endeavour is made by the persons alleged to be thieves to dispose of the property with the assistance of friends and relations, trial of persons charged under Ss. 457 and 436, Penal Code, jointly with persons charged under Ss. 411 and 414 is illegal. Neither Ss. 239 (c) nor S. 239 (d) has application in such a case. (*Dutt Singh, J.*) **SULTAN AHMAD v. EMPEROR.**

**CR. P. CODE (1898), S. 239—Chaps. 20 and 21 (Ss. 241 to 259)—Rights of accused.**

112 I. C. 584 = 29 Cr. L. J. 1080 =

A. I. R. 1929 Lah. 142.

—Several accused were tried together and fined under Ss. 379 and 447 I. P. C., for stealing fish in the course of the same transaction; they were all separately engaged in fishing and there was no evidence of common object or common intention. They were merely several poachers gathered in the same place at the same time.

Held, that their joint trial was not a mere irregularity, and that their conviction must be set aside. A. I. R. 1926 All. 334 and 33 Mad. 502, Dist. (*Jackson, J.*) **SAMIULLAH SAHIB v. KING-EMPEROR.**

98 I. C. 597 = 24 M. L. W. 848 =

38 M. L. T. 37 = 27 Cr. L. J. 1381 =

50 Mad. 735 = A. I. R. 1927 Mad. 177 =

51 M. L. J. 692.

**—S. 239—Miscellaneous.****—Right procedure.**

In the case of a joint trial of accused persons an alternative charge against one of them is legal. (*Ranken, C. J. and C. C. Ghose, J.*) **TOTA MEAH v. EMPEROR.**

56 Cal. 1106 = 30 Cr. L. J. 1015 =

119 I. C. 139 = A. I. R. 1929 Cal. 298.

—There are only two methods provided by law for conducting a trial or trials in case of several accused. Either the trials must be separate if the law requires them to be separate or they may be, and ordinarily will be joint, if the law permits them to be joint unless for some particular reason the Judge considers that the trials should be held separately. It is very dangerous and not in accordance with law for a Judge, with the very best intentions, to follow some procedure which is really neither one nor the other of the two procedures provided by law. (*Dalal and Boy, J.J.*) **RAFI-UZ-ZAMAN v. CHHOTAY LAL.**

48 All. 325 =

24 A. L. J. 472 = 27 Cr. L. J. 445 =

7 L. R. A. Cr. 66 = 93 I. C. 237 =

A. I. R. 1926 All. 334.

**—S. 240—Applicability.**

—Provisions of S. 240 apply to every grade of Court and not only to the trial Court. (*Dalal, J.*) **GHAMANDI NATH v. BABU LAL.**

119 I. C. 575 =

1929 Cr. C. 491 = 10 L. R. A. Cr. 122 =

1929 A. L. J. 1056 = 30 Cr. L. J. 1089 = 51 All. 977 =

12 A. I. Cr. R. 202 = A. I. R. 1929 All. 899.

**—S. 240—Revision.**

—When a charge containing more heads than one is framed against the same person and conviction has been made on one or more of them, and the complainant applies in revision to inflict sentence on the others but subsequently withdraws the application, the withdrawal amounts to withdrawal or complaint with regard to such charge with the consent of the Court and so to acquittal. (*Dalal, J.*) **GHAMANDI NATH v. BABU LAL.**

119 I. C. 575 = 1929 Cr. C. 491 =

10 L. R. A. Cr. 122 = 1929 A. L. J. 1056 =

30 Cr. L. J. 1089 = 51 All. 977 =

12 A. I. Cr. R. 202 = A. I. R. 1929 All. 899.

**—Chaps. 20 and 21 (Ss. 241 to 259)—Rights of accused.**

—If the trial of an ordinary summons or warrant case before a Magistrate an accused person is not entitled, before he appears in Court, to any information as to what detailed evidence the prosecution is going to lead. (*Boys and Young, J.J.*) **CHANDIAN v. EMPEROR.**

1930 A. L. J. 889 = 31 Cr. L. J. 627 =

1930 Cr. C. 442 = 124 I. C. 40 = 52 A. 448 =

1930 A. L. J. 889 = 31 Cr. L. J. 627 =

## CR. P. CODE (1898).

## —S. 241—Framing of charge.

—One of the distinguishing points between a summons and a warrant case is that in a warrant case sufficient evidence to support the charge must be recorded before a charge can be framed and the accused called on to plead. (*Newbould and C. C. Ghose, J.J.*)

NATAVARDHAN v. EMPEROR. 82 I. C. 278 =  
27 C. W. N. 923 = 25 Cr. L. J. 1270 =  
A. I. R. 1924 Cal. 63.

## —S. 242—Absence of accused.

—Where a Court dispenses with the personal attendance of an accused under S. 205, the Court can act upon the plea given by his pleader in a case falling under Ss. 242 and 243. 6 S. L. R. 206, Appr.; *Res. v. Thompson*, (1909) 2 K. B. 614, Foll.; 6 Bom. L. R. 861, Dist. (*Fawcett and Madgavkar, J.J.*) DORAB SHAH v. EMPEROR. 93 I. C. 232 = 50 Bom. 250 =  
28 Bom. L. R. 102 = 27 Cr. L. J. 440 =  
A. I. R. 1926 Bom. 218.

## —S. 242—Conviction on admission.

—In a summons case, the Magistrate is not entitled to convict the accused on the basis of an admission by the accused's counsel and without examining the accused or recording any evidence. Such conviction is illegal and will be set aside. (*Neuve, A. J. C.*) THE MUNICIPAL BOARD, LUCKNOW v. MESSRS. TULSI RAM & SONS. 83 I. C. 883 = 26 Cr. L. J. 179 =  
1 O. W. N. 495 = A. I. R. 1925 Oudh 305.

## S. 242—Framing of charge.

—The fact that an unlicensed person was charged with driving a motor car without a license and pleaded guilty to that charge is not sufficient to justify a Court in convicting the motor driver of having allowed him to drive, where he was not specifically charged with that offence under Motor Vehicles Act, S. 16. (*Barlee, J. C.*) MD. JAMAL v. EMPEROR. 119 I. C. 536 =  
1930 Cr. C. 121 = 30 Cr. L. J. 1077 =  
A. I. R. 1930 Sind 64.

—When an accused has been tried under Ss. 381 and 411, I. P. Code he may be convicted of an offence under S. 54-A, Calcutta Police Act, though not separately charged with it. A. I. R. 1923 Cal. 596, Foll. but not Appr., 29 Cal. 481, Ref. (*Buckland, J.*) on difference between *Mukerji and Graham, J.J.*) RADHA KRISHNA v. JAMUNADAS FATEHPURIA. 120 I. C. 250 = 33 C. W. N. 477 = 49 C. L. J. 506 =  
31 Cr. L. J. 59 = 1929 Cr. C. 31 = A. I. R. 1929 Cal. 401.

## —S. 242—Non-compliance.

—The omission to state to the accused the particulars of the offence with which he is charged when he appears or is brought before the Court is an omission to comply with an express provision of the Code as to the mode of trial, and is more than a mere irregularity and cannot be cured by S. 537. 25 Mad. 61 (P. C.), Rel. on. (*Cuning and Gregory, J.J.*) GOPALKRISHNA v. MATI LAL SINGH. 99 I. C. 411 = 54 Cal. 359 =  
28 Cr. L. J. 155 = 7 A. I. Cr. B. 452 =  
44 C. L. J. 575 = 31 C. W. N. 167 =  
A. I. R. 1927 Cal. 196.

—The omission to comply with the provisions of S. 242, is nothing more than a curable irregularity where a failure of justice has not been caused. (*Findlay, J. C.*) DAMDOO v. HARBA. 101 I. C. 895 =  
28 Cr. L. J. 511 = 8 A. I. Cr. B. 175 =  
A. I. R. 1927 Nag. 210.

## —S. 242—Procedure.

—The law enjoins, and that for a very good reason, that the admission shall be recorded as nearly as possible in the words used by the accused. Omission to comply with the law in this respect cannot be countenanced as it invariably leads to complications.

## CR. P. CODE (1898), S. 244—Evidence.

(*Mookerji, J.*) LALJI RAM v. CORPORATION OF CALCUTTA. A. I. R. 1928 Cal. 243.

## —S. 242—Summons case tried as a warrant case.

## —Right of accused.

The accused must be held to be prejudiced in their defence on account of the Court's wrong procedure and must be enabled by means of a further opportunity to cross-examine the prosecution witness in a case where the Court commits a mistake and treats a summons case as a warrant case and frames a charge against the accused who intimate their wish to further cross-examine prosecution witnesses and produce defence and where, when the witnesses are recalled, the Court cancels the charge and declines to allow cross-examination and delivers judgment against the accused. (*Pullan, A. J. C.*) RAM RATAN v. RAM SAGAR. 82 I. C. 279 = 25 Cr. L. J. 1271 =  
A. I. R. 1925 Oudh 200.

## —S. 243—Conviction on admission.

—An accused in a summons case can be convicted on his own plea of guilty. S. 243 lays down that if the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him, and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict accordingly. A. I. R. 1925 Oudh 305, Dist. (*Nanavutty, J.*) EMPEROR v. SHIVA DATTA. 5 O. W. N. 641 =  
29 Cr. L. J. 893 = 111 I. C. 573 = 3 Luck. 680 =  
A. I. R. 1928 Oudh 402.

## —S. 243—Plea of guilty.

## —Case nevertheless must proceed.

The trial of an accused person does not necessarily end if he pleads guilty but evidence may and should be taken in cases of murder as if the plea had been one of not guilty and case decided upon the whole of the evidence including the accused's plea. It is not in accordance with the usual practice to accept a plea of guilty in a case where the natural sequence would be a sentence of death. 8 Bom. L. R. 240; 19 All. 119 and 19 Bom. L. R. 356, Ref. (*C. C. Ghose and Jack, J.J.*) HASARUDDIN MOHAMMED v. EMPEROR. 115 I. C. 582 = 30 Cr. L. J. 508 = 12 A. I. Cr. B. 320 =  
A. I. R. 1928 Cal. 775.

—Independent evidence should be taken by Court notwithstanding accused's plea of guilty. (*Kennedy, J. C. and Raymond, A. J. C.*) EMPEROR v. KASIM WALAD MAHOMED SAFFER. 83 I. C. 881 =  
17 S. L. R. 268 = 26 Cr. L. J. 177 =  
A. I. R. 1925 Sind 188.

## —S. 244—Applicability.

—Section 2 (2). Bengal Disorderly Houses Act creates an offence within the definition of S. 4 (o), and under S. 5 of the Code, the offence is triable according to the provisions of that Code since there is nothing in the Act itself which regulates the manner of trying the offence. The trial must, therefore, be held in accordance with S. 244 of the Code. (*Macpherson, J.*) MUNSHI MIAN v. EMPEROR. 115 I. C. 690 =  
30 Cr. L. J. 517 = 10 P. L. T. 523 =  
12 A. I. Cr. B. 325 = 1929 Cr. C. 199 =  
A. I. R. 1929 Pat. 406.

## —S. 244—Evidence.

—Where the complainant declines to be examined, it is the duty of the Magistrate to proceed to take the evidence of his other witnesses before dismissing the complaint, although, in any event a strong preliminary presumption against the truth of the complainant's case would arise from his contumacious refusal to allow himself to be examined. An order of acquittal 'porting to be passed under S. 244 (1) without so exa-

**CR. P. CODE (1898), S. 244—Evidence.**

mining the other witnesses is a wrong order. (*Findlay, J. C.*) *DAMODAR v. HARBA.* 101 I. C. 895=  
28 Cr. L. J. 511=8 A. I. Cr. R. 175=  
A. I. R. 1927 Nag. 210.

**—S. 244—Procedure on non-admission.**

—Where a Magistrate adopts the procedure prescribed by S. 244 on the footing that there was no admission of guilt on the part of the accused person, he is not competent to take a further plea from the accused person of guilty and relieve himself of the duty of examining other prosecution witnesses. (*Mukerji, J.*) *LALJI RAM v. CORPORATION OF CALCUTTA.*  
A. I. R. 1928 Cal. 243.

**—S. 244—Summons to witnesses.**

—The Magistrate is not bound to re-issue the summons if a witness summoned by him does not care to appear. It is in the discretion of the Magistrate to issue fresh summons if he likes but the Code does not compel him to issue fresh summonses to the witnesses to whom summonses have once been sent. 30 Cal. 121, Dist. (*Devadoss, J.*) *SELVAMUTHU v. CHINNAPPAN CHETTIAR.*  
91 I. C. 252=27 Cr. L. J. 76=  
A. I. R. 1926 Mad. 361.

**—S. 247—Adjourned hearing.**

—Complainant, not appearing in the Court owing to the non-service of notice, and ignorance of the postponed date of hearing, cannot be said to be absent within the meaning of S. 247 and the order passed against him cannot be said to be an order of acquittal. (*Madhavan Nair and Reilly, JJ.*) *NUNE PANAKALU v. SUBBA RAO.* 113 I. C. 625=52 Mad. 695=  
30 M. L. W. 624=11 A. I. Cr. R. 556=  
30 Cr. L. J. 191=1928 M. W. N. 801=  
1 M. Cr. C. 328=A. I. R. 1928 Mad. 1158=  
57 M. L. J. 331.

**—S. 247—Appearance.**

—Where a party summoned to appear before a Bench of Magistrates at 11 A. M. appeared at that time but did not wait till 2 P. M., when the Bench commenced to sit,

*Held*, that the party did not fail to appear within S. 247. (*Jackson, J.*) *K. AHMED MEERA SAHIB v. MEERAN SAHIB.* 99 I. C. 944=25 M. L. W. 358=  
28 Cr. L. J. 208=A. I. R. 1927 Mad. 393.

**—S. 247—Applicability.**

—S. 247 is not applicable to proceedings under S. 117 (2). (*Sukrawady and Cammiade, JJ.*) *ASRAF ALI SAIVAL v. NASURSARKAR.* 101 I. C. 607=  
45 C. L. J. 211=31 C. W. N. 388=  
28 Cr. L. J. 479=A. I. R. 1927 Cal. 343.

**—S. 247—Death of complainant.**

—In a summons case if the complainant is dead during the course of the enquiry, the Magistrate should acquit the accused and should not proceed with the enquiry. 19 C. W. N. 334, Foll. (*Devadoss, J.*) *APPALA NAIDU v. EMPEROR.* 107 I. C. 512=  
51 Mad. 339=27 M. L. W. 85=29 Cr. L. J. 257=  
9 A. I. Cr. R. 503=1 M. Cr. C. 53=  
A. I. R. 1928 Mad. 167=54 M. L. J. 714.

—In a case of a non-cognizable offence instituted upon a complaint, the axiom of *actio personalis moritur cum persona*, in civil law confined to torts does not apply, and on the death of the complainant the trying Magistrate has discretion in proper cases to allow the complaint to continue by a proper and fit complainant, if the latter is willing. 20 C. W. N. 852, Appl. (*Marten and Madanwar, JJ.*) *MAHOMAD AZAM v. EMPEROR.* 93 I. C. 891=28 Bom. L. R. 288=27 Cr. L. J. 491=  
A. I. R. 1928 Bom. 178.

**CR. P. CODE (1898), S. 247—Procedure.****—S. 247—Dismissal for default.**

—An order dismissing the complaint for default in prosecution, must be taken to have been passed under S. 247. Though the section is not mentioned in the order, such an order is tantamount to an order of acquittal and cannot be set aside by the Dist. Magistrate under S. 435. (*Wazir Hasan, A. J. C.*) *BINDRA v. MT BHAGWANTA.* 77 I. C. 295=  
25 Cr. L. J. 359=A. I. R. 1925 Oudh 44.

**—S. 247—Interpretation.****—Acquittal under S. 247 bars further trial.**

The meaning of the word "tried" in S. 403 (1) does not necessarily import a decision of a case on merits, but only refers to the nature of the proceedings that were had or, in other words, means that the proceedings in which the acquittal was passed were in the nature of a trial. Therefore an acquittal under S. 247 would bar a further trial under S. 403 (1). 34 Mad. 253, Appr. 40 Mad. 976; 7 C. W. N. 493 and 7 C. W. N. 711, Ref. (*Mukerji and Graham, JJ.*) *SUKU RAM KOCH v. KRISHNA DEB SARMA.* 116 I. C. 174=  
49 C. L. J. 119=33 C. W. N. 260=  
30 Cr. L. J. 585=12 A. I. Cr. R. 463=  
A. I. R. 1929 Cal. 189.

—The word "tried" in S. 403 does not necessarily import a decision of any case on the merits. A trial commences, if not from the moment an accused is served with summons, certainly from the moment he appears in Court on the case being called. An acquittal under S. 247 is a bar to further prosecution. A. I. R. 1923 All. 360; 4 C. W. N. 346; 34 Mad. 253 and 40 Mad. 976, Foll. (*Findlay, J. C.*) *MT. YESHODA v. MT. BANUBAI.* 99 I. C. 855=28 Cr. L. J. 183=  
A. I. R. 1927 Nag. 388.

—There is nothing in the section which would justify the construction that the words "upon any day appointed for the appearance of the accused," etc., mean any time before the close of the working day. (*Devadoss and Waller, JJ.*) *TONKYA v. JAGANNATHA.* 96 I. C. 652=49 Mad. 883=1926 M. W. N. 928=  
7 A. I. Cr. R. 17=27 Cr. L. J. 988=  
24 M. L. W. 669=A. I. R. 1926 Mad. 1009=  
51 M. L. J. 730.

**—S. 247—Object.**

—The object of S. 247 is to prevent the complainant from being dilatory in the prosecution of the case, and if he does not care to be present when the case is called on, the accused is entitled to an acquittal unless the Magistrate chooses for reasons he thinks proper to adjourn the case. (*Devadoss and Waller, JJ.*) *TONKYA v. JAGANNATHA.* 96 I. C. 652=49 Mad. 883=  
7 A. I. Cr. R. 17=1926 M. W. N. 928=  
27 Cr. L. J. 988=24 M. L. W. 669=  
A. I. R. 1926 Mad. 1009=51 M. L. J. 730.

**—S. 247—Presence of pleader.**

—The presence of the complainant's vakil alone is not sufficient compliance with the requirements of S. 247. A complainant cannot be represented by a pleader in order to take away the jurisdiction of the Magistrate to proceed under S. 247. (*Devadoss and Waller, JJ.*) *TONKYA v. JAGANNATHA.* 96 I. C. 652=  
49 Mad. 883=7 A. I. Cr. R. 17=  
1926 M. W. N. 928=27 Cr. L. J. 988=  
24 M. L. W. 669=A. I. R. 1926 Mad. 1009=  
51 M. L. J. 730.

**—S. 247—Procedure.**

—The absence of the complainant at the time when the case is taken up for hearing is sufficient to justify the Magistrate in dealing with the case under S. 247, and acquit the accused, and the Court is not bound to wait till the close of the day, to see before proceeding under

## CR. P. CODE (1898), S. 247—Procedure.

S. 247, whether the complainant appears. Cr. R. C. No. 229 of 1925, Diss. from. 7 Mad. 213, Foll. (*Devadoss and Waller, J.J.*) *TONKYA v. JAGANNATHA*.

96 I. C. 652=49 Mad. 833=7 A. I. Cr. R. 17=  
1926 M. W. N. 928=27 Cr. L. J. 988=  
24 M. L. W. 669=A. I. R. 1926 Mad. 1009=  
51 M. L. J. 730.

## —S. 247—Restoration.

A Court which has acted under S. 247, Cr. P. Code, has no power *suo motu* to restore the case and cancel the acquittal. The only remedy of the complainant is to move the High Court in revision. (*Jackson, J.*)

ANJAYYA v. SUBBAMMA. 1930 M. W. N. 190.

—Where an accused is acquitted under S. 247, the Magistrate is incompetent to restore the case against him on the application of the complaint. (*Curguen, J.*) *LAKSHMINARASIMHAM v. NULLURI BAPANNA*.

100 I. C. 238=28 Cr. L. J. 270=  
1927 M. W. N. 274=38 M. L. T. 203=  
7 A. I. Cr. R. 414=A. I. R. 1927 Mad. 473=  
52 M. L. J. 173.

—Once an order under S. 247 acquitting the accused was passed no application for the revival of the proceedings can be entertained unless the order under S. 247 is set aside by a superior Court. An order under S. 247 can only be set aside by the High Court. (*C. C. Ghose and Cumming, J.J.*) *NITYANANDA KOER v. RAKHAHARI MISHRA*.

73 I. C. 940=  
38 C. L. J. 196=24 Cr. L. J. 716=  
A. I. R. 1924 Cal. 96.

## —S. 247—Revision.

An acquittal under S. 247 stands on the same footing as an acquittal ordered in any other circumstances, as for instance under S. 258 and upon an application in revision an acquittal should very rarely be set aside. High Court will not interfere in revision when there is no error of law on the face of the record. 38 Mad. 1028 and 51 M. L. J. 730=A. I. R. 1926 Mad. 1009, Foll. (*Curguen, J.*) *LAKSHMINARASIMHAM v. NALLURI BAPANNA*.

100 I. C. 238=  
28 Cr. L. J. 270=1927 M. W. N. 274=  
38 M. L. T. 203=7 A. I. Cr. R. 414=  
A. I. R. 1927 Mad. 473=52 M. L. J. 173

—The High Court has power to interfere with an order under S. 247 in revision, if the order is improper. (*Ramesam, J.*) (*GOLLA*) *PULLAMMA v. SANJIVI REDDI*.

99 I. C. 326=24 M. L. W. 715=28 Cr. L. J. 118=  
7 A. I. Cr. R. 262=A. I. R. 1927 Mad. 172.

—High Court will not ordinarily interfere in revision in the case of an acquittal, since the Local Government can appeal, but this rule does not properly apply to an acquittal under S. 247 and in any case the rule will not prevent interference by this Court when the acquittal is the result of an improper clutching at jurisdiction. (*Ashworth, A. J. C.*) *RAM NIDH v. RAM SARAN*.

81 I. C. 314=26 O. C. 282=  
25 Cr. L. J. 794=A. I. R. 1924 Oudh 64.

## —S. 247—Right to acquittal.

The right to an order of acquittal accrues to the accused upon two conditions, and is dependent, firstly, on the absence of the complainant and secondly on the Court not adjourning the case. If a case is not taken up at all, it cannot be said that the second condition is fulfilled, for there is no knowing in what way the Court's discretion would have been exercised if it had been taken up. A. I. R. 1923 Cal. 725, Foll. (*Newbould and Mookerji, J.J.*) *RASH BEHARY KARUR v. CORPORATION OF CALCUTTA*.

87 I. C. 970=  
26 Cr. L. J. 1050=A. I. R. 1926 Cal. 502.

—S. 247 gives the Magistrate a discretion and the absence of a complainant in a summons case cannot

## CR. P. CODE (1898), S. 248—Several accused.

result in the acquittal of the accused without the Magistrate passing any order in exercise of that discretion. (*Newbould and Suhravardiy, J.J.*) *SHERMULL v. CORPORATION OF CALCUTTA*.

77 I. C. 892=  
25 Cr. L. J. 492=A. I. R. 1923 Cal. 725.

## —S. 247—Trial in absence.

—S. 247 merely authorizes Court to adjourn the case to enable the complainant to appear. That section does not authorize him to dispense with the presence of the complainant except when he is a public servant. (*Jai Lal, J.*) *MAULA BAKSH v. MARSHALL*.

96 I. C. 878=27 Cr. L. J. 1022=  
A. I. R. 1926 Lah. 628.

## —S. 248—Grounds.

—There is no absolute power of withdrawal; before a withdrawal can be permitted, there must be sufficient grounds to the satisfaction of the Magistrate. (*C. C. Ghose and Duval, J.J.*) *SISHIR KUMAR v. CORPORATION OF CALCUTTA*.

96 I. C. 648=  
53 Cal. 631=43 C. L. J. 369=30 C. W. N. 598=  
27 Cr. L. J. 984=A. I. R. 1926 Cal. 786.

## —S. 248—Scope.

—The provisions of S. 248 have not been affected or abrogated by the provisions of S. 537 of the Calcutta Municipal Act, which is merely an enabling section and the powers given thereunder to do the various acts specified therein can only be exercised in accordance with the provisions of the Code. (*C. C. Ghose and Duval, J.J.*) *SISHIRKUMAR MITTER v. CORPORATION OF CALCUTTA*.

96 I. C. 648=53 Cal. 631=  
43 C. L. J. 369=30 C. W. N. 598=  
27 Cr. L. J. 984=A. I. R. 1926 Cal. 786.

## —S. 248—Several accused.

—*Withdrawal against one is not effectual against others.* (*Contra Harrison, J.*)

Per *Harrison, J.*—The withdrawal of a case is by no means the same as compounding an offence. The section does not contemplate a partial withdrawal nor withdrawal against one of several alleged offenders. There is no difference in the procedure to be followed in withdrawing a complaint of a compoundable nature and one which is not compoundable.

Per *A. Raoof, J.*—Whether a petition is one for withdrawal or compromise is to be judged from the fact whether the accused consented to it or not. The compounding of an offence signifies that the person against whom an offence has been committed has received some gratification to act as an inducement for his desiring to abstain from prosecution. The distinction between a withdrawal and composition is pointed out in 21 C. 103 at 112.

Per *Le Rossignol, J.*—It is a question of fact whenever a complaint is withdrawn under S. 248, whether it is withdrawn as a whole or in part. If the withdrawal of a complaint, implied the physical withdrawal of the document on which the complaint is written it could be contended that the complaint is withdrawn against all the persons implicated; but where the complainant states circumstances which may or may not satisfy the Magistrate that there are sufficient grounds for permitting the complainant to withdraw the complaint against one or all of the accused that does not amount to complete withdrawal; there is nothing in S. 248 which involves a withdrawal of the whole complaint merely because the complaint is withdrawn against one of the accused. 20 C. W. N. 1209=29 Cal. 103, 112; 9 P. R. (Cr.) 1896, Foll. (*Le Rossignol, J.*) *Abdul Raoof and Harrison, J.J.* *ANANTA v. THE CROWN*.

81 I. C. 117=5 Lah. 238=  
25 Cr. L. J. 629=A. I. R. 1924 Lah. 595.

## CR. P. CODE (1898).

## —S. 249—Applicability.

—S. 249 is only intended to apply to summons cases instituted otherwise than upon complaint and not to warrant cases. If an order of release is passed in a warrant case under S. 249, the order is void and the case still being on the file a fresh case respecting the same offence cannot be started on a complaint by a private party. (*Adami and Bucknill, J.J.*) *FIRANGI SINGH v. DURGA SINGH*. 94 I. C. 890 = 5 Pat. 243 = 7 P. L. T. 449 = 27 Cr. L. J. 698 = A. I. R. 1926 Pat. 292.

## —S. 250.

## Appeal.

## Applicability.

## Compensation.

## Complainant.

## Frivolous or vexatious charge.

## Imprisonment.

## Interpretation.

## Jurisdiction.

## Notice.

## Reasons to be recorded.

## Simultaneous order.

## Time for order.

## —S. 250—Appeal.

—Though S. 250 (3) gives the complainant a right to appeal against an order for compensation in certain cases the section does not indicate a forum, which has to be found out by reference to Chap. 31. The appeal would therefore lie under S. 250 (3) coupled with the relevant section in Chap. 31, viz., S. 407, and all the provisions in that chapter including the power to take additional evidence given by S. 428 apply. A. I. R. 1928 Mad. 391 and 33 Mad. 90. Dist. (*Beasley, C. J. and Pandalai, J.*) *V. SEENIAH NAIDU v. ABDUL WAHAB SAHIB*. 123 I. C. 809 = 1930 Cr. C. 507 = 31 M. L. W. 524 = 31 Cr. L. J. 602 = A. I. R. 1930 Mad. 483 = 53 Mad. 688 = 1930 M. W. N. 534 = 58 M. L. J. 414.

—A complainant who has been ordered to give compensation under S. 250 has the right of appeal whenever compensation awarded exceeds Rs. 50 in the aggregate whether this amount is payable to one accused or distributed amongst several accused. Therefore no revision lies in such a case. (*Barlee, J. C. and Aston, A. J. C.*) *SHAFI MAHOMED v. KAMRUDDIN*. 118 I. C. 215 = 30 Cr. L. J. 905 = 1929 Cr. C. 452 = A. I. R. 1929 Sind 176.

—Where the Magistrate passed an order directing the complainant to pay a sum of Rs. 50 to each of the seven accused as compensation,

*Held*, the order was appealable, as the aggregate amount of compensation payable to all the accused collectively was more than Rs. 50. A. I. R. 1925 Bom. 129 and A. I. R. 1926 All. 247 Foll. (*Tek Chand, J.*) *SARAB DIAL v. BIR SINGH*. 108 I. C. 617 = 9 Lah. 462 = 29 Cr. L. J. 430 = 10 A. I. Cr. R. 131 = 29 P. L. B. 550 = A. I. R. 1928 Lah. 638.

—Where compensation is awarded to the accused under S. 250 and the complainant appeals or files a revision against that order, the Crown is the real respondent and notice to ex-accused is not necessary. (*Harrison, J.*) *RASHID MD. KHAN v. EMPEROR*. 101 I. C. 192 = 8 Lah. 568 = 29 P. L. B. 177 = 28 Cr. L. J. 416 = A. I. R. 1927 Lah. 357.

—When the total amount of compensation ordered to be paid by a complainant in one particular case exceeds Rs. 50 there is a right of appeal even though the amount of compensation to be paid to each individual accused person may not exceed the sum of Rs. 50. (*Datal, J.*) *MT. SUMARIA v. EMPEROR*.

## CR. P. CODE (1898), S. 250—Applicability.

91 I. C. 882 = 24 A. L. J. 167 = 7 L. R. A. Cr. 10 = 27 Cr. L. J. 146 = 7 L. R. A. Cr. 148 = A. I. R. 1926 All. 247.

—There is nothing in S. 250 to show that an appeal will only lie when the compensation directed to be paid to each individual accused is more than Rs. 50. Under sub Sec. (3) a complainant who has been ordered by a Magistrate to pay compensation exceeding Rs. 50 has the right of appeal. It is the total amount of compensation directed to be paid by the complainant which must form the basis of the decision whether an appeal lies or not. (*Adami and Macpherson, J.J.*) *SOBHIT MALLAH v. EMPEROR*. 90 I. C. 160 = 7 P. L. T. 552 = 26 Cr. L. J. 1504 = A. I. R. 1926 Pat. 70.

—When the complainant has been ordered to pay a sum exceeding Rs. 50 as compensation, whether it be to one or more than one accused person, he has a right to appeal against such order. (*Rupchand Bilaram, A. J. C.*) *ASSANWAL CHATKUMAL v. DILBAR*. 89 I. C. 159 = 19 S. L. R. 66 = 26 Cr. L. J. 1295 = A. I. R. 1926 Sind 19.

—Whenever a complainant or informant has been ordered under sub-S. (2) to pay compensation exceeding fifty rupees the right of appeal is given, whether compensation has been awarded only to one accused or has to be distributed amongst a number of accused in sums not exceeding fifty rupees. In other words in a case where the total compensation awarded is over fifty rupees, the complainant is entitled to appeal. (*Macleod, C. J. and Crump, J.*) *(AUGUSTIN MANWAL) PEREIRA v. DUMING PASCOL DEMELLO*. 85 I. C. 160 = 49 Bom. 440 = 26 Cr. L. J. 480 = 26 Bom. L. R. 1243 = A. I. R. 1925 Bom. 129.

—Where an appeal is preferred against an order directing payment of compensation to accused.

*Held*, that although there is no express provision nevertheless on the principle *audi alteram partem* the accused should have notice of the appeal in order that they should have an opportunity of supporting the order passed in their favour. 29 Mad. 187, Foll.; 38 Mad. 1091, Foll. (*Campbell, J.*) *RAM CHAND v. JESA RAM*. 76 I. C. 641 = 25 Cr. L. J. 209 = A. I. R. 1924 Lah. 675.

## —S. 250—Applicability.

—*Obiter*.—There is nothing in the language of S. 250 to make that section non-applicable to the case of the Crown. (*Boys, King and Sen, J.J.*) *EMPEROR v. KANVER SEN*. 123 I. C. 330 = 1930 A. L. J. 209 = 31 Cr. L. J. 485 = A. I. R. 1930 All. 206 (F.B.).

—The words "offence triable by a Magistrate" in S. 250 relate to an offence which is shown as triable by a Magistrate in Col. 8 Sch. II of the Code. S. 250 is not applicable to offences triable by a Court of Sessions according to Col. 8, Sch. II. An order by a Magistrate awarding compensation in respect of accusation under S. 477 I.P. C. (the offence not being triable by a Magistrate according to Sch. II) is without jurisdiction. 14 P. R. 1902 (Cr.); 21 W. R. 1910 and 1 Bur. L. J. 38, Ref.; 15 P. R. 1919. Dist. (*Zafar Ali and Fforde, J.J.*) *AMIN LAL v. EMPEROR*. 1930 Cr. C. 594 = 126 I. C. 792 = 11 Lah. 558 = 31 Cr. L. J. 1133 = 31 P. L. B. 869 = A. I. R. 1930 Lah. 482.

—S. 250 refers to the information given to the Police and not to information which led to information being given to police. If A tells B and B tells C and C tells the police, A cannot be fined under S. 250. Where a Village Headman gave the information to a Deputy Tahsildar and he reported to the police.

*Held*, that S. 250 cannot apply. (*Jackson, J.*)

**CR. P. CODE (1898), S. 250—Applicability.**VELAYUTHA UDAYAN *v.* THANDAN TALAYARI.

1929 M. W. N. 785.

—S. 250 does not apply to proceedings under S. 107 (A. I. R. 1923 All. 332, Foll.). The fact that the complaint is treated as one under S. 506 of the Penal Code does not make any difference. Further, where the opposite party agrees to give security, the complaint cannot be called false and frivolous. A. I. R. 1924 All. 269 Rel. on. (*Iqbal Ahmad, J.*) BAIJ NATH *v.* KALI CHARAN.

102 I. C. 780 = 49 All. 750 = 25 A. I. J. 493 = 7 A. I. Cr. R. 543 = 8 L. R. A. Cr. 87 = 28 Cr. L. J. 604 = A. I. R. 1927 All. 531.

**—S. 250—Compensation.**

—Where a Magistrate tries an accused for an offence *prima facie* triable by him, when really if the facts had been proved the offence would have been one triable exclusively by the Sessions Court, an award of compensation made by the Magistrate under S. 250 is not illegal. A. I. R. 1922 Mad. 223, Ref.; A. I. R. 1926 All. 159, Dist. (*Pu'llan, J.*) BALKISHEN *v.* EMPEROR.

123 I. C. 756 = 31 Cr. L. J. 563 = 1930 A. L. J. 465 = A. I. R. 1930 All. 280.

—Where a complainant brings two false accusations, one of an offence triable by a Magistrate and the other triable by a Court of Session, and the Magistrate with powers under S. 30 finds both to be false, he is competent to award compensation only in respect of offences triable by Magistrate. But if compensation is awarded for both kinds of offences and it is not possible to apportion the amount so awarded between the two, the order is bad for uncertainty and must be set aside as a whole. (*Zafar Ali and Fforde, JJ.*) AMIN LAL *v.* EMPEROR.

11 Lah. 558 = 1930 Cr. C. 594 = 126 I. C. 792 = 31 Cr. L. J. 1133 = 31 P. L. R. 869 = A. I. R. 1930 Lah. 482.

—*Acquitting Magistrate should deal with cause shown.*

It is the Magistrate who deals with the substantive case and makes the order of acquittal or discharge who has got to deal with the cause that is shown why compensation should not be awarded. (*Mukerji, J.*) RAJARAM MUJHI *v.* PANCHANAN GHOSE.

125 I. C. 294 = 31 Cr. L. J. 828 = 33 C. W. N. 861 = 1929 Cr. C. 474 = A. I. R. 1929 Cal. 762.

—Where a case is not wilfully false nor is there perversion or exaggeration of evidence, compensation should not be awarded. (*Baguley, J.*) S. GANGULI *v.* EMPEROR.

115 I. C. 900 = 30 Cr. L. J. 539 = 12 A. I. Cr. R. 342 = A. I. R. 1929 Rang. 14.

—An order ordering compensation need not be embodied in the order of acquittal. A. I. R. 1926 Lah. 298, Foll. (*Harrison, J.*) SAUDAGAR SINGH *v.* AROOR SINGH.

110 I. C. 232 = 10 A. I. Cr. R. 430 = 29 Cr. L. J. 680 (Lah.).

—Awarding compensation under S. 250 without hearing all the evidence that the complainant wants to adduce is illegal. No doubt the Magistrate is entitled at any stage to discharge the accused, but that cannot be a ground for awarding compensation to the accused. (*Devadoss, J.*) PARTHASARATHI NAICKER *v.* KRISHNASWAMI AYYAR.

106 I. C. 706 = 51 Mad. 337 = 1 M. Cr. C. 48 = 29 Cr. L. J. 114 = 27 M. L. W. 86 = A. I. R. 1928 Mad. 169 = 54 M. L. J. 641.

**—Compensation.**

No objection can be taken if the proceeding taken by the Magistrate to award compensation is a continuation of the original proceeding against the accused, who was tried for the offence, 25 All. 315, and 34 All. 354, Dist. (*Banerji, J.*) JAIRAJ SINGH *v.* BANSI.

**CR. P. CODE (1898), S. 250—Complainant.**

91 I. C. 67 = 23 A. L. J. 1054 = 6 L. R. A. Cr. 193 = 27 Cr. L. J. 35 = A. I. R. 1926 All. 165.

—If a person makes a report to the Police which is found by a Magistrate to be false and frivolous or vexatious, a Magistrate can direct compensation to be paid. 1 P. L. J. 106, Rel. on. (*Banerji, J.*) JAIRAJ SINGH *v.* BANSI.

91 I. C. 67 = 23 A. L. J. 1054 = 6 L. R. A. Cr. 193 = 27 Cr. L. J. 35 = A. I. R. 1926 All. 165.

—It is only the trying Magistrate who, if he discharges an accused person, can order compensation to be paid. The appellate Court cannot make any order as to compensation. A. I. R. 1924 All. 224, Foll. 28 All. 625 and 39 Cal. 157, F.B. Foll. (*Broadway, J.*) NOTIFIED AREA, KHARAR *v.* KARTA RAM.

7 Lah. 152 = 27 Cr. L. J. 570 = 27 P. L. R. 339 = 94 I. C. 138 = A. I. R. 1926 Lah. 427.

—(*Sulaiman, J.*) CHEVI *v.* RAM LAL.

81 I. C. 615 = 46 All. 80 = 21 A. L. J. 834 = 4 L. R. A. Cr. 233 = 25 Cr. L. J. 967 = A. I. R. 1924 All. 224.

—Two elements one of falsity and the other of either frivolousness or vexatiousness are essentially necessary to base an order for compensation to the accused. A "vexatious" charge may be partly true and the idea conveyed by the word is that the object of the person making the accusation should be primarily to harass the persons accused. (*Kinkhede, A. J. C.*) BHAN *v.* SYED CHAND. 87 I. C. 921 = 26 Cr. L. J. 1033 = A. I. R. 1926 Nag. 31.

—Compensation can also be awarded in a case instituted upon information given to a Police-officer. (*Dalal, J. C.*) HAFIZ KHAN *v.* EMPEROR.

85 I. C. 367 = 26 Cr. L. J. 527 = A. I. R. 1925 Oudh 558.

—Where the trial Court refused to examine two witnesses for complainant, whose names did not appear in the list filed but who were brought to the Court by the complainant in order to save expense.

*Held*, that an order awarding compensation without hearing those witnesses was wrong. (*May Oung, J.*) SYA KYAW *v.* EMPEROR.

82 I. C. 283 = 3 Bur. L. J. 26 = 25 Cr. L. J. 1280 = A. I. R. 1924 Rang. 293.

—The Magistrate ordered the complainant to pay compensation to the persons who had been discharged without giving the complainant an opportunity to show cause why such an order may not be made against him.

*Held*, the order is illegal as being contrary to the proviso (a) to S. 250 of the Cr. P. Code. (*Abdul Raouf, J.*) MUGHLA *v.* MUHAMMED.

82 I. C. 480 = 25 Cr. L. J. 1312 = A. I. R. 1923 Lah. 458.

**—S. 250—Complainant.**

—Under the amended section, if the complainant is present in Court he is bound to show cause immediately. He cannot insist upon a grant of an adjournment for the purpose. If, however, an adjournment is granted or if the complainant is not present and a summons is issued to him, the Court can pass an order at the adjourned hearing after recording and considering the cause if any shown by the complainant or informant. A. I. R. 1926 Bom. 225, Rel. on. (*Patkar and Baker, JJ.*) *In re* VALI MAHOMED.

119 I. C. 774 = 31 Bom. L. R. 591 = 1929 Cr. C. 36 = 30 Cr. L. J. 1112 = A. I. R. 1929 Bom. 287.

—The effect of an order calling upon a complainant to show cause why he should not pay compensation to an accused, under S. 250, without fixing date is that the complainant is to show cause then and there unless he obtains from the Court some order adjourning the



**CR. P. CODE (1898), S. 250—Complainant.**

matter to a further date. (*Mukerji, J.*) RAJARAM MANJHI v. PANCHANAN GHOSE. 33 C. W. N. 861 = 125 I. C. 294 = 31 Cr. L. J. 828 = 1929 Cr. C. 474 = A.I.R. 1929 Cal. 762.

—The mere fact that a Magistrate is trying a case summarily does not justify his omission to record the complainant's objections to an order directing compensation and that such an omission is not a mere irregularity which can be cured by S. 537; 8 S. L. R. 25, Rel. on. (*Percival, J. C. and Aston, A. J. C.*) PIR MAHOMED v. YACOOB. 115 I. C. 334 = 12 A. I. Cr. 425 = 30 Cr. L. J. 458 = 1929 Cr. C. 107 = A. I. R. 1929 Sind 113.

—It is open to a Magistrate under S. 250 to pass an order directing the informant to pay compensation as such an order can be passed against a person upon whose complaint or information given to a police-officer or to a Magistrate the proceedings have been started and a person cannot get rid of the order merely because he was a mere informer and not a real complainant. (*Sulaiman, J.*) FARIDUDDIN v. EMPEROR. 94 I. C. 894 = 24 A. L. J. 221 = 7 L. R. A. Cr. 149 = 27 Cr. L. J. 702 = A. I. R. 1926 All. 295.

—An order of compensation under S. 250 without giving the complainant an opportunity to show cause against it, though the complainant is absent when judgment is pronounced, is illegal and must be set aside and the Magistrate should be directed to summon the complainant and give him an opportunity of showing cause before passing the order. (*Daniels, J.*) KALKA v. RANJIT SINGH. 91 I. C. 704 = 24 A. L. J. 170 = 7 L. R. A. Cr. 7 = 27 Cr. L. J. 128 = A. I. R. 1926 All. 241.

—The procedure prescribed under S. 250 is similar to the procedure prescribed in the case of an accused person in a summons case to show cause under S. 242, and the complainant must show cause immediately why he should not be ordered to pay compensation, and cannot insist on an adjournment. (*Fawcett and Madgavkar, J.J.*) ISWARLAL v. MANEKLAL, *In re*. 28 Bom. L.R. 98 = 27 Cr. L. J. 430 = 93 I. C. 158 = A. I. R. 1926 Bom. 225.

—A complainant does in no way escape a liability for prosecution under S. 211, I.P. Code, by reason of the order passed by the Magistrate under S. 250, directing payment of compensation to the accused. (*Dalal, J.C.*) HAFIZ KHAN v. EMPEROR. 85 I. C. 367 = 26 Cr. L. J. 527 = A. I. R. 1925 Oudh 558.

**—S. 250—Frivolous or vexatious charge.**

—In a trial under Chap. 22, after the evidence was closed and the impression made by it on the Bench was fresh in their mind, the Bench called upon the complainant to show cause why compensation should not be granted in this wise: "The case brought by you has been proved to be false and vexatious and it is clear that this has been brought simply to harass the accused. Please show cause why compensation should not be ordered?" The complainant answered that the case brought by him was true. The Bench holding that it was no explanation ordered compensation.

*Held*, that although the passage that the case was brought simply to harass the accused, occurred as a portion of the question, it must have been intended as record of their own reason for thinking that the complaint was false and vexatious and hence satisfied the requirements of S. 250; (*Pandit, J.*) PALANI GOUNDAN v. KRISHNAPPA GOUNDAN. 82 M. L. W. 283 = 1930 M. W. N. 1047 = 1930 Cr. C. 1141 = A. I. R. 1930 Mad. 929 = 58 M. L. J. 319.

**CR. P. CODE (1898), S. 250—Interpretation.**

—The Court should find that the complaint was vexatious.

Section 250 shows that the Court must first be of the opinion that a case is either false and frivolous or vexatious to justify him in calling upon the complainant to show cause why he should not pay compensation. It is necessary after hearing complainant's explanation that he should still be of the opinion that the case is either false and frivolous or vexatious. To pass an order under S. 250 Court's final opinion should be that the case was false and frivolous or vexatious not that the explanation was unsatisfactory. (*Percival, J. C. and Aston, A. J. C.*) PIR MAHOMED v. YACOOB. 12 A. I. Cr. R. 425 = 115 I. C. 334 = 30 Cr. L. J. 458 = 1929 Cr. C. 107 = A. I. R. 1929 Sind 113.

—S. 250 as amended justifies the Magistrate in awarding compensation where a complaint is found to have been false and brought on account of enmity. 34 All. 354, Dist. (*Kanhaiyalal, J.*) KASHI PRASAD v. EMPEROR. 24 A. L. J. 161 = 27 Cr. L. J. 300 = 7 L. R. A. Cr. 148 = 92 I. C. 588 = A.I.R. 1926 All. 141.

—An accusation cannot be said to be vexatious unless the main intention of the complainant was to cause annoyance to the person accused, and not merely to further the ends of justice, 11 S. L. R. 55, Appr. (*Harrierson, J.*) MUNICIPAL COMMITTEE, SIMLA v. MUKAND SINGH. 27 Cr. L. J. 607 = 94 I. C. 271 = A. I. R. 1926 Lah. 365.

—In the presence of depositions of some of the witnesses and the Zaildar's report supporting the complaint and in the absence of rebuttal by the accused, it is impossible to hold that the complaint is false and vexatious or frivolous. (*Shadi Lal, C.J.*) SAN WALYA v. BARU. 94 I. C. 409 = 27 Cr. L. J. 633 (Lah.).

—S. 250 requires that the complaint or the information given by the complainant should be false and either frivolous or vexatious. But it does not mean that because a complaint is frivolous and vexatious it is false. (*Rupchand Bilaram, A. J. C.*) ASSANMAL v. HATUMAL v. DILBAR. 19 S. L. R. 66 = 26 Cr. L. J. 1295 = 89 I. C. 159 = A.I.R. 1926 Sind 19.

**—S. 250—Imprisonment.**

—The term of thirty days specified in S. 250 (3) of the Cr. P. Code can be imposed in respect of each of several accused in whose favour payment of compensation has been ordered. (*Carr, J.*) EMPEROR v. MA KHA GYL. 86 I. C. 469 = 26 Cr. L. J. 821 = 3 Rang. 93 = 4 Bur. L. J. 9 = A.I.R. 1925 Rang. 202.

—The Magistrate has no power to order that the sentence of imprisonment in default shall take effect after a term of civil detention. (*Carr, J.*) EMPEROR v. MA KHA GYL. 86 I. C. 469 = 26 Cr. L. J. 821 = 4 Bur. L. J. 9 = 3 Rang. 93 = A.I.R. 1925 Rang. 202.

**—S. 250—Interpretation.**

—The report of a Sub-Inspector of Excise to a Magistrate is a police report only for the purposes of S. 190. The report is not a police report for the purpose of S. 250; (*Cuming and Gregory, J.J.*) RADHIKA MOHAN DAS v. HAMID ALI. 100 I. C. 540 = 54 Cal. 371 = 28 Cr. L. J. 316 = A. I. R. 1927 Cal. 405.

—The report of a Sub-Inspector of Excise to a Magistrate is for the purposes of S. 250 either a complaint as defined in S. 4 (A) or any rate is information given to a Magistrate and the Excise Officer is the person giving such complaint or information. (*Cuming and Gregory, J.J.*) RADHIKA MOHAN DAS v. HAMID ALI. 54 Cal. 371 = 28 Cr. L. J. 316 = 100 I. C. 540 = A. I. R. 1927 Cal. 405.

—Section 250 (2) does not mean that if there are a number of accused persons the total amount awarded

## CR. P. CODE (1898), S. 250—Interpretation.

to all of them must not exceed the maximum. (*Sulaiman, J.*) FARIDUDDIN *v.* EMPEROR.

24 A. L. J. 221 = 7 L. R. A. Cr. 149 = 27 Cr. L. J. 702 = 94 I. C. 894 = A. I. R. 1926 All. 295.

—In law there is no distinction between a false accusation as to the motive or intention which prompts a man in doing a certain act, and a false accusation as to his act. False accusation in either way can entitle the accused to compensation under S. 250. (*Fawcett and Madgavkar, J.J.*) RAVISHANKAR *v.* SAVAILAL. 28 Bom. L. R. 89 = 27 Cr. L. J. 448 = 93 I. C. 240 = A. I. R. 1926 Bom. 163.

—Where an accused commits an act under bona fide claim of right, allegation of theft implies false accusation.

Where the accused committed his acts in the assertion of a bona fide claim of rights and not simply under a colourable pretence of right, his action does not amount to theft. The allegation that he committed theft implies the false accusation that he removed the property without any bona fide claim of right within S. 250. (1869) Rat. Unrep. Cr. C. 22 and 44 Cal. 66, Rel. on. (*Fawcett and Madgavkar, J.J.*) RAVI SHANKAR *v.* SAVAILAL. 28 Bom. L. R. 89 = 27 Cr. L. J. 448 = 93 I. C. 240 = A. I. R. 1926 Bom. 163.

—A man who complains to a Village Magistrate of a bailable offence knowing that the latter must in the ordinary course of his duty report the substance of the complaint to the Police, gives information to the police, just as effectively as if he went in person to the police station. 39 M. 1006; 5 L. W. 200 and 4 L. W. 73, Foll. (*Venkatashubba Rao, J.*) KALIYAPERUMAL NAIDU *v.* BAVAJI SAHIB. 73 I. C. 941 = 18 M. L. W. 32 = 1923 M. W. N. 421 = 24 Cr. L. J. 717 = A. I. R. 1924 Mad. 91 = 45 M. L. J. 255.

## —S. 250—Jurisdiction.

—It seems doubtful whether the High Court has jurisdiction to pass an order for compensation for vexatious accusation when the matter comes up in revision. (*Dalal, J.*) AMINULLAH *v.* EMPEROR.

9 L. R. A. Cr. 28 = 26 A. L. J. 328 = 9 A. I. Cr. R. 197 = 29 Cr. L. J. 274 = 107 I. C. 690 = A. I. R. 1928 All. 95.

—Under S. 250 a Magistrate has jurisdiction to direct a complainant to pay compensation only in such cases as are triable by a Magistrate. When the case is not triable by a Magistrate, the discharge of the accused and the Magistrate's refusal to commit him to the Sessions do not invest the Magistrate with the power of imposing a fine on the complainant under S. 250. 40 All. 615, Foll. (*Dalal, J.*) BANSIDAR PANDE *v.* CHUNNI LAL. 25 A. L. J. 818 = 8 A. I. Cr. R. 368 = 8 L. B. A. Cr. 146 = 28 Cr. L. J. 983 = 105 I. C. 807 = A. I. R. 1927 All. 744.

—Under S. 250 it is immaterial whether the case was triable as a summons case or as a warrant case. The section makes no distinction between either, but in order to justify an order for compensation it is necessary to show that the person in question had been accused of an offence triable by the Magistrate ordering compensation and that the person had been discharged or acquitted by the Magistrate. A. I. R. 1926 All. 159, Dist. (*Stuart C.J. and Hasan J.*) PAIGHAMBAR *v.* EMPEROR. 4 O. W. N. 392 = 101 I. C. 482 = 28 Cr. L. J. 450 = 8 A. I. Cr. R. 84 = A. I. R. 1927 Oudh 175.

—When a complaint has been filed against an accused person for offences some of which are triable exclusively by the Magistrate and some by the Sessions Court and the accused after trial is discharged in respect of all the offences, an order for compensation against

## CR. P. CODE (1898), S. 250—Simultaneous order.

the complainant cannot be passed. (*Sulaiman, J.*) HARIHAR DAT *v.* MAKSUD ALI. 48 All. 166 =

23 A. L. J. 1056 = 6 L. R. A. Cr. 188 = 27 Cr. L. J. 6 = 91 I. C. 38 = A. I. R. 1926 All. 159.

—To restrict the operation of S. 250, to cases in which the section referred to in the complaint was of an offence triable by a Magistrate would seriously diminish the usefulness of the section. In filing a complaint the complainant must be deemed to make an accusation which includes not only the offence specifically referred to but also any offence which the facts disclosed in the complaint, considered in the light of such enquiry as the Magistrate considers necessary, disclose. (*Kennedy, J.C. and Aston, A. J. C.*) HEMANDAS *v.* AHMAD KHAN. 84 I. C. 329 = 26 Cr. L. J. 265 =

16 S. L. R. 205 = A. I. R. 1921 Sind 105. —S. 250—Notice.

—Where after an order calling upon the complainant to show cause why he should not be made to pay compensation, the Magistrate fixes the date verbally, and on the date of hearing fixed, the complainant does not appear it being doubtful whether complainant knew the date, and a further date is fixed, the Magistrate ought to issue a summons to appear and show cause, or at any rate he ought to issue a notice to the complainant informing him that the date for showing cause has been fixed for a particular day. (*Mukerji, J.*) RAJARAM MAJHI *v.* PANCHANAN GHOSE. 125 I. C. 294 = 33 C. W. N. 861 = 1929 Cr. C. 474 = 31 Cr. L. J. 828 = A. I. R. 1929 Cal. 762.

—Though no notice is legally necessary, it is desirable in general that before an order setting aside order of compensation is made, the accused person should have notice of any intended interference with an order of compensation made in his favour. 33 Mad. 89, Ref. (*Kennedy, J. C. and Tyabji, A. J. C.*) MOMOON *v.* IBRAHIM. 20 S. L. R. 41 = 27 Cr. L. J. 248 = 92 I. C. 424 = A. I. R. 1926 Sind 143.

## —S. 250—Reasons to be recorded.

—Even in summary trials under chapter XXII of the Code, the requisites of S. 250 must be satisfied and the record should contain the reasons for considering the complaint to be false and vexatious. (*Krishna Pandalai, J.*) PALANI GOUNDAN *v.* KRISHNAPPA GOUNDAN. 32 M. L. W. 283 = 1930 M. W. N. 1047 = 1930 Cr. C. 1141 = A. I. R. 1930 Mad. 929 = 59 M. L. J. 319.

—Reasons must be recorded which are meant for higher tribunal to test justification of order.

The recording of the reasons, for ordering compensation to be paid, is almost a condition precedent to the proper exercise of the power under the section. The recording of the reasons is in addition to the finding of the Magistrate that the accusation was either frivolous or vexatious and why in his opinion it was a fit case, in which an order for compensation should be made. The policy of the legislature in requiring that in such a case the reasons should be recorded in writing is obviously to afford an opportunity to an appellate or revising tribunal to consider the sufficiency of the reasons so recorded. (*Srinivasa Aiyangar, J.*) THADIAPPAN *v.* VERAPERUMAL THEVAN. 90 I. C. 157 = 26 Cr. L. J. 1501 = 21 M. L. W. 646 = A. I. R. 1925 Mad. 1139.

—S. 250—Simultaneous order. —Where the order to show cause is practically simultaneous with the order of acquittal or discharge, order can be taken to be part of the same proceeding and continuation of it and the provisions of the section can be said to have been substantially complied with. A. I. R. 1927 Lah. 153 = 8 Bom. L. R. 847 and A. I. R. 1926

**CR. P. CODE (1898), S. 250—Simultaneous order.**

All. 165, Foll. (*Adami and Chatterji, J.J.*) MANGAL CHAND v. MAKHAN GOLA. 125 I. O. 573 =

11 Pat. L. T. 691 = 31 Cr. L. J. 875 = 9 Pat. 100 = 1930 Cr. C. 526 = A. I. R. 1930 Pat. 292.

—Although under sub-Ss. (1) and (2) the law contemplates two different orders, still, in practice, if a Magistrate, without first writing out his order of discharge under sub-S. (1), calls upon the complainant to show cause why he should not pay compensation, and then combines in one order the order of discharge and the order to pay compensation, he does not contravene substantially the provisions of the law. 11 C. W. N. 62 S.N.; A.I.R. 1925 Mad. 1139 and A.I.R. 1922 Pat. 157, Dist. (*Mukerji, J.*) WAHED ALI v. SARJUDDIN. 122 I.C. 298 = 31 Cr. L.J. 411 = A.I.R. 1929 Cal. 332.

—Order as to compensation—Whether can precede order of discharge.

S 250 contemplates the asking for an explanation of the complainant to show cause why compensation should not be awarded against him after the Magistrate discharges or acquits the accused. It does not contemplate the taking of explanation before the order of discharge is passed. The mere fact that by that time the Magistrate had made up his mind to discharge or acquit the accused is sufficient. (*Devadoss, J.*) RAMASWAMI v. SURYANARAYANA. 1929 M. W. N. 277.

—Where the trial Magistrate signed and dated his order of discharge, and then recorded an order calling on the complainant to show cause why he should not be directed to pay compensation to the accused, and both the orders were passed on the same day, one following the other.

*Held*, that there was a substantial compliance with the requirements of S. 250 (1). 8 Bom. L.R. 847, Foll.; A.I.R. 1926 Lah. 298, Dist. (*Shadi Lal, C.J.*) GHULAM MAHOMED v. VIR BEAN. 28 Cr. L. J. 592 = 102 I. C. 560 = A. I. R. 1927 Lah. 515.

—Where an accused is discharged on one charge before the completion of his trial of other charges, it is not illegal to pass an order for compensation at the time of his acquittal in respect of other charges. (*Fawcett and Madgavkar, J.J.*) RAVISHANKAR v. SAVAILAL. 28 Bom. L. R. 89 = 27 Cr. L.J. 448 = 93 I. C. 240 = A. I. R. 1926 Bom. 163.

—By S. 250 as before amendment, the order for payment of compensation had to be made by the order of discharge, but as amended it is only the order calling upon the complainant to show cause why he should not pay compensation that has to be contained in the order of discharge and the order for payment of compensation is necessarily a subsequent order. 57 P.R. 1905 Cr., Dist. (*Martineau, J.*) ACHHRU MAL v. EMPEROR. 7 Lah. 121 = 27 Cr. L. J. 752 = 95 I. C. 80 = 27 P. L. R. 310 = A. I. R. 1926 Lah. 298.

—The order for compensation must be passed along with the order for discharge.

Where there were two accused and one of them was discharged and the case against the other was adjourned to a later date when he was acquitted and where the Magistrate required the complainant to show cause against an order for compensation being passed and ordered the complainant to pay compensation to each of the accused.

*Held* that the procedure followed was illegal under S. 250 as now amended. When the order of discharge was made against one of the accused the case against him was at an end and in so far as payment of compensation to him was concerned, the order to show cause under Section 250 should have been made along with the order of discharge. The defect was not one

**CR. P. CODE (1898), S. 252—Complainant's withdrawal.**

which was curable under S. 537. (*Sanderson, C. J. and Chotanar, J.*) SURESH CHANDRA GUPTA v. ABDUL JABHAR. 85 I. C. 129 = 29 C. W. N. 127 = 26 Cr. L. J. 449 = A. I. R. 1925 Cal. 264.

**—Ch. 21 (Ss. 251 to 259)—Rebutting evidence.**

—In a warrant case tried under Chap. 21, when the accused leads evidence of good character by way of defence the prosecution cannot as a matter of right claim to lead rebutting evidence, for the Code gives the prosecution no such privilege. If the Magistrate in his discretion thinks such evidence essential to the just decision of the case he may summon it, but the prosecution cannot insist upon his doing so. (*Jackson, J.*) RAMASWAMI MUDALIAR v. RAMALINGA UDAYAR. 1930 M. W. N. 96 = 3 M. Cr. C. 63 = 1930 Cr. C. 500 = 32 M. L. W. 215 = 127 I. C. 304 = A. I. R. 1930 Mad. 448.

**—S. 251—Application.**

—Even in cases of mandatory provisions their application must vary according to the circumstances of the case. (*Dalal, J.*) RALI CHARAN SHARMA v. EMPEROR. 104 I. C. 225 = 8 A. I. Cr. E. 204 = 8 L. R. A. Cr. 124 = 25 A. L. J. 846 = 28 Cr. L. J. 785 = A. I. R. 1927 All. 654.

**—S. 252—Additional evidence.**

—When the complainant producing more witnesses after the original witnesses, Magistrate should not ordinarily refuse.

Section 252 of the Code means first that the complainant should himself produce what evidence he can in support of the prosecution and the Magistrate shall proceed to hear it. The Court is apparently not bound to issue process for such witnesses, or to grant time for the production of such witnesses, but if produced he must record their evidence. Next when the complainant has done all he can without the assistance of the process of the Court it is then for the Magistrate to ascertain from the complainant or otherwise the names of other persons likely or able to give evidence, and he must summon such of those as he thinks necessary, i.e., such of those as he thinks will be of value in assisting the prosecution case. He cannot arbitrarily refuse to summon such witnesses. It is his duty to assist and not to hamper the prosecution, and for that purpose he must issue summons to persons of whom complainant has informed him, who he considers are likely to give useful evidence. The Magistrate is not bound to or expected to exercise this duty of ascertaining more than once, and the proper time is when the evidence "produced" in support of the prosecution has been taken, and that ordinarily includes the cross-examination, if any and re-examination, if any before the charge. A useful test will be whether, if the accused were acquitted in this case, it would be open to the complainant to put in a fresh complaint on the facts put forward. A.I.R. 1923 Mad. 609 (F.B.) Ref. (*Wallace, J.*) K.C. MENON v. KRISHNA NAYAR. 49 Mad. 978 = 24 M.L.W. 304 = 1926 M.W.N. 730 = 97 I.C. 643 = 27 Cr. L. J. 1123 = A. I. R. 1926 Mad. 989 = 51 M. L. J. 328.

**—S. 252—Complainant's withdrawal.**

—In a prosecution for breach of trust, the complainant withdrew from the prosecution, and the Magistrate discharged the accused:

*Held*, that the withdrawal of the complainant did not by itself end the case or acquit the accused, and the order of discharge was under S. 252. (*Jackson, J.*) NARASIMHALU NAIDU v. NAINA PILLAI. 115 I. C. 156 = A. I. R. 1929 Mad. 7.

**CR. P. CODE (1898).****—S. 252—Non-cognizable case.**

—In a non-cognizable warrant case the Court is not bound to summon witnesses for the prosecution or the defence under Ss. 252 and 257 if the party at whose instance or in whose interest the process is issued does not pay process fees as required by Rr. 17 and 18 of the Process Fees Rules made under the Burma Process Fees Act, 1910. Ss. 252, 256 and 257 of the Code must be read as subject to the rules made under the Burma Process Fees Act, 1910. 16 Mad. 234, Dist.; A. I. R. 1926 Rang. 13, Overruled. (*Rulledge. C. J., Carr and Chari, J.J.*) **EMPEROR v. THA SHWE.**

98 I. C. 708 = 4 Rang. 146 = 5 Bur. L. J. 90 = 27 Cr. L. J. 1396 = A. I. R. 1926 Rang. 164 (F. B.).

**—S. 252—Non-production of evidence.**

—The duty of seeing that all the evidence essential to the prosecution case is before the Court, is thrown by Cr. P. Code upon the Magistrate himself. It is not open to a Magistrate to acquit on the ground that the prosecution has failed to produce a necessary witness. (*Wasir Hasan and Simpson, A. J. Cs.*) **KING-EMPEROR v. MAIKU LAL.**

88 I. C. 1042 = 12 O. L. J. 632 = 2 O. W. N. 584 = 26 Cr. L. J. 1266 = A. I. R. 1925 Oudh 667.

**—S. 252—Procedure.**

—Where a witness is examined as a prosecution witness after the whole of the defence evidence has been recorded, the procedure is contrary to the provisions of S. 252. Such a procedure though not objected to causes injustice to the accused and the whole trial is vitiated. A. I. R. 1927 P. C. 44 and 25 Mad. 61, Rel. on. (*Dalip Singh, J.*) **KARAM CHAND v. EMPEROR.**

111 I. C. 396 = 29 P. L. R. 613 = 29 Cr. L. J. 844 = 11 A. I. Cr. R. 182 = A. I. R. 1928 Lah. 953.

—Once the machinery of the law has been set in motion, the right of arresting its progress rests with the State alone.

The procedure in warrant cases is laid down in S. 252. This section clearly contemplates that once action has been taken against an accused the case will normally proceed. It is nowhere contemplated that a desire on the part of the complainant to refrain from further pursuing the case shall justify the arrest of further proceedings. It is always open to the Magistrate, after hearing whatever evidence he considers necessary (S. 252) or even at an earlier stage to discharge the accused (S. 253) if for reasons to be recorded by him he considers the charge to be groundless. If the trying Magistrate considered that although the charge was not groundless, there was little likelihood of the case being pursued to a successful issue, he could consult the District Magistrate who would, if advisable, instruct the Public Prosecutor under S. 494 to withdraw the case. The complainant or the accused could similarly move the District Magistrate in the matter. The principle underlying the provisions dealing with the trial of non-compoundable or cognizable warrant cases is that whether instituted on complaint or otherwise the final responsibility for the conduct of such cases rests with the State and that where there is reasonable ground for believing that an offence has been committed, once the machinery of the law has been set in motion, the right of arresting its progress rests with the State alone. (*Dayle, J.*) **MAUNG THU DAW v. U PO NVUN.**

5 Rang. 136 = 28 Cr. L. J. 649 = 103 I. C. 105 = A. I. R. 1927 Rang. 174.

**—S. 252—Refusal to examine.**

—When certain witnesses were cited only to causes vexation and delay the Magistrate need not compel them to appear.

**CR. P. CODE (1898), S. 253—Discharge before evidence.**

Where summons was issued to a witness but on the application of the complainant the Magistrate declined to send for and examine him together with certain other witnesses, as they in his opinion appeared to have been included with a view to cause vexation to those witnesses themselves;

*Held*, that though he should not have acted on the representation of the complainant, he was perfectly justified, when the matter was brought to his notice that certain witnesses were cited only for the purpose of causing vexation and delay, in ordering that they should not be compelled to appear in his Court. (*D. vadoss, J.*) **SAMINATHA NAINAN v. KUPPUSWAMI AYYAR.**

110 I. C. 581 = 1 M. Cr. C. 149 = 29 Cr. L. J. 725 = A. I. R. 1928 Mad. 652.

**—S. 252—Summoning of witness.**

—When the Magistrate trying the case is of opinion that it is unnecessary to summon a certain witness to the prosecution, the Sessions Judge should not compel the Magistrate, except for most cogent and exceptional reasons, to summon the witness. (*King, J.*) **INAYAT HUSAIN v. EMPEROR.**

116 I. C. 494 = 30 Cr. L. J. 631 = 10 A. I. Cr. R. 99 = 9 L. R. A. Cr. 88 = A. I. R. 1928 All. 684.

**—S. 253—Commitment.**

—In refusing to commit to Sessions, the Magistrate must be satisfied of the untenability of the charge.

Where the Magistrate who held the enquiry for committing a person to Sessions, under the orders of the Superior Court, after recording the prosecution evidence, discharged the person and where such person had originally formed one of those against whom the report in connection with the offence had been made and where he was subsequently dropped out of the proceeding by the senior investigating officer.

*Held*, that the Magistrate had not acted properly in refusing in spite of the Superior Court's order to commit the accused to Sessions and that it was a case in which the Court empowered to try the offence charged against the accused should give a definite pronouncement. There is no necessity compelling a Magistrate to convict an accused to Sessions notwithstanding that he may consider conviction to be impossible. But the Magistrate must be satisfied fully that the prosecution will fail in the Sessions Court. The law will not be satisfied if the Magistrate merely doubts portion of the prosecution evidence. The discretion vested in the Magistrate to discharge an accused charged with an offence triable only by Court of Sessions must be exercised properly and very carefully. (*Pullan, A. J. C.*) **CHHEDA KHAN v. EMPEROR THROUGH HARIHAR.**

82 I. C. 53 = 11 O. L. J. 664 = 25 Cr. L. J. 1189 = A. I. R. 1925 Oudh 167.

**—S. 253—'Discharge'.**

—S. 253 suggests that the word "discharge" means absolute discharge. (*Ashworth, J.*) **BILODAR v. EMPEROR.**

93 I. C. 145 = 13 O. L. J. 490 = 27 Cr. L. J. 417 = 3 O. W. N. 201 = A. I. R. 1926 Oudh 194.

**—S. 253—Discharge before evidence.**

—Where the Magistrate has held that the case against the accused is groundless and has before him the report of the police in support of his view it is not necessary that he should again ask the complainant to prove his case which the Magistrate has disbelieved even before he examines the complainant and his witnesses. 5 C. W. N. 106, Ref. (*Sukraulady and Costello, J.J.*) **FAZLAR RAHAMAN v. EMPEROR.**

1930 Cr. C. 859 = 126 I. C. 553 = 31 Cr. L. J. 1065 = A. I. R. 1930 Cal. 515.

## CR. P. CODE (1898).

## —S. 253—Examination of accused.

—Where the Magistrate does not examine each accused separately, but records their statements collectively it is an illegality which vitiates the proceedings. (*Shadi Lal, C. J.*) MT. GHASITI v. KING-EMPEROR.

93 I. C. 72 = 6 Lah. 554 = 27 Cr. L. J. 408 =

27 P. L. R. 85 = A. I. R. 1926 Lah. 155.

—Where the mandatory provision of S. 342 has been fully complied with, it is not absolutely compulsory for the Magistrate in a warrant case to examine the accused before he framed a charge, provided he does so before the prosecution has been closed. Any such failure to examine is only an irregularity curable by S. 537. (*Findlay O. J. C.*) DEOJI v. KING-EMPEROR. 95 I. C. 606 = 27 Cr. L. J. 830 = A. I. R. 1926 Nag. 459.

## —S. 253—Examination of witnesses.

—There is no warrant for saying that Magistrate is bound to examine all witnesses that may be offered or available before taking action under S. 253. That depends entirely upon circumstances of each case for which no general rules can be laid down. (1911) 1 M. W. N. 149 and A. I. R. 1926 All. 461, Foll. (*Waller and Pandalai, J.J.*) KASINATH PILLAI v. SHANMUGHAM PILLAI. 121 I. C. 619 = 52 Mad. 987 =

30 M. L. W. 273 = 1929 M. W. N. 575 =

1929 Cr. C. 333 = 2 M. Cr. C. 215 = 31 Cr. L. J. 275 =

A. I. R. 1929 Mad. 754 = 57 M. L. J. 490.

## —S. 253—Groundless case.

—Where the Magistrate has held that the case against the accused is groundless and has before him the report of the police in support of his view it is not necessary that he should again ask the complainant to prove his case which the Magistrate has disbelieved even before he examines the complainant and his witnesses. 5 C. W. N. 106, Ref. (*Suhrawardy and Costello, J.J.*) FAZLAR RAHMAN v. EMPEROR.

126 I. C. 553 = 31 Cr. L. J. 1055 =

1930 Cr. C. 859 = A. I. R. 1930 Cal. 515.

## —S. 253—Groundless evidence.

—Groundless evidence means such evidence that no conviction could be rested on it. It does not mean that the evidence discloses no offence whatsoever. (*Waller and Pandalai, J.J.*) KASINATH PILLAI v. SHANMUGHAM PILLAI. 52 Mad. 987 = 30 M. L. W. 273 =

1929 M. W. N. 575 = 1929 Cr. C. 333 =

2 M. Cr. C. 215 = 121 I. C. 619 =

31 Cr. L. J. 275 = A. I. R. 1929 Mad. 754 =

57 M. L. J. 490.

## —S. 253—Joint trial.

—There is no provision in the Cr. P. Code requiring a separate inquiry in respect of each accused person. The provision contained in S. 233 relates to separate trials only. Hence no question of an illegal joint trial arises when the accused persons are discharged under S. 253. 9 N. L. R. 42, Rel. on; 4 N. L. R. 71 and 13 N. L. R. 35, Dist. (*Mohiuddin, A. J. C.*) MANBODH SINGH v. JHABBAOLAL. 115 I. C. 164 =

30 Cr. L. J. 404 = 1929 Cr. C. 261 =

12 A. I. Cr. R. 368 = A. I. R. 1929 Nag. 237.

## —S. 253—No case.

—To say that no case is made out is not tantamount to saying that the charge is groundless. (*Wallace, J.*) MAHMED SHERIEF v. ABDUL KARIM. 51 Mad. 185 = 1 M. Cr. C. 87 = 105 I. C. 819 =

28 Cr. L. J. 995 = 1927 M. W. N. 845 =

39 M. L. T. 486 = 26 M. L. W. 553 =

A. I. R. 1928 Mad. 129 = 53 M. L. J. 757.

## —S. 253—Prima facie case.

—Where a complaint prima facie discloses an offence, the Magistrate cannot hold the charge groundless.

## CR. P. CODE (1898), S. 253—State of discharge.

The mere fact that the matter is one of rendition of accounts and must be referred to the civil Court is obviously insufficient to justify an order of discharge under S. 253 (2) in a case of alleged breach of trust. To say that no case has been made out is not tantamount to saying the charge is 'groundless.' Where a complaint *prima facie* discloses an offence, a Magistrate cannot hold the charge to be groundless unless he knows what is the sort of evidence that is going to be adduced to prove it; and he can only judicially come to such a conclusion when he has at least ascertained from the complainant what is the nature of the evidence his witnesses are going to give. A. I. R. 1928 Mad. 129, Foll. (*Tekchand, J.*) MEHTAB v. NATHU. 1930 Cr. C. 530 = 123 I. C. 275 = 31 Cr. L. J. 481 =

31 P. L. R. 204 = A. I. R. 1930 Lah. 461.

## —S. 253—Setting aside discharge.

—An order of discharge should only be set aside very sparingly and only when it can be said either to be perverse or *prima facie* incorrect and there is a suggestion that any further evidence might be forthcoming. (*Young, J.*) MOHAMMAD HUSAIN v. MT. NANHI. 52 A. 257 = 1930 Cr. C. 369 = 126 I. C. 253 =

31 Cr. L. J. 995 = 1930 A. L. J. 521 =

A. I. R. 1930 All. 257.

## —S. 253—Stage of discharge.

—A Magistrate can discharge an accused at any stage before recording any evidence or in the course of recording evidence if he is of opinion that the charge is groundless. 34 I. C. 305 and 10 Cal. 67, Ref.; A. I. R. 1928 Mad. 129, Dist. (*Suhrawardy and Costello, J.J.*) FAZLAR RAHMAN v. EMPEROR. 1930 Cr. C. 859 = 126 I. C. 553 = 31 Cr. L. J. 1055 = A. I. R. 1930 Cal. 515.

—Where a Magistrate discharges the accused without allowing the complainant to adduce all his evidence, it cannot be said that there is a full and complete inquiry in the case, and the order of the District Magistrate directing full inquiry should not be interfered with. S. 253 no doubt gives a Magistrate power to discharge before entire case is complete and such order is legal, but when the inquiry has been incomplete the District Magistrate acts with equal legality in directing further inquiry. (*Broadway, J.*) HAKIM SINGH v. LAL SINGH. 121 I. C. 289 = 31 Cr. L. J. 239 =

1930 Cr. C. 166 = A. I. R. 1930 Lah. 158.

—Failure to examine complainant before discharging accused is an error of law. Magistrate's personal knowledge that the complainant's witnesses were untrustworthy is no adequate reason for discharging the accused. (*Suhrawardy and Graham, J.J.*) MUKUNDA PATRE v. PURUSHOTTAM SHAH. 51 C. L. J. 44 =

120 I. C. 458 = 1929 Cr. C. 95 =

31 Cr. L. J. 128 = A. I. R. 1929 Cal. 479.

—It would not be a proper exercise of the discretion vested in the Magistrate under S. 253 to discharge an accused merely on a statement by a prosecution witness of a prior admission by the complainant that the case was a false one. It is better in such a case to hear the whole evidence and after that to come to whatever conclusion it is considered proper (*Obiter*). (*Dalip Singh, J.*) RAM LUBHAYA v. JAGANNATH. 117 I. C. 882 = 30 P. L. R. 361 =

30 Cr. L. J. 854 = 1929 Cr. C. 131 =

A. I. R. 1929 Lah. 623.

—A Magistrate can discharge an accused, even where process against him is issued before recording all evidence produced by complainant if he is satisfied after considering the result of police enquiry and evidence already recorded that the charge is groundless. (*Danicks, J.*) KUNJ BHARU LAL v. EMPEROR. 24 A. L. J. 512 = 7 I. R. A. C. 119 =



**CR. P. CODE (1898), S. 253—State of discharge.**

27 Cr. L. J. 541 = 93 I. C. 1037 =  
A. I. R. 1926 All. 461.

—Under section 253 (2) a Magistrate can discharge an accused even before the date fixed for hearing if the Magistrate is satisfied from the record that the accused cannot possibly be convicted of the offence. (*Kulwant Sahay, J.*) W. J. WATSON v. P. H. METCALFE.

81 I. C. 184 = 25 Cr. L. J. 696 =  
A. I. R. 1925 Pat. 154.

**—S. 254—Applicability.**

—The sections apply to proceedings under S. 117 of the Code.

There is no reason why Ss. 254 and 255 should not be applied to an enquiry under S. 117, except in so far as framing of a charge and the reading of it to the accused is concerned; in other words, at any stage of the prosecution the Magistrate, if he is *prima facie* satisfied that there is a case against the accused, may interrupt the proceedings for the purpose of asking the accused whether he pleads guilty or whether he has any defence to make. When the stage is reached for asking the accused whether he wishes to plead guilty or to defend, the accused must be allowed an opportunity of cross-examining any witnesses whom he desires to cross-examine. (*Boys, J.*) TIRLOK v. EMPEROR.

25 A. L. J. 749 = 8 A. I. Cr. R. 183 =  
8 L. R. A. Cr. 122 = 28 Cr. L. J. 792 =  
104 I. C. 232 = A. I. R. 1927 All. 660.

**—S. 254—Commitment.**

—Due to S. 104, Presidency Towns Insolvency Act as amended, read with S. 254 of the Code, commitment of an accused for trial to the High Court Sessions for an offence under S. 103, Presidency Towns Insolvency Act, is illegal because the case under that section is a warrant case and the maximum punishment for the offence is only two years' imprisonment. 24 Cal. 429; (1906) A. W. N. 28 and 41 All. 454, Ref. (*Buckland, J.*) EMPEROR v. GIRISH CHANDRA KUNDU.

120 I. C. 813 = 1929 Cr. C. 521 = 56 Cal. 785 =  
31 Cr. L. J. 184 = A. I. R. 1929 Cal. 777.

**—S. 254—Framing of charge.****—Powers.**

Where the complaint purported to be under Ss. 193 and 211, Indian Penal Code, but the Magistrate, after hearing the evidence, framed the charge of defamation, under S. 500, Indian Penal Code, and convicted the accused under that section,

*Held*, it is quite sufficient that the complainant shall state the true facts in his own language, and it is for the Magistrate to apply the law to those facts. If, in the opinion of the Magistrate, the offence disclosed fell under S. 500, Penal Code, the Magistrate was at liberty to proceed and frame a charge under that section, provided the complainant satisfied the conditions of S. 198 of the Cr. P. Code whatever may have been the section of the Penal Code recited in the complaint. 10 All. 39; 27 Mad. 61; 29 Cal. 415, Dist. 23 P. R. (Cr.) 1895, Foll. (*Le Rossignol and Ffordre, J.J.*) MT. NAURATI v. EMPEROR. 95 I. C. 305 = 6 Lah. 375 =  
26 P. L. R. 552 = 27 Cr. L. J. 769 =  
A. I. R. 1925 Lah. 631.

**—S. 254—Judgment after charge.**

—If defence evidence unsatisfactory, judgment need not necessarily be one of conviction.

Although in a warrant case a Magistrate has in the first instance thought fit to frame a charge against an accused person, it is not incumbent on him to convict the accused merely because the latter has failed to adduce satisfactory rebutting evidence. It is his duty when he proceeds to judgment to carefully consider all the evidence adduced in the case and the probabilities

**CR. P. CODE (1898), S. 256—Adjournment.**

and surrounding circumstances: and if at the time of giving judgment, he comes to the conclusion that the guilt of the accused has not been satisfactorily established, he is bound to acquit him although he may have framed a charge against him in the first instance. (*Wadegaonkar, A.J.C.*) DAMODAR v. JUJHAR SINGH.

26 Cr. L. J. 1348 = 23 N. L. R. 99 = 89 I. C. 388 =  
A. I. R. 1926 Nag. 115.

**—S. 254—Procedure.**

—In a warrant case it is imperative on the Magistrate to draw up a formal charge against the accused in manner indicated in S. 254 and to comply strictly with the provisions of S. 342. (*C. C. Ghose and Duvval, J.J.*) MAHOMED RAFIQUE v. EMPEROR.

43 C. L. J. 100 = 27 Cr. L. J. 406 = 93 I. C. 70 =  
A. I. R. 1926 Cal. 537.

**—S. 254—Warrant case.**

—Altering section to convict without framing charge—If proper.

When once trial has begun according to the provisions relating to warrant cases, it is not open to the Magistrate to alter the section and to convict the accused without framing a charge. (*Kendall, J.*) GOBIND v. EMPEROR.

8 L.R.A. Cr. 29 = 28 Cr. L. J. 227 =  
99 I. C. 1027 = 7 A. I. Cr. R. 202 =  
A. I. R. 1927 All. 270.

**—S. 255—Kidnapping.**

—Charge to be clearly explained.

When a question whether there was kidnapping either with or without persuasion, and a question as to how long the kidnapping has continued, and to whether at some stage a fresh kidnapping has been carried out, and whether there was a previous conspiracy or conduct amounting to abetment, or whether, there was no kidnapping or share in the kidnapping at all but merely a confidence trick undertaken to cheat a person is more than ever the duty of the Judge even though counsel may be engaged to clear the ground and to be quite sure that each accused or his counsel clearly understand what case they have to meet. (*Walsh, J.*) JODHA SINGH v. EMPEROR.

81 I. C. 80 =  
25 Cr. L. J. 592 = 4 L.R.A. Cr. 83 =  
A. I. R. 1923 All. 285.

**—S. 256—Adjournment.**

—Refusing adjournment so that the accused may cross-examine the prosecution witnesses initiated trial.

It would depend upon the facts of each case whether the contravention of S. 256 amounts to an irregularity of procedure or to an illegality vitiating the trial. On the very day the charge was framed, the Magistrate called upon the accused to state whether he wished to cross-examine any of the prosecution witnesses. The accused applied for time but the Magistrate refused to allow time for the reason that it was his usual practice to put the question forthwith.

*Held*, that the Magistrate's reason was not adequate and that he committed an illegality vitiating trial: A. I. R. 1926 Bom. 226, Ref. (*Mirza and Patkar, J.J.*) EMPEROR v. LAKSHMAN RAMSHET. 53 Bom. 578 =  
31 Bom. L.R. 593 = 1929 Cr. C. 130 =  
121 I. C. 588 = 31 Cr. L. J. 309 =  
A. I. R. 1929 Bom. 309.

—Where prosecution witnesses have come from a Native State and it would have been difficult to secure their attendance again,

*Held*, that it is an excellent reason for asking the accused forthwith whether they wish to cross-examine any of them. (*Addison, J.*) KURA v. EMPEROR.

27 Cr. L. J. 720 = 94 I. C. 912 =  
A. I. R. 1926 Lah. 434.



**CR. P. CODE (1898), S. 256—Adjournment.**

—The words inserted by the amendments indicate the intention of the Legislature that sufficient time should be given to an accused to consider whether he wishes to cross-examine any of the prosecution witnesses after the framing of the charge, and it is only in special cases that the Magistrate can require him to state forthwith if he so wishes. (*Jwala Prasad and Macpherson, J.J.*) **RAMCHANDRA MODAK v. EMPEROR.** 5 Pat. 110=7 P. L. T. 304=27 Cr. L. J. 499=93 I. C. 963=A. I. R. 1926 Pat. 214.

—**S. 256—Applicability.**

—Section 256 is applicable to inquiry into cases under S. 110 so far as practicable. A. I. R. 1927 All. 660, Foll. (*Boys and Young, J.J.*) **CHANDAN v. EMPEROR.** 1930 A. L. J. 389=31 Cr. L. J. 627=1930 Cr. C. 442=124 I. C. 40=52 A. 448=A. I. R. 1930 All. 274.

—Whether an accused is tried under Chap. 21 or Chap. 22 and whatever form the charge may take, he must be called upon to plead, and S. 256, which provides for the defence, is applicable to either sort of trial. A. I. R. 1926 Bom. 226, Diss. (*Jackson, J.*) **RAJU ACHARI, In re.** 50 Mad. 740=24 M. L. W. 649=99 I. C. 44=38 M. L. T. 141=28 Cr. L. J. 12=7 A. I. Cr. R. 211=A. I. R. 1927 Mad. 78=51 M. L. J. 687.

—Section 256 does not apply before a charge is framed. Therefore, the statement of the pleader of the defence made before framing of the charge to the effect that he no longer required the attendance of the prosecution witnesses does not deprive the accused of his right to further cross-examine the prosecution witnesses after the framing of the charge under the section. (*Jwala Prasad and Macpherson, J.J.*) **RAMCHANDRA MODAK v. EMPEROR.** 5 Pat. 110=7 P. L. T. 304=27 Cr. L. J. 499=93 I. C. 963=A. I. R. 1926 Pat. 214.

—**S. 256—Comparison with S. 257.**

—The scope of S. 256 is with reference to cases in which the charge is framed before all the witnesses for the prosecution have been examined in chief and the scope of S. 257 refers to a stage when the prosecution closes its case after examining all its witnesses, (*Hullifax A. J. C.*) **GANGADHAR v. BHANGI SAO.** 81 I. C. 976=25 Cr. L. J. 1152=A. I. R. 1925 Nag. 147.

—**S. 256—Comparison with S. 342.**

—There can be no difference in the meaning between the words "called upon to enter upon his defence" in S. 256 and "called on for his defence" in S. 344. (1923 Cal. 727, Appr.) The obligation imposed by S. 256 on the Magistrate to ask the accused whether he wishes to cross-examine the prosecution witness is quite distinct from the obligation imposed by S. 342 to question the accused generally for the purposes mentioned therein. (*Macleod, C. J. and Crump, J.*) **EMPEROR v. NAREHU KASTURCHAND MARWADI.** 50 Bom. 42=27 Bom. L. R. 105=26 Cr. L. J. 690=86 I. C. 66=A. I. R. 1925 Bom. 470.

—**S. 256—Costs of witnesses.**

—The order of Magistrate directing the complainant to pay costs to the accused after charges have been framed for failing to produce prosecution witness for re-examination is not warranted by law. (*Pforde, J.*) **ABDUL MAJID v. MEHR CHAND.** 116 I. C. 710=30 Cr. L. J. 664=13 A. I. Cr. R. 95=1929 Cr. C. 466=A. I. R. 1929 Lah. 766.

—The accused, after the charges were framed, requested to recall the prosecution witnesses for further cross-examination. The complainant stated that the

**CR. P. CODE (1898), S. 256—Non-compliance.**

witnesses were won over by the accused and thus he was unable to produce them in Court but he was willing to pay the process-fees for their production. Thereupon the Magistrate ordered him to pay the process-fee and costs of witnesses and also a certain sum of money to be paid to the accused as costs.

*Held*, that the order directing the complainant to pay costs to the accused was quite unjustifiable. (*Harrison, J.*) **FAIZ MAHOMED v. NABU.** 106 I. C. 436=29 Cr. L. J. 20=9 A. I. Cr. R. 295=A. I. R. 1928 Lah. 175.

—A Magistrate has no power while passing an order on an application under S. 256 to impose a condition upon the accused to deposit costs for the purpose of recalling the prosecution witnesses for cross-examination. (*Jwala Prasad and Macpherson, J.J.*) **RAMCHANDRA MODAK v. EMPEROR.** 93 I. C. 963=5 Pat. 110=7 P. L. T. 304=27 Cr. L. J. 499=A. I. R. 1926 Pat. 214.

—Where an accused seeks to exercise the right of cross-examination conferred by S. 256. Cr. P. Code, he cannot legally be required to deposit the expenses. 8 N. L. R. 65, Foll. (*Baker, Offg. J.C.*) **RADHAKISHAN v. RAMKRISHNA.** 81 I. C. 448=7 N. L. J. 57=25 Cr. L. J. 912=A. I. R. 1924 Nag. 114.

—**S. 256—Non-compliance.**

—The provision that the accused should be asked whether he wishes to cross-examine the prosecution witnesses on a date subsequent to that upon which he is called upon to plead to the charge, inserted in S. 256 by the amending Act of 1923 by words "at the commencement of the next hearing," is obviously intended to give the accused an interval of time to think out the lines of his defence before he is called upon to inform the Court how he intends to proceed and an omission of this new procedure is an irregularity which vitiates the whole trial. 7 L. L. J. 114, Foll. (*Suhedar, A. J. C.*) **GIRDHARI v. EMPEROR.** 31 Cr. L. J. 705=1930 Cr. C. 831=124 I. C. 619=A. I. R. 1930 Nag. 255.

—Where it cannot be said with certainty that the accused, who has not been asked by the Magistrate as to whether he wishes to cross-examine the prosecution witnesses, has not been prejudiced by reason of non-compliance of the provisions of S. 256 and the case, is not fit one for retrial, the conviction should be set aside. (1902) A. W. N. 5 and A. I. R. 1927 All. 217, Rel. on. (*Sen, J.*) **RAM SUNDAR v. EMPEROR.** 120 I. C. 208=10 L. R. A. Cr. 151=31 Cr. L. J. 14=1929 Cr. C. 496=13 A. I. Cr. R. 15=A. I. R. 1929 All. 904.

—S. 256 lays down that the accused shall have the right to recall and cross-examine the prosecution witnesses after the charge has been framed. The Magistrate cannot reject such an application. Failure of the Magistrate to act in accordance with the express provision of S. 256 is not a mere irregularity but an illegality. 25 Mad. 61 (P. C.), Rel. on.; A. I. R. 1927 All. 217, Dist. A. I. R. 1927 Mad. 78, Ref. (*Barlee, J.C. and Aston, A. J. C.*) **CHAGPAL NARAINJI v. EMPEROR.** 118 I. C. 200=1929 Cr. C. 319=30 Cr. L. J. 880=A. I. R. 1929 Sind 151.

—Where the Magistrate had not complied with the provisions of S. 256, and the procedure had resulted in a miscarriage of justice,

*Held*, that the order for retrial was right. A. I. R. 1926 Lah. 155, Ref. (*Findlay, J. C.*) **SHRAWAN MAHAR v. RAJESHWAR KHANDOPAT PAGE.** 108 I. C. 439=29 Cr. L. J. 384=108 I. C. 439=A. I. R. 1928 Nag. 135.

—Conviction of accused without complying with S. 256 is not illegal under certain circumstances, and if

**CR. P. CODE (1898), S. 256—Non-compliance.**

During the prosecution of an author of a book under S. 153-A, I.P.C., the book was proscribed by an order of Government under the Cr. P. Code (amended 1926), S. 99-A, on the ground that the book contained matter the publication of which is punishable under S. 153-A, I.P.C. The author applied under S. 99-B and his application was dismissed by a Bench of the High Court. Thereupon the trial Magistrate without recording any defence evidence or allowing further cross examination of prosecution witnesses convicted the accused.

*Held*, that the conviction was legal and the judgment of the Bench of the High Court was admissible under Ss. 11 and 13, Evidence Act. (*Dalal, J.*) **KALI CHARAN SHARMA v. EMPEROR.**

104 I. C. 225 = 8 A. I. Cr. R. 204 =

8 L. R. A. Cr. 124 = 25 A. L. J. 846 =

28 Cr. L. J. 785 = A. I. R. 1927 All. 654.

—The provisions in S. 256 are not provisions relating to the mode of trial, and it would be wrong to hold that failure to follow those provisions strictly amounts to more than an irregularity in procedure. (*Kendall, J.*) **CHHAJJU v. EMPEROR.**

99 I. C. 1029 =

49 All. 316 = 25 A. L. J. 111 =

8 L. R. A. Cr. 37 = 28 Cr. L. J. 229 =

7 A. I. Cr. R. 242 = A. I. R. 1927 All. 217.

**—S. 256—Recall.**

—The word "recall" in S. 256 does not mean re-summon. After the examination and cross-examination of the prosecution witnesses, a charge was framed and the Magistrate for reasons recorded in writing required the accused to state forthwith whether they would cross-examine any and what witnesses for prosecution. He further said that the counsel would have opportunity of cross-examining then or never.

*Held*, that the procedure adopted by the Magistrate was correct. 8 A. L. J. 707. Rel. on. (*Dalal, J.*) **BAQRIDE v. EMPEROR.**

1930 Cr. C. 739 =

125 I. C. 32 = 31 Cr. L. J. 764 = A. I. R. 1930 All. 495.

**—S. 256—Recording of reasons.**

—Omission to record reasons under S. 256, for questioning the accused forthwith after the framing of the charge, as to whether he wishes to recall any of the prosecution witnesses for further examination amounts to no more than an irregularity in procedure covered by S. 537, and would not be a ground for setting aside the conviction unless it has occasioned a failure of justice. A. I. R. 1927 All. 217; A. I. R. 1926 Lah. 155, Rel. on. A. I. R. 1929 Bom. 309, Dist. (*Mirza and Broomfield, J.J.*) **VISHRAM NARAYAN DEVI v. EMPEROR.**

124 I. C. 810 = 32 Bom. L. R. 596 = 1930 Cr. C. 693 =

31 Cr. L. J. 743 = A. I. R. 1930 Bom. 241.

—A Magistrate put the accused that question on the same day as he was charged and recorded as reason "the accused is undefended."

*Held*, the Magistrate might have considered that as the accused had not engaged a pleader nor appeared desirous of doing so, it would simply be a waste of time to defer the question till the next hearing. (*Pandalai, J.*) **JANARDHANAM v. EMPEROR.**

1930 M. W. N. 985 =

1930 Cr. C. 1193 = A. I. R. 1930 Mad. 977.

**—The adequacy, rather than recording the reasons at Court.**

It is not so much the recording of the reasons as the adequacy thereof which should count in the determination of the question if the provisions of S. 256 have been complied with. If no good reasons are forthcoming, merely recording them in writing by the Magistrate would not save the trial from the taint of an incurable irregularity if it results in prejudice to the accused. The reasons that the Magistrate had to go out for urgent work or that the prosecution witnesses had to leave the place of trial immediately are not good reasons for taking

**CR. P. CODE (1898), S. 256—"Remaining witnesses".**

up a case on Sunday and rushing through the trial without giving the accused proper opportunity to defend himself. (*Subhadar, A.J.C.*) **GIRDHARI v. EMPEROR.**

124 I. C. 619 = 31 Cr. L. J. 705 = 1930 Cr. C. 831 =

A. I. R. 1930 Nag. 255.

—Even on the date the charge is framed it is permissible for a Magistrate to call upon the accused to state whether they wish to cross-examine any of the prosecution witnesses, but if he adopts such procedure he has to record his reasons in writing. And as this procedure is exceptional there must be some special reason for a Magistrate to adopt it. 39 Mad. 503; 16 Cr. L. J. 786; 2 Bom. L. R. 542, Rel. on. (*Mirza and Patkar, J.J.*) **EMPEROR v. LAKSHMAN RAM-SHET.**

53 Bom. 578 = 31 Bom. L. R. 593 =

121 I. C. 588 = 31 Cr. L. J. 309 =

1929 Cr. C. 130 = A. I. R. 1929 Bom. 309.

—If the pleader appearing for the accused is asked whether he wishes to cross-examine the witnesses, the Magistrate should give adequate reasons.

Under S. 256 read with S. 72 of the amendment of 1923 where the accused is represented by a vakil from the outset, he may generally be asked if he wishes to cross-examine forthwith, for the simple reason that the accused will not be prejudiced and it is convenient to arrange a date for the subsequent attendance of the prosecution witnesses before they disperse. If, however, he is asked forthwith, with a view to recalling the witness forthwith fuller reasons will be required. If an accused is not represented by a vakil, reason must be shown for not postponing the question to the next hearing by which time he can have consulted a vakil and the omission to give reasons is an irregularity not curable under S. 537. A. I. R. 1926 Lah. 155, Diss.; 25 Mad. 61 (P. C.), Rel. on. (*Jackson, J.*) **RAJU ACHARI, In re.**

50 Mad. 740 = 24 M. L. W. 649 =

99 I. C. 44 = 38 M. L. T. 141 = 28 Cr. L. J. 12 =

7 A. I. Cr. R. 211 = A. I. R. 1927 Mad. 78 =

51 M. L. J. 687.

—The provision contained in S. 256 is not mandatory, but merely directory and the irregularity can be cured under S. 537, provided that there has been no consequent failure of justice and where it is clear that the omission to record the reasons has not caused any prejudice to the accused, the trial is not illegal. (*Shadi Lal, C.J.*) **MT. GHASITI v. KING-EMPEROR.**

6 Lah. 554 = 27 Cr. L. J. 408 = 27 P. L. R. 85 =

93 I. C. 72 = A. I. R. 1926 Lah. 155.

—Though S. 537 of the Code could in no circumstances be applied to a case where a Magistrate has infringed the provisions of S. 256, yet the accused must be held to have been prejudiced if the Magistrate, without assigning any reason for departing from the normal procedure has not allowed him the privilege to which he was entitled under S. 256. (*Campbell, J.*) **PHUMAN SINGH v. CROWN.**

7 L. L. J. 114 =

26 Cr. L. J. 1158 = 26 P. L. R. 460 =

88 I. G. 518 = A. I. R. 1925 Lah. 339.

**—S. 256—"Remaining witnesses."**

—"Remaining witnesses" may not be present when application is made for their examination, but applicant cannot insist on an adjournment for their examination.

A Magistrate held an enquiry and committed the accused to the Sessions on a charge of bigamy. Owing to the amendment of the Cr. P. Code, the offence of bigamy ceased to be exclusively triable by the Court of Sessions and the case was sent back to the trying Magistrate for disposal. The prosecution witnesses, who had been examined and cross-examined, were then re-called and cross-examined again. The complainant

**CR. P. CODE (1898), S. 256—"Remaining witnesses"**

then asked that the evidence of seven prosecution witnesses might be taken. The witnesses were not present but some of the witnesses had, as a matter of fact, been summoned but had not attended. With regard to others an application for witness summonses had been granted.

*Held*, that the witnesses were remaining witnesses. But the complainant had no right to insist on the examination of witnesses for whose evidence a postponement would have been necessary. (*Kennedy, J. C. and Aston, A. J. C.*) *ALI SHER v. MIR MAHOMED*.

87 I. C. 110 = 26 Cr. L. J. 958 =  
A. I. R. 1925 Sind 315.

**—S. 256—Right of accused.**

—Even if a warrant case is tried summarily, the provisions of S. 256 apply and after the prosecution case is closed, the accused is entitled to have further time for producing his evidence. (*Percival, J. C., and Rupchand, A. J. C.*) *SHIDU v. EMPEROR*.

124 I. C. 370 = 31 Cr. L. J. 683 = 24 S. L. R. 336 =  
1930 Cr. C. 529 = A. I. R. 1930 Sind 146.

**—S. 256—Right of cross-examination.**

—In a warrant case until the stage provided for in S. 256 is reached the accused has no right to cross-examine and consequently the evidence of a witness given before framing of the charge is not admissible under S. 33. 8 C. W. N. 388, Ref. (*Cuming and Lort Williams, J. J.*) *EMPEROR v. C. A. MATHEWS*.  
125 I. C. 281 = 31 Cr. L. J. 809 =  
1929 Cr. C. 669 = A. I. R. 1929 Cal. 822.

—*Failure to cross-examine one of the witnesses who had been present, by the accused, does not vitiate the trial.*

The accused themselves put in their list of the prosecution witnesses whom they wished to cross-examine again after the charge was framed but eventually they did not examine S, one of such witnesses. At one of the hearings S was present in the Court and was examined in another case between the same parties but no steps were taken to cross-examine him. Further the accused did not protest against the examination of defence witnesses when it was begun.

*Held*, that it could be inferred from these circumstances that the accused dispensed with the cross-examination of S and that the trial was not vitiated by reason of the failure to give the accused an opportunity to cross-examine S after the charge was framed. (*Reilly, J.*) *PUBLIC PROSECUTOR, MADRAS v. CHOCKALINGA AMBALAM*.  
52 Mad. 355 =  
29 M. L. W. 108 = 1929 M. W. N. 60 =  
2 M. Cr. C. 1 = 118 I. C. 274 = 30 Cr. L. J. 908 =  
A. I. R. 1929 Mad. 201 = 56 M. L. J. 216.

—A person proceeded against under S. 110 has no right to further cross-examine the prosecution witnesses under S. 256. 1 P. R. 1916 Cr.; 35 Cal. 243, Foll. (*Shadi Lal, C. J.*) *BIJA v. EMPEROR*.  
99 I. C. 1039 = 8 Lah. 265 = 28 P. L. R. 438 =  
28 Cr. L. J. 239 = A. I. R. 1927 Lah. 470.

—The provisions of S. 256 are imperative and the accused has a right to be given an opportunity of further cross-examining the prosecution witnesses, if he so desires. 11 P. R. 1914 (Cr.), Foll.; 26 I. C. 309, not Foll. (*Abdul Qadir, J.*) *MAHAN SINGH v. EMPEROR*.  
72 I. C. 371 = 24 Cr. L. J. 371 =  
9 P. W. B. Cr. 1923 = A. I. R. 1924 Lah. 215.

—Even before charge is framed an accused is entitled to cross-examine the witnesses for the prosecution. Refusal to allow such cross-examination is in contravention of the law and is illegal. (*Wallace, J.*) *MUTHIAH CHETTY, In re*.  
81 I. C. 44 = 19 M. L. W. 391 =  
25 Cr. L. J. 556 = A. I. R. 1924 Mad. 785.

**CR. P. CODE (1898), S. 257—Cost of expenses.**

**—S. 256—Right of defence.**

—Where the cross-examination took place under directions of the Sessions Judge and the accused had previously declared that he had no witnesses for the defence. *Held*, the accused had no right to produce his defence. (*Dalal, J.*) *MUSTAQA HUSAIN v. EMPEROR*.

5 L. R. A. Cr. 92 = A. I. R. 1924 All. 673.

**—S. 257—Adjournment.**

—Where the accused informed the Court that the witness summoned by him was ill and asked for a postponement in order to enable him to produce the witness.

*Held*, the application should not have been refused on the ground that the petitioner had not produced a medical certificate to show that the witness was actually ill. (*Newbould and Suhrwardy, J. J.*) *MIHIR LAL ROY v. EMPEROR*.  
72 I. C. 370 = 24 Cr. L. J. 370 =  
A. I. R. 1924 Cal. 534.

**—S. 257—Application for process.**

—S. 257 allows an accused to summon witnesses for the purpose of cross-examination, but it does not mean that the accused must necessarily state in his application for process whether he wants the witnesses for examination or for cross-examination. It is for the Magistrate to enquire into the accused's purpose if he thinks the application may be vexatious, and, therefore, where the Magistrate has issued the process, he is not justified in refusing to allow the witnesses to be dealt with for the purpose for which the accused wanted them to be summoned. (*Wallace, J.*) *KAILE LAKSHMAYYA v. KING-EMPEROR*.  
24 M. L. W. 751 =  
99 I. C. 64 = 7 A. I. Cr. R. 195 = 28 Cr. L. J. 32 =  
A. I. R. 1927 Mad. 129.

**—S. 257—Attendance of witness.**

—Where an order has been made for the issue of summons on the accused's witnesses that order should be carried out, but if through some mistake or other the order is not carried out, the accused has good ground for complaint that he had not been afforded an opportunity to produce his witnesses before the Court. (*C. C. Ghose and Duval, J. J.*) *UPENDRA NATH JANA v. JOGENDRA NATH MANA*.  
27 Cr. L. J. 841 =  
95 I. C. 761 = A. I. R. 1926 Cal. 1088.

—As a general proposition it should be considered that once a Magistrate has given orders that a certain witness should be called, he should take such steps as may be necessary and possible to enforce his attendance but it cannot be suggested that in no case it is possible for the Magistrate, if he comes to the conclusion that the attendance of the witness is not really necessary, to dispense with that person's attendance. (*Bucknill, J.*) *RAMSAKAL RAI v. EMPEROR*.  
26 Cr. L. J. 1627 =  
90 I. C. 923 = A. I. R. 1926 Pat. 139.

**—S. 257—Cost of expenses.**

—*In warrant cases the cost of causing the attendance of witnesses is usually borne by the Crown.*

While the Court is fully justified in declining to accede to request which would amount to an abuse of process of the Court, it should at the same time be careful not to do any act which might hamper the accused in his defence. In a trial of an accused under S. 500, after charges had been framed against him, he applied to the Court to issue summonses to 19 witnesses. The Magistrate disallowed the six witnesses and ordered that the remaining could be summoned provided he paid the necessary process fees and expenses.

*Held*, that the order directing the deposit of expenses was not right because in warrant cases the usual rule is that the costs of causing the attendance of an accused person's witnesses are usually borne by the Crown and no adequate reason had been assigned for a departure

**CR. P. CODE (1898), S. 257—Cost of expenses.**

from the usual rule in this case. (*Broadway, J.*)  
*HABIB v. MEHDI HUSSAIN.* 108 I. C. 907 =  
 10 A. I. Cr. R. 87 = 29 Cr. L. J. 459 (Lah.).

**—S. 257—Costs of witnesses.**

—Although under Sub-Cl. 2, S. 257, a Magistrate may, before summoning any witness on the application of the accused require that his reasonable expenses be deposited in Court, still where the witnesses have in fact been already summoned at Government expenses and are actually present in the Court, the Magistrate is not justified in refusing to allow them to be cross-examined unless the accused paid their expenses. (*Addison, J.*) *EMPEROR v. SADHU SINGH.* 115 I. C. 76 =  
 30 Cr. L. J. 380 = 1929 Cr. C. 152 =  
 A. I. R. 1929 Lah. 578.

—If court thinks it to be vexatious or meant to defeat or delay ends of justice, it may refuse to summon any of the witnesses but it cannot order accused to pay for their costs.

The ordinary procedure in warrant cases is that the costs of causing the attendance of accused's necessary witnesses is usually borne by Government. The Magistrate has no doubt authority to depart from this usual practice, but there should be strong and cogent reasons for making the departure. Where the Magistrate finds that the accused has given a long list of witnesses to defeat or delay the ends of justice, he may decline to compel their attendance, under sub-S. (1), but at the same time he must be careful not to do any act which might hamper the accused in his defence. The Court should, in a case of this kind, adopt a reasonable course which would, while avoiding any hardship on either side, promote the ends of justice. (*Shadi Lal, C. J.*) *SAIVOD HABIB v. EMPEROR* 117 I. C. 667 =  
 30 Cr. L. J. 814 = A. I. R. 1929 Lah. 23.

—A Court ordering a party to deposit the travelling allowance of a witness should state the amount of the travelling allowance to be deposited. (*Kulwant Sahay, J.*) *GOURI SHANKER v. THE COLLECTOR OF MUZAFFERPUR.* 87 I. C. 421 = 6 P. L. T. 215 =  
 3 Pat. L. R. Cr. 127 = 26 Cr. L. J. 965 =  
 A. I. R. 1925 Pat. 553.

**S. 257—Dictating terms.**

—Once a summons has been issued and the witness is before the Court, even in a summons case the principle of S. 257 applies and there is no jurisdiction in the Court to dictate to the accused the terms upon which the examination of the witness shall be conducted. If the accused wishes to put questions in cross examination the Magistrate is bound to allow it. (*Mullick, J.*) *RAMESHWAR SAHU v. EMPEROR.* 107 I. C. 846 =  
 29 Cr. L. J. 308 = 10 A. I. Cr. R. 48 =  
 A. I. R. 1928 Pat. 253.

**—S. 257—Discretion.**

—A Magistrate has a large discretion under S. 257. When, however, the accused clearly explains that he wanted an adjournment because his vakil was ill and if the witnesses are subsequently present there is no reason for not letting them be cross-examined. (*Jackson, J.*) *SADAYAN CHETTI v. EMPEROR.* 124 I. C. 606 =  
 1930 Cr. C. 536 = A. I. R. 1930 Mad. 632.

**—S. 257—Examination on Commission.**

The inconvenience and expense to the State entailed by the conveyance of three convicts from Coimbatore to Calicut was held to be not so serious that application for the attendance of these witnesses should be deemed to be made for the purpose of vexation or delay or defeating the ends of justice. Their examination on commission was held to be an irregularity leading naturally to failure of justice though accused sent interrogatories at the commission. (*Ayling and Odgers, J.J.*)

**CR. P. CODE (1898), S. 257—Provisions mandatory.**

*ARVALI POKKER In re.* 74 I. C. 952 =  
 18 M. L. W. 899 = 1923 M. W. N. 758 =  
 24 Cr. L. J. 840 = A. I. R. 1924 Mad. 243 =  
 45 M. L. J. 305.

**—S. 257—Limitation on number.**

—The Magistrate has no right arbitrarily to limit the number of witnesses to be produced by an accused in his defence, but under S. 257 he can refuse to summon a defence witness on the ground that the application for summoning is made for the purpose of vexation or delay or for defeating the ends of justice. (*Shadi Lal, C. J.*) *YUSUF ALI v. EMPEROR.* 93 I. C. 1039 = 27 Cr. L. J. 543 = A. I. R. 1926 Lah. 454.

**—S. 257—Prosecution witnesses.**

—It is doubtful whether under the Code, it is the duty of the complainant to pay the expenses of his witnesses over again for further cross-examination.

The language of S. 257, seems to imply that it is the accused who applies for re-calling of prosecution witnesses for cross-examination and it is he who should pay the expenses and not the complainant. (*Harrison, J.*) *FAIZ MAHOMED v. NABU.* 106 I. C. 436 =  
 29 Cr. L. J. 20 = 9 A. I. Cr. R. 295 =  
 A. I. R. 1928 Lah. 175.

—Where the case was closed without granting adjournment to accused to cross-examine prosecution witnesses through his pleader, the order was set aside subject to accused paying the expenses: 37 Cal. 236 and 43 Mad. 411, Ref. (*Kinkhede, A. J. C.*) *JAIRAM KUNBI v. EMPEROR.* 101 I. C. 457 =  
 8 A. I. Cr. R. 55 = 28 Cr. L. J. 425 =  
 A. I. R. 1927 Nag. 240.

—Where a witness for the prosecution is examined and cross-examined before charge and leaves for England, and after charge the accused requires him to be cross-examined under S. 257, the Magistrate may act under the provisions of S. 33, Evidence Act. (*Maung Ba, J.*) *NGA BAON v. KING-EMPEROR.* 104 I. C. 637 = 6 Bur. L. J. 114 =  
 9 A. I. Cr. R. 33 = 28 Cr. L. J. 861 =  
 A. I. R. 1927 Rang. 248.

—The accused, even after he has entered upon his defence, is entitled to have the prosecution witnesses summoned for cross-examination, unless the Magistrate considers that such application should be refused on the ground that it was made for the purpose of vexation or delay or for defeating the ends of Justice. If the Magistrate does so consider, the section is imperative that such ground shall be recorded by him in writing. A failure to comply with this provision of law is an illegality which vitiates the trial. (*Newbould and B. B. Ghose, J.J.*) *MANOMOHAN DASLIDAR v. BANKIM BEHARI CHOWDHURY.* 84 I. C. 864 = 51 Cal. 1044 =  
 26 Cr. L. J. 384 = A. I. R. 1925 Cal. 411.

—The accused are entitled to cross examine prosecution witnesses called to the Court under S. 257. The section itself however gives the Magistrate certain powers to refuse an application for the summoning of witnesses under S. 257 whether it is the case of a witness who is desired to be called for the defence or whether it is desired only to cross-examine. The mere fact that an accused's lawyers declined to cross-examine such witnesses or the mere fact that such witnesses were not cross-examined does not compel Court to summon them. (*Buchnill and Macpherson, J.J.*) *AJO MIAN v. EMPEROR.* 92 I. C. 865 = 27 Cr. L. J. 353 =  
 6 P. L. T. 626 = A. I. R. 1925 Pat. 696.

**—S. 257—Provisions mandatory.**

—Provisions are mandatory and no discretion is left to Magistrates.

**CR. P. CODE (1898), S. 257—Provisions mandatory.**

The provisions laid down by S. 257 (2) are mandatory and imperative. When an accused person has entered upon his defence he ought to be allowed every reasonable facility in establishing his defence and the Magistrate is bound to issue any process for enforcing the attendance of a witness required by the accused person, unless the Magistrate is convinced that the accused wants that witness not in the interest of justice but for purpose of vexation and delay or for defeating the ends of justice. Where the Magistrate does not record in writing the grounds on which the application should be refused, the trial is vitiated. The omission to comply with the provisions is an illegality and not a mere irregularity and the defect cannot be cured by S. 537.

But it is competent for the appellate Court to direct the trial Court to comply with the provisions of law as contained in S. 257, where the same has not been done with microscopic exactness; and where the lacuna contained in the procedure of the trial Court is removed the applicant ought not to have any cause of grievance. (*Sen, J.*) **PARBHU v. EMPEROR.** 120 I. C. 123 = 11 L. B. A. Cr. 11 = 30 Cr. L. J. 1155 = 1930 A. L. J. 226 = 13 A. I. Cr. R. 117 = 1929 Cr. C. 642 = A. I. R. 1929 All. 914.

—S. 257 is neither imperative nor exhaustive. (*Odgers and Wallace, J.J.*) **M. P. NARAYANA MENON, In re.** 77 I. C. 481 = 25 Cr. L. J. 401 = A. I. R. 1925 Mad. 106.

—The provision that the Magistrate shall, save in exceptional circumstances, issue process on the defence witnesses is mandatory. The exception arises when the Magistrate considers that the application of the accused should be refused on special ground which must be recorded in writing. The inability or even refusal to pay the costs of the witnesses would not be adequate ground in a warrant case. 3 A. 392, 26 B. 412, 31 M. 131, Ref. (*Macpherson, J.*) **DEBI SINGH v. KING EMPEROR.** 74 I. C. 863 = 5 P. L. T. 112 = 2 Pat. L. R. Cr. 73 = 24 Cr. L. J. 831 = A. I. R. 1924 Pat. 142.

—S. 257—Refusal to examine.

—Where summons was issued to a witness but on the application of the complainant the Magistrate declined to send for and examine him together with certain other witnesses, as they in his opinion appeared to have been included with a view to cause vexation to those witnesses themselves.

*Held*, that though he should not have acted on the representation of the complainant, he was perfectly justified, when the matter was brought to his notice that certain witnesses were cited only for the purpose of causing vexation and delay, in ordering that they should not be compelled to appear in his Court. (*Devadoss, J.*) **SAMINATHA NAYINAN v. KUPPUSWAMI AYYAR.** 110 I. C. 581 = 1 Mad. Cr. C. 149 = 29 Cr. L. J. 725 = A. I. R. 1928 Mad. 652.

—S. 257—Refusal to summon.

—Where the accused was prejudiced by the Magistrate's refusal to summon two material witnesses without recording grounds for such refusal, in contravention of S. 257 the High Court set aside the conviction and directed re-hearing of the case. (*C. C. Ghose and Panton, J.J.*) **ABDUL JABBAR v. EMPEROR.** 76 I. C. 1030 = 25 Cr. L. J. 310 = A. I. R. 1925 Cal. 80.

—S. 257—Revision.

—If a good case was made out that the Magistrate's refusal was outside the limits of reasonable discretion, the High Court should and would interfere. The fact that it might perhaps have been possible from a cross-examination of those witnesses to have extracted from

**CR. P. CODE (1898), S. 259—Adjournment costs.**

them something which might have been of advantage to the accused is not sufficient, but it must appear in fact that there was matter to be obtained from the witnesses sought to be called for cross-examination which would have materially affected the result of the trial. (*Bucknill and Macpherson, J.J.*) **AJO MIAN v. EMPEROR.**

92 I. C. 865 = 6 P. L. T. 626 = 27 Cr. L. J. 353 = A. I. R. 1925 Pat. 696.

—Where accused or his mukhtear did not apply for further process but did not expressly give up witnesses nor argued the case, the High Court in revision ordered further opportunity to be given. (*Buckland and Cuning, J.J.*) **PONTHIRAM JOAB v. EMPEROR.**

76 I. C. 965 = 38 C. L. J. 285 = 25 Cr. L. J. 293 = A. I. R. 1924 Cal. 196.

—S. 257—Warrant case treated as summons case.

—In a case tried as a warrant case under S. 323, I. P. Code some of the prosecution witnesses were cross-examined, accused reserving his right of cross-examining the complainant and a charge was framed against the accused. At this stage, the Magistrate ordered the case to be treated as one under S. 352 I. P. Code that is to say as a summons case and the accused were refused permission to further cross examine the prosecution witness.

*Held*, the order of the Court was unjustifiable and the accused must be allowed to cross-examine all the prosecution witnesses that they may wish to. (*Dalip Singh, J.*) **DEVI DAYAL v. MT. RATAM DEVI.**

29 Cr. L. J. 235 = 107 I. C. 285 = A. I. R. 1928 Lah. 294.

—S. 258—Absence of complainant.

—A complaint was lodged against the accused charging him with having shoe-beating the complainant. A charge was framed against the accused and a date was fixed for the complainant to attend with his witnesses for cross-examination. The complainant and also his witnesses failed to attend. On their failure to appear the Magistrate passed an order discharging the accused purporting to act under S. 259, being unaware as to what other course he should have adopted.

*Held*, that there were two courses open to him, firstly to adjourn the case; or secondly, if he felt that there were no good grounds for adjourning the case to find the accused "not guilty" and acquit him, acting under S. 258 (1). (*Boys, J.*) **EMPEROR v. NAZIR HUSAIN.**

1930 Cr. C. 1017 = A. I. R. 1930 All. 795.

—An order of acquittal in a warrant case can be passed only under S. 258 of the Code, that is, on a finding that the accused is not guilty. The accused cannot be acquitted merely because the complainant is absent. (*Wazir Hasan, A. J. C.*) **RAM BAKSH v. RAI JAIRAM DAS.** 84 I. C. 328 = 27 O. C. 316 = 26 Cr. L. J. 264 = A. I. R. 1925 Oudh 306.

—S. 258—Finding.

—To apply the provisions of S. 258 the Magistrate must find the accused not guilty. (*Dalal, J. C. and Neave, A. J. C.*) **EMPEROR v. GODHAN.** 84 I. C. 944 = 26 Cr. L. J. 400 = A. I. R. 1925 Oudh 314.

—S. 258—Interpretation.

—The finding "not guilty" is a technical expression and not necessarily equivalent to a finding that the accused did not commit the acts charged. (*Boys, J.*) **EMPEROR v. NAZIR HUSAIN.** 1930 Cr. C. 1017 = A. I. R. 1930 All. 795.

—S. 259—Adjournment costs.

—After the framing of a charge in a non-compoundable warrant case the position of the complainant is reduced to that of a witness, and he cannot be ordered to pay the costs of an adjournment occasioned by his failure to attend on any particular date of hearing.



**CR. P. CODE (1898), S. 259—Adjournment costs.**

(*Zafar Ali, J.*) NABI BAKSH *v.* KING-EMPEROR.  
76 I. C. 23=25 Cr. L. J. 87=A. I. R. 1924 Lah. 627.  
—S. 259—After charge.

—After a charge is framed the provisions of S. 259 will not apply. (*Dalal, J. C. and Neave, A. J. C.*)  
EMPEROR *v.* GODHAN. 84 I. C. 944=  
26 Cr. L. J. 400=A. I. R. 1925 Oudh 314.

—There can be no discharge under S. 259 after a charge has been framed. (*Wazir Hasan, A. J. C.*)  
RAM BAKSH *v.* JAIRAM DAS. 84 I. C. 328=  
27 O. C. 316=26 Cr. L. J. 264=  
A. I. R. 1925 Oudh 306.

**—S. 259—Death of complainant.**

—In a case of a non-cognizable offence instituted upon a complaint, the axiom of *actio personalis moritur cum persona*, in civil law confined to torts, does not apply, and the trying Magistrate has discretion in proper cases to allow the complaint to continue by a proper and fit complaint, if the latter is willing. 20 C. W. N. 862, Appl. (*Marten and Madgwick, J.J.*) MAHOMED AZAM *v.* EMPEROR. 28 Bom. L. R. 288=  
27 Cr. L. J. 491=93 I. C. 891=  
A. I. R. 1926 Bom. 178.

**—S. 259—Delay to appear.**

—Where a case was fixed at 7 A. M. after the prosecution had been closed and the pleader for complainant was present but the complainant arrived a little late.

*Held*, that the order of Magistrate dismissing complaint was revisable. (*Krishnan, J.*) (OTTAVU) SUBBIAH *v.* INDUHOTI OBLAH. 98 I. C. 607=  
27 Cr. L. J. 1391=A. I. R. 1927 Mad. 139.

**—S. 259—Fresh complaint.**

—A complaint dismissed under S. 259 can be revived on a fresh complaint as it is not an acquittal; 28 Mad. 310; 29 Mad. 126 (F. B.) and 28 Cal. 652, (F. B.) Foll. Where the original complaint was entertained by Magistrate A only because another Magistrate D who had the jurisdiction in the place was on leave.

*Held*, that a subsequent complaint could be taken up by Magistrate D. (*Baker, J. C.*) ASHGAR ALI *v.* AKBAR ALI. 87 I. C. 928=26 Cr. L. J. 1040=  
A. I. R. 1925 Nag. 432.

**—S. 259—Non-compoundable case.**

—In a case under Ss. 421 and 424, Penal Code, the complainant died before the date of hearing. The Magistrate proceeded with the trial.

*Held*, that the offences being non-compoundable, though non-cognizable, he was right in the procedure he adopted. (*Maung Ba, J.*) U MAUNG GAING *v.* U PO SIN. 6 Rang. 664=30 Cr. L. J. 345=  
114 I. C. 681=A. I. R. 1929 Rang. 14.

—Where a person is prosecuted by police for a non-compoundable offence the case should not be dismissed on the ground of want of prosecution. (*Stuart, C. J.*) EMPEROR *v.* MUNNU SINGH. 1 L. C. 337=104 I. C. 256=28 Cr. L. J. 816=  
A. I. R. 1927 Oudh 352.

—A Magistrate must proceed with the trial of a non-compoundable warrant case after the framing of the charge and conclude it regardless of the fact whether the complainant does or does not attend in a non-compoundable warrant case. (*Zafar Ali, J.*) NABI BAKSH *v.* EMPEROR. 76 I. C. 23=  
25 Cr. L. J. 87=A. I. R. 1924 Lah. 627.

**—S. 259—Resumption of trial.**

—No doubt a Court must begin trial *de novo*, if, after discharging accused under S. 259, it takes up the complaint again but where Court discharged accused under S. 259, but subsequently proceeded with the trial without taking sworn statement the accused not being

**CR. P. CODE (1898), S. 259—Grave case.**

prejudiced the trial was not illegal. (*Jackson, J.*) VENKATASUBBA AIYYAR *v.* SOUNDARARAJA AYYANGAR. 1929 M. W. N. 184=2 M. Cr. C. 89=  
115 I. C. 64=30 Cr. L. J. 403=  
12 A. I. Cr. R. 371=A. I. R. 1929 Mad. 260.

**—S. 260—Condition precedent.**

—Before the Magistrate can assume jurisdiction to try the accused in a summary form, he has to satisfy himself that the property in respect of which he is trying the accused is less than Rs. 50, in value. (*Ross, J.*) BRIJ NANDAN PANDAY *v.* KING-EMPEROR. 81 I. C. 33=6 P. L. T. 114=25 Cr. L. J. 545=  
A. I. R. 1922 Pat. 227.

**—S. 260—Contempt of Court.**

—The High Court as a Court of Record has jurisdiction to deal summarily with contempts of Courts, 10 Cal. 109 (P.C.) 29 All. 95 (P.C.), Foll. (*Broadway, Addison and Coldstream, J.J.*) HABIB, *In the matter of*. 6 Lah. 528=26 P. L. R. 772=26 Cr. L. J. 1409=  
89 I. C. 833=A. I. R. 1926 Lah. 1 (S.B.).

**—S. 260—Duty of court.**

—It is not right for a Court to minimise an offence by shutting its eyes to a graver offence which on the facts found by it has been committed, and to refrain from charging the accused with that offence, and by such abstention to justify itself in trying the case summarily. (*Boys, J.*) MEWALAL *v.* EMPEROR. 116 I. C. 789=51 All. 540=1929 A.L.J. 340=  
10 L. B. A. Cr. 57=11 A. I. Cr. R. 402=  
30 Cr. L. J. 686=A. I. R. 1929 All. 349.

**—S. 260—Erroneous procedure.**

—Where an offence as disclosed was not summarily triable and the Court adopted the summary procedure the High Court can set aside the conviction and remand the case for retrial. (*Cuming, J.*) TOPZAL HOSSAIN *v.* HUNT. 1930 Cr. C. 1111=34 C. W. N. 556=  
128 I. C. 208=A. I. R. 1930 Cal. 711.

**—S. 260—Excise cases.**

—An offence under S. 60 of the Excise Act being punishable with imprisonment for one year cannot be tried summarily, and if it is so tried the proceedings are void. (*Dalal, J. C.*) BHIKHA *v.* EMPEROR. 86 I. C. 432=28 O. C. 123=26 Cr. L. J. 800=  
A. I. R. 1925 Oudh 627.

**—S. 260—Exhaustive evidence.**

—A summary trial is meant to be a summary trial and where owing to the bulk of evidence or the complication of the matters or owing to the difficult nature of points of issue, it is not possible for the Magistrate to keep in his mind without taking exhaustive notes the evidence of important facts then even though the offence may be technical and be punishable only with a slight sentence, the Magistrate will not be acting properly if he applies the summary procedure to such a trial and should he in so important a case apply the summary procedure, then the appellate Court or Revisional Court will direct the re-trial of the case in more appropriate form. (*Kennedy, J. C. and Lobo, A. J. C.*) RAHIMTULLAH *v.* EMPEROR. 87 I. C. 914=19 S. L. R. 136=26 Cr. L. J. 1026=  
A. I. R. 1925 Sind 284.

**—S. 260—Grave case.**

—Summary trial in some case may be legal but not desirable.

It is manifest that a summary trial is intended to be directed towards offences which are appropriate for such form of trial. While it may be legal to use that procedure in a particular case, it does not follow that it is desirable. An offence which may seem very grave when regarded only from the point of view of the section applicable may really be, in the light of its parti-



**CR. P. CODE (1898), S. 260—Grave case.**

cular circumstances, of a trivial nature. On the other hand the consequences following upon conviction of what is in itself a trivial offence may be so grave as to render a summary trial unsuitable. In a case under S. 411, I. P. Code tried summarily the accused, had already been bound under S. 109, Cr. P. Code, in a personal bond with one surety. He was also a previous convict. At the time when the case, tried summarily, was sent up by the police they knew that they were not only making a charge of theft, but that the sentence should be very seriously enhanced owing to the previous convictions, and they knew that the consequences of the accused being under a bond were certain to follow.

*Held*, that it was clearly a case that required a full hearing and record. (*Boys and Sen, J.J.*) **EMPEROR v. BASHIR.**

115 I. C. 614 = 10 L. R. A. Cr. 73 =  
11 A. I. Cr. R. 503 = 30 Cr. L. J. 505 =  
A. I. R. 1929 All. 267,

**—S. 260—Joinder of charges.**

Where on a charge under Ss. 147, 323 and 506, Penal Code, the Magistrate issued process and tried the accused summarily but convicted them only under S. 323.

*Held*, that the proceedings of the Magistrate were void as the case fell under S. 530 (g), Cr. P. Code. It is mainly the offence, with regard to which process is issued, for which the accused is tried and it could not be said that the accused was not tried under S. 147. 27 C.W.N. 148, Foll. (*Fawcett and Mirza, J.J.*) **RAM SADU v. EMPEROR.**

52 Bom. 254 =  
30 Bom. L. R. 371 = 10 A. I. Cr. R. 191 =  
29 Cr. L. J. 492 = 109 I. C. 220 =  
A. I. R. 1928 Bom. 142.

**—S. 260—Object.**

There is nothing in the Code which requires a Magistrate in a summary case to place upon the record the notes of the evidence or a full statement of the examination of the accused persons. The whole object of entrusting qualified Magistrates to try certain cases summarily will be defeated if Courts in revision lay down rules of procedure for the hearing of summary cases which would in effect provide a procedure, similar to the procedure required in cases which are not tried summarily. (*Stuart, C. J.*) **BHAWANI BHIK v. KING-EMPEROR.**

3 O. W. N. 946 = 99 I. C. 108 =  
28 Cr. L. J. 76 = A. I. R. 1927 Oudh 42.

**—S. 260—Police report.**

There is nothing improper if the Magistrate is influenced by the police report in directing a summary trial. (*Ashworth, J.*) **NAUBAT v. EMPEROR.**

8 L. R. A. Cr. 11 = 28 Cr. L. J. 140 =  
99 I. C. 348 = 7 A. I. Cr. R. 130 =  
A. I. R. 1927 All. 136.

**—S. 260—Procedure.**

An offence falling under S. 211, Penal Code, cannot be tried summarily. (*Cuming, J.*) **TOPZAI HOSSAIN v. H. C. HUNT.**

1930 Cr. C. 1111 =  
34 C. W. N. 556 = 128 I. C. 208 =  
A. I. R. 1930 Cal. 711.

*Offences triable summarily and otherwise joined.* A complaint was lodged of an offence, as one under S. 456, I. P. Code. An investigation was held and the police sent the accused up for trial upon charges under Ss. 457 and 354, Indian Penal Code. While recording the evidence, the Magistrate disbelieved the whole story, tried the accused summarily under S. 457 and acquitted him.

*Held*, that though it would have been preferable had the Magistrate proceeded regularly and tried the accused upon the two charges upon which he was sent up for

**CR. P. CODE (1898), S. 261—Recording of evidence.**

trial, yet it cannot be said that the course followed by the Magistrate is one which requires that as a matter of course the case should be re-tried or that by reason of that course there has been a miscarriage of justice requiring that, the High Court should interfere. (*Cuming and Graham, J.J.*) **GOVERNMENT OF ASSAM v. KANTIA CHUTIA.**

31 C. W. N. 583 = 103 I. C. 553 =  
28 Cr. L. J. 697 = A. I. R. 1927 Cal. 505.

In a case tried summarily the mere fact that there is an omission on the Magistrate's part to ask the accused whether he wants any of the prosecution witnesses for further cross-examination is not sufficient to make the proceedings and the trial illegal. (*Fawcett and Madgavkar, J.J.*) **UMAJI KRISHNAJI v. EMPEROR.**

28 Bom. L. R. 95 = 27 Cr. L. J. 431 =  
93 I. C. 159 = A. I. R. 1926 Bom. 226.

The Magistrate should ordinarily restrict summary trial to simple cases but the mere fact that the case involves a question of title is not in itself sufficient ground for holding that the case is too complicated for summary trial. Nor is there any law forbidding the summary trial of public servants. (*Pullan, A. J. C.*) **SUKHPUT LAL v. EMPEROR.**

89 I. C. 972 =  
26 Cr. L. J. 1452 = A. I. R. 1926 Oudh 63.

**—S. 260—Several accused.**

The mere fact of there being a large number of accused is not a conclusive reason against trying a case in the summary method. (*Ashworth, J.*) **NAUBAT v. EMPEROR.**

99 I. C. 348 = 8 L. R. A. Cr. 11 =  
28 Cr. L. J. 140 = 7 A. I. Cr. R. 130 =  
A. I. R. 1927 All. 136.

Where the complaint discloses or alleges the commission of an offence, in the case of at least one of the accused punishable under S. 144 I.P.C. the case is not triable summarily. (*Teimon and Ghose, J.J.*) **CHANDRA MOHAN DAS v. EMPEROR.**

77 I. C. 992 =  
27 C. W. N. 148 = 25 Cr. L. J. 528.

**—S. 260—Summary trial.**

Where an offence as disclosed was not summarily triable and the Court adopted the summary procedure the High Court set aside the conviction and remanded the case for retrial. (*Cuming, J.*) **TOPZAI HOSSAIN v. H. C. HUNT.**

1930 Cr. C. 1111 =  
34 C. W. N. 556 = 128 I. C. 208 =  
A. I. R. 1930 Cal. 711.

**—S. 260—Theft.**

In Sind where cattle-thieving is so prevalent and the offences of cattle theft so often go unpunished, it is necessary that deterrent sentences should be imposed, and a Court which decides to try such a case summarily is not exercising its discretion in a proper manner. (*Percival, J. C. and Aston, A. J. C.*) **AMIR BUX v. EMPEROR.**

105 I. C. 671 = 9 A. I. Cr. R. 153 =  
28 Cr. L. J. 959 = A. I. R. 1927 Sind 257.

**—S. 261—Recording of evidence.**

Section 355 does not apply to offences coming under S. 261, cl. (b). (*Fawcett and Pathkar, J.J.*) **CHIMANLAL MANEKLAL v. EMPEROR.**

102 I. C. 345 = 29 Bom. L. R. 710 =  
28 Cr. L. J. 587 = 8 A. I. Cr. R. 168 =  
A. I. R. 1927 Bom. 426.

In a case falling under S. 261 (b) in which an appeal lies, even if rough notes of evidence are taken by the Magistrate for the purpose of embodying the substance of the evidence in the judgment, they need not form part of the record under cl. (2) of S. 264. A. I. R. 1921 Cal. 165 not Foll.; A. I. R. 1925 Sind 284, Appr. (*Fawcett and Pathkar, J.J.*) **CHIMANLAL MANEKLAL v. EMPEROR.**

102 I. C. 345 = 29 Bom. L. R. 710 =  
28 Cr. L. J. 587 = 8 A. I. Cr. R. 168 =  
A. I. R. 1927 Bom. 426.

## CR. P. CODE (1898).

## —S. 262—Sentence.

—Under S. 262, in summary trials, the maximum punishment is three months, in the case of any conviction. (*May Oung, J.*) *NGA SEN BA v. EMPEROR.*

76 I.C. 704=25 Cr. L. J. 240=2 Bur. L. J. 150.

## —S. 262—Summons case.

—There is no difference between summary trials of summons cases and the ordinary trials of summons cases. (*Schwabe, C. J. Oldfield, Ramessam, Devadoss and Coleridge, J.J.*) *DHARAM SINGH v. EMPEROR.*

74 I. C. 959=46 Mad. 766=1923 M. W. N. 893=18 M. L. W. 612=24 Cr. L. J. 847=

A. I. R. 1924 Mad. 30=45 M. L. J. 230 (F.B.).

## —S. 263—Appealable case.

—Where in an appealable case in a summary trial the procedure as laid down in Ss. 262 to 264 was exactly carried out except that a formal charge was not framed, *Held*, that the mere failure to frame a charge does not vitiate the conviction. A. I. R. 1924 Cal. 63, Dist.

There is considerable doubt as to whether there is any provision in law requiring the framing of a charge under S. 264 in a summary trial, whether an appealable sentence is passed or not; for S. 264 states exactly what the record shall consist of, and that is a judgment embodying the substance of the evidence and the particulars set out in S. 263. (*Sukrawardy and Duval, J.J.*) *MADHAB CHANDRA SAHA v. EMPEROR.*

98 I. C. 191=53 Cal. 738=27 Cr. L. J. 1295=

A. I. R. 1926 Cal. 1202.

—In cases tried summarily by a Magistrate from which an appeal lies, such Magistrate shall record a judgment embodying the substance of the evidence and also the particulars mentioned in S. 263, but framing of a charge and notes of evidence are not necessary. A.I.R. 1924 Cal. 63, Diss. from. (*Dalal, J.C.*) *KALLU BARI v. EMPEROR.* 89 I. C. 310=26 Cr. L. J. 1334=

A. I. R. 1925 Oudh 722.

—S. 263 applies to cases in which no appeal lies and exempts the Magistrate from framing a formal charge in such cases. But there is no such exemption in a case tried summarily in which, the sentence passed is appealable. (*Newbould and C. C. Ghose, J.J.*) *NATABAR KHAN v. KING-EMPEROR.* 82 I. C. 278=

27 C. W. N. 923=25 Cr. L. J. 1270=

A. I. R. 1924 Cal. 63.

## —S. 263—Examination of accused.

—Where the examination of an accused person is a proper examination as prescribed by S. 342, it is not necessary in a summary trial in a warrant case for the Magistrate to record the examination in detail. A. I. R. 1922 Pat. 5; Ref. (*Kulwant Sahay and Allanson, J.J.*) *PURSOTAM DAS v. KING-EMPEROR.* 106 I. C. 221=

6 Pat. 594=8 P. L. T. 757=28 Cr. L. J. 1037=

A. I. R. 1927 Pat. 369.

—In summary trials the failure to comply with the provisions of S. 342 as to the examination of accused vitiates the trial and the convictions must be set aside. (*Kennedy, J.C. Aston and DeSouza, A. J. C.s.*) *EMPEROR v. NABU.* 90 I. C. 484=20 S. L. R. 34=

26 Cr. L. J. 1554=A. I. R. 1926 Sind 1 (F. B.).

## —S. 263—Interpretation.

—The words "if any" in S. 263 do not limit the obligation imposed on Courts by S. 342, or render it inapplicable to summary trials; they merely have reference to those cases in which owing to the admission and plea of the accused, or owing to the weakness of the evidence called in support of the prosecution, the accused can either be convicted on his own plea, without the taking of evidence, or acquitted on the evidence without the examination referred to in S. 342. (*Kennedy, J.C. Aston and DeSouza, A. J. C.s.*) *EMPEROR v. NABU.*

## CR. P. CODE (1898), S. 263—Notes of evidence.

90 I.C. 434=20 S. L. R. 34=26 Cr. L. J. 1554=

A. I. R. 1926 Sind 1 (F. B.).

## —S. 263—Non-compliance.

—Besides brief summary of evidence if trial ends in conviction concise statement of reasons showing presence of ingredients necessary to complete offence should be given. Where such evidence and reasons are not given order is illegal. 18 Bom. 97 and 10 A. L. J. 251, Foll. (*Agha Haidar, J.*) *ATAM PARKASH v. EMPEROR.*

1930 Cr. C. 593=31 P. L. R. 576=

A. I. R. 1930 Lah. 481.

—Where in a summary trial the Magistrate has not recorded the plea of the accused and his examination as required by cl. (g). S. 263, so also where he has not given a brief statement of the reasons upon which his finding is based as required by Cl. (h) and has not even recorded a finding that the offence is committed, the trial of the case is vitiated. (1885) A. W. N. 213; (1886) A. W. N. 181; (1890) A. W. N. 81 and 10 A. L. J. 251, Ref.; 9 C. W. N. 76 (notes) Foll. (*Walsh, J.*) *MURAT SINGH v. EMPEROR.*

107 I. C. 592=26 A. L. J. 109=9 A.I.Cr. R. 98=

9 L. R. A. Cr. 10=29 Cr. L. J. 265=

A. I. R. 1928 All. 266.

—Omission to comply with cl. (h) of S. 263, i.e., omission to briefly record reasons for finding is a mere irregularity curable under S. 537 where in a non-appealable case it appears that there is clear evidence justifying the conviction. (*Marten and Fawcett, J.J.*) *EMPEROR v. NAMDEO LAKMAN.* 85 I. C. 146=

26 Bom. L. R. 1236=26 Cr. L. J. 466=

A. I. R. 1925 Bom. 138.

## —S. 263—Notes of evidence.

—In a summary trial the Court trying the case summarily is not relieved of the duty of making a précis of the evidence adduced before it. (*Devadoss, J.*) *KAPPAL NADAR v. EMPEROR.* 109 I. C. 600=

29 Cr. L. J. 584=10 A. I. Cr. R. 257=

1 M. Cr. C. 252=A. I. R. 1928 Mad. 928.

—Though the object of a summary procedure is to shorten the course of a trial it is nevertheless incumbent on the Magistrate to put on record sufficient evidence to justify his order.

Where the Magistrate does record the evidence but subsequently destroys the notes, the conviction must be set aside. 27 Cal. 450 and 48 Cal. 280, Foll. (*Banerji, J.*) *ATMA RAM v. EMPEROR.* 99 I. C. 120=

49 All. 131=28 L. R. A. Cr. 9=28 Cr. L. J. 88=

7 A. I. Cr. R. 127=A. I. R. 1927 All. 157.

—The provisions of Ss. 263 and 264, in cases in which these sections are applicable, are not controlled by S. 355.

In cases in which Ss. 263 and 264 are applicable, the Magistrate is perfectly free to take such notes as he pleases, or, if he prefers, to take none at all, and if he takes down any notes for his own use they form no part of the record and are the private property of the Magistrate. A. I. R. 1921 Cal. 165, Diss. from. (*Walsh, Ag. C.J. and Banerji, J.*) *MANTOO TIWARI v. KING-EMPEROR.* 99 I. C. 225=8 L. R. A. Cr. 12=

25 A. L. J. 140=28 Cr. L. J. 97=49 All. 261=

7 A. I. Cr. R. 131=A. I. R. 1927 All. 124.

—Short notes made by Magistrate of the evidence of the witnesses heard by him in the course of the trial held summarily form part of the record and the Magistrate is bound to keep them on the record and not destroy them. 48 Cal. 280, Ref. (*Kinkhede, A. J. C.*) *LAL CHAND v. EMPEROR.* 89 I. C. 974=

26 Cr. L. J. 1454=A. I. R. 1926 Nag. 79.

## CR. P. CODE (1898).

## —S. 263—Reasons for conviction.

—It is true that in a summary trial the judgment need not be a very long and detailed one but it is the duty of the Magistrate to give a brief summary of the evidence and a concise statement of the reasons if the trial ends in a conviction. These safeguards are essential so that in a case of revision the High Court may have sufficient materials on the record before it for arriving at the conclusion as to whether the order of the Magistrate is right or wrong. (*Agha Haidar, J.*)  
MURLIDHAR v. EMPEROR. 127 I. C. 849 =  
31 Punj. L. R. 317.

—Where no reasons whatever for the conviction were recorded as required by S. 263 (*h*).  
*Held*, that the trial was bad. A. I. R. 1923 Mad. 185, Rel. on. (*Findlay, J. C.*) NISAR ALI v. SECRETARY, MUNICIPAL COMMITTEE. 101 I. C. 671 =  
28 Cr. L. J. 495 = 8 A. I. Cr. R. 296 =  
A. I. R. 1927 Nag. 250.

—Honorary Presidency Magistrate should record reasons for conviction. (*Odgers and Wallace, J.J.*)  
THURMAN, *In re*. 81 I. C. 908 = 20 M. L. W. 330 =  
25 Cr. L. J. 1084 = A. I. R. 1924 Mad. 799.

## —S. 263—Re cross-examination.

—In summary trials under S. 263, when no charge is framed, the accused has no right as such to recall the witnesses for the prosecution. (*Fawcett and Madgavkar, J.J.*)  
UMJI KRISHNAJI v. EMPEROR. 93 I. C. 159 = 28 Bom. L. R. 95 = 27 Cr. L. J. 431 =  
A. I. R. 1926 Bom. 226.

## —S. 263—Summary trial.

—The fact found by a Magistrate in a summary trial must clearly show that the offence had been committed and that his record, however meagre, ought to be sufficient to establish the necessary ingredients of the offence of which the accused had been found guilty. 7 P. R. 1887 and 5 P. R. 1889 Cr. Rel. on. (*Tek Chand, J.*)  
DIN MUHAMMAD v. EMPEROR. 111 I. C. 461 =  
10 Lah. 231 = 29 P. L. R. 647 = 29 Cr. L. J. 877 =  
11 A. I. Cr. R. 137 = A. I. R. 1929 Lah. 378.

## —S. 264—Appeal.

—The legislature has laid down that in the case of summary trials the judgment with certain particulars shall be the only record and, therefore, the appellate Court is not justified in looking outside the record in hearing an appeal from the conviction in a summary trial. A. I. R. 1927 Mad. 298 : A. I. R. 1926 Lah. 301 : and A. I. R. 1926 Cal. 1202, Ref. (*Devadoss, J.*)  
CHOKKALINGA PANDARAM v. EMPEROR.

109 I. C. 897 = 29 Cr. L. J. 625 =  
10 A. I. Cr. R. 271 = 28 M. L. W. 394 =  
1 M. Cr. C. 146 = A. I. R. 1928 Mad. 597 =  
55 M. L. J. 117.

## —S. 264—Charge.

—Summary trial, no formal charge need be framed whether the case is appealable or not.

The language of Ss. 264 and 265 when read with S. 262 and 263 makes it clear that in no summary trial whether it be appealable or non-appealable need a formal charge in writing be framed. S. 264 (2) especially when read with the opening words of S. 265, makes it clear that the judgment and the judgment alone, embodying as it does, the substance of the evidence and the particulars mentioned in S. 263, is the self-contained record of the case, and apart from this record, there is no other, and what is more there is no document, which can be defined or described as a portion of a record. A. I. R. 1924 Cal. 68, Diss. (*Harrison, J.*)  
EMPEROR v. SALIG RAM. 94 I. C. 415 = 7 Lah. 303 = 8 L. L. J. 140 =

## CR. P. CODE (1898), S. 264—Substance of evidence.

27 Cr. L. J. 639 = 27 P. L. R. 265 =  
A. I. R. 1926 Lah. 301.

## —S. 264—Findings of fact.

—In summary trials it is all the more important that there should be clear findings on questions of fact because it is only through such findings that the Court of revision can form its own judgment with regard to the legality or otherwise of the proceedings of the Trial Court. (*Wazir Hasan, A. J. C.*)  
EMPEROR v. JAG MOHAN DAS. 75 I. C. 292 = A. I. R. 1924 Oudh 297.

## —S. 264—Notes of evidence.

—The Magistrate's action in destroying his "notes" of the summary trial is not illegal. A. I. R. 1921 Cal. 165, Dist. from. A. I. R. 1927 All. 124, Foll. (*Boys, J.*)  
ISMAIL v. EMPEROR. 101 I. C. 474 =  
49 All. 562 = 25 A. L. J. 346 = 8 L. R. Cr. 78 =  
28 Cr. L. J. 442 = 7 A. I. Cr. R. 487 =  
A. I. R. 1927 All. 480.

—Notes of evidence by presiding Magistrate cannot be called for or consulted by appellate Court to test substance of evidence in judgment. (*Jackson, J.*)  
NAGOOR KANNI NADURA v. SITHU NAICK.

99 I. C. 346 = 25 M. L. W. 43 = 38 M. L. T. 35 =  
1927 M. W. N. 40 = 28 Cr. L. J. 138 =  
A. I. R. 1927 Mad. 298 = 52 M. L. J. 32.

—Where a Magistrate tries a case summarily and does as a matter of fact take rough notes, those rough notes should not be transcribed and attached to the record. (*Kennedy, J. C. and Lobo, A. J. C.*)  
RAHIMTUL-LAH v. EMPEROR. 87 I. C. 914 = 19 S. L. R. 136 =  
26 Cr. L. J. 1026 = A. I. R. 1925 Sind 284.

## —S. 264—Reasons for conviction.

—Where the accused is tried summarily and sentenced to an appealable sentence the Magistrate must write a judgment embodying the substance of the evidence on both sides for example merely saying that the witnesses for prosecution support the statement of the complainant, and that the statement of the witnesses examined by the accused very conflicting, is not enough. 16 O. C. 357, Ref. (*Daniels, A. J. C.*)  
SATIM v. EMPEROR. 72 I. C. 948 = 24 Cr. L. J. 484 =  
A. I. R. 1924 Oudh 167.

## —S. 264—Substance of evidence.

—Judgment containing necessary substance is legal.

The substance of the evidence required by S. 264 is a matter distinct from the facts which may be considered as proved by the evidence and it should be recorded in such a manner that a superior Court acting in appeal or revision may be in a position to judge that there were sufficient materials before the Magistrate to support the conviction. A Magistrate is not bound to record substance of every deposition. He has to state the substance of witnesses' evidence. A judgment when it contains the substance of the evidence, which is sufficient for convicting the accused is a legal judgment. (*Raza, J.*)  
JAMNA PRASAD v. EMPEROR. 116 I. C. 57 =  
6 O. W. N. 45 = 30 Cr. L. J. 557 =  
12 A. I. Cr. R. 437 = A. I. R. 1929 Oudh 151.

—The provisions of S. 264 require that the substance of evidence should be plainly stated and not that the appellate Court should be driven to inferences in order to find out the substance of the evidence and if the failure to observe the conditions thus prejudice the accused, the irregularity is material. (*Fawcett and Mirza, J.J.*)  
NURUBIN SULTAN ADAM v. EMPEROR. 112 I. C. 221 = 30 Bom. L. R. 954 =  
12 A. L. J. 346 = 29 Cr. L. J. 877 =  
A. I. R. 1929 Oudh 151.

## CR. P. CODE (1898).

## S. 265—Intention.

—Judgment signed only by Chairman and omission to sign by all is mere irregularity.

The intention of S. 265 is that by whomsoever the judgment and record may have been written, they shall be signed by all the members present. The words "presiding officer of the Court" do not afford any assistance in the construction of S. 265 and do not show that the judgment may be signed only by the Chairman of the Benches; they are no more than a compendious description of all classes of judicial officers, Magistrates and Judges who have to pronounce judgments. But the failure to comply with a mandatory provision of the Code is not necessarily an illegality and thus where all the members of the Bench sign the register, in which the sentences are embodied, and thus agree in the judgment, their omission to comply with the technical requirements of the law in the fact that the judgment is signed only by the chairman is a mere irregularity which occasions no failure of justice. A.I.R. 1928 Mad. 1172, Doubtful. (*Waller and Cornish, J.J.*) NATHAN v. EMPEROR.

1930 Cr. C. 187 = 53 Mad. 165 = 124 I. C. 501 = 31 Cr. L. J. 715 = 2 M. Cr. C. 222 = 30 M.L.W. 883 = 1930 M. W. N. 78 = A. I. R. 1930 Mad. 187 = 57 M. L. J. 763.

## —S. 265—Signature in copies of judgment.

—If, when copies of the judgments of Bench Magistrates are taken, the signature of the presiding Magistrate alone is copied omitting the signatures of the other Magistrates, such copies are incorrect (Obiter). (*Sundaram Chetty, J.*) BRAHMAIAH v. EMPEROR.

1930 M. W. N. 787 = 32 M. L. W. 280 = 1930 Cr. C. 1123 = A. I. R. 1930 Mad. 867 = 59 M. L. J. 674

## —S. 265—Signing of judgment.

—A judgment of a Bench of Magistrates has to be signed as required by law and the requirements of public policy necessitate the writing of the full name of the Magistrate who signs the judgment and the mere putting in of the initials is not a sufficient compliance with the mandatory provisions of S. 265 of the Code. Where one of the three Magistrates of a Bench merely initials instead of signing his name, the irregularity cannot be cured by S. 537. 25 Cal. 911; 32 I. C. 393; 23 Cal. 896 and A. I. R. 1926 Mad. 827, Rel. on. (*Sundaram Chetty, J.*) BRAHMAIAH v. EMPEROR.

1930 M. W. N. 787 = 32 M. L. W. 280 = 1930 Cr. C. 1123 = A. I. R. 1930 Mad. 867 = 59 M. L. J. 674.

—If the record is prepared by a member of the Bench and not by the presiding officer, it shall have to be signed by each member of the Bench taking part in the proceedings, as required by S. 265 (2). But where a judgment of a Bench is prepared by the presiding officer, it is sufficient if he alone signs it (*Dwadoss, J.*) RAMAKOTIAH v. SUBBA RAO. 112 I. C. 61 = 28 M. L. W. 498 = 1928 M. W. N. 785 = 1 M. Cr. C. 298 = 29 Cr. L. J. 973 = 52 Mad. 237 = 11 A. I. Cr. R. 265 = A. I. R. 1928 Mad. 1172 = 55 M. L. J. 576.

—S. 266—Judicial Commissioner.

—An appeal lies from the decision of a Judge of the Court of the Judicial Commissioner of Sind holding a sessions trial where the Judge has accepted the finding of the Jury. For purposes of appeal such trial is a sessions trial notwithstanding the amendment of S. 266. (*Kincaid, J. C. Kennedy, Aston, Rupchand Bilaram and Lobo, A. J. C.s.*) HAJI KHUDBUX v. EMPEROR. 85 I. C. 706 = 19 S. L. R. 309 = 26 Cr. L. J. 562 = A. I. R. 1925 Sind 249 (F. B.).

—S. 268—Trial by assessors.

## CR. P. CODE (1898), S. 269—Alteration of charge.

—Where a Sessions Judge is trying a case with the aid of assessors it is the Judge plus the assessors who constitute the Court, not the Judge alone and where therefore the Sessions Judge has tried a case with the aid of a number of assessors less than that fixed by law there has been no trial at all. This wrong procedure cannot be cured by S. 537 for that section refers only to errors of procedure and not to substantive errors of law. 45 All. 125, Ref. (*Prdeaux and Kinkhede, A. J. C.s.*) JAIRAM KUNBI v. KING-EMPEROR.

77 I. C. 811 = 20 N. L. R. 129 = 25 Cr. L. J. 459 = A. I. R. 1924 Nag. 287.

—Where the Judge, after the assessors have been discharged, takes further evidence, the trial is vitiated and if the accused has been convicted, the conviction must be set aside. 15 All. 136, Foll.; Cr. Appeal No. 580 of 1910, Dissented from. (*Mars, C. J. and Ryves, J.*) JAISUKH v. EMPEROR. 59 I. C. 559 = 19 A. I. J. 1 = 43 All. 125 = 22 Cr. L. J. 127 = A. I. R. 1921 All. 284.

## —S. 268—Trial by jury.

—The translation of the charge to the juryman who did not know English by the Public Prosecutor was not bad.

Where one of the jurymen in a case had not an adequate knowledge of English and when the peshkar commenced to translate the Judge's charge in the vernacular, it was found to be unsatisfactory because of his lack of sufficient knowledge of English, whereupon it was arranged that the Public Prosecutor being the best man available as regards translating capacity would translate the charge to the jury, the mukhtear for the defence being told that if he wanted to object to any translation he was at liberty to object then and there and the verdict of the jury was unanimous.

Held, that there was no reason to think that this particular juryman was not given the benefit of the correct translation of the Judge's charge and it was a fair trial and the accused was in no way prejudiced. (*Rankin, C. J. and C. C. Ghose, J.*) DWIJAPADA HALDAR v. EMPEROR. 109 I. C. 910 = 47 C. L. J. 449 = 29 Cr. L. J. 638 = 10 A. I. Cr. R. 344 = A. I. R. 1928 Cal. 401.

—S. 269—Alteration of charge.

—An accused charged under S. 412 (triable by jury) can be convicted under S. 411 triable with aid of assessors) though not separately charged. 22 Bom. L. R. 1241 and 26 Mad. 243, Rel. on. (*Fawcett and Madgavkar, J.J.*) EMPEROR v. GULAB CHAND. 94 I. C. 602 = 27 Bom. L. R. 1416 = 27 Cr. L. J. 650 = A. I. R. 1928 Bom. 134.

—Alteration of charge from S. 436 to S. 436 read with S. 149 does not take away operation of notification requiring S. 436 offence triable by jury—Trial of altered charge with assessors is void.

Where by a notification the Government had directed that in a particular district certain offences, including an offence under S. 436, I. P. Code, were to be tried by jury and not with the aid of assessors, and the S. J. of that district upon a commitment of the accused with charge under S. 436 altered the charge to one under S. 149 read with S. 436 and tried the case with the help of assessors.

Held, that the trial was void as being without jurisdiction. The trial of an offence under S. 149 read with S. 436 is a trial under S. 436 as the Court must always first determine whether the offence under S. 436 has been committed by an individual and next whether S. 149 makes the participants responsible. Exactly same is the case with S. 34, I. P. C.

Held, further, that the Sessions Judge ought not to have withdrawn the charge under S. 436 and substituted

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that under S. 149 read with S. 436 which put the accused under a disadvantage as they were deprived of the right of trial by jury, the assessor's opinion being less final on a question of fact than the verdict of a jury. (*Mullick and Kulwant Sahay, J.J.*) RAMSUNDAR ISSER v. EMPEROR. 93 I. C. 976 = 5 Pat. 238 = 7 P. L. T. 178 = 27 Cr. L. J. 512 = A. I. R. 1926 Pat. 253.

**—S. 269—Joint trial.**

*—Re-trial should be only for offences triable with assessors in respect of which alone irregularity has taken place.*

The accused were tried under S. 235 for several offences, some triable by jury and others triable with the aid of assessors. On the charges triable by the jury, the accused were acquitted, but for offences triable with the aid of assessors they were convicted. The opinion of all the jurors as assessors was not taken and consequently on appeal the case was remanded for re-trial. At the second trial, the accused were tried only for the charges triable with the aid of assessors.

*Held per Ross, J.*—Retrial should not be of all the offences including those triable by jury, but only for such offences as were tried with the aid of the assessors.

It seems clearly opposed to principle, that where there has been a verdict of a jury acquitting the prisoners of certain charges and that verdict has not been impugned by way of appeal by the Crown, the prisoners should again be put in peril for the same offences.

*Per Kulwant Sahay, J.*—S. 269 (3) provides for certain advantages to the accused, such as trial by jurors as assessors for offences not triable by jury and it would be manifestly illegal to deprive him of such advantages by splitting up the trial. Therefore, order for retrial opened the whole case and the accused could have been tried again for all the offences they were charged with. But at the re-trial it is open to the Public Prosecutor to confine himself to some only of the charges. (*Ross and Kulwant Sahay, J.J.*) ABDUL HAMID v. KING-EMPEROR. 97 I. C. 364 = 27 Cr. L. J. 1100 = 8 P. L. T. 12 = 6 Pat. 208 = 7 A. I. Cr. B. 164 = A. I. R. 1927 Pat. 13.

**—S. 269—Re-trial.**

*—Procedure.*

The accused were tried under S. 235 for several offences, some triable by jury and others triable with the aid of assessors. On the charges triable by the jury the accused were acquitted, but for offences triable with the aid of assessors they were convicted. The opinion of all the jurors as assessors was not taken and consequently on appeal the case was remanded for re-trial. At the second trial the accused were tried only for the charges triable with the aid of assessors.

*Held, per Ross, J.*—Re-trial should not be of all the offences including those triable by jury, but only for such offences as were tried with the aid of the assessors.

It seems clearly opposed to principle, that where there has been a verdict of a jury acquitting the prisoners of certain charges and that verdict has not been impugned by way of appeal by the Crown, the prisoners should again be put in peril for the same offences.

*Per Kulwant Sahay, J.*—S. 269 (3) provides for certain advantages to the accused, such as trial by jurors as assessors for offences not triable by jury and it would be manifestly illegal to deprive him of such advantages by splitting up the trial. Therefore, order for re-trial opened the whole case and the accused could have been tried again for all the offences they were charged with. But at the re-trial it is open to the Public Prosecutor to confine himself to some only of the charges. (*Ross and Kulwant Sahay, J.J.*) ABDUL

**CR. P. CODE (1898), S. 274—Mistaken belief about number.**

HAMID v. KING-EMPEROR.

97 I. C. 364 = 8 P. L. T. 12 = 27 Cr. L. J. 1100 = 6 Pat. 208 = 7 A. I. Cr. B. 164 = A. I. R. 1927 Pat. 13.

**—S. 269—Separate judgment.**

*—Failure to write a separate judgment in a case where the procedure laid down by S. 269 (3) is followed, does not vitiate the trial.*

An accused was tried by a jury with an offence punishable under S. 395, Penal Code, and was acquitted being found not guilty. In the same trial he was tried for an offence under S. 396, Penal Code, with the same jury sitting as assessors. The Judge stated both cases for the benefit of jury and his summing up covered both the charges.

*Held*, that it was not necessary for the Judge after having summed up at great length to write again another full and elaborate judgment covering exactly the same ground so far as S. 396, I. P. C., charge was concerned and failure to write a separate judgment did not vitiate the trial where nothing was gained by accused in repeating the same remarks in two separate documents. A. I. R. 1922 Mad. 502, Ref. (*Stuart, C. J. and Raza, J.*) BISHESHWAR v. EMPEROR.

123 I. C. 851 = 4 Luck. 721 = 1930 Cr. C. 153 = 31 Cr. L. J. 599 = 6 O. W. N. 1007 = A. I. R. 1930 Oudh 57.

**—S. 271—Plea of guilty.**

—S. 271, though it directs that the plea shall be recorded, does not direct that the accused shall be convicted thereon, but only that he may be so convicted. It is left to the discretion of the presiding Judge in each particular case to determine whether in spite of the plea it is or is not desirable to enter upon the evidence. (*C. C. Ghose and Jack, J.J.*) HARARUDDIN v. EMPEROR. 115 I. C. 582 = 30 Cr. L. J. 508 =

12 A. I. Cr. B. 320 = A. I. R. 1928 Cal. 775.

—Under S. 271, sub-S. (2), all that is incumbent on the Court is to record the plea of guilty. It is not obligatory on the Court to convict him thereon. The conviction on a plea of guilty is discretionary. (*Sulaiman, J.*) SHANKER v. EMPEROR. 93 I. C. 241 =

24 A. L. J. 318 = 27 Cr. L. J. 449 =

7 L. R. A. Cr. 55 = A. I. R. 1926 All. 318.

**—S. 272—Plea of guilty.**

—An accused persons does not plead to a section of criminal statute. He pleads guilty or not guilty to the facts alleged to disclose an offence under that section. (*Broadway and Fforde, J.J.*) BASANT SINGH v. THE CROWN. 7 Lah. 359 = 8 L. L. J. 251 =

27 Cr. L. J. 907 = 27 P. L. B. 551 = 96 I. C. 219 = A. I. R. 1928 Lah. 406.

**—S. 273—Illegal commitment.**

—Section 273 is a special power given to High Court. It has no reference to illegal commitment. The reference to portions of a charge and to the charge or portion thereof being "clearly unsustainable" is sufficient to show that the section is intended to provide a short and an effective way by which charges which have no merits may be disposed of. (*Rankin, C. J., C. C. Ghose, Buckland, B. B. Ghose and Mukerji, J.J.*) GIRISH CHANDRA v. EMPEROR. 50 C. L. J. 408 = 61 C. W. N. 43 = 1929 Cr. C. 468 =

123 I. C. 433 = 57 Cal. 1049 = 21 Cr. L. J. 506 =

A. I. R. 1929 Cal. 756 (F. B.).

**—S. 274—Mistaken belief about number.**

*—Case requiring jury of nine—Judge believing seven to be the required number—Trial held on that basis if initiated—Applicability of S. 537 of the Code.*

(Where in a prosecution for offences under Ss. 120 B, 395, 399 and 402, I. P. C. and also under Ss. 304, 306

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and 34, I. P. C. fourteen persons were summoned of whom six remained absent, one was exempted and one discharged on objection leaving six empanelled without objection and another person who was in the list of special jurors and happened to be present in court was taken in to complete the number of seven, and it appeared that the Judge thought that seven was the required number.

*Held*, that the Judge not having applied his mind to the question whether it was practicable to have a jury of nine the trial was vitiated.

*Held*, further that the defect was not a mere irregularity so as to be cured by S. 537 of the Code. (*Pearson and Jack, J.J.*) **THE SUPDT. AND REMEMBRANCE OF LEGAL AFFAIRS, BENGAL v. BENOZIR AHMAD.** 34 C. W. N. 735 = 51 C. L. J. 578 = 1930 Cr. C. 1116 = A. I. R. 1930 Cal. 716.

**—S. 274—Non-compliance.**

—In a murder case where the number of jurors summoned is 14, nine of whom appear and are chosen by lot, the trial is not bad by reason of the fact that only 14 jurors have been summoned in contravention of the provisions of Ss. 274 and 326. A. I. R. 1927 P. C. 44, Appr., 25 Mad. 61 (P. C.), Dist.; 33 C. W. N. 1054 Overruled; A. I. R. 1930 Cal. 60 (2) and 33 C. W. N. 1053, impliedly Overruled. (*Rankin, C. J., C. C. Ghose, Sukrawardy, Pearson and Page, J.J.*) **EMPEROR v. ERMANALI.** 57 C. 1228 = 123 I. C. 664 = 1930 Cr. C. 212 = 34 C. W. N. 296 = 51 C. L. J. 171 = 31 Cr. L. J. 536 = A. I. R. 1930 Cal. 212 (F. B.).

—In a murder case only fourteen jurors were summoned of whom eleven attended and seven were empanelled.

*Held*, that not less than eighteen jurors ought to have been summoned and hence the trial was vitiated because the jury was illegally constituted, there being a breach of the statutory provisions. A. I. R. 1928 Cal. 645, Rel. on. (*Sukrawardy and Graham, J.J.*) **DWARIKA MALO v. EMPEROR.** 122 I. C. 219 = 33 C. W. N. 692 = 56 Cal. 1154 = 1930 Cr. C. 12 = 31 Cr. L. J. 377 = A. I. R. 1930 Cal. 60.

**—S. 274—Objection.**

—An objection as to the constitution of the jury raised for the first time at the hearing of an appeal against acquittal cannot be entertained. (*Graham and Lort Williams, J.J.*) **SUPERINTENDENT, ETC. AFFAIRS BENGAL v. BHAIJOO MAJHI.** 57 Cal. 1062 = 125 I. C. 733 = 1930 Cr. C. 379 = 34 C. W. N. 106 = A. I. R. 1930 Cal. 291.

**—S. 275—Indian British subject.**

—The claim to be tried as an Indian British subject mentioned in Ss. 528-A and 528-B is a different and distinct one from the claim to be tried by a majority of Indian jury as mentioned in S. 275, though it can only be put forward by a person who has, in the language of that section been found under the provisions of the Code to be an Indian British subject. (*Mukerji, J.*) **EMPEROR v. HARENDRA CHANDRA CHAKRAVARTHY.** 84 I. C. 929 = 51 Cal. 980 = 29 C. W. N. 384 = 26 Cr. L. J. 385 = A. I. R. 1925 Cal. 384.

**—S. 275—Procedure.**

—*Procedure in mofussal and in Presidency Towns discussed as to the claim to be tried as a British subject.*

An Indian British subject to be dealt with as such must put in his claim before the Magistrate before whom he is brought for the purpose of enquiry or trial. This applies to Presidency Magistrates as well as Magis-

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trates in the mofussal. If the Magistrate rejects the claim and tries him, the decision shall form a ground of appeal from the sentence or order passed in such appeal. This applies to the Presidency Magistrates as well as to Magistrates in the mofussal. If the Magistrate rejects the claim and commits him to the Court of Session, he may repeat the claim before the said Court. Such repetition may only be made in a Court of Session and not the High Court exercising Original Criminal Jurisdiction. If the Court of Session rejects the claim and tries him, the decision shall form a ground of appeal from the sentence or order passed in such trial. It necessarily follows that if a claim is made before a Presidency Magistrate and rejected by him and the accused is committed to the High Court, there is no provision for repetition of the claim before the High Court, and the accused will not be entitled to put in, under S. 275 of Cr. P. Code, before the High Court, a further claim for being tried by a jury the majority of whom should be Indians. Where no such claim is put forward before a Magistrate, there being no provision for repetition of the claim before the High Court, S. 528-B is a bar to the assertion of the same in any subsequent stage of the case. (*Mukerji, J.*) **EMPEROR v. HARENDRA CHANDRA CHAKRAVARTHY.** 84 I. C. 929 = 51 Cal. 980 = 29 C. W. N. 384 = 26 Cr. L. J. 385 = A. I. R. 1925 Cal. 384.

**—S. 276—Choosing jury.**

—*Procedure in empanelling a jury described.*

S. 276 provides, in the first instance, for a ballot among the persons summoned under S. 326, all of whom may or may not be present. When their names have been exhausted, if a jury has not yet been empanelled, the Court may in its discretion allow the number requisite to complete the jury to be chosen from among the bystanders, or may adjourn the case for a fresh jury to be summoned. As each name is drawn and called aloud if the person summoned answers, or as each juror is chosen from among the bystanders, should that point have been reached and that course be permitted, the accused shall be asked, if he objects to be tried by such juror. Should the objection be allowed, the Court should proceed as laid down in S. 279 (2), adopting the course prescribed according as there are, or are not persons left from among those summoned whose names have not been drawn. A. I. R. 1927 Cal. 242 and A. I. R. 1927 Cal. 787, Overruled.

Per *Mukerji, J.*—S. 276 with all its provisions is a general section, dealing with the general nature of the procedure, and the details of that procedure are given in Ss. 277 to 279. The words: "with the leave of the Court," in Prov. 2, S. 276, give a discretion to the Court to proceed or not to proceed in this particular way, *viz.*, allowing persons in Court to come in as jurors accordingly as it thinks fit. (*Rankin, C. J., Buckland, Cumming, B. R. Ghose, and Mukerji, J.J.*) **KEDAR NATH MAHTO v. EMPEROR.** 108 I. C. 577 = 47 C. L. J. 43 = 32 C. W. N. 221 = 55 Cal. 371 = 29 Cr. L. J. 437 = 10 A. I. Cr. E. 57 = A. I. R. 1928 Cal. 83 (F. B.).

108 I. C. 577 = 47 C. L. J. 43 = 32 C. W. N. 221 = 55 Cal. 371 = 29 Cr. L. J. 437 = 10 A. I. Cr. E. 57 = A. I. R. 1928 Cal. 83 (F. B.).

—The provision of choosing jurors by lot is applicable only when the persons summoned to act as jurors are present in such number as to make it possible to choose them by lot and when such number is not present the Judge is to take the help of persons present in Court to form the jury. (*Sukrawardy and Camma, J.J.*) **RAHAMOT SHEIK v. EMPEROR.** 54 Cal. 1026 = 31 C. W. N. 711 = 28 Cr. L. J. 615 = 102 I. C. 903 = 8 A. I. Cr. E. 265 = A. I. R. 1927 Cal. 593.



## CR. P. CODE (1898).

## —S. 276—Deficiency.

—There is no provision for requisition of jurors from outside the Court. Selection of jurors will have to be made from jurors attending in obedience to summons and chosen in the manner provided by S. 276 or if there is no such other juror present then any other person present in the Court, whose name is on the list of the jurors or whom the Court considers a proper person may be selected. (*Rankin, C. J. and Buckland, J.*) AHEDALI FAKIR v. EMPEROR.

56 Cal. 835 = 1929 Cr. C. 364 = 33 C. W. N. 722 = A. I. R. 1929 Cal. 728.

—Where out of 12 jurors summoned only two were present and the Sessions Court sent for three of the professors from the local college and one of them being objected to, a third professor was called in.

*Held*, the procedure was illegal and vitiated the trial.

Where there is deficiency of jurors, the Court should empanel other persons present in Court to fill up the vacancy in the jury. (*Suhrawardy and Cammiade, J.J.*) MAHAMMED SAGIRUDDIN v. EMPEROR.

113 I. C. 280 = 30 Cr. L. J. 120 = A. I. R. 1928 Cal. 551.

—Deficiency of jurors cannot be filled up from persons not present in Court. A. I. R. 1928 Cal. 551, Foll. (*C. C. Ghose and Jack, J.J.*) SHADARAT SHAIKH v. EMPEROR.

113 I. C. 328 = 48 C. L. J. 479 = 30 Cr. L. J. 136 = 12 A. I. R. 66.

—Where, out of the jurors summoned, only the requisite number appear on the day of trial and the trial is conducted with their help, the trial is illegal. A. I. R. 1927 Cal. 242, Foll. (*Ross and Wort, J.J.*) TAJALI MIAN v. EMPEROR. 7 Pat. 50 = 28 Cr. L. J. 843 = 104 I. C. 459 = 9 P. L. T. 57 = A. I. R. 1928 Pat. 31.

—Where of the jurors that were summoned to act, only five were present on the day on which the case against the accused was taken up and they were chosen as jurors,

*Held*, that the procedure was not illegal. A. I. R. 1927 Cal. 242, Diss. from. 8 Cal. 739, Diss.; A. I. R. 1925 Cal. 798, Foll. (*Suhrawardy and Cammiade, J.J.*) RAHAMAT SHEIKH v. EMPEROR. 54 Cal. 1026 = 31 C. W. N. 711 = 28 Cr. L. J. 615 = 102 I. C. 903 = 8 A. I. R. 265 = A. I. R. 1927 Cal. 593.

## —Interpretation.

The word "deficiency" and "number of jurors required" in the second proviso to S. 276 mean deficiency in the number of jurors required to make up the jury and not to make up a sufficient number for the purpose of selection by lot. (*Suhrawardy and Cammiade, J.J.*) RAHAMAT SHEIKH v. EMPEROR. 54 Cal. 1026 = 31 C. W. N. 711 = 28 Cr. L. J. 615 = 102 I. C. 903 = 8 A. I. R. 265 = A. I. R. 1927 Cal. 593.

—If jurors are not selected by lot it vitiates trial.

Where out of the jurors summoned to attend the Court, only such number of jurors is present as is necessary to form a quorum, proper course is for the Judge to make good the deficit by choosing some other persons who are present, add their names to the jurors that are present and from the whole body to choose the necessary jurors by lot to act as the jury. Omission to follow this course and empanel only the jurors that are present is an irregularity of a very grave and material nature inasmuch as it affects the proper constitution of the Court. 7 C. W. N. 188; 33 All. 385 and A. I. R. 1925 Cal. 798, Rel. on. (*Chotzner and Duval, J.J.*) BHOLA NATH v. EMPEROR. 44 C. L. J. 541 = 99 I. C. 930 = 28 Cr. L. J. 194 = A. I. R. 1927 Cal. 242.

## CR. P. CODE (1898), S. 276—Principle.

—S. 276 provides that in case of a deficiency of persons summoned, the number of the jurors required may with the leave of the Court, be chosen from such other persons as may be present. They need not be chosen by lot or be on the jury list. (*Newbould and Mukerji, J.J.*) THE GOVERNMENT OF BENGAL v. MUCHU KHAN. 86 I. C. 467 = 26 Cr. L. J. 819 = 29 C. W. N. 652 = A. I. R. 1925 Cal. 798.

## —S. 276—Discharged juror.

—A jury having once been discharged should not be recalled to do duty as jurors in the same case as it is reasonable to suppose that after their discharge the jurors might have mixed freely with the people and talked about the case with others and formed decided opinions about the case. A. I. R. 1927 Cal. 199, Foll. (*Suhrawardy and Graham, J.J.*) ABDUL RASHID v. EMPEROR. 33 C. W. N. 425 = 56 Cal. 1032 = 122 I. C. 194 = 31 Cr. L. J. 366 = A. I. R. 1929 Cal. 343.

## —S. 276—Objection.

—No objection was taken to the original selection of the jurors, eight of whom were present in the Court, and instead of conducting a second ballot, as required by R. 14, Ch. V, Oudh Criminal Rules, the Judge chose five out of the eight present. The Judge asked the accused whether they had any objection to this selection but they had none.

*Held*, that the irregularity was covered by S. 537, and did not vitiate trial. 8 Cal. 739, Foll.; 33 All. 385, Not. Foll. (*Razz and Pullan, J.J.*) RAM ADHIN v. EMPEROR. 114 I. C. 814 = 6 O. W. N. 97 = 30 Cr. L. J. 384 = A. I. R. 1929 Oudh 154.

—In a trial by jury requiring a panel of five jurors, only five jurors were present in Court although ten were summoned. The Court drew the lot including those jurors who were absent and some absent jurors were also chosen by the lot, but they being absent, the Judge obtained substitutes for them by the process of elimination. No objection was taken to any juror.

*Held*, that the trial was not illegal and the irregularity if any, was cured by S. 537. A. I. R. 1927 Cal. 242, Diss. from. 8 Cal. 739, Foll. (*Ross, Allanson, and Wort, J.J.*) WORT, J. Dismissing. AKBAR ALI v. EMPEROR. 104 I. C. 897 = 7 Pat. 61 = 8 P. L. T. 800 = 28 Cr. L. J. 881 = A. I. R. 1928 Pat. 1 (F. B.).

—Jurors not chosen by lot—Irrregularity is curable under S. 537 (a).

In jury trials it is desirable, if not necessary that the Judge should specifically state that the jurors have been chosen by lot. Where, however, the Court did not choose the jurors by any strict process of lot, but simply selected five jurors out of the gentlemen summoned to act as such and present in Court.

*Held*, that the irregularity is curable under S. 537 (a) as being only an irregularity in the proceedings before or during trial. If under S. 536 (2) a trial, by mistake without a jury is curable, it is a *reductio ad absurdum* to postulate that where the composition of the jury was not objected to by the appellant or his counsel, the proceedings should be held to be bad merely because the jurors were not selected by lot. 33 All. 385; 7 C. W. N. 118, Cons. but not Foll.; 8 Cal. 739 Appr. (*Findlay, J. C.*) SONIA KOSHTI v. EMPEROR. 28 Cr. L. J. 177 = 99 I. C. 849 = 7 A. I. R. 333 = A. I. R. 1927 Nag. 117.

## —S. 276—Principle.

—"Required" in S. 276, *Prov. 2*, refers to "persons summoned" — "Chosen" means "chosen by lot."

The object of Ss. 276-279 is to secure an impartial trial by rendering impossible any intentional selection of jurors to try a particular case. An accused person has a right to claim to be tried by a jury chosen with strict

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regard to all the safeguards provided in the code to secure perfect impartiality. The central idea is to have a jury chosen by lot from the persons summoned to act as jurors. In other words, in ordinary cases, five persons are to be chosen by lot for the purpose of acting as a jury out of ten persons summoned to act as jurors. In murder trials seven or nine persons, as the case may be, are to be chosen by lot for the purpose of acting as a jury out of 14 or 18 persons summoned to act as jurors. In case, however, of a deficiency of persons summoned, *i.e.*, where the persons attending in obedience to the summonses, are less than the number summoned the number of jurors required may with the leave of the Court be chosen from such other persons as may be present. Proviso 2 to S. 276 has been introduced to meet a case where there is a deficiency of persons summoned, and the word "required" in the proviso must refer and is relative to the words immediately preceding, namely, "in case of a deficiency of persons summoned". Therefore, if there is a deficiency of persons summoned to act as jurors it is this deficiency that under the proviso may be made good from such other persons as might be present in Court, and the meaning of the word "chosen" in the proviso must mean "chosen by lot". In so far as S. 279(2) permits a person not chosen by lot to be empanelled, it certainly introduces an exception to the general rule, but this is only in the exceptional condition stated and in emergent circumstances. A.I.R. 1927 Cal. 242, Appr.; A.I.R. 1927 Cal. 593, Expl. and Dist. (*C. C. Ghose and Gregory, J.J.*) **ROSONALI v. EMPEROR.** 46 C. L. J. 160 = 31 C. W. N. 1102 = 28 Cr.L.J. 889 = 104 I. C. 905 = A. I. R. 1927 Cal. 787.

**—S. 276—Provisions imperative.**

—The first part of S. 276 is mandatory and governs the remainder. (*Ross, Allanson and Wort, J.J.*) **AKBAR ALI v. EMPEROR.** 7 Pat. 61 = 8 P. L. T. 800 = 28 Cr.L. J. 881 = 104 I.C. 897 = A. I. R. 1928 Pat. 1 (F.B.).

—The provisions of Ss. 326 and 276, are imperative and their violation will render the constitution of the Court illegal. It is not a question of jurisdiction, but more a question relating to the constitution or even the very existence of a valid forum; much less is it an irregularity curable by S. 537, or with the consent of parties. (*Suhrawardy and Cammiade, J.J.*) **RAHAMAT SHEIKH v. EMPEROR.** 102 I. C. 903 = 31 C.W.N. 711 = 28 Cr.L.J. 615 = 8 A.I.Cr. B. 265 = 54 Cal. 1028 = A. I. R. 1927 Cal. 593.

**—S. 276—Special jury.**

—A trial for sedition under S. 124-A, I.P.C. should be by a special jury. (1908) 10 Bom. L.R. 848, Foll. (*Fawcett, J.*) **EMPEROR v. PHILLIP SPRATT (No. 1.)** 30 Bom. L.R. 313 = 108 I. C. 509 = 29 Cr.L. J. 411 = 9 A.I. Cr. B. 433 = A. I. R. 1928 Bom. 74.

**—S. 276—Unentitled Jurymen.**

—Where one of the jurymen is a person who was not entitled to sit on the jury, having not been summoned, the Court is not properly constituted and the verdict of the jury counts for nothing. But where the verdict was in accordance with the facts of the case, the High Court did not order a retrial. (*Suhrawardy and Cammiade, J.J.*) **EMPEROR v. IJAN.** 46 O.L.J. 241 = 9 A. I. Cr. B. 20 = 28 Cr. L.J. 874 = 104 I. C. 714 = A. I. R. 1927 Cal. 820.

**S. 277—Absence of accused.**

—Junior pleader not challenging jurors, constitution of jury cannot be assailed.

A junior pleader, who had been engaged on behalf of the accused, was present in Court. There was another

**CR. P. CODE (1898), S. 282—Discharge of Jury.**

gentleman who was his senior who had also been engaged on behalf of the defence but he was absent.

*Held*, that it is not correct to say that the accused was wholly unrepresented and that it was open to the defence to challenge the jurors as their names were called out, but, as the junior pleader did not challenge anybody but contented himself by saying that he was only a junior, the constitution of the jury cannot be assailed. (*C. C. Ghose and Jack, J.J.*) **BEOLZUR RAHMAN v. EMPEROR.** 48 C. L. J. 307 = 33 C. W. N. 136 = 30 Cr.L.J. 494 = 115 I. C. 561 = A. I. R. 1929 Cal. 1.

**—S. 278—Partiality.**

—An objection to a juror on the ground that there was litigation pending between accused's master and the juror's principal, should be allowed. (*Ross and Wort, J.J.*) **TAJALI MIAN v. EMPEROR.**

7 Pat. 50 = 28 Cr.L.J. 843 = 104 I.C. 459 = 9 P. L. T. 57 = A.I. R. 1928 Pat. 31.

**—S. 278—Specialties of case.**

—Provided there is lottery, the mere fact that the Court proceeded to choose jury from amongst those able to read English, on the suggestion of the Public Prosecutor to which the counsel for the accused consented as there were certain documents in English and identity of handwriting of which was fact in issue, does not in any way vitiate the constitution of jury and amount to excess in exercise of inherent powers that the Court has in ensuring a fair trial or infringe in any way the provisions of S. 278. (*C. C. Ghose and Guha, J.J.*) **MO. HIUDDIN v. EMPEROR.** 51 C. L. J. 352 = 1930 Cr. C. 745 = A. I. R. 1930 Cal. 437.

**—S. 279—Discretion.**

—The trial Judge has a wide discretion in the matter of accepting or overruling objections to jurors and his decision is final. (*Newbould and Mukerji, J.J.*) **THE GOVERNMENT OF BENGAL v. MUCHU KHAN.** 86 I. C. 467 = 29 C. W. N. 652 = 26 Cr. L. J. 819 = A. I. R. 1925 Cal. 798.

**—S. 282—Discharge of Jury.**

—Though the Code of Criminal Procedure has not specifically conferred any right on the Judge to discharge a jury on the ground of misconduct, yet every Judge has an inherent power to discharge a jury when he is satisfied by such enquiry as in the circumstances he can adopt that reasonable grounds exist for exercising the discretion vested in him to discharge a jury on suspicion. A. I. R. 1923 Cal. 724, Foll.; A. I. R. 1929 Cal. 57, Rel. on. (*Suhrawardy and Graham, J.J.*) **ABDUL RASHID v. EMPEROR.** 33 C. W. N. 425 = 122 I. C. 194 = 31 Cr. L. J. 366 = 56 Cal. 1032 = A. I. R. 1929 Cal. 343.

—Suspicion in the mind of a Public Prosecutor is not and could never be recognized as a good or valid ground for discharging a jury. Something much more definite and tangible than this is necessary. (*Suhrawardy and Graham, J.J.*) **ABDUL RASHID v. EMPEROR.** 33 C. W. N. 425 = 56 Cal. 1032 = 122 I.C. 194 = 31 Cr. L. J. 366 = A. I. R. 1929 Cal. 343.

—The Code makes no provision for dealing with a jury or jurors guilty of misconduct. The Judge has an inherent power to discharge a jury for misconduct. [A. I. R. 1923 Cal. 724, Foll.] So where a juror misconducts himself he should be discharged and either a new juror added or the whole jury discharged and a fresh jury empanelled. Such juror may be taken from the persons present in the Court-room. (*Cuming and Lort Williams, J.J.*) **REBATI MOHAN v. EMPEROR.**

32 C. W. N. 945 = 56 Cal. 150 = 115 I. C. 258 = 30 Cr. L. J. 435 = 12 A. I. Cr. R. 265 = A. I. R. 1929 Cal. 57.

**CR. P. CODE (1898).****—S. 282—Discretion.**

—There is a discretion in the Judge whether to postpone the trial to a date on which the juror should be able to attend or to discharge the jury or have another jury. If a juror is going to be able to attend in a very short time, it is a wrong exercise of discretion to discharge the jury. (*Rankin and Duval, J.J.*) **EMPEROR v. MANMOTHA NATH MITTER.**

99 I. C. 349 = 31 C. W. N. 144 = 28 Cr. L. J. 141 = 7 A. I. Cr. R. 463 = A. I. R. 1927 Cal. 199.

**—S. 284—Non-compliance.**

—A trial commencing after the coming into force of the new Act is rendered illegal by non-compliance with S. 284 thereof. (*Daniels, J. C.*) **PRAGI v. EMPEROR.** 11 O. L. J. 245 = A. I. R. 1924 Oudh 417.

**—S. 284—Trial with less number.**

—S. 284 of the amended Code requires that there shall be at least three assessors; and therefore a trial held with the assistance of only two assessors is improper and S. 537, does not cure the defect. (*Daniels, J.*) **RAM NARAIN v. KING-EMPEROR.**

84 I. C. 711 = 27 O. C. 213 = 26 Cr. L. J. 359 = A. I. R. 1925 Oudh 110.

—Where four assessors are not chosen, it is right that the Court should give reasons in the order-sheet to explain the impracticability of choosing four, but the trial with three assessors, without the record of these reasons, is not irregular but is still according to law and does not offend against the provisions of S. 284. (*Adami and Bucknill, J.J.*) **JAMAL MOMIN v. EMPEROR.**

86 I. C. 153 = 7 P. L. T. 14 = 1925 P. H. C. C. 29 = 26 Cr. L. J. 713 = A. I. R. 1925 Pat. 381.

**—S. 286—Duty of Prosecution.**

—*Statements allowed to be read—Judge omitting to warn jury not to pay attention to the contents of the complaint—Omission amounts to misdirection.*

Per *Rankin, C. J.*—So far as criminal cases are concerned the opening for the prosecution ought always to be confined to matters which are necessary to establish the jury to follow the evidence when it is brought before them. This is not the stage of a case where a doubtful question of admissibility should be either raised or decided. Whether a document is admissible or inadmissible is a matter which should always be ruled upon at the time when the document is being proved or put in or the question asked of the witnesses. In many cases a thing may be good evidence at one stage of the cases and inadmissible at another. It is frequently necessary to give evidence to lay the foundation which justifies a question or the putting in of a document. The opening speech of the counsel for the prosecution does not afford a proper occasion for the determining of such questions.

Per *C. C. Ghose, J.*—In a criminal trial, counsel for the prosecution, in opening the case to the jury, can only state all that it is proposed or intended to prove in the case, so that the jury may see if there is any discrepancy between the opening statement of the counsel and the evidence afterwards adduced in support of them and it is wholly improper for the counsel for the prosecution to open any matter to the jury in respect whereof no evidence is intended to be read or can be adduced at the trial. Very great care must be taken by counsel for the prosecution in the observation to be made to the jury and that topics of prejudice connected with the character of the prisoner should be carefully excluded. *P* was prosecuted for selling *R* for immoral purposes under S. 372, Penal Code. In this trial *P* had managed to put in a copy of birth register showing that *R* was of 18 years. *P* was ultimately acquitted. Proceedings

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were subsequently taken against *P* under Ss, 193 and 471, Penal Code for having used as genuine a forged document (copy of birth register of *R*) knowing it to be forged document. When the case began before the Court of Sessions the counsel for the prosecution insisted upon reading to the jury in his opening speech the whole of *R*'s complaint against *P* in S. 372 Penal Code case, which contained highly prejudicial matters that *P* was of loose morals, that he was notorious for seducing girls, that he used to keep such girls as concubines and that he had assaulted and raped *R* on diverse occasions. Counsel for the accused objected to its being read but the objection was overruled.

*Held*, that an atmosphere of prejudice had been allowed to be created and that there were grave reasons for concluding that the chances of *P* in obtaining a fair trial at the hands of the jury were seriously jeopardized. The allegations in the petition of *R* were such as must have and could not but have influenced the jury against *P* at the very beginning of the trial. The jury in the circumstances could not possibly get out of their minds the fact that *P* was a depraved person. This was specially unfortunate because the Judge in the course of his charge to the jury did not tell the jury as he should have done, that the petition of complaint had not been admitted as evidence in the case, that the contents thereof which were objected to were irrelevant to the matter in issue at the trial before the jury, and that the jury ought not to pay any attention whatever to the contents of that petition. This was non-direction and it was non-direction of such a character as to amount to misdirection. (*Rankin, C. J., C. C. Ghose, Suhrwardy, Mukerji and Jack, J.J.*) **PADAM PRASAD v. EMPEROR.** 50 C. L. J. 106 = 33 C. W. N. 1121 = 30 Cr. L. J. 993 = 119 I. C. 93 = 1929 Cr. C. 228 = A. I. R. 1929 Cal. 617 (F.B.).

—*It is the duty of the prosecution to place before the Court all the available witnesses.*

Per *Jwala Prasad, J.*—In a capital case it is undoubtedly the duty of the Public Prosecutor to place before the trial Court the testimony of all available witnesses. This salubrious rule should be adhered to for the ends of justice and the prosecution should not be left the option of choosing witnesses who would support the prosecution case and withholding those who would not. Unless it is shown by facts and circumstances in the case that the witnesses were withheld because they would not tell the truth, the prosecution should not be left the option to choose. To allow such an option is to create embarrassment. The Court should have the whole of the material evidence and of all eye-witnesses whether in favour of or hostile to the prosecution so as to form its own opinion upon the entire evidence. 10 C. L. R. 161 and 42 Cal. 422, Appr. (*Jwala Prasad and James, J.J.*) **MATHURA TEWARY v. EMPEROR.**

10 P. L. T. 177 = 8 Pat. 625 = 30 Cr. L. J. 1136 = 120 I. C. 37 = 1929 Cr. C. 155 = A. I. R. 1929 Pat. 343.

**—S. 286—Procedure.**

—*The Judge should not contravene the provisions of S. 286.*

The two accused had admitted their guilt in the Court of the Committing Magistrate, but pleaded "not guilty" in the Sessions Court. The Sessions Judge proceeded at once to take in evidence the previous statements made by the accused, not only before the Committing Magistrate, but also when they were examined under S. 164 of the Code. He then examined, and almost cross examined, the two accused upon these confessions

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and having done this began to record the prosecution evidence.

*Held*, the trial Court certainly contravened the provisions of S. 286 of the Code of Criminal Procedure as to the manner in which a trial at Sessions should be commenced. (*Piggott and Walsh, J.J.*) **MT. SUKHIA v. EMPEROR.**

73 I. C. 497 = 20 A. L. J. 669 =  
24 Cr. L. J. 609 = A. I. R. 1922 All. 266.

**—S. 286—Right of accused.**

—All witnesses of prosecution except false ones must be tendered for cross-examination even if not examined.

Where ten witnesses were examined before the committing Magistrate on behalf of the prosecution and of these seven were not examined in the Sessions Court nor were they tendered for cross-examination although an application was made on behalf of the accused that this should be allowed, and it was not suggested that these witnesses were discarded by the Public Prosecutor on the ground that if examined they would not tell the truth,

*Held*, the accused was entitled to have them put in the box for cross-examination. (*Newbould and Suhrwardy, J.J.*) **NAGENDRA CHANDRA DHAR v. KING-EMPEROR.**

76 I. C. 430 = 27 C. W. N. 820 =  
38 C. L. J. 203 = 25 Cr. L. J. 190 =  
A. I. R. 1923 Cal. 717.

**—S. 287—Duty of prosecution.**

—The duty of a Public Prosecutor is to represent not the police but the Crown and this duty should be discharged fairly and fearlessly and with a full sense of the responsibility attaching to his position. In a capital case it is the duty of the Crown to place before the Court all materials irrespective of the question as to whether they help the accused or go against him, the rule is not merely a technical one but founded on common sense and humanity. (*Courtney Terrell, C.J. and Fazl Ali, J.*) **KUNJA SUBUDHI v. EMPEROR.**

116 I. C. 770 = 8 Pat. 289 = 10 P. L. T. 549 =  
30 Cr. L. J. 675 = 1929 Cr. C. 62 =  
13 A. I. Cr. R. 143 = A. I. R. 1929 Pat. 275.

**—S. 288—Basis of conviction.**

—Under the amended S. 288, the evidence recorded by the committing Magistrate, if admitted under S. 288 must be treated as evidence for all purposes even as the basis of finding or verdict or on a par with any other evidence before the Sessions Court or as substantive evidence on which the verdict of the jury or judgment of the Judge can be based. 51 P. R. (Cr.) 1887, Appr.; A. I. R. 1925 Pat. 51, not foll. (*Suhrwardy and Panton, J.J.*) **ABDUL GANI v. EMPEROR.**

53 Cal. 181 = 42 C. L. J. 205 = 26 Cr. L. J. 1577 =  
90 I. C. 537 = A. I. R. 1926 Cal. 235.

—Unless there is clearly present, besides the evidence given before the Magistrate evidence which will show that the evidence given before the Magistrate should be preferred to and substituted for that given before the Sessions Judge, the evidence given before the Magistrate cannot be effectively utilised in support of a conviction. Case Law reviewed. (*Adami and Bucknill, J.J.*) **JEHAL TELI v. EMPEROR.**

84 I. C. 334 = 3 Pat. 781 = 6 Pat. L. T. 53 =  
26 Cr. L. J. 270 = A. I. R. 1925 Pat. 51.

**—S. 288—Contradicting statements.**

—Deposition before committing Magistrate contradicting evidence before Sessions cannot be put in under S. 288 without putting to witness.

No doubt when depositions before the committing Magistrate are admitted in the Sessions Court under S. 288 they are on the same footing with any other evidence in the case. But S. 145, Evidence Act governs

**CR. P. CODE (1898), S. 288—Effect of amendment.**

the position in so far as these statements are used for contradicting the witness either mainly or incidentally. Depositions therefore, taken in the committing Magistrate's Court which contradict the evidence given in the Sessions Court cannot, however, be put in without putting them to the witness. A. I. R. 1922 Pat. 40; 7 All. 862 Appr.; 28 All. 683, Expl. and not Appr.; 4 C. W. N. 49, Diss. from. Other case law Referred. (*Scroope and Dhavle, J.J.*) **NANHU MAHTON v. EMPEROR.** 1930 Cr. C. 710 = A. I. R. 1930 Pat. 338.

**—S. 288—Contradiction.**

—Where the Court is satisfied that statements made by the witnesses before the committing Magistrate were true and the statements made by them subsequently before the Sessions Judge were false, the Court is at liberty to rely upon the previous statements. (*Sulaiman and Mukerji, J.J.*) **TULLI v. EMPEROR.**

47 All. 276 = 21 A. L. J. 1075 = 26 Cr. L. J. 458 =  
6 L. R. A. Cr. 33 = 85 I. C. 130 =  
A. I. R. 1925 All. 185.

**—S. 288—Denial of statement.**

—Transfer of statement of witness before committing Magistrate found to be made though denied by witness, to the record of trial without asking an explanation for discrepancy is faulty. Existence of one trifling divergency, though unexplained does not justify use of S. 288. (*Johnstone and Addison, J.J.*) **SADAR v. EMPEROR.**

112 I. C. 471 = 10 L. L. J. 460 =  
29 Cr. L. J. 1047 = 11 A. I. Cr. R. 395 =  
A. I. R. 1929 Lah. 111.

**—S. 288—Duly recorded, what is.**

—Statement of witnesses recorded in presence of accused are duly recorded and can be treated as evidence at the trial.

An enquiry before commitment was held in the hospital where the accused was an indoor patient. Witnesses for prosecution were examined, but the accused declined to cross-examine them on the ground that he was not in a proper condition to examine them. These witnesses were therefore again tendered for cross-examination on an adjourned date and were cross-examined on behalf of accused. They went back on their previous statements and supported the defence.

*Held*, that the statements of the witnesses as recorded on the first hearing, on behalf of the prosecution, were duly recorded within the meaning of S. 288, and when transferred could legally be treated as evidence in the Sessions trial. (*Shadi Lal, C. J. and Jai Lal, J.*) **MD. ASLAM KHAN v. EMPEROR.** 27 P. L. R. 469 =  
9 L. L. J. 45 = 7 A. I. Cr. R. 186 = 28 Cr. L. J. 33 =  
99 I. C. 65 = A. I. R. 1926 Lah. 590.

**—S. 288—Effect of amendment.**

—The amendment of S. 288 by substituting the words "duly recorded in the presence of the accused under Chapter XVIII" for the words "duly taken in the presence of the accused before the committing Magistrate" is intended to cover cases where evidence may be recorded by the committing Magistrate but not for the purposes of commitment, as under S. 219. There is no special procedure laid down in Ch. XVIII for recording evidence and any evidence recorded by a Magistrate before commitment whether recorded with a view to commitment or in the ordinary course of trial, is evidence recorded in the presence of the accused under Chapter XVIII. (*Suhrwardy and Panton, J.J.*) **ABDUL GANI v. EMPEROR.**

53 Cal. 181 = 42 C. L. J. 205 =  
26 Cr. L. J. 1577 = 90 I. C. 537 =  
A. I. R. 1926 Cal. 235.

—Evidence before committing Magistrate—Amended section does not preclude its use as substantive evidence in Sessions Court.

## CR. P. CODE (1898), S. 288—Effect of amendment

S. 288 is intended to enable the Court to read the evidence in the committing Magistrate's Court as substantive evidence in the case at the trial where, for the purposes of justice, the adoption of such a course is found necessary by the Judge. 27 Cal. 295, Ref. In using the words "subject to the provisions of the Indian Evidence Act, 1872", the intention of the Legislature was to prevent the admission of irrelevant evidence in the Sessions Court merely on the ground that it had been recorded by the committing Magistrate. The committing Magistrate might well record through inadvertence hearsay evidence or statements made by the accused persons to the Police in the absence of a Magistrate. (*Kincaid and Aston, A. J. Cs.*) BAHADUR WALAD RANA KHASKHELI v. EMPEROR. 88 I. C. 7 = 19 S. L. R. 71 = 26 Cr. L. J. 1063 = A. I. R. 1925 Sind 289.

## —S. 288—Evidentiary value.

—*Previous statements of witnesses—Admissibility considered.*

Previous statements of witnesses are only ordinarily admissible to corroborate or contradict the witnesses who have made statements at the trial, or by virtue of S. 288. The latter section should only be employed when there is reason to believe that a witness at the trial is deliberately departing from the evidence which he gave before the Magistrate and where it is considered by the trial Judge desirable to bring the whole statement made before the Magistrate on record as substantive evidence. As to corroborating a witness it is unnecessary for the prosecution to corroborate their witnesses by previous statements until the statement made at the trial has been, in one way or another, challenged. As to contradicting a witness, it is not in accordance with law to use his statement made on a previous occasion, until the particular statement, by means of which it is desired to contradict the witness is put to him and he is asked what explanation he can give. In neither of these two latter cases is the previous statement itself substantive evidence. (*Boys and Young, J.J.*) ABDUL JALIL KHAN v. EMPEROR. 1930 Cr. C. 1002 = 1930 A. L. J. 1105 = A. I. R. 1930 All. 746.

—The evidence of a prosecution witness during his examination-in-chief before the committing Magistrate without his being cross-examined was brought on record before the Sessions Court.

*Held*, that though a Sessions Judge has discretion to put in depositions before the committing Magistrate, that discretion must be carefully exercised. Under the present circumstances the evidence should not be put in before the Sessions, as being very unfair to the defence. (*Rankin, C. J. and Patterson, J.*) KHADEM v. EMPEROR. 1930 Cr. C. 1106 = 57 Cal. 940 = A. I. R. 1930 Cal. 706.

—*Statement of witness recorded in committing courts—Sessions Court if admissible in.*

Evidence of the statement of the witness, recorded by the committing Magistrate and transferred to the Sessions Court recorded under S. 288, Cr. P. C. can be accepted as substantive evidence by the Sessions Court. A. I. R. 1925 Lah. 452, Foll. (*Coldstream, J.*) ALA SINGH v. EMPEROR. 106 I. C. 585 = 9 A. I. Cr. R. 301 = 29 Cr. L. J. 73 (Lah.).

—A statement made by an approver before the committing Court and subsequently resiled from before the Sessions Court, can be taken into consideration provided it is brought on record under S. 288. A. I. R. 1925 Pat. 51; A. I. R. 1929 Pat. 212 and A. I. R. 1928 Pat. 630, Ref. (*Courtney Terrell, C. J., and Rowland, J.*) BHIKARI PATI v. EMPEROR. 11 P. L. T. 787 =

## CR. P. CODE (1898), S. 288—Evidentiary value.

128 I. C. 114 = 1930 Cr. C. 1089 = 9 Pat. 592 = A. I. R. 1930 Pat. 545.

—Statements made before a committing Magistrate, when admissible under the Evidence Act, can be admitted for all purposes and not only for the purpose of corroboration or contradiction. A. I. R. 1925 Pat. 51, Appr. (*Sulaiman and Banerji, J.J.*) BEHARI v. EMPEROR. 98 I. C. 485 = 49 All. 251 = 25 A. L. J. 126 = 7 A. I. Cr. R. 10 = 7 L. R. A. Cr. 205 = 27 Cr. L. J. 1365 = A. I. R. 1927 All. 479.

—The deposition of witness before the committing Magistrate when put in under S. 288 becomes substantive evidence and is used as such. It cannot be put in evidence if for any reason it is irrelevant under the Evidence Act. (*Newbould and R. B. Ghose, J.J.*) FAZARUDDIN v. EMPEROR. 42 C. L. J. 111 = 26 Cr. L. J. 1553 = 90 I. C. 433 = A. I. R. 1926 Cal. 105.

—*Weight to be given to the previous evidence depends on facts of each case, but it cannot be utilized to support conviction unless there is other evidence to corroborate it.*

The deposition recorded by the committing Magistrate can be utilized at the trial if the matter contained therein is according to the rules of evidence laid down in the Evidence Act, of evidential value. To limit the admissibility of such evidence at the trial only to cases where the evidence is admissible under the Evidence Act would be to frustrate the object in enacting S. 288. A. I. R. 1925 Pat. 51, Rel. on. It is difficult to lay down any precise rule as regards the weight to be placed on a piece of evidence admitted at the trial. Each case will depend upon its own peculiar facts and the nature of the other evidence adduced in the case. It can, however, be said that if a witness makes two contradictory statements, his evidence cannot be implicitly relied upon and must be taken with a good deal of caution. Unless there is clearly present besides the evidence given before the Magistrate, evidence which will show that the evidence given before the Magistrate should be preferred to and substituted for that given before the Sessions Judge, the evidence given before the Magistrate cannot be effectively utilized in support of a conviction. A. I. R. 1925 Pat. 51, Foll.; A. I. R. 1924 Mad. 379, Ref. (*Ross and Kulwant Sahay, J.J.*) BIGNA KUMAR v. EMPEROR.

1926 P. H. C. C. 167 = 27 Cr. L. J. 594 = 94 I. C. 258 = A. I. R. 1926 Pat. 440.

—*Evidence recorded under S. 288 can be acted upon precisely as if it had been deposed to before Sessions Judge.*

The evidence of a witness which has been recorded under the provisions of S. 288, may be acted upon by the Court precisely as if that evidence had been deposed to before the Sessions Judge. The amending words "for all purposes subject to the provisions of the Indian Evidence Act, 1872" merely mean that the law of evidence enacted in that Act must be complied with. For instance, evidence, which had been wrongly admitted by the committing Magistrate, in violation of the provisions of the Evidence Act, could not be transferred to the Session's file. (*Scott-Smith and Fforde, J.J.*) AMIR ZAMAN v. CROWN. 88 I. C. 861 = 6 Lah. 199 = 26 P. L. R. 361 =

26 Cr. L. J. 1245 = A. I. R. 1925 Lah. 452.

—*Depositions before committing Magistrate is on the same footing as those in the Sessions Court.*

Under S. 288 the Court is not restricted to using the evidence before the committing Magistrate only for the purpose of contradicting the witness at the trial. The section is intended to enable a Court to read the pre-



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vicious evidence as substantive evidence at the trial where for the purpose of justice the adoption of such a course is found necessary by the judge. Where there is clearly a conspiracy to suppress the names of assailants in the Sessions Court but there is corroboration of statements made under S. 288 in all material respects except this, the Sessions Judge is perfectly justified in order to attain the ends of justice in regarding the statements under S. 288 as substantive evidence in the trial. Where there are equally balanced stories, one story in the Sessions Court and the second story as told before the committing Magistrate, it is as a matter of discretion unsafe to prefer the latter, rather than the former. (28 All. 683 and 24 Mad. 415. Foll.) Where the witnesses are so careless of truth as to abandon readily on oath what they have previously sworn on oath their statements on any point should not be accepted without great caution and sound judicial reasons for accepting as true anything they have said. Sometimes this principle has been interpreted in particular cases to mean that sound judicial reasons are absent unless there is independent corroboration on material particulars. 27 Cal. 295, 21 All. 111 and 22 All. 445, 43 M. L. J. 229 and 24 Mad. 425, Foll. That is a rule of practice and not a rule of law. (*Odgers and Wallace, J.J.*) **BACHALA PEDA SOMADU v. NETHIPUDI APPIGADU.**

81 I. C. 203 = 47 Mad. 232 = 18 M. L. W. 705 = 33 M. L. T. 159 = 25 Cr. L. J. 715 = A. I. R. 1924 Mad. 379 = 45 M. L. J. 602.

**—S. 288—Portions of statements.**

—Under S. 288 whole of the previous statement is to be treated as evidence and not only portions of it and therefore it is essential to put the whole of it to the witness and then after giving notice to the prosecution and the defence, it can be brought on record under S. 288, Cr. P. Code. (*Kinkhede and Mohiuddin, A. J. Cs.*) **MUSA v. EMPEROR.**

114 I. C. 609 = 30 Cr. L. J. 333 = 1929 Cr. C. 257 = A. I. R. 1929 Nag. 233.

—If a Judge wants to rely upon S. 288 the whole of the previous statement should be filed and it would then be open to the Court to come to a conclusion after weighing the evidence. (*Devadoss and Wallace, J.J.*) **AYYAMPERUMAL PILLAI v. EMPEROR.**

91 I. C. 50 = 27 Cr. L. J. 18 = 1925 M. W. N. 319 = 22 M. L. W. 405 = A. I. R. 1925 Mad. 879.

**—S. 288—Procedure.**

—At the trial, on the date of the examination of the witness, the evidence of the witness recorded under Ch. 18, was brought on record and admitted in evidence under S. 288. The Court did not inform the accused or the prosecution that he was going to treat as evidence under S. 288 the evidence of the witness.

Held that the course adopted was contrary to practice and inconsistent with all rules regulating the admissibility of evidence. (*Kinkhede and Mohiuddin, A. J. Cs.*) **MUSA v. EMPEROR.**

114 I. C. 609 = 30 Cr. L. J. 333 = 1929 Cr. C. 257 = A. I. R. 1929 Nag. 233.

**—S. 288—'Provisions.'**

—"Provisions" are not limited to Ss. 155 and 157 of Evidence Act.

Under S. 288 the evidence of a witness taken before the committing Magistrate can in the discretion of the Judge, be treated as substantive evidence in the case "for all purposes subject to the provisions of the Indian Evidence Act." "Provisions" in the section cannot be limited to particular provisions in the Evidence Act, so that statements made by witness before the committing Magistrate are admissible not only to contradict or corroborate a witness but also for the purpose of deter-

**CR. P. CODE (1898), S. 288—Directions to Jury.**

mining the guilt or innocence of the accused. But if the witness changes the version before the Session Judge such evidence must be accepted with more caution, than the evidence of a witness who adheres in the Sessions Court to what he deposed before the committing Magistrate. (*Macleod, C. J. and Crump, J.*) **BASAPPA RUDRAPPA DHAMANGHI v. EMPEROR.**

86 I. C. 145 = 27 Bom. L. R. 113 = 26 Cr. L. J. 705 = A. I. R. 1925 Bom. 266.

**—S. 288—Retraction.**

—Where before the committing Magistrate, the wife of the accused admits that her husband had taken part in the murder of his father but asserts in the Sessions Court that the admission was due to torture by police, of which she never complained before, the Sessions Judge is entirely justified in admitting her deposition before the committing Magistrate as evidence at the trial under S. 288. (*Waller and Cornish, J.J.*) **KESAVA PILLAI v. EMPEROR.**

1929 Cr. C. 485 = 30 M. L. W. 642 = 2 M. Cr. C. 298 = 1929 M. W. N. 901 = A. I. R. 1929 Mad. 837 = 57 M. L. J. 681.

—S. 288 empowers the Court of Sessions to treat as substantive evidence at the trial, depositions made before the committing Magistrate but subsequently, repudiated before Sessions Judge, as having been made under police pressure. (*Shadi Lal, C. J. and Zafar Ali, J.*) **RAKHA v. THE CROWN.**

93 I. C. 230 = 6 Lah. 171 = 26 P. L. R. 304 = 27 Cr. L. J. 438 = A. I. R. 1925 Lah. 399.

**—S. 288—Scope.**

—Evidence duly taken before a Magistrate can be used for all purposes in a trial Court so long as the evidence is evidence within the meaning of the Indian Evidence Act. The view that S. 288 can only be utilised in such cases as the Evidence Act specifically provides is wrong as that Act has no such special provision. On the other hand, to hold that S. 288 can be utilized in all cases, except those in which the Evidence Act directly prohibits such use, would render the amendment of 1923 quite useless. (*Adami and Bucknill, J.J.*) **JEHAL TELI v. EMPEROR.**

84 I. C. 334 = 3 Pat. 781 = 6 Pat. L. T. 53 = 26 Cr. L. J. 270 = A. I. R. 1925 Pat. 51.

**—S. 288—Statements in investigations.**

—The object and effect of S. 288 is to place the deposition in the committal enquiry on exactly the same footing as the deposition in the Sessions Court. Such a deposition is "testimony" within the meaning of S. 157 of the Evidence Act, which, a prior statement by the witness during the police investigation is admissible in evidence to corroborate. A. I. R. 1923 Mad. 20 and 27 Cal. 295, Foll. (*Scott-Smith and Ffords, J.J.*) **MAMCHAND v. THE CROWN.**

82 I. C. 129 = 25 Cr. L. J. 1201 = 5 Lah. 324 = A. I. R. 1924 Lah. 609.

**—S. 289—Directions to Jury.****—Insufficient evidence.**

Although a mere scintilla of evidence clearly would not justify the Judge in leaving the case to the jury, at the same time it is not necessary that the evidence must be satisfactory, trustworthy and conclusive before the jury can be asked to arrive at their verdict on it; (10 All. 414 and 16 Bom. 414. Rel. on.) (*Allanson and Sen, J.J.*) **RAMCHARITER SINGH v. EMPEROR.**

103 I. C. 548 = 8 P. L. T. 691 = 28 Cr. L. J. 692 = 7 Pat. 15 = 8 A. I. Cr. R. 369 = A. I. R. 1927 Pat. 370.

**—Insufficient evidence.**

No evidence worth the name is under the law very different from no evidence. If a Judge directs the jury



**CR. P. CODE (1898), S. 289—Directions of Jury.**

to return a verdict of not guilty, because he holds that there was no evidence worth the name against the accused he commits an error of law. If there is any evidence it is for the jury and not for the Judge to say that this evidence was such that no reliance could be placed upon it. But this error of law is not of great importance. (*Newbould and B. B. Ghose, J.J.*) RAHAMALI HOWLADAR v. EMPEROR. 86 I. C. 463= 26 Cr. L. J. 1151=A. I. R. 1925 Cal. 1055.

**—S. 289—Procedure.**

—A and B tried together—No sufficient evidence against A—Court should not forbear from acquitting A on the ground that B's case will be prejudiced. (*Cuming and Mukerji, J.J.*) HARICHARAN DAS v. EMPEROR. 93 I. C. 46=

27 Cr. L. J. 398=A. I. R. 1926 Cal. 728.

**—S. 289—Withdrawal from Jury.**

—Insufficient or untrustworthy evidence.

Section 289, clearly lays down that Sessions Judge has no power to withdraw a case from the jury, but in certain circumstances in a trial by jury he is entitled to direct the jury to return a verdict of not guilty. But what gives him such power, as S. 289, sub-S (2), states, is when there is no evidence. 5 C. W. N. 411, Expl.

The expression "there is no evidence" in S. 289 cannot be extended to mean no satisfactory, trustworthy or conclusive evidence. 9 C. W. N. 829; 10 All. 414; A. I. R. 1923 Bom. 220 and A. I. R. 1924 Rang. 165, Foll. (*Wort, J.*) EMPEROR v. NAWAL KISHORE MISSIR. 115 I. C. 692=

10 P. L. T. 101=30 Cr. L. J. 519= 12 A. I. Cr. R. 329=A. I. R. 1929 Pat. 121.

**—S. 291—Discharged witness.**

—Right of Accused.

Section 291 of the Cr. P. Code, does not in express terms refer to a witness who has been cited and discharged but if the accused insists on the examination of a witness in attendance who had been discharged before, the Court may, in the interests of justice, allow the accused an opportunity for his production. (*Kanhaiya Lal, J. C.*) NAGESHWAR v. KING-EMPEROR. 73 I. C. 54=

24 Cr. L. J. 518=A. I. R. 1923 Oudh 142

**—S. 291—Refusal to examine a witness for defence—Conviction bad.**

—Where the accused wanted to examine a witness in his own defence but the witness was not examined,

*Held*, that the accused was deprived of a right which he had by law and that his conviction was bad. (*Walsh, J.*) BHAGWAN DAS v. SADDIQ AHMED.

86 I. C. 79=23 A. L. J. 73=26 Cr. L. J. 703= 6 L. R. A. Cr. 101=A. I. R. 1925 All. 318.

**—S. 291—Refusal to summon.**

—Refusal to grant an adjournment to summon a witness not named in the list delivered to the trying Magistrate is legal. (*Martineau and Zafar Ali, J.J.*) NAZIR SINGH v. EMPEROR. 91 I. C. 806=

7 L. L. J. 428=26 P. L. R. 767= 27 Cr. L. J. 134=A. I. R. 1925 Lah. 557.

**—S. 297.**

Charge to Jury.

Contents of Charge to Jury.

Defective direction.

Duty of Jury.

Evidence.

Misdirection.

Non-direction.

Omissions.

Summing up.

Miscellaneous.

**CR. P. CODE (1898), S. 297—Charge to Jury—Evidence.****—S. 297—Charge to Jury.**

—Accused represented.

Where the accused are represented, the Court may, having regard to the skill and elaboration with which rival contentions are placed before the jury by counsel on both sides, make the charge not so elaborate, but direct the jury to take the arguments into consideration. 27 Bom. 644, Ref. (*Wild, J. C. and Rupchand, A. J. C.*) MD. KHAN v. EMPEROR.

1930 Cr. C. 1145=A. I. R. 1930 Sind 308.

—Accused unrepresented.

Per *Wild, J. C.*—Where in a Sessions Court an accused person is unrepresented, it is particularly necessary that the Judge while charging the jury should bring to their notice the arguments which would have been used, if he had been represented by a pleader; else there is a chance that if the case goes to appeal, it will be urged that there was a non-direction in the charge of the jury. (*Wild, J. C. and Rupchand, A. J. C.*) MD. KHAN v. EMPEROR. 1930 Cr. C. 1145=

A. I. R. 1930 Sind 308.

—Where the Judge told the jury that the essence of the law of private defence was that the person exercising it must be possessed of reasonable fear either for his own safety or the safety of his property,

*Held*: that exposition of the law on the right of private defence was not exhaustive, for, under S. 97, I. P. C. the right of private defence extends under the restrictions specified in that section not only to the defence of one's own body or property, but to the body or property of any other person as well. (*Newbould and Mukherji, J.J.*) ABDUL RAZACK v. EMPEROR.

A. I. R. 1928 Cal. 269.

**—S. 297—Charge to jury—Caution.**

—Where the foundation for the prosecution story is dying declaration of the deceased a caution should be given to the jury as regards the weight and efficacy to be given to a dying declaration and their attention should be drawn to the question of how far the other facts and surrounding circumstances proved in evidence must be said to support the truth or otherwise of that declaration. (*Pearson and Jack, J.J.*) EMPEROR v. SASHI KANTA DE. 34 C. W. N. 792=

1930 Cr. C. 1154=A. I. R. 1930 Cal. 754.

**—S. 297—Charge to jury—Evidence.**

—Reference to police Diary under S. 162.

Although it is injudicious to refer to police diaries in charge to jury, where the Judge refers to it under S. 162, there is no misdirection in doing so if the Court warns the jury that they were entitled to believe the witness if they thought so unless the defence showed that he had on a previous occasion made a contradictory statement. (*Macpherson and Dhavle, J.J.*) RAM SARUP SINGH v. EMPEROR. 9 Pat. 606=

1930 Cr. C. 1009=128 I. C. 121=

A. I. R. 1930 Pat. 513.

—Suggestion that witnesses are screening the offender.

The jurors ordinarily are not men who are used to weighing evidence and it is therefore necessary that all help should be given to them in estimating the evidence in the light of the observations made by the learned Judges in decided cases. Where the witnesses changed their version of evidence in the Sessions Court and the Judge addressed the Jury as follows:—

"It seems clear to me that these persons have decided to go as far as they possibly can towards altering their evidence in such a way as shall secure the acquittal of the two men here on trial."

**CR. P. CODE (1898), S. 297—Charge to jury—Evidence.**

*Held*, that this was a suggestion to the jury the witnesses were speaking the truth when they were deposing before the committing Magistrate but that before him they were attempting to screen the offender and therefore the charge was vitiated by the defect. (*Suhrawardy and Panton, J.J.*) **ABDUL GANI v. EMPEROR.**

53 Cal. 181=42 C. L. J. 205=26 Cr. L. J. 1577=90 I. C. 537=A.I.R. 1926 Cal. 235.

**Documents not proved.**

Where it has not been proved that certain letters had been written by a certain person, it is not necessary for the Court to place those letters before the jury in order to get their opinion whether the letters were written by that person or not. (*Cuming and Mukerjee, J.J.*) **KHIJIRUDDIN v. EMPEROR.**

53 Cal. 372=42 C. L. J. 504=27 Cr. L. J. 266=92 I.C. 442=A. I. R. 1926 Cal. 139.

**—S. 297—Charge to jury—Explanation of Law.****Benefit of doubt—Mention of.**

A Judge is bound to explain the law to the jury with clearness and distinctness and failure to do so prejudices the trial. Where the Judge withholds from the jury the legal assistance, the assistance in points of law, which the case demands he fails in his duty. So also the Judge ought not to omit to state in his charge that if the jury entertains a reasonable doubt as to the guilt of the accused they are bound to return the verdict that the accused is not guilty. (*Young and Sen, J.J.*) **EMPEROR v. MOHAMMAD ISMAIL.**

120 I. C. 264=1929 A. L. J. 1261=31 Cr. L. J. 33=1930 Cr. C. 40=A. I. R. 1930 All. 24.

**Accused not pleading exception.**

The mere fact that the accused persons do not admit that they were present at the occurrence or raise a case of provocation or that of passion, etc., does not render it unnecessary to give the jury a proper direction as to the exceptions. The question is whether on any reasonable view of the facts, certain of the exceptions can matter. If they can matter and if a proper direction is not given to the jury, then it is not open to the Court to guess and gamble as to whether or not the jury's verdict would have been different. (*Rankin and Chotanar, J.J.*) **JAHUR SHEIKH v. EMPEROR.**

30 C. W. N. 912=45 C. L. J. 20=27 Cr. L. J. 1402=98 I. C. 714=A. I. R. 1926 Cal. 1107.

—Merely stating in the charge, that particular sections have been read and explained to the jury without showing in what manner they were explained, is bad. (*Newbould and B. B. Ghose, J.J.*) **RAHAMALI HOWLADAR v. EMPEROR.**

88 I. C. 463=26 Cr. L. J. 1151=A. I. R. 1925 Cal. 1055.

**Unlawful assembly.**

In making the charge to the jury with respect to accused in an unlawful assembly case the judge must be careful to see whether there has been any change in the common object of the assembly in the course of the occurrence. For the common object of an unlawful assembly can change as the occurrence progresses. So it may be that there are various common objects in the course of an occurrence and it is the business of the judge in his charge to the jury to place all these common objects that there may have been, before the jury to enable the jury to decide if any of them has been proved against the accused and if so which of them. (*Greaves and Panton, J.J.*) **ABDUL GANI v. EMPEROR.**

83 I. C. 346=25 Cr. L. J. 1386=A.I.R. 1925 Cal. 494.  
—Per *Cuming, J.*—S. 34 and the connected Ss. 35, 36, 37 and 38 of I. P. Code create no substantive offence. They are merely declaratory of a principle of law and in charging an accused person it is not necessary to

**CR. P. CODE (1898), S. 297—Charge to jury—Nature.**

cite them in the charge. (*Mookerjee, Richardson, C. C. Ghose, Cuming and Page, J.J.*) **EMPEROR v. BARENDRA KUMAR GHOSE.**

81 I. C. 353=28 C. W. N. 170=38 C. L. J. 411=25 Cr. L. J. 817=A. I. R. 1924 Cal. 257 (F.B.).

**—S. 297—Charge to jury—Nature.**

—In a case triable by a jury, the charges should be few and simple, and so readily capable of explanation by the Judge that the jury will have no difficulty in appreciating the law which they have to apply to the facts of the case before them. The charge should shortly state the salient points in the case, the evidence adduced in it and the points for determination to the jury with reference to the law. A multitude of charges covering offences subtly distinguished from one another is enough to confuse a jury and cause a mistrial. (*Suhrawardy and Page, J.J.*) **JABANULLAH v. EMPEROR.**

34 C. W. N. 365=57 Cal. 1162=1930 Cr. C. 742=A.I.R. 1930 Cal. 434.

**Simple language—Judges opinion.**

The duty of a Judge is to help the jury to arrive at a proper verdict of the facts, and with that in view it is far better to use the plainest and simplest language in his charge. Also if he does express his opinion on the facts he should do it in such a way as makes it quite clear to the jurors that he is not in any way seeking to usurp their functions or to interfere in matters the decision of which is exclusively within the competence of the jury itself. (*Pearson and Mullick, J.J.*) **MANOHAR MANDAL v. EMPEROR.**

1930 Cr. C. 657=126 I. C. 775=31 Cr. L. J. 1115=A. I. R. 1930 Cal. 430.

—The charge cannot be said to be bad unless it is really insufficient. (*Rankin, C. J. and Buckland, J.*) **BABARALI SARDAR v. EMPEROR.**

49 C. L. J. 197=116 I. C. 167=30 Cr. L. J. 580=56 Cal. 840=13 A. I. Cr. B. 8=A. I. R. 1929 Cal. 182.

**Several accused.**

Where several persons are tried jointly being members of an unlawful assembly and for several other offences, the charge to jury must set out the defence of each accused and the common object and the case of each accused must be dealt with separately. (*Odgers, J.*) **THANGAYA NADAR v. EMPEROR.**

97 I. C. 748=27 Cr. L. J. 1164=A. I. R. 1927 Mad. 56.

—Where a Judge complied with all the requisitions of the law, i.e., where he stated the law correctly and placed the case before the jury both as it stood against as well as in favour of the prisoners, and left the jury to decide upon evidence which was admissible and relevant and where the jury arrived at a verdict which was very reasonable,

*Held*, that there was no justification for interfering with the conviction based upon such verdict. (*Stuart, C. J.*) **BABAN v. EMPEROR.**

4 O. W. N. 901=28 Cr. L. J. 937=105 I.C. 457=A.I.R. 1927 Oudh 549.

**Reading of passages from judgments.**

There is no prohibition in law forbidding a Judge to read to a jury in his charge from a judgment, though in practice it is not desirable to refer and read from several law reports, as it may have the effect of confusing the minds of laymen. Yet the jury are entitled to ask and the Judge is entitled to read passages from judgments for guidance of the jury, and such reading does not amount to misdirection. (*Rutledge, C. J., Heald and Chari, J.J.*) **KING-EMPEROR v. NGA TIN GYI.**

488=5 Bur. L. J. 209=99 I.C. 1013=28 Cr. L. J. 213=7 A. I. Cr. B. 394=A. I. R. 1927 Bang. 68 (F.B.).

**CR. P. CODE (1898), S. 297—Charge to jury—Nature.**

—S. 368, I. P. C.—*Distinction between knowledge and suspicion.*

The proper way to charge the jury in a case under S. 368, I.P.C. would be to place before the jury the evidence, the direct evidence of knowledge as given of the abduction of the girl, to point out the strength and weakness of that evidence, to tell them that this was the only evidence relating to the knowledge, and then to place before them the circumstances, if any, which might raise an inference of knowledge on the part of the accused that the girl was an abducted girl; and lastly to ask the jury to draw their own conclusion on that question. To place before the jury the suspicion in the mind of the accused and the reasonable cause for such suspicion and also direct evidence as to knowledge on his part will have the effect of obliterating from the mind of the jury any distinction they may entertain between knowledge and suspicion. A defect of this nature on a crucial point is likely to vitiate the verdict. (*Suhrawardy and M. N. Mukerji, JJ.*) **GADADHAR SARKAR v. EMPEROR.** 87 I. C. 845 =

26 Cr. L. J. 1021 = A. I. R. 1926 Cal. 226.

**—S. 297—Charge to jury—Procedure.**

—*Interpretation of charge.*

The right course for a Judge is to charge the jury himself; but where there are difficulties in the way of doing this, as when the Judge does not happen to be sufficiently acquainted with the vernacular language so as to be understood by the jury, his delivering the charge through some other man is not improper. The important thing is that the review of the evidence made by the learned Judge should be placed before the jury in a manner which they can understand. (*Lindsay, Ag.C.J.*) **SUR NATH BHADURI v. EMPEROR.** 105 I. C. 662 = 25 A.L.J. 1077 = 8 A.I.Cr.R. 342 = 8 L.R.A. Cr. 140 = 28 Cr. L. J. 950 = A. I. R. 1927 All. 721.

—The Judge should warn the jury that the statement of the accused not amounting to confession cannot be considered against the co-accused.

A charge to the Jury must be read as a whole and if upon the general view taken, the case has been fairly left within the Jury's province there is no misdirection. 41 Cal. 1023, Foll. (*Kennedy, J. C. and Raymond, A. J. C.*) **TOPANDAS v. EMPEROR.** 81 I. C. 249 = 25 Cr. L. J. 761 = A. I. R. 1925 Sind 116.

**—S. 297—Charge to jury—Re-charge.**

—*Cross-examination of jury.*

When in case of an unintelligible verdict from a jury, a Judge thinks it better to re-charge the jury on specific points there is nothing in the Cr. P. Code to prevent him from doing so. In such a matter it is most unsatisfactory for a Judge to cross-examine the jury which as a matter of fact means cross-examination of the foreman of the jury. (*Rankin, C. J. and C. C. Ghose, J.*) **HAMID ALI v. EMPEROR.** 125 I. C. 97 = 31 Cr. L. J. 761 = 1930 Cr. C. 401 = 57 Cal. 61 = A. I. R. 1930 Cal. 320.

**—Conviction for dacoity—Acquitting one out of five.**

Where five persons were charged with dacoity and the jury acquitted one and convicted the rest and the Judge failed to ask them to consider the result of their acquitting one and whether they still found that robbery was committed by five persons,

*Held*, it was impossible to find, what the verdict could have been if the questions were put to them and conviction for dacoity should be set aside. (*Waller and Madhavani Nair, JJ.*) **ABBAS ALI v. EMPEROR.** 106 I. C. 341 = 1927 M. W. N. 853 = 29 Cr. L. J. 5 =

**CR. P. CODE (1898), S. 297—Charge to jury—Specific direction.**

9 A. I. Cr. R. 248 = 1 M. Cr. C. 72 = A. I. R. 1928 Mad. 144 = 53 M. L. J. 732.

**—S. 297—Charge to jury—Recording.**

—In a Judge does not write his charge before delivery which whenever practical is the better course, he should reduce the charge to writing as soon as possible after charging the jury so that what he said is fresh in his mind. A delay makes it impossible for an appellate Court to know whether the written charge was really the charge which was given to the jury. (*Young, J.*) **JAGMOHAN SINGH v. EMPEROR.**

120 I. C. 114 = 1930 Cr. C. 44 = 30 Cr. L. J. 1146 = 52 All. 207 = 1930 A.L.J. 486 = A. I. R. 1930 All. 28.

—It is unquestionably desirable that the record of the charge on question of law should be sufficiently full to show whether the elements constituting the offences charged have been properly and fully explained to the jury. But where the law regarding the offence charged has been fully explained to the jury, the fact that the Judge has failed to note the same on the record is not sufficient to set aside the conviction. (*Macpherson and Dhaive, JJ.*) **RAMSARUP SINGH v. EMPEROR.**

128 I. C. 121 = 1930 Cr.C. 1009 = 9 Pat. 606 = A.I.R. 1930 Pat. 513.

—*Rangoon High Court practice—Taking shorthand note of charge—Deprecated.*

The existing practice of taking a shorthand note of the charge of the learned Judge presiding at the Criminal Sessions of the Rangoon High Court only in cases of murder strongly deprecated. In cases where an appeal lies, or where an application is made to the Government Advocate for a fiat, it is essential that there should be an official record of the charge the learned judge delivered to the jury. 28 C. W. N. 170 at 174 and 28 C. W. N. 251, Ref. (*Page and C. J. Doyle, J.*) **U BA THEIN v. THE EMPEROR.** 8 Rang. 372 = 127 I. C. 730 = 1930 Cr. C. 1179 = A. I. R. 1930 Rang. 351.

—It is not in every case that the Judge is bound to state in his charge how he explained the law to the jury. But the charge must be recorded in such a way as would enable the High Court sitting as a Court of appeal to judge whether the facts and circumstances of the case had been properly placed before the jury and also whether the law had been correctly explained. (*Cuming and Mukerji, JJ.*) **KHIJRUDDIN v. EMPEROR.**

53 Cal. 372 = 42 C. L. J. 504 = 27 Cr. L. J. 266 = 92 I. C. 442 = A. I. R. 1926 Cal. 139.

**—S. 297—Charge to Jury—Specific direction.**

—*Evidence of slight value—Caution.*

Where in a trial for forgery it was essential to prove whether one R was below 18 and the accused had knowledge of it, evidence of a witness in another proceeding was referred to of which the accused had knowledge; the judge instead of leaving the jury to find the knowledge of the accused simply said that if he had knowledge of the prior proceeding, he should be held guilty, and omitted to mention that the evidence referred to was trivial.

*Held*, the charge was defective and the trial was vitiated. (*Rankin, C. J., C. C. Ghose, Suhrawardy, Mukherji and Jack, JJ.*) **PADAM PARSHAD v. EMPEROR.**

119 I. C. 193 = 50 C. L. J. 106 = 33 C. W. N. 1121 = 30 Cr. L. J. 993 = 1929 Cr. C. 228 = A. I. R. 1929 Cal. 617 (S. B.).

**—Important witness not called by prosecution.**

The fact that an important witness has not been called by the prosecution should be pointed out to the jury and they should be left to draw their own conclu-

**CR. P. CODE (1898), S. 297—Charge to jury.—Specific direction.**

sions from it. 8 Cal. 121, Ref. (*Ross and Wort, J.J.*)  
**TAJALI MIAN v. EMPEROR.** 104 I. C. 459 =  
 9 P. L. T. 57 = 7 Pat. 50 = 28 Cr. L. J. 843 =  
 A. I. R. 1928 Pat. 31.

**—Person suspected to be an accomplice.**

In any jury trial where the facts and circumstances of the case raised a sufficient suspicion that a certain person had something to do with the transaction concerning the offence, it is necessary for the Judge to have it put to the jury to consider whether such person is or is not an accomplice. (*Cuming and Gregory, J.J.*)  
**MOSS v. EMPEROR.** 100 I. C. 358 =  
 28 Cr. L. J. 278 = A. I. R. 1927 Cal. 460.

**—Omission to put in F. J. R.**

Where the witnesses named as eye-witnesses in the original complaint were not examined, it would be improper to tell the jury that they were entitled to draw inference adverse to the prosecution unless in evidence it appears that no satisfactory reasons for non-examination were forthcoming. It is not the duty of the Court to inform the jury that several witnesses in committing Court did not support the prosecution case where this point was not put in evidence before the jury. It is the obvious duty of the prosecution to put forward the first information report in the case. Where the Judge in his charge to the jury merely passed over the omission to do so with a casual remark that the complaint has not been filed, it would amount to a misdirection and as the jury were not therefore properly charged, the verdict must be set aside. A. I. R. 1922 Cal. 461; 16 All. 84; A. I. R. 1924 Mad. 239, Rel. on; 10 Cal. 1070 Diss. from; 42 Cal. 422, Dist.; A. I. R. 1921 Cal. 257. Commented upon. (*Wallace and Madhavan Nair, J.J.*)  
**MUTHAYA THEVAN v. KING-EMPEROR.**  
 100 I. C. 531 = 25 M. L. W. 487 = 28 Cr. L. J. 307 =  
 A. I. R. 1927 Mad. 475.

**—Benefit of doubt.**

In every charge to a jury it is well to include therein a direction that the prisoner must always be given the benefit of the doubt, but that doubt must be at reasonable and valid doubt. (*Findlay, J. C.*) **SONIA KOSHTI v. EMPEROR.** 99 I. C. 849 = 28 Cr. L. J. 177 =  
 7 A. I. Cr. R. 333 = A. I. R. 1927 Nag. 117.

**—Supplementary trial.**

Where there are two trials—one original and the other supplementary—the Judge at the supplementary trial should warn the jury that the accused must have a perfectly fair trial, and that the jury are not to be biassed by the result arrived at in the previous trial. It is neither necessary nor desirable for him to tell the jury the offences of which the first batch of the accused were convicted. (*Walmley and Suhrwardy, J.J.*)  
**MOFEZUDDI v. EMPEROR.** 72 I. C. 65 =  
 24 Cr. L. J. 305 = A. I. R. 1924 Cal. 435.

**—S. 297—Contents of charge to jury.****—Evidence equally balanced.**

Where *prima facie* the evidence is more or less equally balanced to the ordinary jury the Judge ought to give the usual direction to the jury that if they have any reasonable doubt in their minds as to the guilt of the accused they should give the accused the benefit of it. In such a case it is almost impossible to say that the omission of this very important portion of the charge to the jury might not affect the minds of the jury. (*Young, J.*) **JAGMOHAN SINGH v. EMPEROR.**  
 120 I. C. 114 = 1930 Cr. C. 44 = 30 Cr. L. J. 1146 =  
 52 All. 207 = 1930 A. L. J. 486 = A. I. R. 1930 All. 28.

—Something more is required than the strict letter of the law in a Judge's charge to the jury. It is not sufficient merely to recount and repeat chronologically

**CR. P. CODE (1898), S. 297—Contents of charge to jury.**

the evidence of witnesses "obfuscated by a cloud of unnecessary detail and exalted verbiage," without sifting and valuing it or marshalling it under separate heads." "It is worse than a waste of time to spread fine language and lofty homilies before a common jury." Similarly long and abstruse dissertations upon the law only tend to divert the attention of the jury from the essential points for consideration. A charge which avoids any expression of opinion amounts to a most unhelpful direction. An inadequate charge is vitiated for misdirection and non-direction. (*Cuming and Lort Williams, J.J.*) **NAGENDRA NATH v. GOPAL SARDAR.**  
 34 C. W. N. 164 = 1929 Cr. C. 390 = 57 Cal. 740 =  
 A. I. R. 1929 Cal. 742.

**—Record of.**

Session Judge's note on the point of heads of charge, giving sections without details as having been read and explained to the jurors is sufficient record so as to comply with the law at least where the law applicable to the facts of the case is not complicated. A. I. R. 1925 Pat. 797 and A. I. R. 1928 Pat. 420; Pat. Cr. A. 94 of 1924, Ref. (*Macpherson and Dhawle, J.J.*)  
**DHANPAT TIWARI v. EMPEROR.** 9 Pat. 148 =  
 11 Pat. L. T. 646 = 125 I. C. 131 = 31 Cr. L. J. 786 =  
 1930 Cr. C. 511 = A. I. R. 1930 Pat. 243.

**—Accused unrepresented.**

Where the accused is represented and the case has been elaborately argued, the Court may not make the charge elaborate but simply direct the jury to take the arguments into consideration. But where the accused is unrepresented, it is particularly necessary that the judge should bring to their notice the arguments which would possibly have been used by a pleader; else there is a risk of the charge being attacked on appeal on the ground of non-direction. (*Wild, J. C. and Rupchand, A. J. C.*) **MAHOMED KHAN v. EMPEROR.** 1930 Cr. C. 1145 = A. I. R. 1930 Sind 308.

—Judge should place before jury in coherent manner salient points arising on evidence adduced—Evidence of witnesses need not be incorporated. (*Rankin, C. J. and C. C. Ghose, J.*) **JUTI MULI v. EMPEROR.**  
 125 I. C. 599 = 33 C. W. N. 918 = 1929 Cr. C. 477 =  
 57 Cal. 248 = 31 Cr. L. J. 857 = A. I. R. 1929 Cal. 765.

**—Accuracy—Mention of—Two conflicting presumptions together.**

It is essential that in the general observations which a Judge makes in the course of his charge to the jury he should be accurate and within the limits of what has always been allowed from time to time in criminal trials. The verdict of the jury should not be interfered with except where the charge taken as a whole cannot be supported. The passage in the charge to the jury ran as follows: "As there is a presumption of innocence in favour of the accused, so there is a presumption of truthfulness in favour of the witnesses. The presumption is rebutted if it is shown that the witness has told an untruth. But that would not justify you in rejecting his evidence in toto. You will have to carefully scrutinize his evidence and should accept it only to the extent to which it is supported by the evidence of other trustworthy witnesses and circumstances and probabilities of the case".

*Held*, that the language of the learned Judge may lead to misconstruction and he should not have put together the presumption of innocence in favour of an accused and the presumption in favour of the veracity of testimony adduced in a Court of justice. The two presumptions are in their nature different and should not be classed together in the manner in which it has been done by the learned Judge in this instance. (*C. C.*

**CR. P. CODE (1898), S. 297—Contents of Charge to jury.**

*Ghose and Jackson, J.J.*) **AMBAR ALI v. EMPEROR.**  
 48 C.L.J. 473=30 Cr.L.J. 825=33 C.W.N. 55=  
 117 I.C. 684=A.I.R. 1928 Cal. 769.  
 —Full statement of law and fact.

As the law allows an appeal in cases of trial by jury on the ground of misdirections, the charge should be in such a form as to enable the Court of appeal to say that all points of law and fact were clearly and correctly and with sufficient fullness explained to the jury, having regard to the evidence adduced in the case. (34 Cal. 698, Foll.) (*C. C. Ghose and Cammiade, J.J.*) **TUKA MIA v. EMPEROR.**  
 31 C.W.N. 387=28 Cr. L.J. 478=  
 101 I.C. 606=A.I.R. 1927 Cal. 936

**—Questions of law.**

Although the law requires that the Judge should record only the heads of the charge, still he must put down sufficient in the charge for the appellate Court to ascertain whether he did or did not correctly explain the law to the jury. A. I. R. 1922 Cal. 192, Foll. (*Cuming and Gregory, J.J.*) **MOSS v. EMPEROR.**  
 100 I.C. 358=28 Cr. L.J. 278=A.I.R. 1927 Cal. 460.

—It is not for the Judge to explain to the jury questions of law which do not arise on the facts or pleadings of the party. (*Cuming and Gregory, J.J.*) **ADAM ALI v. EMPEROR.** 100 I.C. 718=  
 7 A.I. Cr. E. 546=45 C.L.J. 131=31 C.W.N. 314=  
 28 Cr. L. J. 334=A. I. R. 1927 Cal. 324.

**—Opinion of the Judge.**

The duty of the Judge in summing up is to place the entire evidence, for or against the accused, before the jury and leave the ultimate decision of the question of fact to it. He is not debarred from expressing his own opinion upon the evidence, but it should be done in such a way as not to create any impression in the mind of the jury that it was a direction from the Judge which they should follow. (34 Cal. 698 and A. I. R. 1922 Cal. 192, Rel. on.) Apart from this, any advice from the Judge to ignore or neglect any evidence is improper. It is not proper to ask the jury to decide questions of fact without considering the whole of the evidence. 6 Bom. L. R. 31, Rel. on.

In a case where there are no eye witnesses and no sufficient evidence of motive, it is proper to leave the whole case to the jury. (*Suhrawardy and Duval, J.J.*) **NAIBULLA SHAIKH v. EMPEROR.** 96 I.C. 990=  
 43 C.L.J. 488=27 Cr. L.J. 1038=A.I.R. 1926 Cal. 996.

**—Words of the section.**

It is the duty of the Sessions Judge to explain clearly to the jury the offence with which the accused are charged and in doing so the Judge should keep before him the words of the section defining the offence.

In case of theft removal must be done dishonestly and the word "dishonestly," must be explained to the jury. (*Devadoss and Waller, J.J.*) **VENKATIGADU v. EMPEROR.** 97 I.C. 951=24 M. L. W. 415=  
 27 Cr. L. J. 1191=A. I. R. 1926 Mad. 1121.

**—Judge should state the law.**

The charge to the Jury must comply with the provisions of S. 297, and must sum up the evidence for the prosecution and lay down the law by which the jury are to be guided. Where the charge stated that the law on the subject had already been presented to the jury by the public prosecutor and that in the opinion of the Sessions Judge no difficult point of law arose in the case, *Held*, that the charge is defective. (29 Cal. 379, Approved.) (*Kotval, A. J. C.*) **RAMPRASAD v. EMPEROR.** 88 I.C. 178=26 Cr. L. J. 1090=  
 A. I. R. 1926 Nag. 53.

**—Explanation of accused.**

In a case where the evidence of the guilt of the

**CR. P. CODE (1898), S. 297—Defective direction.**

accused rests upon discovery of stolen property from his possession, and which is tried by the jury the proper course is to direct that the jury are entitled to take the explanation offered by the accused of their possession. It is not necessary that such claim by the accused must be proved. 52 Cal. 223, Ref. (*Suhrawardy and Panton, J.J.*) **KABATULLA v. EMPEROR.**

90 I. C. 542=42 C. L. J. 212=  
 26 Cr. L. J. 1582=53 Cal. 157=  
 A. I. R. 1925 Cal. 1241.

—The Judge is not expected to comment on every point that could possibly be urged in favour of the accused. It is sufficient if he deals with the more important points and does not unduly press on the jury his own view on the questions of fact. 49 Cal. 573 at 599, Foll. (*Kennedy, J. C. and Raymond, A. J. C.*) **TOPAN DAS v. EMPEROR.** 81 I. C. 249=25 Cr. L. J. 761=  
 A. I. R. 1925 Sind 116

**—Conspiracy case.**

In a charge to the jury in a conspiracy case not only is it necessary that there should be a consideration of the conspiracy and the determination as to what was its nature and by what evidence it is proved, but unless it is quite clear that if there was a conspiracy all the accused were the members of it, there should be somewhere a separate statement and criticism of the proved actions of each of the members of the conspiracy. If this is not done the jury may take it for granted that all the accused were knowingly members of the conspiracy and that the only question before them was whether the conspiracy was criminal. (*Kennedy, J. C. and Raymond, A. J. C.*) **TOPANDAS v. EMPEROR.** 81 I. C. 249=25 Cr. L. J. 761=  
 A. I. R. 1925 Sind 116.

**—Dacoity case.**

In cases of offences under S. 395, I. P. C. (dacoity) the Judge ought to explain to the jury what is necessary to constitute the offence of robbery as that offence is defined in S. 390 of the Indian Penal Code. If he does not, it is a real and not merely a technical defect. It is not to be assumed that every jurymen knows the legal distinction between theft and robbery and the defect arising from the omission by the Judge to explain to the jury the essential elements of the offence of robbery is not cured by the fact that evidence was given in the particular case which if believed by the jury would warrant their conviction of the accused on the charge of dacoity. (25 Cal. 711; 8 M. L. T. 82; 39 All. 348; 4 C. W. N. 193; 30 Mad. 44; (1903) A.W.N. 232, Ref. and Foll.) (*Wazir Hasan, J. C.*) **NAWAB ALI v. EMPEROR.** 81 I. C. 953=25 Cr. L. J. 1129=  
 11 O. L. J. 315=A. I. R. 1924 Oudh 411.

**—S. 297—Defective direction.****—Collocation of evidence.**

Where the judge instead of grouping the witnesses in such a way as to direct the attention of the jury to the evidence regarding each of the particular facts sought to be proved on either side, merely placed their depositions before the jury in the order in which they were examined, *Held*, that such a method might have tended to confuse the minds of the jury in some respects. *Held*, however that the defect was remedied by the judge summing up the evidence against each individual accused. (*Pearson and Patterson, J.J.*) **HACHUNI KHAN v. EMPEROR.** 127 I.C. 767=34 C.W.N. 390=  
 1930 Cr. C. 793=A.I.R. 1930 Cal. 481.

—Where the jury were given the proper questions to answer but told to answer the same in the wrong order and, further, the jury were told that two questions, which were in fact separate, were intimately connected,

**CR. P. CODE (1898), S. 297—Defective direction.**

*Held*, that there was a misdirection vitiating the trial. (*Waller and Reilly, J.J.*) **SOLIYAN v. EMPEROR.** 1930 M. W. N. 773.

—*Dacoity—Judge omitting to point out the possible consequence of acquitting one of the five accused.*

Prosecution alleged that five persons took part in the dacoity. The judge in his summing up pointed out to the jury that they must make sure that there was a dacoity and secondly whether each of the accused took part in it. He, however, omitted to make clear to the jury the possible consequence of acquitting any of the accused. *Held*, that the conviction was vitiated by an improper charge to the jury. In such a case, the Judge should point out that if it was not proved that five persons took part, the offence for which each one of them was liable to be convicted was robbery and not dacoity. (*Waller and Cornish, J.J.*) **SUBBIAH TEVAN v. EMPEROR.** 1929 M. W. N. 789.

—*Wrong first information Report.*

Not treating the proper first information report as such and treating some other as proper and directing the jury accordingly amounts to misdirection and is sufficient to order retrial where accused was likely to have been prejudiced by the procedure. (*C.C. Ghose and Jack, J.J.*) **MOMIN TALUKDAR v. EMPEROR.**

117 I. C. 601=30 Cr. L. J. 803=  
A. I. R. 1928 Cal. 771.

—*Incomplete statement of law.*

Where the Judge told the jury that the essence of the law of private defence was that the person exercising it must be possessed of reasonable fear either for his own safety or the safety of his property.

*Held*, that exposition of the law on the right of private defence was not exhaustive, for under S. 97, I. P. C. the right of private defence extends under the restrictions specified in that section not only to the defence of one's own body or property, but to the body or property of any other person as well. (*Newbould and Mukerji, J.J.*) **ABDUL RAZAK v. EMPEROR.**

A. I. R. 1928 Cal. 269.

—*Law of private defence not well explained.*

Where there had been no proper summing up and the direction as to the right of private defence was also not free from objection, and the accused had been prejudiced by these defects,

*Held*, that the conviction of and the sentences passed on the accused should be set aside. (*Newbould and Mukerji, J.J.*) **ABDUL RAZAK v. EMPEROR.**

A. I. R. 1928 Cal. 269.

—*Evidence of accomplice.*

A jury must be warned expressly of the danger in accepting the uncorroborated evidence of an accomplice and if the warning is omitted, a conviction based upon such uncorroborated evidence must be set aside. (*Curtney-Terrill, C. J. and Macpherson, J.*) **RATTAN DHANUK v. EMPEROR.** 113 I. C. 329=8 Pat. 235=

9 P. L. T. 672=30 Cr. L. J. 137=

12 A. I. R. 41=A. I. R. 1928 Pat. 630.

—*Judge's opinion.*

Where the charge to jury is more in the nature of a judgment than a charge and the Judge expresses his opinion on the facts too dogmatically and in too unqualified a manner, and the charge takes the form of a considered argument tending in favour of the prosecution rather than an impartial summing up of evidence to the jury, the charge is defective and the conviction should be set aside. (*Ross and Wort, J.J.*) **TAJALI MIAN v. EMPEROR.** 104 I. C. 459=7 Pat. 50=

28 Cr. L. J. 843=9 P. L. T. 57=A. I. R. 1928 Pat. 31.

—*Analysis of evidence.*

Where in a case under S. 302, 324, I. P. C. the Judge

**CR. P. CODE (1898), S. 297—Evidence—Confession.**

in effect withdrew the determination of facts, telling them that no reasonable man would have any doubt as to the guilt of the accused and that the defence was trivial and beside the point, and he simply read out the evidence without analysing it and presenting the points favourable to the accused, *Held*, that the charge was bad and that re-trial should be ordered. (*C. C. Ghose and Graham, J.J.*) **EMPEROR v. RAJAB ALI FAKIR.**

103 I. C. 790=46 C. L. J. 31=

31 C. W. N. 881=8 A. I. Cr. R. 316=

28 Cr. L. J. 742=A. I. R. 1927 Cal. 631.

—**S. 297—Duty of jury.**

—*Findings in other proceedings not to influence.*

Where the first information had been judicially found to be false and where the Sessions Judge, in charging the jury, said that the decision was not binding on the accused or on the jury so that they could come to a different conclusion on the point on the materials before them, instead of saying in stronger terms that they were not to be influenced by this judicial decision and that they should discard it from their consideration,

*Held*, that the jury were bound to consider the first information which was relevant on many grounds and that the fact of its having been judicially found to be false was irrelevant and the jury was properly told that that decision was not binding on them and that they were at liberty to form their own conclusion. (*Jwala Prasad and Ross, J.J.*) **WAJID ALI v. EMPEROR.**

114 I. C. 220=7 Pat. 153=10 P. L. T. 297=

30 Cr. L. J. 273=A. I. R. 1929 Pat. 34.

—**S. 297—Evidence—Approver.**

—*Corroboration.*

Finding of a substance not ordinarily identifiable such as for example, sugar, from the house of a particular dacoit soon after the dacoity can lend corroboration to the approver's statement and it does not amount to misdirection to refer to it as such in the charge to jury. 29 Cal. 782 and A. I. R. 1929 Cal. 57, Ref. (*Macpherson and Dhavle, J.J.*) **RAMSARUP SINGH v. EMPEROR.**

128 I. C. 121=

9 Pat. 606=1930 Cr. C. 1009=A. I. R. 1930 Pat. 513.

—*Corroboration.*

A conviction based upon an uncorroborated evidence of an approver should ordinarily not be sustainable unless the Judge had explained carefully to the jury that they were taking a grave risk in convicting upon such uncorroborated evidence. Where the Judge, in his charge, explains the nature of the corroboration and directs the jury to arrive at their verdict after considering the evidence of the approver and the evidence of corroboration together, the charge is open to no objection. (*Stuart, C. J.*) **MANI RAM v. EMPEROR.**

107 I. C. 876=5 O. W. N. 33=29 Cr. L. J. 311=

10 A. I. Cr. R. 21=A. I. R. 1928 Oudh 207.

—*Corroboration need not be on all points.*

It is not necessary that the approver should be corroborated as regards every single statement that he makes and therefore a direction to jury that if the approver was corroborated on some points, they might believe him on other points in respect of which he was not corroborated, is not misdirection. (*Newbould and B. B. Ghose, J.J.*) **LEDU MOLLA v. EMPEROR.**

87 I. C. 925=52 Cal. 595=42 C. L. J. 501=

26 Cr. L. J. 1037=A. I. R. 1925 Cal. 872.

—**S. 297—Evidence—Confession.**

—*In a case of doubt on the question of admissibility of evidence when it is of such vital importance to the prisoners as their own confessions one should not hold them as admissible unless one is affirmatively satisfied as*



**CR. P. CODE (1898), S. 297—Evidence—Confession.**

to their relevancy. *R. v. Warringham*, 2 Den. C. C. 447 (1851), Foll. (*Mukerji, J.*) *EMPEROR v. PANCHKARI DUTT*. 86 I. C. 414=52 Cal. 67=29 C. W. N. 300=26 Cr. L. J. 782=A. I. R. 1925 Cal. 587.

**—S. 297—Evidence—Discussion of.**

—In summing up of evidence the Judge should not confine himself to detailing chronologically the evidence given by the witnesses for the prosecution without shifting or analyzing it and without directing the jury in any way upon the value or weight which ought to be or might be attached to it. He ought also to draw the attention of the jury to the defence raised. Omission to do either makes the Judge of little assistance to jury. (*Cuming and Lort Williams, J.J.*) *NATABAR HALDAR v. EMPEROR*. 123 I. C. 751=50 C. L. J. 476=34 C. W. N. 223=1930 Cr. C. 136=31 Cr. L. J. 572=A. I. R. 1930 Cal. 136.

**—Opening address by counsel.**

Matter of which evidence is not intended or cannot be produced should not be referred by counsel for prosecution in his opening of case—Topics as to accused's character should be excluded. See Sec. 286, Cr. P. C.—Evidence. (*Rankin, C. J., C. C. Ghose, Suhravarday, Mukerji and Juck, J.J.*) *PADAM PRASHAD UPADHYAYA v. EMPEROR*. 119 I. C. 193=50 C. L. J. 106=33 C. W. N. 1121=30 Cr. L. J. 993=1929 Cr. C. 228=A. I. R. 1929 Cal. 617 (S.B.).

**—Credibility of a witness.**

It is no business of the Judge in charging the jury to assume the part of the defence counsel. It is his duty to place the evidence before the jury as he finds it and though the inference left to be drawn by the jury reasonably is that it would be unsafe to accept that evidence of a particular witness it is certainly open to the jury to believe what the witness said and to accept it if they chose to do so. (*Chotzner and Gregory, J.J.*) *SAMI-UDDIN v. EMPEROR*. 32 C. W. N. 616=10 A. I. Cr. R. 223=29 Cr. L. J. 497=109 I. C. 225=A. I. R. 1928 Cal. 500.

**—Ridiculing defence evidence at out set.**

The Judge should not ridicule the defence at the very outset of the charge before the discussion of the evidence; for that may have a pernicious influence on the mind of the Jury and the Jury may thereby reject the whole defence theory without giving sufficient consideration to it. (*Kennedy, J. C. and Raymond, A. J. C.*) *TOPANDAS v. EMPEROR*. 81 I. C. 249=25 Cr. L. J. 761=A. I. R. 1925 Sind 116.

—Judge should not suggest that a particular evidence is of no importance. (*Newbould and B. B. Ghose, J.J.*) *EMPEROR v. SAGARMAL AGARWALLA*. 82 I. C. 145=28 C. W. N. 947=40 C. L. J. 135=25 Cr. L. J. 1217=A. I. R. 1924 Cal. 960.

**—S. 297—Evidence—Inadmissible.**

**—Police diaries.**

It is not proper for a Judge to read out an order on an application for copies under S. 162, in Court within the hearing of the jurors and if he has done so it is proper for him to caution the jurors and explain to them that the statements made before the police are legally no evidence in the case and that consequently they should not be influenced by the note made by the Judge that there were no statements in the diaries that might be used to contradict the statements made by the prosecution witnesses in Court. (*Courtney Terrell, C. J. and Faal Ali, J.*) *JHARI GOPA v. EMPEROR*. 8 Pat. 279=10 P. L. T. 460=118 I. C. 130=30 Cr. L. J. 858=1929 Cr. C. 21=A. I. R. 1929 Pat. 268.

**—Admission of—Warning to jury.**

**CR. P. CODE (1898), S. 297—Evidence—Probative value of**

If improper questions have been admitted at a trial it is for the Crown to show that their improper effect has been set right by the Court. Either the jury should be told at once to disregard the statements, or else the charge should contain a similar warning to them and they should be expressly told that they are not to consider the statement as involving a contradiction or otherwise damaging the evidence of the witness. If this cannot be done, it is the duty of the presiding Judge to discharge the jury and begin the case *de novo*. (*Marlew and Madgavkar, J.J.*) *KUTUBUDDIN KHAN v. EMPEROR*. 28 Bom. L. R. 281=27 Cr. L. J. 481=93 I. C. 881=A. I. R. 1926 Bom. 238.

—The duty of a Judge in a trial held with the aid of a jury is to prevent the production of inadmissible evidence whether it is or is not objected to by the parties. (*Mukerji, J.*) *EMPEROR v. PANCHKARI DUTT*. 86 I. C. 414=52 Cal. 67=29 C. W. N. 300=26 Cr. L. J. 782=A. I. R. 1925 Cal. 587.

**—Admission of—Failure to refer in charge.**

The verdict of the Jury cannot be set aside unless there is a clear misdirection in the charge by the Judge to the Jury. But where statement of the accused amounting to confession was brought to the light in the presence of the Jury, but was not referred to in charge to the Jury,

*Held*, if the statement was inadmissible then omission to refer to it in the charge was a misdirection in law and vitiated the trial. If on the other hand it was admissible this statement must have been prominently brought out by the Judge in his charge to the Jury. (*Jwala Prasad and Adami, J.J.*) *SAMESHWAR JHA v. EMPEROR*. 65 I. C. 443=3 P. L. T. 101=23 Cr. L. J. 91=A. I. R. 1923 Pat. 103.

**—S. 297—Evidence—Probative value of.**

**—Circumstantial evidence.**

The correct principles in criminal trials are that in a case dependent upon circumstantial evidence the incriminating fact must be incompatible with the innocence of the accused and incapable of explanation upon any reasonable hypothesis than that of his guilt. Where therefore, the Judge in a case depending not on the probative value of the circumstantial evidence but of the weighing of direct testimony of witnesses while charging the jury says "it should be established by the prosecutor beyond reasonable doubt that the circumstances are not merely consistent with the guilt of the accused but entirely inconsistent with his innocence" without explaining to the jurors in the light of the principle above enunciated, it amounts to misdirection. 17 C. W. N. 379, Expl. 8 C. W. N. 278, Rel. on. (*Pearson and Patterson, J.J.*) *GOVERNMENT OF BENGAL v. SANTI RAM MONDAL*. A. I. R. 1930 Cal. 370. 127 I. C. 657=1930 Cr. C. 634=

**—Evidence of accomplices.**

Where the case was a dacoity case and two of the prosecution witnesses were persons who had admitted having assisted in disposing of stolen property and who had been arrested and subsequently discharged before being placed before a Magistrate,

*Held*, that the Judge might no doubt have elaborated the point but that having regard to the ample directions he gave the Jury as to the value of the evidence of these men if they were found to be accomplices and to the fact that he called the attention of the jury in three passages in his Judgment to their detention by the police, no further amplification was necessary. (*Sanderson, C. J. and Chotzner, J.*) *HARENDRA NATH v. EMPEROR*. 84 I. C. 451=40 C. L. J. 313=26 Cr. L. J. 307=

A. I. R. 1925 Cal. 161.

**CR. P. CODE (1898),****—S. 297—Evidence—Witness.****—Grouping of.**

The Judge in his charge to the jury, should group the witnesses in such a way as to direct the attention of the jury to the evidence regarding each of the particular facts sought to be proved on each side. He should not merely place the depositions before the jury in the order in which they were examined as it may lead to confuse the minds of the jury in some respect. (*Pearson and Patterson, J.J.*) **HACHANI KHAN v. EMPEROR.**

127 I.C. 767 = 1930 Cr. C. 793 =  
34 C. W. N. 390 = A. I. R. 1930 Cal. 481.

**—Important witness not examined.**

Where a material witness for the prosecution is not called the Judge in his charge to the jury, should direct them that it should be presumed from the fact of his non-examination, that if he had been examined his evidence would not have supported the case for prosecution. (*Pearson and Patterson, J.J.*) **HACHANI KHAN v. EMPEROR.**

127 I.C. 767 = 1930 Cr. C. 793 =  
34 C. W. N. 390 = A. I. R. 1930 Cal. 481.

**—Failure to call.**

Where a witness which it was the duty of the prosecution to call is not called, so long as the Judge leaves it to jury to say for themselves how far the failure to call that particular witness was as material as to raise in their minds a reasonable doubt as to the prosecution evidence, there is no error or misdirection. (*Dhavl and Fazl Ali, J.J.*) **KRISHNA MAHARANA v. EMPEROR.**

1929 Cr. C. 379 = A. I. R. 1929 Pat. 651.

—Omission to examine witness mentioned in the first information should be brought to the notice of jury, but failure to so inform is not necessarily fatal. (*Cuming and Mukerji, J.J.*) **HARI CHARAN DAS v. EMPEROR.**

27 Cr. L. J. 398 = 93 I. C. 46 =  
A. I. R. 1926 Cal. 728.

**—Opportunity to test.**

To bring to the notice of the jury the earliest version of the occurrence as given by a witness is obligatory on the part of the Court in order to draw the attention of the jury to that statement so that they might judge the case as against the accused. (*Cuming and Mukerji, J.J.*) **KHJIRUDDIN v. EMPEROR.**

53 Cal. 372 =  
42 C. L. J. 504 = 27 Cr. L. J. 266 = 92 I. C. 442 =  
A. I. R. 1926 Cal. 139.

**—S. 297—Misdirection—Defects in directions.**

—It is desirable that the record of heads of charges should indicate far more fully than mere enumeration of the numbers of the sections. But in order to entitle the High Court to interfere with the verdict of the jury and set it aside, it must be affirmatively proved that there has been misdirection and misunderstanding and the verdict is erroneous owing to misdirection by the judge and misunderstanding on the part of the jury of the law as laid down by him. (*Jack and Panckridge, J.J.*) **HAFEZALI HALDAR v. EMPEROR.**

1930 Cr. C. 1112 =  
A. I. R. 1930 Cal. 712.

—A misdirection regarding one of the charges against the accused may have a bearing on the other charge as well because the jury might consider on the basis of a proper direction that the entire prosecution story was unworthy of credit. (*Jack and Panckridge, J.J.*) **NABABALI v. EMPEROR.**

1930 Cr. C. 1108 =  
A. I. R. 1930 Cal. 708.  
34 C. W. N. 1151

—Right of private defence—Omission to raise the plea of—Duty of judge.

Where on the cross-examination of the prosecution witnesses, it was clear that accused were acting in exercise of their private defence but the counsel for the

**CR. P. CODE (1898), S. 297—Misdirection—Defects in directions.**

accused omitted to raise the point and the judge expressly called upon the jury not to consider the plea,

*Held*, that the charge to the jury amounted to misdirection which occasioned failure of justice in the sense that it has the effect of depriving the accused of their undoubted right to have the question of the existence of the right of private defence and other questions of fact arising therefrom decided by the jury;

*Held*, further, that it ought to have been left to the jury to decide on a consideration of evidence as a whole, whether the existence of the right of private defence had or had not been established and if so what would be the effect of the existence of that right on the question of the liability of the various accused persons in respect of the charges on which they had been tried. (*Pearson and Patterson, J.J.*) **KUTI v. EMPEROR.**

1930 Cr. C. 750 = 127 I. C. 263 = 31 Cr. L. J. 1203 =  
51 C. L. J. 339 = A. I. R. 1930 Cal. 442.

**—Expert witness.**

Where the case is one giving false evidence while giving evidence as an expert the true rule is that no man can be convicted of giving false evidence except on proof of facts which if accepted as true show not merely that it is incredible but that it is impossible that the statements of the party accused made on oath can be proved. But where in a case, which is not one prosecuting an expert witness for giving false evidence, but of a different nature the Judge enunciated the above rules without explaining to the jury wherein and how far it can be said to apply to the evidence in the case before them there is misdirection to the jury. 11 W. R. Cr. 25, Expl. (*Pearson and Patterson, J.J.*) **GOVERNMENT OF BENGAL v. SANTIRAM MONDAL.**

127 I. C. 657 =  
1930 Cr. C. 634 = A. I. R. 1930 Cal. 370.

—Use of the word 'possible' instead of the word 'likely' Ss. 302 and 304, I. P. Code.

A Judge after explaining Ss. 302 and 304, Penal Code, said in his charge to jury. "If, however, you find that the accused had neither the intention nor the knowledge requisite under S. 302 consider his liability under S. 304." He then read and explained that section and continued "if you hold that he intended to cause the deceased such bodily injury that death would be possible but not the most probable result you will find him guilty under S. 304, Part I, or if you hold that he had no such intention but knew as a reasonable man that the deceased's death would be a likely consequence of his act you will find him guilty under S. 304, Part 2."

*Held*, that there was misdirection. (*Cuming and Lord Williams, J.J.*) **NATABAR HALDAR v. EMPEROR.**

123 I. C. 751 = 50 C. L. J. 476 =  
34 C. W. N. 223 = 1930 Cr. C. 136 =  
31 Cr. L. J. 572 = A. I. R. 1930 Cal. 136.

—It is the judge's duty to hold the balance even between the prosecution and the defence and to put before the jury the weak as well as the strong points in the prosecution case. Where it appeared that the evidence had been misstated and circumstances in favour of the accused were ignored, glossed over or minimised and it also appeared that the jury had been asked to consider the stories, invariably unfavourable to the accused to supplement the defects and the motive alleged by the prosecution not having been proved the Judge propounded an alternative motive for the consideration of the jury, *Held*, that the conviction was vitiated by misdirection. *Held also*, on a consideration of the facts that it was unlikely that a jury would convict the accused and that consequently a retrial need not be directed. Duty of Judge to explain the evidence to the jury

**CR. P. CODE (1898), S. 297—Misdirection—Defects in direction.**

pointed out. (*Waller and Cornish, J.J.*) DORAISWAMY PILLAY v. EMPEROR. 1929 M. W. N. 946.

—Questions asked to be answered in wrong order.

Where the jury were given the proper questions to answer but told to answer the same in the wrong order and, further, the jury were told that two questions, which were in fact separate, were intimately connected.

*Held*, that there was a misdirection vitiating the trial. (*Waller and Reilly, J.J.*) SOLIYAN v. EMPEROR. (1930) M. W. N. 771.

—Recent possession.

In a charge of the possession of the stolen goods by the accused the Judge mentioned that the stolen articles were found in the possession of accused more than 14 months after offence and said that it cannot be said that the possession was recent and cited authorities there for and then left them to decide whether the possession was recent. Moreover he did not point out that the question of recent possession depends not only on the lapse of time but upon the nature of the property and the concomitant circumstances of each particular case.

*Held*, that there was misdirection. (*Ramesam and Jackson, J.J.*) MUTHU VIRA VELAN v. EMPEROR.

115 I. C. 831 = 30 Cr. L. J. 542 = 1929 M. W. N. 517 = 2 M. Cr. C. 148 = 12 A. I. Cr. R. 341.

—Circumstantial evidence—Appraising of.

Where the Judge has not put it to the jury that when a case is based on circumstantial evidence the circumstances should be such that there can be no reasonable possibility of the innocence of the accused, it is a misdirection vitiating the trial. (*Suhrawardy and Cammiade, J.J.*) MAHAMMAD SAGIRUDDIN v. EMPEROR.

113 I. C. 280 = 30 Cr. L. J. 120 = A. I. R. 1928 Cal. 551.

—Where a Judge while charging the jury dealt with a certain statement as a confession, while in reality it was not.

*Held*, that this was a serious misdirection. (*Chotzner and Gregory, J.J.*) BHADRESWAR SARDAR v. EMPEROR.

109 I. C. 351 = 29 Cr. L. J. 527 = 32 C. W. N. 731 = 47 C. L. J. 526 = 10 A. I. Cr. R. 219 = A. I. R. 1928 Cal. 416.

—Wrong section of law.

Where shortly after the murder, the murdered girl's jewellery was discovered in the possession of the accused who was charged with robbery and murder and the Judge told the jury that, if it had been removed from her person after her death, the offence committed was one under S. 404, I.P.C.,

*Held*, that that was not a proper direction, but that the question for consideration was whether the murder had been committed for the purpose of stealing the jewels, and if it had been committed for that purpose, the offence was one under S. 392. (*Devadoss and Waller, J.J.*) MUNIVAN, *In re*.

27 Cr. L. J. 1368 = 98 I. C. 488 = 7 A. I. Cr. R. 450 = A. I. R. 1927 Mad. 243.

—Question of title important in the case—Direction to ignore that question is misdirection.

Where in a case of rioting the question of title to the disputed property is of importance and if the Sessions Judge in his charge to the Jury asks them to arrive at their verdict irrespective of that question his action amounts to a misdirection which vitiates the trial. (*Newbould and Mukerji, J.J.*) AHED FAKIR v. EMPEROR.

87 I. C. 98 = 26 Cr. L. J. 946 = 43 C. L. J. 245 = A. I. R. 1925 Cal. 1235.

**—S. 297—Misdirection—Evidence.**

—Reference to evidence not let in.

While charging the jury the Sessions Judge said nothing

**CR. P. CODE (1898), S. 297—Misdirection—Evidence.**

ing at all about the evidence of a certain witness in that part of the charge in which he considered whether the offence was committed on that day or not. But when he came to that part in the charge in which he dealt with evidence against particular accused, he referred to evidence of that witness. It was not given before the Sessions but had been given before the committing Magistrate. But his deposition before the committing Magistrate had also never been put in before the Sessions.

*Held*, that under the circumstances such evidence should not have been brought in while charging the jury as it is of an extremely damaging character to the general case of the accused. (*Rankin, C. J. and Patterson, J.*) KHADEM v. EMPEROR.

57 Cal. 940 = 1930 Cr. C. 1106 = A. I. R. 1930 Cal. 706.

—Search list—Admission of.

Where during a search ornaments were found on the person of the accused's wife, and it was alleged that they were the ornaments stolen during the dacoity and a list handed over to the investigating police officer during the course of investigation included the ornaments,

*Held*, that the list being a statement within the meaning of S. 162, Cr. P. Code, was clearly inadmissible and its admission having caused misdirection, the verdict of the jury and the sentence of the accused should be set aside. (*C. C. Ghose and B. B. Ghose, J.J.*) FULBASH SHEIKH v. EMPEROR.

120 I. C. 458 = 1929 Cr. C. 71 = 31 Cr. L. J. 127 = A. I. R. 1929 Cal. 448.

—Suggestion of alternative case arising out of evidence.

In his charge to jury, the Judge suggested an alternative case but left it open to the jury whether they would accept the suggestion he made and it could not be said that if the suggestion was not accepted, the prosecution case must fail and the suggestion he made was a suggestion which would occur to the mind of any person who heard the facts put forward by either side.

*Held*, that there was no misdirection to the jury. 11 C. L. J. 270 and 40 Cal. 367, Dist. (*Adami and Scroope, J.J.*) NATHUNI NONTA v. EMPEROR.

109 I. C. 898 = 6 Pat. 572 = 29 Cr. L. J. 626 = A. I. R. 1928 Pat. 139.

—Matters not on record.

It is a misdirection to put before the jury matters which are not on the record and matters prejudicial, at all events on a certain view, to the accused. (*Rankin and Duval, J.J.*) ISU SHEIKH v. EMPEROR.

99 I. C. 937 = 45 C. L. J. 584 = 28 Cr. L. J. 201 = 7 A. I. Cr. R. 459 = 31 C. W. N. 171 = A. I. R. 1927 Cal. 200.

—Saying "No evidence" where opportunity to produce evidence is not given.

Where the Public Prosecutor did not say that he had no evidence to offer, or that he did not intend to offer any evidence, and his attitude throughout was that he had witnesses who would substantiate the case, if further opportunity were allowed to him,

*Held*, that, although the witnesses for the prosecution were not present, yet in the circumstances it is a misdirection for the Judge to tell the jury that there was no evidence and that they should return a verdict of "not guilty." The verdict of "not guilty" and the order acquitting the accused must be set aside. (*Walmesley and Mukerji, J.J.*) SUPDIT AND LEGAL REMEMBRANCE v. SADER SAIK.

81 I. C. 791 = 30 C. W. N. 190 = 27 Cr. L. J. 126 = A. I. R. 1928 Cal. 584.

**CR. P. CODE (1898), S. 297—Misdirection—Evidence.**

—*Retracted confession—Warning as to co-accused.*

Where the Sessions Judge directed the jury that the retracted confession of a co-accused is practically of no value against anybody but the confessor, but asked the jury to take into consideration the confession while considering the cases of the other two co-accused individually,

*Held*, that such direction was likely to prejudice the jury and lead them to give some weight to such statements when they should have disregarded them altogether. And that it caused a miscarriage of justice and necessitated a retrial of all those accused in respect of whom there had been such misdirection. (*Newbould and B. B. Ghose, J.J.*) **IBRAHIM, In re.**

88 I. C. 458 = 42 C. L. J. 496 = 26 Cr. L. J. 1146 = A. I. R. 1928 Cal. 374.

—*Onus of proof.*

Where the Judge stated in his direction to the jury regarding Evidence Act, S. 114 ill. (a) that if the property was proved or reasonably presumed to be stolen property, the *onus* would shift to the accused to show that he acquired the property in an innocent manner,

*Held*, that it was a misdirection. 31 C. L. J. 310 and 1914 Cr. App. R. 45, Foll. (*Newbould and Mukerji, J.J.*) **SATYA CHARAN MANNA v. EMPEROR.**

88 I. C. 515 = 52 Cal. 223 = 26 Cr. L. J. 1155 = A. I. R. 1925 Cal. 666.

—*Receiving stolen property—Identity of property and possession by accused—Non-direction as to other circumstances.*

The charge to the jury regarding the Evidence Act, S. 114, ill. (a) was such as to have left an impression in the minds of the jury that if they found that the two articles were properly identified, as having been the properties which were stolen at the time of the dacoity in question and were found in the accused's possession, they were bound to presume the accused's guilt. The jury were not properly directed that it was their duty to weigh all the circumstances of the case, consider the accused's explanation and then decide whether or not they should make such a presumption. *Held*, that this was a serious misdirection. (*Newbould and Mukerji, J.J.*) **SATYA CHARAN MANNA v. EMPEROR.**

88 I. C. 515 = 26 Cr. L. J. 1155 = 52 Cal. 223 = A. I. R. 1925 Cal. 666.

—**S. 297—Misdirection—Miscarriage of justice.**

—*Test for.*

Miscarriage of justice through misdirection means that there must be a reasonable ground for apprehending that the misdirection may have affected the jury's verdict. Where it is possible that the omission of a charge under the particular circumstances might have affected the minds of the jury, it is a proper case for retrial by another jury. A. I. R. 1926 All. 429, Rel. on. (*Young, J.*) **JAGMOHAN SINGH v. EMPEROR.**

120 I. C. 114 = 52 All. 207 = 1930 Cr. C. 44 = 30 Cr. L. J. 1146 = 1930 A. L. J. 486 = A. I. R. 1930 All. 28.

—**S. 297—Misdirection—Omission.**

—*Offence of cheating—Judge omitting to refer to loss caused owing to conduct of accused.*

Where the judge at the commencement of his charge set out the necessary ingredients of the offence of cheating but when dealing specifically with the question he in effect told the jury that if they found that the accused told a lie and thereby induced the other party namely the bank to increase the overdraft limit the offence of cheating was complete. *Held*, Eddy, J., dissenting, that there was a serious misdirection vitiating the trial because the jury were not further directed that they must before they convict be satisfied that the Bank suffered loss or were likely to suffer loss by such enhance-

**CR. P. CODE (1898), S. 297—Misdirection—What is not.**

ment. (*Wallace. Madhavan Nair, Jackson, Anantakrishna Aiyar and Eddy, J.J.*) C. K. N. SUNDARESA IYER v. EMPEROR. 1930 M. W. N. 249 (F.B.)

—The omission to direct the jury upon an important point which may serve to help the defence of the accused amounts to misdirection. (*Rankin and Mukerji, J.J.*) **MAMAT ALI v. EMPEROR.** 99 I. C. 51 = 44 C. L. J. 233 = 28 Cr. L. J. 19.

—**S. 297—Misdirection—Presumption.**

—Where the Judge directs the jury that there is a presumption of law that the witness who has spoken untruth must be believed in so far as he deposes to facts spoken to by other witnesses, it is a misdirection because there is no hard-and-fast rule making other statements, which are not proved to be false, binding on the jury. (*Suhrawardy and Cammiade, J.J.*) **MAHAMMAD SAGIRUDDIN v. EMPEROR.** 113 I. C. 280 = 30 Cr. L. J. 120 = A. I. R. 1928 Cal. 551.

—Where in a case of dacoity the Judge charged the jury saying that if the articles are stolen properties and were found in possession of the accused it is sufficiently proved that they were thieves or dacoits and the rebuttable presumption that arises in law is that the accused are either thieves or dacoits until they succeed by adducing sufficient proof in establishing their innocence.

*Held*, that the direction was a serious misdirection. 31 C. L. J. 310, Ref. (*Suhrawardy and Panton, J.J.*) **KABALULLA v. EMPEROR.** 90 I. C. 542 = 42 C. L. J. 212 = 26 Cr. L. J. 1582 = 53 Cal. 157 = A. I. R. 1925 Cal. 1241.

—*Presumption as to stolen character of property—Guilt.*

Before a presumption under S. 114 (a) can arise, it must be proved that the goods found in the possession of the accused have been stolen. No such presumption will arise in a case when it may reasonably be presumed that the property in question is stolen property. A direction to the jury that the presence of a reasonable presumption of this property being stolen property is enough to raise the presumption of guilt, is misdirection. (*Newbould and Mukerji, J.J.*) **SATYA CHARAN MANNA v. EMPEROR.**

88 I. C. 515 = 52 Cal. 223 = 26 Cr. L. J. 1155 = A. I. R. 1925 Cal. 666.

**S. 297—Misdirection—Retrial.**

—High Court, in the case of misdirection vitiating the verdict can direct retrial or enter into the merits and dispose of the case. (*Kennedy, J. C. and Raymond, A. J. C.*) **TOPANDAS v. EMPEROR.** 81 I. C. 249 = 25 Cr. L. J. 761 = A. I. R. 1925 Sind 116.

—**S. 297—Misdirection—What is not.**

—Since an approver may tell the truth in some parts of his story, direction to jury with respect to evidence of an approver as "The mere fact that the approver says that a certain one of the accused was not present at the place and time of the offence does not prove the accused guiltless unless you are satisfied that the approver is telling the truth" does not amount to misdirection. (*Marpherson and Dhavle, J.J.*) **RAMSARUP SINGH v. EMPEROR.** 9 Pat. 606 = 1930 Cr. C. 1009 = 128 I. C. 121 = A. I. R. 1930 Pat. 513.

—*Major and minor offences.*

Accused were charged under Ss. 366, 498 and 147. In its charge to jury the Court directed that mere dragging by hair and removal by force would amount to offences under Ss. 341 and 352.

*Held*, that offences under Ss. 341 and 352 being involved in offences under Ss. 366 and 498, there was no misdirection. (*C. C. Ghose and Duval, J.J.*) **TORAP ALI v. EMPEROR.** 98 I. C. 386 = 44 C. L. J. 239 =

**CR. P. CODE (1898), S. 297—Misdirection—What is not.**

53 Cal. 599=27 Cr. L. J. 1314=  
A.I.R. 1926 Cal. 1059.

**—Defects in prosecution case—Emphasis on.**

Where a charge is, as a whole, distinctly favourable to the defence, it is a matter of great difficulty to say that there is any misdirection which has misled the jury into giving the verdict. It is not enough to say that the Judge might have laid much more stress than he has laid on the defects in the prosecution case in order to establish misdirection. (*Devadoss and Waller, J.J.*) AMBALAM, *In re*. 91 I. C. 960=23 M. L. W. 90=27 Cr. L. J. 176=A. I. R. 1926 Mad. 370.

**—Impressions about witnesses.**

The mere fact that a Sessions Judge without recording at the end of deposition states to the Jury his impression of the demeanour of some of the witnesses, is not a misdirection when the witnesses appeared before the Jury. (*Greaves and Panton, J.J.*) SHAM-LAL SINGH v. EMPEROR. 85 I. C. 716=26 Cr. L. J. 572=A. I. R. 1925 Cal. 980.

**—Interpretation of S. 34, I. P. Code.**

The material portions of the Judge's charge to the jury were as follows:—

"Therefore in this case if these persons went to that place with a common intention to rob the Post Master, and if necessary, to kill him, and if death resulted, each of them is liable, whichever of the three fired the fatal shot.

"If you come to the conclusion that these three or four persons came into the Post Office with that intention to rob, and if necessary to kill, and if death resulted from their act, if that be so, you are bound to find a verdict of guilty.

"I say if you doubt that it was the pistol of the accused which fired the fatal shot, that does not matter. If you are satisfied on the other hand that the shot was fired by one of those persons in furtherance of this common intention, if that be so, then it is your duty to find a verdict of guilty."

*Held*, that there was no misdirection and that the balance of authority and reason is against the limited interpretation placed on S. 34 of the Indian Penal Code in 41 Cal. 1072. (*Mukerjee, Richardson, C. C. Ghose, Cuming and Page, J.J.*) EMPEROR v. BARENDRA KUMAR GHOSE. 81 I. C. 353=28 C. W. N. 170=38 C. L. J. 411=25 Cr. L. J. 817=A. I. R. 1924 Cal. 257 (F.B.).

**—S. 297—Non-direction.**

Where the charge to the jury contained no caution as regards the weight and the efficacy to be given to a dying declaration,

*Held*, that the verdict of the jury and sentence must be set aside. (*Pearson and Jack, J.J.*) EMPEROR v. SASHI KANTA DE. 34 C. W. N. 792=1930 Cr. C. 1154=A. I. R. 1930 Cal. 754.

**—Absence of material witnesses—Direction to draw inference.**

Where the prosecution failed to produce material witnesses on the ground that they were relatives of the accused and where the trying Judge drew the attention of the jury to the explanation suggested by the prosecution for their absence, and said that it was for the jury to accept or reject it without saying that the jury would be at liberty to draw an inference adverse to the prosecution if the explanation suggested were not acceptable to them and where no specific mention was made to the jury by the Judge regarding the fact that no explanation was offered about the non-production of one of the material witnesses for the prosecution.

**CR. P. CODE (1898), S. 297—Non-direction.**

*Held*, that the omission of the trial Judge to direct the jury as to the inference they were entitled to draw if they were not satisfied with the explanation suggested for the absence of material witnesses was a non-direction amounting to a misdirection and to be a good reason for setting aside the conviction of the accused person. A.I.R. 1921 Cal. 257, Foll.; 36 Cal. 281, Ref.; A.I.R. 1930 Cal. 481, Dist. (*Jack and Pancridge, J.J.*) NABABALI v. EMPEROR. 1930 Cr. C. 1108=34 C. W. N. 1151=A. I. R. 1930 Cal. 708.

**—Conduct of the complainant.**

The failure to put to jury matters which ought to have been placed before them for their consideration amounts to a misdirection. Where the Judge omitted to state the defence case and also did not draw the attention of the jury to the conduct of the complainant and the accused,

*Held*, that the trial was vitiated. (*Pearson and Patterson, J.J.*) RAM CHARITAR DUBEY v. EMPEROR. 34 C. W. N. 954.

**—Arguments for accused.**

The Judge is not bound to address himself to every suggestion put forward by the defence. His duty is fairly and candidly to point out the main and salient features of the case from the point of view of the prosecution and of the defence respectively. (*Macpherson and Dhavle, J.J.*) RAMSARUP SINGH v. EMPEROR. 1930 Cr. C. 1009=9 Pat. 606=128 I. C. 121=A. I. R. 1930 Pat. 513.

**—Meagre outline of facts and law.**

Where in a charge to the jury the explanation of the law bearing on the subject is drastically meagre, and the summing up is no more than the barest possible skeleton of the evidence on the record, so that it is very doubtful whether the jury were afforded any real assistance by the Judge when he proceeded to sum up the case to the jury; and where from the record it is clear that important points which should have been brought to the notice of the jury were not brought to their notice, there is non-direction to the jury and such case is fit for ordering re-trial. 31 C.W.N. 387 and 34 Cal. 698, Ref. (*C. C. Ghose and Jack, J.J.*) DWARAKA DAS v. EMPEROR. 118 I.C. 351=33 C. W. N. 84=30 Cr. L. J. 912=A. I. R. 1929 Cal. 170.

**—Only witness discredited by Prosecution itself no evidence—Duty to direct.**

In a trial by jury under S. 325, Penal Code, prosecution relied upon the evidence of a certain witness who was the only witness in the case and who could testify as to what had occurred. His evidence was considered hostile in some respects and the prosecution sought to discredit him. Judge did not direct the jury that there was no evidence.

*Held*, that this was a serious misdirection as there remained no evidence to go to the jury, the witness having been discredited and the trial was vitiated. (*Cunning and Lort Williams, J.J.*) MOKBULKHAN v. EMPEROR. 114 I. C. 793=56 Cal. 145=30 Cr. L. J. 350=32 C. W. N. 872=A. I. R. 1928 Cal. 690.

**—Failure to record his summing up of law.**

The failure on the part of a Sessions Judge to record in his charge what actually his explanation of the law was does not amount to a misdirection, which would vitiate the trial as having occasioned a failure of justice and so a re-trial cannot be ordered on this ground. A.I.R. 1925 Pat. 797; A.I.R. 1925 Cal. 1055; A.I.R. 1925 Cal. 926; A.I.R. 1927 Cal. 460; 41 C.L.J. 474; A.I.R. 1922 Cal. 124 and 47 Cal. 795, Ref. to (*Kulwant Sahay and Allanson, J.J.*) CHOTAN SINGH v. EMPEROR. 111 I. C. 308=7 Pat. 361



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10 P. L. T. 26=29 Cr. L. J. 804=  
11 A. I. Cr. R. 91=A. I. R. 1928 Pat. 420.

—*Infancy and immature understanding.*

When the Judge attempts to exclude the consideration by the jury, of the question as to whether the accused was a boy under 12 years of age and incapable of understanding the nature of his act, his summing up upon the point amounts to a misdirection the question being one for the jury to decide notwithstanding no proof may have been adduced on the point. (*Pullan, A. J. C.*) **EMPEROR v. ALI RAZA.** 84 I. C. 454=26 Cr. L. J. 310=28 O. C. 69=A. I. R. 1925 Oudh 311.

—*When a ground of interference.*

Mere non-direction is not necessarily misdirection, those who allege misdirection must show that something wrong was said or that something was said which would make wrong that which was left to be understood. Non-direction when it consists in omission to put the material facts or to put the defence to the jury is sufficient to cause the Court to quash the conviction, if the Court comes to the conclusion that is reasonably probable that the verdict of the jury was affected thereby. (*Mookerjee, Richardson, C. C. Ghose, Cumming and Page, J.J.*) **EMPEROR v. BARENDRA KUMAR GHOSE.** 81 I. C. 353=28 C. W. N. 170=38 C. L. J. 411=25 Cr. L. J. 817=A. I. R. 1924 Cal. 257 (F.B.).

—*Arguments on behalf of accused.*

Per *Richardson, J.*—If a defence is substantially put to the jury, a mere omission to refer to this or that circumstance or suggestion is not non-direction which amounts to misdirection. It is not the function of the Judge to repeat to the jury every argument or suggestion urged by the learned counsel for the accused. (*Mookerjee, Richardson, C. C. Ghose, Cumming and Page, J.J.*) **EMPEROR v. BARENDRA KUMAR GHOSE.** 81 I. C. 353=28 C. W. N. 170=38 C. L. J. 411=25 Cr. L. J. 817=A. I. R. 1924 Cal. 257 (F.B.).

## —S. 297—Omissions.

—*Evidence of approver—Corroboration.*

In dealing with the evidence of an approver the Judge should tell the jury that the sort of corroboration that is required is corroboration in material particulars tending to connect each of the accused with the offence. Where the jury are well aware of the kind of corroboration required, the omission to state the law in more precise terms does not amount to misdirection. But the omission of the Judge to draw the special attention of the jury to the fact that though there is some corroborative evidence as regards the movements of two of the accused in a case of dacoity immediately before and immediately after the occurrence, there is no such corroboration in respect of the third accused, amounts to misdirection. (*Pearson and Patterson, J.J.*) **HACHANI KHAN v. EMPEROR.** 127 I. C. 767=1930 Cr. C. 793=34 C. W. N. 390=A. I. R. 1930 Cal. 481.

—*Failure to examine important witness.*

*Held*, that the Judge would be guilty of a misdirection is not telling the jury that it might and indeed should be presumed from the fact of his non-examination that if he had been examined his evidence would not have supported the case for the prosecution. (*Pearson and Patterson, J.J.*) **HACHANI KHAN v. EMPEROR.** 34 C. W. N. 390=1930 Cr. C. 793=127 I. C. 767=A. I. R. 1930 Cal. 481.

—*Material witness to prosecution—Absence of omission to direct.*

There should be a substantive direction on the part of the trial Judge as to the view of the prosecution which the jury is entitled to adopt if they are not satisfied

## C.R. P. CODE (1898), S. 297—Omissions.

with the explanation offered for the absence of a witness material for the prosecution case. The omission of the trial Judge to direct the jury as to the inference they are entitled to draw in such a case is non-direction, amounting to misdirection sufficient to set aside a conviction. (*Jack and Panckridge, J.J.*) **SHEIKH NABAB ALI v. EMPEROR.** 1930 Cr. C. 1108=34 C. W. N. 1151=A. I. R. 1930 Cal. 708.

—Prosecution alleged that five persons took part in the dacoity. The Judge in his summing up pointed out to the Jury that they must make sure that there was a dacoity and secondly whether each of the accused took part in it. He, however, omitted to make clear to the Jury the possible consequence of acquitting any of the accused.

*Held*, that the conviction was vitiated by an improper charge to the jury. In such a case the Judge should point out that if it was not proved that five persons took part, the offence for which each one of them was liable to be convicted was robbery and not dacoity. (*Waller and Cornish, J.J.*) **SUBBIAH TEVAN v. EMPEROR.** 1929 M. W. N. 789.

—*Direction to ignore irrelevant evidence.*

P was prosecuted for selling R a minor for immoral purposes and by producing a birth certificate of R proving that R was a major he got acquitted and subsequently he was charged for forging the birth certificate and the prosecution put in the complaint in that case and read them in full before the jury.

*Held*, the reading of the complaint in the former trial tended to depict the accused in the worst colours and an atmosphere of prejudice was created against accused thereby. The omission of the Judge in his summing up to draw attention of the Jury to this fact and to ask them to ignore the contents of the petition, was a non-direction of such a character as to amount to misdirection. (*Rankin, C. J., C. C. Ghose, Sukraward, Mukerji and Jack, J.J.*) **PADAM PRASHAD UPADHYAYA v. EMPEROR.** 119 I. C. 193=50 C. L. J. 106=33 C. W. N. 1121=30 Cr. L. J. 993=1929 Cr. C. 228=A. I. R. 1929 Cal. 617 (S.B.).

—*Law of private defence.*

Where the law as to the right of private defence of a person as bearing on the facts set up had not been clearly placed before the jury, and their attention was not directed to find as to whether the accused was, and, if so, how far, justified, in preventing injury to himself, in attacking the deceased,

*Held*, that the charge, as delivered by the Judge, contained serious misdirection necessitating a retrial. (*Sukraward and Duval, J.J.*) **ASIRUDDIN v. EMPEROR.** 53 Cal. 980=28 Cr. L. J. 273=100 I. C. 353=7 A. I. Cr. R. 417=A. I. R. 1927 Cal. 257.

—*Conviction of co-accused—Warning as to not to be influenced.*

If in the charge a reference is made to the fact that another person who was a co-accused of the accused under trial was sent up on a charge-sheet and convicted on trial it is also absolutely necessary to warn the jury and warn them very carefully, not to take into account the conviction of the co-accused at all, and an omission on the part of the Judge to give such a direction to the jury is an omission on a very vital point; and it must prejudice the accused person, and the verdict of the jury based upon a charge in which an omission of such vital character is noticed cannot be supported. (*Cumming and Mukerji, J.J.*) **HARI CHARAN DAS v. EMPEROR.** 27 Cr. L. J. 398=93 I. C. 46=A. I. R. 1926 Cal. 728.



## CR. P. CODE (1898), S. 297—Omissions.

## —Discussion of probabilities.

In a trial by jury omission on vital points in the Judge's charge to the jury may amount to such misdirection as to vitiate the trial. Where the Judge's direction as to the probabilities puts the probabilities in favour of the prosecution too strongly before the jury and upon a mere assumption of the facts which the jury are not asked to find for themselves there is misdirection which vitiates the trial. (*Newbould and Mukerji, J.J.*) CHHAKARI SHAIK v. EMPEROR. 26 Cr.L.J. 567=85 I.C. 711=A.I.R. 1926 Cal. 439.

## —Several accused—Direction as to individual consideration of the case.

Where there are several accused persons and the case as against all of them does not stand on the same footing, omission by the Court to ask the jury to consider the case as against each of the accused individually is a very serious omission prejudicial to the accused persons. (*Cuming and Mukerji, J.J.*) KHJIRUDDIN v. EMPEROR. 53 Cal. 372=42 C. L. J. 504=27 Cr.L.J. 266=92 I. C. 442=A.I.R. 1926 Cal. 139.

—A verdict obtained from the jury without placing before them an important piece of evidence in favour of the defence, whatever may have been its real worth, cannot be sustained. (*Cuming and Mukerji, J.J.*) KHJIRUDDIN v. EMPEROR. 53 Cal. 372=42 C. L. J. 504=27 Cr. L. J. 266=92 I. C. 442=A. I. R. 1926 Cal. 139.

## —First information report—Variation in evidence.

The omission on the part of the Judge to present in his summing up to the jury the first information report and its variance with the depositions of several witnesses, named therein, has a material bearing on the case and constitutes serious misdirection sufficient to vitiate the verdict of the jury. (*Newbould and Mukerji, J.J.*) JESSARAT v. EMPEROR. 87 I. C. 833=29 C. W. N. 526=26 Cr. L. J. 1009=A. I. R. 1925 Cal. 729.

## —Direction as to credibility.

Where one of the witnesses for the prosecution is himself suspected of being implicated in the offence, the jury should be directed not to accept his evidence without the most careful scrutiny. The omission to give such a direction amounts to serious misdirection. (*Newbould and Mukerji, J.J.*) SATYA CHARAN MANNA v. EMPEROR. 88 I. C. 515=26 Cr. L. J. 1155=52 Cal. 223=A. I. R. 1925 Cal. 666.

## —Benefit of doubt.

The omission to tell the jury that the accused is entitled to the benefit of any reasonable doubt is not a misdirection vitiating the trial, though as a matter of practice it is as well to always end the charge with these words. (*Baker, J.C.*) RAHIM BEG v. EMPEROR. 92 I. C. 169=7 N.L.J. 208=27 Cr. L. J. 217=A. I. R. 1925 Nag. 154.

## —Omission to define in detail offence charged.

An omission by the magistrate to give the jury a detailed definition of the offence charged is not a misdirection justifying reversal of verdict where the nature of the offence was fully described to the jury and the constituent factors fully understood by them. (*Pullan, A.J.C.*) JINDAR SINGH v. EMPEROR. 81 I.O. 808=25 Cr. L. J. 1032=A. I. R. 1925 Oudh 69.

## —Incomplete statement of law.

Where the accused at his trial for murder pleaded self-defence to prevent robbery and the Sessions Judge had charged the jury expounding the law with regard to the right of private defence of the person.

Held, that the Judge erred in law in not directing the jury with regard to the private defence of property. (*Greaves and Panton, J.J.*) BASERUDDIN SHAIK v.

## CR. P. CODE (1898), S. 297—Summing up.

## EMPEROR.

83 I.C. 528=28 C. W. N. 585=39 C. L. J. 525=26 Cr. L. J. 48=A. I. R. 1924 Cal. 776.

—A grave omission to direct the jury on a cardinal matter in the case, cannot be made good merely by Counsel's calling attention to it at the termination of the summing up. It is one thing to indicate agreement with a submission made by Counsel; it is another to direct a jury effectively. (*Mookerjee, Richardson, C. C. Ghose, Cuming and Page, J.J.*) EMPEROR v. BARENDRA KUMAR GHOSE. 81 I.C. 353=28 C. W. N. 170=38 C. L. J. 411=25 Cr. L. J. 817=A. I. R. 1924 Cal. 257 (F.B.).

## —Omission of counsel to take a possible defence—Judge is not relieved.

The substantial question is, whether the evidence for the prosecution and the case for the defence were fairly summed up. The mere fact that Counsel for the accused has failed to present to the Court a particular aspect of the case, cannot justify an omission on the part of the Judge to draw the attention of the jury to what appears to be a possible answer to the charge against the accused even on the prosecution evidence; it is the duty of the Judge to draw the attention of the jury to such possible view of the case, on the evidence, notwithstanding that it may have escaped the Counsel for the accused; in other words, the line of defence adopted by Counsel does not relieve the Judge of his duty. (*Mookerjee, Richardson, C. C. Ghose, Cuming and Page, J.J.*) EMPEROR v. BARENDRA KUMAR GHOSE. 81 I.C. 353=28 C.W.N. 170=38 C.L.J. 411=25 Cr. L. J. 817=A.I.R. 1924 Cal. 257 (F.B.).

## —Statement of law.

The omission of a Judge to lay down the law by which the jury are to be guided as required by S. 297, Code of Criminal Procedure, is something more than misdirection. It is a failure to comply with an express provision of the law and S. 537, of the Code of Criminal Procedure is not applicable in such a case. (*Wazir Hasan, J.C.*) NAWAB ALI v. EMPEROR. 81 I. C. 953=25 Cr. L. J. 1129=11 O. L. J. 315=A. I. R. 1924 Oudh 411.

## —S. 297—Summing up.

## —Distinction between manslaughter and murder not considered.

In the judgment of the lower Court which convicted the accused of murder without the aid of a jury there was not the slightest enquiry into whether, assuming that the shot which resulted in the death of the deceased was fired by the accused, the act amounted to manslaughter and not murder. There was no attempt to face the question of whether the standard of proof required to prove murder as against manslaughter, had in the case been reached.

Held, that if the case had been before a jury and the Judge had not explained to them the possibility of a verdict of manslaughter but had said if not accident the only alternative is murder, that would have been an erroneous summing up. The question as between manslaughter and murder being entirely undealt with and in the absence of evidence sufficient to reach the standard of proof necessary to involve a conviction for murder the conviction must be quashed. (*Piscourt Dunderin.*) BENJAMIN KNOWLES v. EMPEROR. 124 I.C. 578=31 Cr. L.J. 701=1930 Cr. C. 884=34 C.W.N. 599=A. I. R. 1930 P.C. 201=55 M.L.J. 127 (P.C.).

## —Omission to point out the liberty of the jury—Judge's opinion.

In a lengthy charge, the trial Judge cannot be expected to pause at every step to assume to the jury, that matter of fact are matters for them. Where on the whole, it

**CR. P. CODE (1898), S. 297—Summing up.**

appears that the Judge has, not only in the opening portion of his charge but also several times in the course of it, pointed out the liberty of the jury to draw their own conclusions on questions of fact, it is hypercriticism to regard the charge as defective on that score simply because in dealing with a particular matter or at a particular stage, it was not in terms repeated that the jury were entitled to brush aside what might have been suggested as the opinion of the Judge. (*Rankin, C. J., C. C. Ghose and Patterson, J.J.*) **EMPEROR v. PANCHU SHEIKH.** 34 C. W. N. 1154 (F.B.).

**Corroboration of approver's evidence.**

*Held*, that in his summing up, the Judge is bound to draw the attention of the jury to the nature of the corroboration that the approver's evidence has from the other evidence in the case. (*Pearson and Patterson, J.J.*) **HACHUNI KHAN v. EMPEROR.**

34 C. W. N. 390 = 1930 Cr. C. 793 =  
127 I. C. 767 = A. I. R. 1930 Cal. 481.

**Record as to statement of law.**

The heads of charge are not intended to be an exhaustive detail of every particular which the Judge may have addressed to the jury; and although it is desirable that record of the charge on question of law should be sufficiently full to show whether the elements constituting the offences charged have been properly and fully explained to the jury, High Court can refuse to interfere with the verdict where the Sessions Judge has failed to note in so many words that he had explained the law to the jury if it is satisfied from the charge as a whole and the verdict that the law was properly explained and there was no miscarriage of justice. (*Macpherson and Dhaule, J.J.*) **RAMSARUP SINGH v. EMPEROR.** 9 Pat. 606 = 1930 Cr. C. 1009 = A.I.R. 1930 Pat. 513.

**Judge's opinion.**

Where the Judge throughout his charge has several times cautioned the jury that they are not to accept his view of the evidence as they were the sole judges of facts the mere fact that the Judge gave expression to his opinion regarding certain evidence does not amount to misdirection. (*Mirza and Murphy, J.J.*) **EMPEROR v. C. E. RING.** 120 I. C. 340 = 53 Bom. 479 =

31 Bom. L. R. 545 = 1929 Cr. C. 114 =  
31 Cr. L. J. 65 = A. I. R. 1929 Bom. 296.

**Marshalling of facts.**

To avoid any misdirection or non-direction of jury it is absolutely essential in proper cases that every particle of evidence should be carefully scrutinized and compared and contrasted and substantial help and guidance should be given to the jury to avoid any miscarriage of justice. It is not sufficient merely to re-count and repeat chronologically the evidence as it had been given in Court by the various witnesses. It is necessary to sift and weigh and value the evidence. The final weighing is of course for the jury but the Judge ought to see that all essential facts go into the scales of justice and on the proper side of the balance. Further facts must be marshalled by the Judge under separate heads and in distinct compartments as they affect each separate incident in the story. Otherwise the evidence is to the jury simply a confused mass of discrepant, disconnected and contradictory details. (*Cuming and Lort Williams, J.J.*) **NAGENDRA NATH v. EMPEROR.**

124 I. C. 482 = 31 Cr. L. J. 673 = 34 C. W. N. 164 =  
1929 Cr. C. 390 = A. I. R. 1929 Cal. 742.

**Judge's opinion.**

A charge to the jury which succeeds in avoiding any expression of opinion must generally amount to a most colourless and unhelpful direction and a Judge ought to tell the jury his opinion if any so long as he makes it clear they are at liberty to regard or disregard it as they

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please. (*Cuming and Lort Williams J.J.*) **NAGENDRA NATH v. EMPEROR.** 124 I. C. 492 =

31 Cr. L. J. 673 = 34 C. W. N. 164 =  
1929 Cr. C. 390 = A. I. R. 1929 Cal. 742.

**Intermediate verdicts are not recognised.**

Five persons were accused under Ss. 302, 148 and 149, Penal Code; the prosecution alleged that the offence had taken place before dark. The Judge asked the jury to give an intermediate verdict on the question whether the offence was committed before or after dark and on the jury holding that the offence was committed after dark the accused were acquitted.

*Held*, that there was no proper summing up to the jury and that, therefore, the verdict ought not to be allowed to stand. The law does not recognize intermediate verdicts of jurors and the procedure adopted by the Judge was in contravention of the specific provisions of the law relating to charges to the jury and to the ascertainment of their verdict. (*C. C. Ghose and Gregory, J.J.*) **GOVERNMENT OF BENGAL v. NASAR, DURZI.** 33 C. W. N. 451 = 115 I. C. 257 = 30 Cr. L. J. 434 =  
12 A. I. R. C. B. 249 = A. I. R. 1929 Cal. 62.

**Offence of theft—Lapse of time.**

In a prosecution for theft it is necessary that the judge should point out in his summing up to the jury that a considerable time had elapsed between the recovery of the stolen articles from the persons who had been put in possession of them by the accused and the theft. (*Beasley, C. J. and Cornish, J.*) **MAYANDI THEVAN v. EMPEROR.** 1929 M.W. N. 577.

**Judge's opinion.**

Where the trend of the charge was in favour of the accused and the Judge most carefully told the jury that they were not bound by his opinion, and if after considering everything their opinion was different from his, they were to be guided by their own opinion and not by his, it was by no means improper for the learned Sessions Judge to have indicated in cautious language his experience on the Bench that an explanation offered by the prosecution on a certain point was one which deserved the consideration of the jury. (*Macpherson and Allanson, J.J.*) **RAMDAS RAI v. EMPEROR.**

8 Pat. 344 = 10 P. L. T. 409 = 117 I. C. 173 =  
30 Cr. L. J. 721 = 1929 Cr. C. 99 =  
A. I. R. 1929 Pat. 313.

**Duty of the Judge.**

The fact that the evidence had been summarized at great length by both sides and the jury had taken notes from the arguments and had themselves made a complete summary of the evidence for their own convenience would not relieve the Judge from the duty of conforming to the provisions of S. 297, which distinctly lays down that he should sum up the evidence. 27 Bom. 644, Ref. (*Newbould and Mukherji, J.J.*) **ABDUL RAZAK v. EMPEROR.** A. I. R. 1928 Cal. 269.

Where the Judge finds certain facts as to sufficiency of evidence and the mind of the parties at the time of the offence, which ought to go to the jury and mentions to the jury that the evidence was discrepant without telling them what the discrepancies are,

*Held*, that the summing up was not proper (*Rankin and Duval, J.J.*) **ISU SHEIKH v. EMPEROR.**

45 C. L. J. 584 = 31 C. W. N. 171 =  
28 Cr. L. J. 201 = 7 A. I. R. C. B. 459 = 99 I. C. 937 =  
A. I. R. 1927 Cal. 200.

**Duty of Judge—Inclination in favour of one side.**

The first point which a Judge must observe in making his summing up is that whatever he says to the jury, must be true. If he states that such and such fact is contained in the evidence, the jury are bound to believe

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him, and the mere fact that he includes in his summing up a statement which he has culled from the evidence, indicates to the jury that that piece of the evidence is important, and should be considered by them when giving their decision. It is also necessary that the Judge should obtain from the jury a decision on all the material points which go towards establishing a particular offence under the Penal Code. There is no objection if a Judge sums up strongly in favour of one and strongly against another accused. If that is his opinion, he is perfectly right to make it clear to the jury. But he is not justified in stating in his summing up that there was definite evidence against an accused, which as a matter of fact is not on the record. An accused cannot be said to have had a fair trial if the direction of the Judge was not only adverse to him but also omitted to obtain the decision of the jury on a material point, and contained a misstatement of facts which was prejudicial to the accused. 27 Bom. 644, Ref. (*Pullan, J.*) *NAHRUMAL v. EMPEROR*. 2 Luck. 597= 4 O. W. N. 616=103 I. C. 411=28 Cr. L. J. 683= 8 A. I. Cr. R. 365=A. I. R. 1927 Oudh 259.

**Discrepancies.**

A Judge should explain to jury the issues of fact which the jury has to determine upon the charge upon which the prisoners are being tried, and having made the jury understand these issues, the more convenient mode of summing up the case is to present the jury, as materially and impartially as he can, a summary of the evidence and the considerations and inferences to be drawn from the evidence, and as they appear both on the negative and the affirmative sides of the case. Merely telling the jury that there are material discrepancies without telling them about discrepancies is a clear misdirection, and telling a jury in a case under S. 377, Penal Code, over and over again about their moral conviction as to the guilt of the accused is also a misdirection. (*Banerji, J.*) *ENAYAT HUSAIN v. KING-EMPEROR*. 25 A. L. J. 33=49 All. 209=

7 L. R. A. Cr. 167=28 Cr. L. J. 15= 99 I. C. 47=A. I. R. 1926 All. 752.

**What it should contain.**

The summing up must give a fair summary of the evidence on both sides, and the Court cannot do this unless it includes a reference to all evidence which is of vital importance in the case. The summing up must also be an intelligent summing up, and it is the Judge's duty to call the jury's attention to any flagrant contradictions in the evidence. He should at the same time naturally recall to the jury any explanation of the contradiction which has been suggested and leave it to them to decide on its adequacy. (*Daniels, J.*) *DHIRAJI v. AKASI*.

24 A. L. J. 506=7 L. R. A. Cr. 123= 27 Cr. L. J. 785=95 I. C. 385= A. I. R. 1926 All. 429.

**What it should contain.**

The object of a summing up under S. 297 is to enable the Judge to place before the jury the facts and circumstances of the case both for and against the prosecution so as to help them in arriving at a right decision upon the points which arise for their consideration. (*Cuming and Mukerji, J.J.*) *KHUIRUDDIN v. EMPEROR*. 53 Cal. 372=42 O. L. J. 504=

27 Cr. L. J. 266=92 I. C. 442= A. I. R. 1926 Cal. 139.

**Judge's opinion.**

There is no harm in the trial Judge expressing his opinion on the fact and in fact it is his duty so to assist the jury provided that he is careful to express his opinion in such a way as not in any way to interfere with the duties of the jury to finally decide according to

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their own view of the facts. (*Newbould and B. B. Ghose, J.J.*) *FAZARUDDIN v. EMPEROR*.

90 I. C. 433=42 O. L. J. 111= 26 Cr. L. J. 1553=A. I. R. 1926 Cal. 105.

—*Mere summarising evidence is not summing up.*

The Judge in a proper summing up must formulate and specify simple issues for consideration, and collate the evidence *pro* and *con* bearing upon the issues in order to assist the jury to arrive at the correct decision thereon. Merely summarising the evidence, examination-in-chief, cross-examination and re-examination of the different witnesses who have deposed at the trial, and putting before the jury all that has been said by the witnesses or by the lawyers appearing on the two sides and huddling together important facts as well as trivial points without any attempt at discrimination, instead of aiding the jury will only confuse them. (*Newbould and Mukerji, J.J.*) *JESSARAT v. EMPEROR*.

87 I. C. 833=29 C. W. N. 526= 26 Cr. L. J. 1009=A. I. R. 1925 Cal. 729.

**Judge's opinion—Exhortation.**

It is permissible for a Judge and especially in India, it is often necessary for a Judge, to express an opinion clearly to the jury, and it is also permissible, though not always or indeed often advisable, to admonish the jury as to their duty, but it is unfair to the jury if the Judge says to them "I am thoroughly convinced of the guilt of the accused. Return a just verdict. If you do not, both you and I will be disgraced for ever."

A Judge in his charge to the jury must not make an appeal or exhortation to the jury. Where the summing up is calculated to leave a misleading impression on the mind of the jury, that amounts to a misdirection.

A Judge may express his opinion in the charge to the jury but he should be careful to add that it is for the jury to form their opinion on the evidence. A Judge should not in his charge to the jury express his opinion in terms too dogmatic and unqualified and state his own view on important matters of fact so positively as to leave the jury no loophole for taking any other view; his doing so vitiates the verdict of the jury. (*Kennedy, J. C. and Raymond, A. J. C.*) *TOPANDAS v. EMPEROR*. 81 I. C. 249=25 Cr. L. J. 761= A. I. R. 1925 Sind 116.

**S. 297—Miscellaneous.****Additional charge.**

Where the common object of the assembly as put forth in the charge originally was to loot crops and after some evidence the addition made in the charge was "and to assault" a certain person,

*Held*, the charge was not alternative charge and it was not the duty of the Judge to find from the jury on which common object they were depending. (*Adami and Scroope, J.J.*) *NATHUNI NONIA v. EMPEROR*. 109 I. C. 898=6 Pat. 572=29 Cr. L. J. 626= A. I. R. 1928 Pat. 139.

**Record of—What it should contain.**

*Kulwant Sahay, J.*—The heads of charge ought to show as to how the Judge explained the law to the jury. It is not sufficient to say that such and such sections of the Penal Code were read and explained. When the law which the jury has to apply is complicated and not easy of comprehension by laymen, the necessity to show as to how it was explained to the jury becomes imperative. Moreover, mere explanation of the sections of the Penal Code in the words of the Judge without reading out the sections themselves is also undesirable. The sections must be read out to the jury and then explained to them. (*Kulwant Sahay, and Allanson, J.J.*) *CHOTAN SINGH v. EMPEROR*. 111 I. C. 398=11 A. I. R. 91=7 Pat. 661=

## CR. P. CODE (1898), S. 297—Miscellaneous.

10 P. L. T. 26=29 Cr. L. J. 804=  
A. I. R. 1928 Pat. 420.

—In the charge to the jury the Judge must set out separately the case of every accused. (*Adami and Macpherson, J.J.*) MT. CHAMPA PASIN v. EMPEROR.  
108 I. C. 81=29 Cr. L. J. 325=  
9 A. I. Cr. R. 545=A. I. R. 1928 Pat. 326.

## —“Common object”—Description of.

Where a Judge's charge to a jury in respect of the accused forming an unlawful assembly described the object of the unlawful assembly as follows.—“With the premeditated object of disturbing the public peace and resisting, obstructing and overawing the police by criminal force and assaulting the police.”

*Held*, that there can really be no objection to the way in which the common object was placed before the jury.

*Held* further, that such a charge does not on the whole exceed the limits of the common objects set out in S. 141, Penal Code, so as to be likely to prejudice the accused. (*Graeves and Panton, J.J.*) ABDUL GANI v. EMPEROR.  
83 I. C. 346=25 Cr. L. J. 1386=  
A. I. R. 1925 Cal. 494.

## —S. 298—Consideration of evidence.

## —Corroboration of approver.

Per *Cuming, J.*—It is doubtful whether the Judge has to determine whether there is any evidence that does corroborate the story of the approver so far as the complicity of the accused is concerned, that being a question of facts. 19 C. W. N. 653 and *Ryder v. Wombwell*, 4 Ex. 32, Dis. and Doubt. (*Cuming and Lort Williams, J.J.*) REBATI MOHAN v. EMPEROR.

115 I. C. 258=32 C. W. N. 945=56 Cal. 150=  
30 Cr. L. J. 435=12 A. I. Cr. R. 265=  
A. I. R. 1929 Cal. 57.

## —S. 298—Directions to jury.

## —Reading of reports.

It is the duty of the Judge in his charge to the jury to place the facts clearly and explain the law with reference to the points for determination. The Judge must tell the jury how they should apply the law to the facts found by them. The practice of reading out head-notes or other portions of the reports of a case is a dangerous practice likely to confuse the jury. But the Judge may tell the jury how to apply the law laid down by the decisions of the High Court to the facts of the particular case.

When the defence takes up a plea of private defence, it is a serious defect if the charge merely indicates the argument but does not direct the jury how they are to apply the law in deciding the guilt or otherwise if they find facts giving rise to the right of private defence. (*Suhrawardy and Page, J.J.*) JABANULLAH v. EMPEROR.  
1930 Cr. C. 742=57 Cal. 1162=  
34 C. W. N. 365=A. I. R. 1930 Cal. 434.

## —Hostile witness.

Judge should explain to jury situation arising in case of hostile witness—He should tell jury to reject evidence of such witness altogether—Omission to do so amounts to misdirection—Evidence of hostile witness cannot in part be relied upon and rest rejected. A. I. R. 1923 Cal. 463; *Alexander v. Gibson*, 2 Camp. 556, Ref. (C. C. *Ghose and Pearson, J.J.*) PANCHANAN GOGAI v. EMPEROR.  
57 Cal. 1266=127 I. C. 270=  
1930 Cr. C. 356=51 C. L. J. 203=34 C. W. N. 526=  
31 Cr. L. J. 1207=A. I. R. 1930 Cal. 276.

—Where the jury were given the proper questions to answer but told to answer the same in the wrong order and further, the jury were told that two questions which were in fact separate, were intimately connected.

## CR. P. CODE (1898), S. 298—Directions to jury.

*Held*, that there was a misdirection vitiating the trial. (*Waller and Reilly, J.J.*) SOLIYAN v. EMPEROR.  
1930 M. W. N. 773

## —Evidence of co-accused.

Wherein the charge to the jury the Judge does not give any direction to the jury as to how they should treat and the weight they should give to evidence of an accused person as against his co-accused it is impossible to say how far such omission does not prejudice the accused and retrial should be ordered. (*Cuming and Lort Williams, J.J.*) BIKRAM ALI PRAMANIK v. EMPEROR. 124 I. C. 66=50 C. L. J. 467=1930 Cr. C. 139=57 Cal. 801=31 Cr. L. J. 610=A. I. R. 1930 Cal. 139.

## —Arguments for accused.

The Judge is not bound to address himself to every suggestion put forward by the defence. His duty is fairly and candidly to point out the main and salient features of the case from the point of view of the prosecution and of the defence respectively. (*Macpherson and Dhaule, J.J.*) RAMSARUP SINGH v. EMPEROR.  
1930 Cr. C. 1009=9 Pat. 606=A. I. R. 1930 Pat. 513.

—During the trial on a charge of dacoity the Sessions Judge referred in his charge to the jury to the statement of a witness given before the committing Court to the effect that he had seen 18 or 19 persons coming out of the house of the accused. The witness was not examined before the Sessions nor was his deposition put in before the Court. *Held*, the trial was vitiated, as the learned Judge had brought in a piece of evidence of an extremely damaging character on a cardinal point, the effect of which on the jury it would be difficult to speculate upon. (*Rankin, C. J. and Patterson, J.*) KHADEM v. EMPEROR. 57 Cal. 940=1930 Cr. C. 1106=A. I. R. 1930 Cal. 706.

## —Corroboration of accomplice.

Per *Lort-Williams, J.*—The Judge must not tell the jury that such or such witness does in fact corroborate the accomplice. That is the function of the jury and depends upon whether they believe the witness or not. (*Cuming and Lort Williams, J.J.*) REBATI MOHAN v. EMPEROR. 115 I. C. 258=32 C. W. N. 945=56 Cal. 150=30 Cr. L. J. 435=12 A. I. Cr. R. 265=A. I. R. 1929 Cal. 57.

## —Corroborative evidence.

Though an omission to direct the attention of the jury to those portions of the corroborative evidence which amount to corroborative evidence in law would only be a non-direction, it is a misdirection if the Judge points out to the jury certain portions of the evidence as fulfilling the requirements already stated, when in fact they do not do so. 29 Cal. 782, Foll. (*Cuming and Lort Williams, J.J.*) REBATI MOHAN v. EMPEROR. 115 I. C. 258=32 C. W. N. 945=56 Cal. 150=30 Cr. L. J. 435=12 A. I. Cr. R. 265=A. I. R. 1929 Cal. 57.

—It is not the duty of the Judge to discuss in detail each and every item of the evidence and any such discussion of the evidence by the Judge in the charge leads to a great risk of the Judge pressing his own view of the facts too positively. (*Findlay, J. C.*) NARAYAN SINGH CHHATRI v. EMPEROR. 31 Cr. L. J. 557=123 I. C. 477=1929 Cr. C. 410=A. I. R. 1929 Nag. 295.

—It is not the duty of the Judge to put to the jury hypothetical cases unsupported by any evidence. (*Cuming and Lort Williams, J.J.*) AJGAR SHAIKH v. EMPEROR. 117 I. C. 596=30 Cr. L. J. 799=48 C. L. J. 138=32 C. W. N. 839=A. I. R. 1928 Cal. 700.

## —Judge's opinion.

In many cases it is not merely permissible but also desirable that the Judge should tell the jury what view he has taken of the facts, in order to enable them to

**CR. P. CODE (1898), S. 298—Directions to jury.**

consider the facts properly and arrive at their own decision on them. 13 W. R. Cr. 34, Foll. (*Newbould and Mukerji, J.J.*) **ABDUL RAZAK v. EMPEROR.**

**A. I. R. 1928 Cal. 269.**

**—Judge's opinion.**

A Judge has a right to express his opinion. If he expresses an opinion, which is an unfair opinion and which prejudices the accused, the superior Court can, and should, interfere to remove the ill consequences of such action by finding misdirection. If the Judge attempts to take the case out of jury's province by something in the nature of imposing his own view upon the jury, it is a case of misdirection; but if a Judge simply states the opinion which the law allows him to state, in such a manner that intelligent jurymen should see for themselves that it is only his opinion and nothing else, it is not necessary for him to add, as a safeguard, a remark that it is only his opinion and that the jury are perfectly at liberty to form their own. On questions of fact the Judge's opinion in no way binds the jury, but the Judge has a right to express it so that the jury may know what it is. It is not a Judge's duty to conceal his opinion but to state it. **A. I. R. 1914 P. C. 116, Appl. (Stuart, C. J.) DES RAJ SINGH v. EMPEROR.**

**110 I. C. 577 = 5 O. W. N. 497 = 29 Cr. L. J. 721 = A. I. R. 1928 Oudh 326.**

**—Omission or misstatement likely to mislead.**

A mere omission or a misstatement in a summing up is not itself a misdirection when the case has been fully heard by the Jury, but there is a miscarriage of justice where the omission or misstatement is such that the jury may probably be misled by it. *R. v. Wann*, 23 Cox. C. C. 183, Ref. (*Findlay, J. C.*) **SOINA KOSHTI v. EMPEROR.** **99 I. C. 849 = 28 Cr. L. J. 177 = 7 A. I. Cr. R. 333 = A. I. R. 1927 Nag. 117.**

**—Statement of law—Use of books.**

Under the law of procedure it is the duty of the judge to explain to the jury the law applicable to the case, and it is the duty of the jury to accept the law as laid down by the Judge without any extraneous aid. If the jury is unable to understand the law fully and clearly it is the duty of the Judge to explain it to them afresh, but in doing so he cannot place before them the Penal Code or any legal treatise for the purpose of finding out the law; if he does so he fails in his duty. (*Sahrawardy and Duval, J.J.*) **EMPEROR v. G. C. WILSON.**

**96 I. C. 270 = 30 C. W. N. 693 = 43 C. L. J. 537 = 27 Cr. L. J. 926 = A. I. R. 1926 Cal. 895.**

Under the amended law it is the duty of the Judge to withhold from the jury's knowledge the statements made by a witness to the police unless they are proved in the manner provided by law at the request of the accused. (*Newbould and B. B. Ghose, J.J.*) **GAHUR HOUL-DAR v. EMPEROR.** **94 I. C. 593 = 30 C. W. N. 603 = 27 Cr. L. J. 641 = A. I. R. 1926 Cal. 793.**

**—Confession—Judge finding it voluntary.**

Where the Judge made observations in his charge to the Jury to the following effect: "Taking the evidence and the circumstances and the probabilities into my consideration I am satisfied that the confessions in question were voluntary and I accordingly hold them to be so. It is for you to decide whether or not they are true."

*Held*, that the Jury have to decide independently whether the confessions were voluntary and it was not right, therefore to take away entirely from the Jury the consideration of the question as to whether the confessions were voluntary or not. It was the duty of the learned Judge to place before them the facts and circumstances

**CR. P. CODE (1898), S. 298—Record of charge.**

*pro* and *con*, and ask them to form their own conclusions as to the character of the confessions. The omission to do the same is sufficient to vitiate the verdict of the jury. (*Walmsley and Mukerji, J.J.*) **SHEIKH ABDUL v. EMPEROR.**

**85 I. C. 830 = 26 Cr. L. J. 606 = A. I. R. 1925 Cal. 887.**

—None of the accused recognised on the spot in spite of sufficient opportunity to recognise, existing—Fact not pointed out to Jury—Prejudice is caused. (*Walmsley and Mukerji, J.J.*) **SHEIKH ABDUL v. EMPEROR.**

**85 I. C. 830 = 26 Cr. L. J. 606 = A. I. R. 1925 Cal. 887.**

**—Formulation of questions—Practice.**

The law does not expressly require a Judge to formulate, at the conclusion of the delivery of his charge, specific questions for the jurors' reply. Such a practice is, however, helpful in deciding the legal effect of jury's finding but the formulation of such questions requires great care and queries should be confined within the narrowest possible compass.

*Kulwant Sahay, J.*—In complicated cases the judge should, in his charge to the jury, not only explain the law, but should draw their attention to the evidence in the case and explain how they should apply the law to the particular facts of the case. Observations of Manuk, J., in 3 Pat. L. J. 655, Appr. (*Bucknill and Kulwant Sahay, J.J.*) **RUPAN SINGH v. EMPEROR.**

**91 I. C. 225 = 4 Pat. 626 = 7 P. L. T. 239 = 27 Cr. L. J. 49 = A. I. R. 1925 Pat. 797.**

**—S. 298—Function of jury.**

—In a trial by jury it is the function of the jury to find the facts upon the evidence laid before them and for that purpose to be guided by the law which is applicable and it is in all cases the duty of the Judge to point out to them that law. 21 W. R. 69, (Cr.), Foll. (*Cuming and Lort Williams, J.J.*) **REVATI MOHAN v. EMPEROR.**

**115 I. C. 258 = 32 C. W. N. 945 = 56 Cal. 150 = 30 Cr. L. J. 435 = 12 A. I. Cr. R. 265 = A. I. R. 1929 Cal. 57.**

**—S. 298—Non-direction to jury.**

—A non-direction is not a misdirection unless the jury has been misled or unless the non-direction is of primary importance. (*Adami and Macpherson, J.J.*) **MT. CHAMPA PASIN v. EMPEROR.**

**108 I. C. 81 = 9 A. I. Cr. R. 545 = 29 Cr. L. J. 325 = A. I. R. 1928 Pat. 326.**

**—S. 298—Questions of law.**

—The law of evidence is part of the general law. The question as to what is, or is not evidence, that is to say, what amounts or does not amount in law to evidence is a question of law to be decided by the Judge as is the question whether there is any evidence in law to go to the jury. (*Cuming and Lort Williams, J.J.*) **REVATI MOHAN v. EMPEROR.**

**115 I. C. 258 = 32 C. W. N. 945 = 56 Cal. 150 = 30 Cr. L. J. 435 = 12 A. I. Cr. R. 265 = A. I. R. 1929 Cal. 57.**

**—S. 298—Record of charge.**

—It is unquestionably desirable that the record of the charge on question of law should be sufficiently full to show whether the elements constituting the offences charged have been properly and fully explained to the jury. But where the law regarding the offence charged has been failed to note the same on record is not sufficient to set aside the conviction. (*Macpherson and Dhawle, J.J.*) **RAMSARUP v. EMPEROR.** **9 Pat. 606 = 1930 Cr. C. 1069 = A. I. R. 1930 Pat. 513.**



**CR. P. CODE (1898).****—S. 298—Verdict of jury.**

—It is no part of a Judge's duty to accept and interpret for himself a verdict of an unintelligible character when the members of the jury are there and can give a proper verdict (*Rankin, C. J. and C. C. Ghose, J.*)

HAMID ALI v. EMPEROR. 125 I. C. 97=  
31 Cr. L. J. 761=1930 Cr. C. 401=57 Cal. 61=  
A. I. R. 1930 Cal. 320.

**—S. 299—Evidence in lower Court.**

—Where deposition of witness for prosecution in preliminary enquiry under Chap. 18 is put in evidence under S. 288, Cr. P. Code, by the defence, it is open to jury to believe the evidence if they so wished although the Judge may be of opinion that the witness having given different version in the lower Court ought not to be believed. (*Graham and Lort Williams, J.J.*)

TAKIR PRAMANIK v. EMPEROR. 125 I. C. 743=  
31 Cr. L. J. 916=50 C. L. J. 584=  
1930 Cr. C. 196=A. I. R. 1930 Cal. 228.

**—S. 299—Plea of insanity.**

—It is for the jury to determine whether the prisoner when he committed the offence with which he stood charged, was incapable of distinguishing right from wrong or under the influence of any delusion which rendered his mind at the moment insensible of the nature of the act he was about to commit, since in that case he would not be legally responsible for his conduct. (*C. C. Ghose and Jack, J.J.*) BAZLUR RAHAMAM v. EMPEROR. 115 I. C. 561=48 C. L. J. 307=  
33 C.W.N. 136=30 Cr.L.J. 494=A.I.R. 1929 Cal. 1.

**—S. 299—Questions for jury.**

—It is for the jury to determine whether the prisoner, when he committed the offence with which he stood charged, was incapable of distinguishing right from wrong or under the influence of any delusion which rendered his mind at the moment insensible of the nature of the act he was about to commit, since in that case he would not be legally responsible for his conduct. (*C. C. Ghose and Jack, J.J.*) BAZLUR RAHAMAN v. EMPEROR. 115 I. C. 561=48 C. L. J. 307=  
33 C.W.N. 136=30 Cr.L.J. 494=A.I.R. 1929 Cal. 1.

**—S. 299—Re-trial.**

—Where the jury did not consider the case.

The jury returned a verdict that they agreed with whatever opinion the Sessions Judge might form. The jury was sent back to bring in a proper verdict after consideration. The jury returned within a short time with a verdict of guilty. The Judge convicted the accused although he did not agree with the verdict.

Held, that the jury apparently abdicated their functions in favour of the Judge and did not consider the case at all. The conviction and sentence should be set aside and re-trial ordered. (*C. C. Ghose and Jack, J.J.*) ABDUL BARIK v. EMPEROR. 113 I. C. 70=  
30 Cr. L. J. 54=48 C. L. J. 477=  
A. I. R. 1928 Cal. 827.

**—S. 300—Procedure.**

—Joint consultation essential.

When the jurymen are not able to come to a decision or agree upon a verdict before the trial then the law requires that they should retire to consider their verdict and they should all be in their retiring room together during the whole of the time between the moment of their retirement and the moment when their verdict is taken by the presiding Judge. *R. v. O'Connell*, 1 Cox C. C. 410, Rel. on. The jury who were nine in number retired to consider their verdict. At 4 P.M. five of the jurors came out and sat in Court. The remaining four stayed in the retiring room till 4-30

**CR. P. CODE (1898), S. 303—Form of verdict wrong.**

P.M. and then came out and sat in Court, when the presiding Judge proceeded to take the verdict of the jury.

Held, that the accused had not the benefit of the joint consideration and consultation of all the jurymen before the verdict was returned and hence the verdict should be set aside. (*C. C. Ghose and Guha, J.J.*) KASERUDIN v. EMPEROR. 126 I.C. 753=31 Cr. L.J. 1090=  
1930 Cr. C. 709=A. I. R. 1930 Cal. 446.

—Jury allowed to disperse—Illegal.

There can be no doubt that S. 300 does not contemplate that the jury, after the Judge has summed up a case to the jury, will leave the precincts of the Court or be at large. The section clearly contemplates that after the Judge had delivered his charge the jury must then retire to the jury room and then and there consider its verdict. Where after the Judge's charge to the jury the latter were, owing to exceptional circumstance, allowed to disperse for several hours and then returned to the Court and considered and delivered their verdict.

Held, that the trial was vitiated. (*Bucknill and Ross, J.J.*) SARIMAN AHIR v. EMPEROR.

86 I. C. 717=3 Pat. L. R. Cr. 160=6 P. L. T. 552=  
26 Cr. L. J. 861=A. I. R. 1925 Pat. 595.

**—S. 301—"Not guilty", meaning.**

—The only legitimate inference to be drawn from a verdict of "not guilty" is that in the opinion of the majority of the jury it is not established that the accused committed the offence with which he was charged. The verdict cannot be construed in any other ways. (*Barlee, J. C. and Aston, A. J. C.*) MIR AHMAD SHAH v. EMPEROR. 118 I. C. 195=  
23 S. L. R. 397=1929 Cr. C. 313=  
30 Cr. L. J. 877=A. I. R. 1929 Sind 145.

**—S. 301—Several accused.**

—Procedure.

Where there are more than one accused and where there are several charges, it would be a convenient course, if the officer of the Court were to take the verdict of the jury upon each charge separately. (*Sanderson, C. J. and Panton, J.*) ERAN KHAN v. EMPEROR. 74 I. C. 950=50 Cal. 658=24 Cr. L. J. 838=  
A. I. R. 1924 Cal. 47.

**—S. 302—Re-consideration.**

—Fresh charge after jury came to a unanimous verdict.

Where the jury at first brought in a unanimous verdict of guilty against the accused, but the Judge apparently being of a contrary opinion proceeded to charge the jury again and after the second charge was finished the jury retired again and returned the verdict of not guilty.

Held, that the procedure adopted was one which was entirely opposed to the procedure laid down in the Cr. P. Code and was one for which there is no warrant anywhere in the law obtaining in British India and the verdict of the jury cannot be allowed to remain. (*C. C. Ghose and Cammiade, J.J.*) SUPT. & LEGAL REMEMBRANCER v. JUHAY SHEIKH. 107 I. C. 90=  
32 C. W. N. 144=29 Cr. L. J. 228=  
9 A. I. Cr. R. 451=A. I. R. 1928 Cal. 228.

**—S. 303—Form of verdict wrong.**

—Curable irregularity—S. 408, I. P. C.

Where in his charge to the jury in a trial for an offence under S. 408, I. P. C., with regard to a gross sum said to have been misappropriated within a year, and composed of items more than three in number, the Judge instead of inviting verdict in respect of charge under S. 408 asked the jury to give their verdict in respect of the charge as laid against the accused on the



**CR. P. CODE (1898), S. 303—Form of verdict wrong.**

several items and the jury returned a verdict of guilty as regards some of the items only and not guilty as regards others and the Judge convicted the accused under S. 408.

*Held*, that though the form in which verdict was asked for and expressed was wrong, proper form being simply to ask jury their verdict in respect of an offence under S. 408, the defect was one of form and did not prejudicially affect the accused. (*Suhrawardy and Costello, J.J.*) RAHIM BUX SARKAR v. EMPEROR.

34 C. W. N. 901=1930 Cr. C. 1117=  
A. I. R. 1930 Cal. 717.

**—S. 303—Jury's verdict.**

*Silent on one of the charges—Charge not negatived—Retrial ordered.*

Where an accused was tried under Ss. 364, 120-B read with S. 302 and the jury found him guilty under Ss. 120-B and 364 but was silent about the charge of murder,

*Held*, that the verdict of the jury under S. 120-B read with S. 302 did not by itself negative the charge of murder and hence re-trial for a charge under S. 302 could be ordered. (*Sanderson, C. J. and Cumming, J.*) EMPEROR v. USMAN SANDAR.

81 I. C. 824=  
39 C. L. J. 284=25 Cr. L. J. 1048=  
A. I. R. 1924 Cal. 809.

**—S. 303—Individual opinions.**

In cases of disagreement among the jury the individual opinion of members should never be disclosed. 36 Mad. 858, Foll. The procedure of disclosing is opposed to a fundamental principle of the scheme of trial by jury. (*Simpson, A. J. C.*) JAGANNATH v. KING-EMPEROR.

89 I. C. 386=12 O. L. J. 643=  
2 O. W. N. 534=26 Cr. L. J. 1346=  
A. I. R. 1925 Oudh 746.

**—S. 303—Legality of questions.**

The object of S. 303 is merely to enable the Court to ascertain whether the jury intended to bring in a verdict of guilty or not guilty. For no other purpose is a Judge entitled to interrogate the jury under S. 303 after they have given their verdict. A Judge is not entitled to examine the jurors as to the grounds upon which they have based their verdict. (*Suhrawardy and Page, J.J.*) EMPEROR v. DERAJTULLA SHEIKH.

1930 Cr. C. 751=127 I. C. 79=31 Cr. L. J. 1150=  
34 C. W. N. 283=A. I. R. 1930 Cal. 443.

**—Amount of embezzlement.**

Where in a case under S. 403, I. P. C., the jury returned a verdict of guilty but were not definite as to the amount embezzled but gave some approximate amount which was a fraction of the amount charged and where the Judge was inclined to think that a much larger amount than that mentioned by the jury had been misappropriated,

*Held*, that under S. 303 (1), Cr. P. Code, the Judge is always entitled to ask the jury such questions as are necessary to ascertain what their verdict is and in a case like this, it is his duty to question them. (*Walmsley and Mukerji, J.J.*) KHADE KUMAR MOOKERJEE v. EMPEROR.

85 I. C. 372=40 C. L. J. 555=  
29 C. W. N. 54=26 Cr. L. J. 532=  
A. I. R. 1925 Cal. 260.

**—Incomplete verdict.**

Where the answer given by the foreman of the jury was an incomplete verdict,

*Held*, it is necessary and legal under the provisions of S. 303 of the Cr. P. Code that the learned Judge should put further questions to the foreman in order to ascertain precisely what the verdict of the jury was. (*Sanderson, C. J. and Panton, J.*) ERAN KHAN v.

**CR. P. CODE (1898), S. 303—Reconsideration.**

EMPEROR. 74 I. C. 950=24 Cr. L. J. 838=  
50 Cal. 658=A. I. R. 1924 Cal. 47.

**—S. 303—Questions to jury—Dacoity case.**

*Five charged—One acquitted.*

Where five persons were charged with dacoity and the jury acquitted one and convicted the rest and the Judge failed to ask them to consider the result of their acquitting one and whether they still found that robbery was committed by five persons,

*Held*, it was impossible to find what the verdict could have been if the questions were put to them and conviction for dacoity should be set aside. (*Waller and Madhavan Nair, J.J.*) ABBAS ALI v. EMPEROR.

106 I. C. 341=1927 M. W. N. 853=29 Cr. L. J. 5=  
9 A. I. Cr. R. 248=1 M. Cr. C. 72=  
A. I. R. 1928 Mad. 144=53 M. L. J. 732.

**—S. 303—Reasons for verdict.**

It is not competent to a Sessions Judge to ask the jury for their reasons in arriving at their verdict. A.I.R. 1923 Pat. 474, Foll. and A. I. R. 1922 Pat. 348, Diss. (*Ross and Wort, J.J.*) RAMJAG AHIR v. EMPEROR.

109 I. C. 114=7 Pat. 55=  
9 P. L. T. 567=29 Cr. L. J. 466=  
A. I. R. 1928 Pat. 203.

**—Inability to give.**

In a trial for murder by jury all the jurors found the accused not guilty. Thereupon the learned Judge asked them the question "what are your reasons for your verdict." The answer they gave was, "We give him the benefit of doubt. We can give no other reason."

*Held*, that from the mere fact that the jury were unable to give reasons beyond saying that they gave the accused the benefit of doubt, it cannot be held that the jury had no adequate reasons for bringing a verdict of not guilty. (*Suhrawardy and Mukerji, J.J.*) EMPEROR v. NISHI KANTA BANIKYA.

86 I. C. 453=41 C. L. J. 35=26 Cr. L. J. 805=  
A. I. R. 1925 Cal. 525.

**—Where verdict is clear.**

It is not competent to the Sessions Judge after a clear verdict was returned by the jury to ask them for their reasons. 58 I. C. 829, Foll. (*Mullick and Bucknill, J.J.*) EMPEROR v. ALI HYDER.

86 I. C. 712=  
4 Pat. L. T. 425=26 Cr. L. J. 856=  
A. I. R. 1923 Pat. 474.

**—S. 303—Reconsideration.**

*Jury not considering part of the case.*

The Judge asked the jury for their opinion about a part of the case, the foreman of the jury hesitated and then informed the Court that the jury had not considered that part of the case and for this reason the Judge sent the jury back in order that that part of the case might be considered. After this the unanimous verdict of "guilty" was returned.

*Held*, that there was nothing wrong in the procedure. (*Lindsay, Ag. C. J.*) SURNATH BHADURI v. EMPEROR.

105 I. C. 662=25 A. L. J. 1077=  
8 A. I. Cr. R. 342=8 L. R. A. Cr. 140=  
28 Cr. L. J. 950=A. I. R. 1927 All. 721.

*Verdict by jury—Answers to questions by Judge showing that jury did not understand law.*

In a trial for murder the jury at first stated that their unanimous verdict was that the accused was guilty of 'culpable homicide not amounting to murder'. In order to determine which degree of that offence the jury intended, the Judge proceeded to ask certain questions in order to ascertain which degree of the offence they referred to. From the answers given, the jury showed that they were in doubt as to what they did mean and that they did not understand the law on the point, and finally they asked the Judge to read to them a por-

**CR. P. CODE (1898), S. 303—Reconsideration.**

tion of a certain judgment which the Judge had explained to them in the summing up, on the question of inference to be drawn from the weapon used. The jury then asked permission to retire once more and consider matters. After some time they returned and unanimously convicted the accused under S. 303.

*Held*, that until the jury intimated under which part of S. 304 their first verdict fell, it would not in fact be accepted and recorded. It was incomplete. And as their subsequent answers to proper questions addressed to the jury showed that they had arrived at no unanimous verdict under S. 304 at all, it was the duty of the Court to send them back for further consideration. The subsequent verdict was the only clear verdict and as it was a unanimous verdict the Judge was bound to accept it. (*Ruledge, C. J., Heald and Chari, J.J.*) KING-EMPEROR v. NGA TIN GYL. 99 I. C. 1013 =

4 Rang. 488 = 5 Bur. L. J. 209 = 28 Cr. L. J. 213 = 7 A. I. Cr. R. 394 = A. I. B. 1927 Rang. 68 (F. B.).

**—S. 303—Several charges.****—Procedure.**

In jury trials the charges upon which the accused are to be tried and upon which they are likely to be convicted should be specifically mentioned and the verdict of the jury should be taken on each of such charges. (*Devadoss and Madhavan Nair, J.J.*) VIRUMANDITHEVAN, *In re*. 105 I. C. 831 = 28 Cr. L. J. 1007 =

9 A. I. Cr. R. 211 = 1 M. Cr. C. 196 = A. I. B. 1928 Mad. 207.

**—Procedure.**

A verdict on all charges should be elicited by the Judge by questions under S. 303 (1), Cr. P. Code and the questions and answers recorded under S. 303 (2). Where there were several charges of which the accused were charged, a statement in the judgment that the verdict was of guilty was held not sufficient and the conviction was set aside. (*Kotwal, A. J. C.*) RAMPRASAD v. EMPEROR. 88 I. C. 178 = 26 Cr. L. J. 1090 = A. I. R. 1926 Nag. 53.

**—S. 303—Unintelligible verdict.**

—Where the verdict of the jury is confused and unintelligible, it is the duty of the Judge to obtain from them a proper and correct verdict before accepting the verdict given. (*Suhrawardy and Duval, J.J.*) EMPEROR v. G. C. WILSON. 96 I. C. 270 =

30 C. W. N. 693 = 43 C. L. J. 537 = 27 Cr. L. J. 926 = A. I. R. 1926 Cal. 895.

**—S. 304—Absurd verdict.**

—In a criminal trial with the help of a jury a Judge is not obliged to accept an absurd verdict either as a verdict of guilty or as a verdict of not guilty. He is quite entitled to tell the jury to consider the matter over again. (*Rankin, C. J. and C. C. Ghose, J.*) HAMID ALI v. EMPEROR. 125 I. C. 97 = 31 Cr. L. J. 761 = 1930 Cr. C. 401 = 57 Cal. 61 = A. I. R. 1930 Cal. 320.

**—S. 304—Fresh evidence.****—Fresh—Verdict—Nullity.**

All the evidence on both sides must be concluded before the case can be submitted to the jury. There is no power in a Judge to present a case to a jury subject to conditions, and once a verdict is delivered there is no power in the trial Court or in the jury to reconsider that verdict except under the provisions of S. 304.

Where after a trial had been concluded and verdict given a new trial had been held on further evidence and a fresh verdict given,

*Held*, that it is immaterial that the second verdict happened to be the same as the first. The second verdict upon which judgment has been given and sentence pronounced is a nullity and the judgment based upon it is, therefore, made without jurisdiction and is void.

**CR. P. CODE (1898), S. 304—Ends of justice.**

(*Fforde, J.*) JOHN THAMAS LYME v. THE CROWN. 77 I. C. 425 = 4 Lah. 382 = 25 Cr. L. J. 377 = A. I. R. 1924 Lah. 17.

**—S. 306—Doubt about correctness.****—Acceptance of verdict.**

The Judge in passing sentence upon the accused after conviction is clearly right in giving no weight to whatever doubts he personally entertained as to the propriety of the verdict of the jury or mitigating the sentence on that account. Having accepted the verdict he is bound to award punishment as if he agreed with the verdict. (*Macpherson and Allanson, J.J.*) RAMDAS RAI v. EMPEROR. 117 I. C. 173 = 8 Pat. 344 =

10 P. L. T. 409 = 30 Cr. L. J. 721 = 1929 Cr. C. 99 = A. I. B. 1929 Pat. 313.

**—S. 306—Reference.****—Conditions under S. 307 should be satisfied.**

Section 306 does not impose an obligation on the Judge to refer a case to the High Court except when the conditions set out in S. 307 are satisfied. The disagreement referred to in S. 306 is the same disagreement as impels the Judge to take action under S. 307. A. I. R. 1928 Pat. 120, Rel. on; 5 Cal. 871, Dist.; 13 Mad. 343, Ref. (*Macpherson and Allanson, J.J.*) RAMDAS RAI v. EMPEROR. 117 I. C. 173 = 8 Pat. 344 =

10 P. L. T. 409 = 30 Cr. L. J. 721 = 1929 Cr. C. 99 = A. I. B. 1929 Pat. 313.

**—S. 307.****Ends of justice.****Evidence.****Grounds for reference.****Interference in verdict.****Object of.****Powers of High Court.****Procedure.****Scope.****Verdict of Jury.****Miscellaneous.****—S. 307—Ends of justice.****—Where the Judge really disagrees.**

Sessions Judges are under no obligation to have or express their individual opinion upon really disputable questions of fact which are for the jury. If the Judge really disagrees with the verdict, that is, as a settled and considerate opinion then it is necessary for the ends of justice to refer the case; if he does not think it necessary his "disagreement" is not a reality and then he should not expose his inconclusive state of mind. (1871) 15 W.R. (Cr.) 46, held no longer good law. (*Rankin, C. J. and Buckland, J.*) EBRAHIM MOLLA v. EMPEROR. 119 I. C. 290 = 56 Cal. 473 = 33 C. W. N. 371 = 30 Cr. L. J. 1036 = 1929 Cr. C. 28 = A. I. B. 1929 Cal. 415.

**—Judge's view is final.**

It is not correct law to say that, if the High Court thinks that the Judge, in a case tried by jury, ought to have been of opinion that it is necessary for the ends of justice to submit the case, the High Court can direct him so to do or can act as though he has, in fact, submitted the case. The conditions laid down are not merely that the Judge disagrees with the verdict of the jury, but also that the Judge is clearly of opinion that it is necessary for the ends of justice to submit the case. It is quite impossible to direct the Judge to be clearly of a certain opinion and the language used by the statute shows that the Judge's view on that point is to be final for that purpose. (*Rankin, C. J. and G. C. Ghose, J.*) BEPIN CHANDRA MANDAL v. EMPEROR. 111 I. C. 323 = 47 C. L. J. 483 = 32 C. W. N. 673 = 10 A. I. Cr. R. 504 = 29 Cr. L. J. 819 = A. I. B. 1928 Cal. 444.

**CR. P. CODE (1898), S. 307—Ends of justice.***Discretion of the Judge.*

Section 307 quite clearly gives to the Judge a discretion in the matter of submitting a case to the High Court and it is only when he is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court that he shall so submit it. If he is not clearly of that opinion his failure to submit the case is not a subject for interference by the High Court on appeal. A. I. R. 1924 Cal. 47, Foll.; A. I. R. 1925 Cal. 795 and 13 Mad. 343, Dist.; 13 Beng. L. R. 19 and 1 Rom. 10, Ref. (*Allanson and Sen, J.J.*) **BAJIT MIAN v. EMPEROR.** 106 I. C. 673 = 6 Pat. 817 = 29 Cr. L. J. 81 = 9 A. I. Cr. R. 221 = 9 P. L. T. 191 = A. I. R. 1928 Pat. 120.

*Circumstances about accused's guilt suspicious.*

No doubt great weight attaches to the unanimous opinion of the jury on questions which are purely questions of facts, but where the whole case is a suspicious one and the real facts in connexion with the occurrence and the circumstances under which it took place have not been disclosed by the prosecution, then although the case which the defence put forward is also not true in its entirety, to convict the accused under such circumstances on the unanimous verdict of guilty by the jury is likely to cause a miscarriage of justice. (*Walmesley and Mukerji, J.J.*) **EMPEROR v. YAKUB.** 98 I. C. 413 = 30 C. W. N. 858 = 27 Cr. L. J. 1341 = A. I. R. 1926 Cal. 1034.

**—S. 307—Evidence.***Judge thinking that the sole prosecution witness is unreliable.*

Where Sessions Judge is opinion from the demeanour and the evidence of the witness that the witness is unreliable and the witness is the only witness on which prosecution relies and on whose evidence jury have based their verdict, it is not incompetent to make reference to High Court. Such a case is quite distinguishable from the case where the Sessions Judge takes a view of the evidence quite different from one which jury have taken. (*Wort, J.*) **EMPEROR v. LAL MOHAMMAD.** 119 I. C. 898 = 30 Cr. L. J. 1114 = 1930 Cr. C. 270 = 11 P. L. T. 452 = A. I. R. 1930 Pat. 174.

High Court has power under S. 307 read with S. 428 to call further evidence (*Rankin, C. J. and Buckland, J.*) **DEBENDRA NARAIN v. EMPEROR.** 119 I. C. 378 = 33 C. W. N. 632 = 56 Cal. 566 = 50 C.L.J. 1 = 30 Cr. L.J. 1031 = A.I.R. 1929 Cal. 244.

Judge referring case on assumption that jury having accepted evidence as regards one charge should accept evidence on other charges—Reason is not adequate for reference. (*Wort and Macpherson, J.J.*) **SAKHICHAND KUMHAR, In the matter of.** 113 I. C. 694 = 9 P. L. T. 649 = 30 Cr. L. J. 210 = A. I. R. 1929 Pat. 16.

**High Court—Practice.**

When the jury has, by a majority, acquitted the accused, it is necessary that the High Court, who cannot see the witnesses, must be very careful before substituting a conviction. It may be that the opinion of the jury ought not to have the same weight as that of the Judge. But it is necessary to show upon evidence that the case is such that the verdict of the majority is plainly unreasonable. Until that can be shown, it is not possible for the High Court to substitute a conviction. (*Rankin, C. J. and Mukerji, J.*) **EMPEROR v. IZAZUDDIN.** 117 I. C. 662 = 30 Cr. L. J. 804 = 32 C. W. N. 894.

*Two inferences possible on evidence—When High Court can interfere.*

Where one of two inferences is possible upon the

**CR. P. CODE (1898), S. 307—Grounds for reference.**

evidence the Court of Reference will not interfere with the finding of the jury even though the Court is of opinion that it would have drawn the other inference if it had been a Court of Appeal. But where the inference drawn by the jury is manifestly inconsistent with the documentary evidence and with the conduct of the parties, the law makes it obligatory on the Court to interfere.

In a reference under S. 307 it is not sufficient to show that another jury might have formed a different opinion; what the prosecution has to show is that no reasonable body of men would have returned the verdict complained of. A. I. R. 1923 Pat. 476, Foll. (*Davson Miller, C. J. and Mullick, J.*) **EMPEROR v. LAHIR HAIDER BILGRAMI.** 97 I. C. 17 = 7 P. L. T. 367 = 27 Cr. L. J. 1041 = 7 A. I. Cr. R. 97 = A. I. R. 1926 Pat. 566.

*Procedure on reference.*

When a Judge makes a reference to the High Court under S. 307, it is the duty of the High Court not only to consider the entire evidence, but also to give due weight to the opinion of the Judge and the jury. (*Sanderson, C. J. and Panton, J.*) **EMPEROR v. MOFIZEL PEADA.** 89 I. C. 242 = 29 C. W. N. 842 = 26 Cr. L. J. 1298 = A. I. R. 1925 Cal. 909.

**—S. 307—Grounds for reference.***Different view by Judge.*

The fact that the Sessions Judge might and does take a different view of the evidence from that which the jury took is no ground for a reference under S. 307. (*Wort, J.*) **EMPEROR v. BHUKHAN DUBEY.** 11 P. L. T. 605 = 120 I. C. 290 = 31 Cr. L. J. 54 = A. I. R. 1930 Pat. 208.

*Verdict which would not be come to by a reasonable man.*

It is not in every case if the verdict of the jury does not commend itself to the Sessions Judge that he is entitled to refer the case to the High Court. The principle is that where the verdict is a verdict which would not be come to by a reasonable man then a reference would be competent. 13 Mad. 343 and A.I.R. 1929 Pat. 313, Ref. (*Wort, J.*) **EMPEROR v. LAL MOHAMMAD.** 119 I. C. 898 = 30 Cr. L. J. 1114 = 1930 Cr. C. 270 = 11 P. L. T. 452 = A. I. R. 1930 Pat. 174.

*Verdict definitely and manifestly wrong—Different view by Judge.*

It is not contemplated that a Sessions Judge who does not happen to agree with the verdict of a jury, should necessarily make a reference to the High Court, especially where pure questions of fact are involved which are matters for the decision of the jury and the jury alone. It is no justification for a reference that the Sessions Judge came to a different conclusion, on the evidence tendered, from that of the jury unless there is something to show that the verdict of the jury was manifestly wrong and definitely contrary to the weight of the evidence. Whether a particular witness is to be believed or not is a question for the jury. (*Graham and Lort Williams, J.J.*) **MEAJAN HOWLADAR v. EMPEROR.** 124 I. C. 523 = 31 Cr. L. J. 698 = 1929 Cr. C. 399 = A. I. R. 1929 Cal. 737.

*Judge thinking that accused should have been convicted for lesser offence.*

The trial Judge when charging the jury directed them, if they found that the accused, who was charged with an offence punishable under S. 459 that whilst committing housebreaking he caused grievous hurt, was not guilty under S. 459, to find whether he was guilty of grievous hurt under S. 325. The verdict of the jury was that the accused was guilty of no offence. The trial Judge

**CR. P. CODE (1898), S. 307—Grounds for reference.**

agreed with the jury that no offence had been committed under S. 459 but was of opinion that he had committed an offence under S. 325.

*Held*, that the verdict of the jury on the charge framed included the verdict of the minor offence under S. 325 and so the Judge was entitled to refer the case under S. 307. 41 Cal. 662. Dist. (*Macnair, Ag. J. C.*) **EMPEROR v. HARILAL TAMBOLI.** 117 I. C. 284 = 30 Cr. L. J. 793 = A. I. R. 1929 Nag. 114.

—*Unreasonable and perverse verdict—Judge need not state expressly.*

Where the Judge in his reference does not state in so many words that he considers that the verdict of the jury was perverse or unreasonable but this appears to be his opinion it must be taken that the Judge has only referred the case on the ground that in his opinion the verdict was perverse and unreasonable. A. I. R. 1928 Mad. 1186, Rel. on. (*Raza and Pullan, J.J.*) **EMPEROR v. BHAGWAN DIN,** 116 I. C. 207 = 6 O. W. N. 40 = 30 Cr. L. J. 570 = 12 A. I. Cr. R. 442 = 1929 Cr. C. 13 = A. I. R. 1929 Oudh 280.

—*Warning of Judge—Disregard of.*

Where the learned Judge, in delivering his charge placed before the jury all the evidence and pointed out the grave defects in the case for the prosecution, and where in spite of his warning, the jury were unanimous in finding all the accused guilty,

*Held*, that reference under S. 307 was proper. (*Walmstey and Mukerji, J.J.*) **EMPEROR v. KOMORUDDIN SHEIKH.** A. I. R. 1928 Cal. 233.

—*Contents of reference.*

In order to justify a reference under S. 307 it is not necessary that the Judge should be able to describe the jury's finding as perverse. (*Rankin and Chotzner, J.J.*) **JAHRUR SHEIKH v. EMPEROR.** 98 I. C. 714 = 30 C. W. N. 912 = 45 C. L. J. 20 = 27 Cr. L. J. 1402 = A. I. R. 1926 Cal. 1107.

—*Perverse verdict.*

The words "manifestly wrong" mean that the verdict of the jury must be so wrong that it amounts to a perverse verdict. It is only when, as a matter of fact, the Court can be of opinion that the verdict of the jury is perverse that High Court is entitled in a reference under S. 307, Criminal Procedure Code, to place its own opinion on the evidence against the opinion of the jury. (1913) 41 Cal. 621, Foll. (*Macleod, C. J. and Fawcett, J.*) **KING-EMPEROR v. C. J. WALKER.** 83 I. C. 995 = 26 Bom. L. R. 610 = 26 Cr. L. J. 211 = A. I. R. 1924 Bom. 450.

—*Ends of justice.*

S. 307 quite clearly gives to the Judge a discretion in the matter of reference and it is only when he is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court that he shall submit it. If he is not clearly of that opinion, his failure to submit the case is not a subject for interference by the High Court on appeal. (*Sanderson, C. J. and Pantlon, J.*) **ERAN KHAN v. EMPEROR.** 74 I. C. 950 = 50 Cal. 658 = 24 Cr. L. J. 838 = A. I. R. 1924 Cal. 47.

—**S. 307—Interference in verdict—Acquittal.**

The verdict of a jury has more weight than the opinion of assessors and should not be set aside unless no sensible man could have arrived at their verdict particularly in the case of a verdict of acquittal. 13 B. L. R. 19, App. and 41 Cal. 621, Ref. (*Courtnay-Terrill, C. J. and Adams, J.*) **EMPEROR v. VIDYASAGAR PANDEY.** 112 I. C. 363 = 8 Pat. 74 =

**CR. P. CODE (1898), S. 307—Interference in verdict—Grounds for.**

9 P. L. T. 683 = 29 Cr. L. J. 1035 = 11 A. I. Cr. R. 371 = A. I. R. 1928 Pat. 497.  
—**S. 307—Interference in verdict—Considerations for.**

—*Perverse verdict.*

Where the verdict of the jury is perverse and patently erroneous and it is established that the verdict amounts to a gross miscarriage of justice, the High Court is entitled to draw its conclusions from the evidence as to the guilt of the accused.

The accused was charged under Penal Code, S. 394, was caught at the spot with a lathi. The prosecution evidence fully established the accused's guilt and the accused led no evidence to establish his innocence. The majority of the jury, however, gave a verdict of not guilty on the ground that the injuries caused to the complainant were trivial and that the stolen goods were not discovered in the accused's house.

*Held*, that the verdict of the jury was perverse. 2 A. L. J. 475, Ref. (*Banerji and Sen, J.J.*) **EMPEROR v. JUKHAN.** 119 I. C. 443 = 1929 A. L. J. 509 = 10 L. B. A. Cr. 80 = 11 A. I. Cr. 547 = 30 Cr. L. J. 1078 = A. I. R. 1929 All. 338.

—*Where verdict is due to misdirection or misunderstanding.*

Under S. 423 (2) the High Court is not authorised to alter or reverse the verdict of a jury unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the jury of the law as laid down by him. (*Macpherson and Allanson, J.*) **RAMDAS RAI v. EMPEROR.** 117 I. C. 173 = 8 Pat. 344 = 10 P. L. T. 409 = 30 Cr. L. J. 721 = 1929 Cr. C. 99 = A. I. R. 1929 Pat. 313.

—*Perverse or manifestly wrong.*

The High Court has full powers to re-open matters in connection with a verdict of acquittal by a jury where the Sessions Judge has disagreed with the verdict and has referred the case to the High Court under the section. But the High Court should interfere only when the verdict is perverse or clearly and manifestly wrong. The principle will secure the objects of the legislature in creating juries. Any undue interference with the verdict of a jury tends to diminish the sense of responsibility which it is desirable a jury ought to cherish. (*Stuart and Mukerji, J.J.*) **EMPEROR v. PANNA LAL.** 81 I. C. 629 = 46 All. 265 = 22 A. L. J. 162 = 5 L. B. A. Cr. 65 = 25 Cr. L. J. 981 = A. I. R. 1924 All. 411.

—It is not enough to show that the High Court if it had tried the case as a Court of original jurisdiction, would upon the evidence on the record come to a conclusion other than the conclusion at which the jury have come but it must be shown by the Court before it sets aside the verdict of the jury on a reference under S. 307 that the verdict of the jury is so manifestly wrong that it must be set aside by the High Court. It is not enough to find that the defence theory is one which cannot be accepted, but it must be found whether on the evidence such as appears on the record it was not possible for the jury to take the view which they have taken. 41 Cal. 621, Foll. (*C. C. Ghose and Chotzner, J.J.*) **EMPEROR v. NRITYA GOPAL ROY.** 75 I. C. 145 = 38 C. L. J. 1 = 24 Cr. L. J. 897 = A. I. R. 1924 Cal. 317.

—**S. 307—Interference in verdict—Grounds for.**

Jury's verdict should stand unless evidence and Judge's opinion show it is wrong and justice requires it to be set aside. (*Richardson and Subhrawady, J.J.*) **EMPEROR v. JAMALDI FAKIR.** 81 I. C. 712 =

**CR. P. CODE (1898), S. 307—Interference in verdict—Grounds for.**

51 Cal. 160 = 28 C. W.N. 536 = 25 Cr. L. J. 1000 =  
A. I. R. 1924 Cal. 701.

—**S. 307—Interference in verdict—Practice.**

—*Practice—Lucknow Chief Court.*

It is not the practice of the Lucknow Chief Court to interfere with a jury verdict if it is in any way a reasonable verdict, but if the verdict is both unreasonable and perverse it must be set aside. (*Stuart, C. J. and Raza, J.*) **MOHAMMAD HADI HUSAIN v. KING-EMPEROR.**

112 I. C. 103 = 5 O. W. N. 281 =  
3 Luck. 494 = 29 Cr. L. J. 983 =

11 A. I. Cr. R. 226 = A. I. R. 1928 Oudh 277.

—**S. 307—Interference in verdict—Unanimous verdict.**

—*Should not easily be set aside.*

If the High Court is to interfere in every case of doubt in every case in which it may with propriety be said that the evidence would have warranted a different verdict then it must be held that real trial by jury is absolutely at an end, and that the verdict of a jury is of no more weight than the opinion of assessors. In a case under S. 307, the High Court which has not the opportunity to see the witnesses must act with great caution. The most careful note must often fail to convey the evidence fully in some of its most important elements, those for which the open oral examination of the witness in the presence of prisoner, Judge and jury is so justly prized. (*Mookerjee and Chatterjee, J.J.*) **EMPEROR v. AKBAR MOLLA.**

81 I. C. 261 =  
51 Cal. 271 = 38 C. L. J. 379 = 25 Cr. L. J. 773 =  
A. I. R. 1924 Cal. 449.

—**S. 307—Interference in verdict—When not made.**

—The High Court has to consider the entire evidence and to decide after giving due weight to the opinion of the Sessions Judge and the jury whether the charge was made out against the accused. High Court should not interfere with the verdict of the jury unless it is shown that the verdict was manifestly wrong and that there were no sufficient materials to justify it. (*Graham and Lort Williams, J.J.*) **EMPEROR v. BALAI GHOSE.**

124 I. C. 486 = 31 Cr. L. J. 667 =  
50 C. L. J. 518 = 1930 Cr. C. 141 = A. I. R. 1930 Cal. 141.

—Where the charge is good and verdict of the jury unanimous but Judge disagrees, provided the jury's view is neither bad nor impossible one High Court should not reverse the verdict. (*Stuart, C. J. and Raza, J.J.*) **EMPEROR v. CHIRAUNJA LAL.**

124 I. C. 661 =  
31 Cr. L. J. 719 = 7 O. W. N. 376 = 1930 Cr. C. 524 =  
A. I. R. 1930 Oudh 334.

—High Court will not as a rule interfere with the verdict of a jury except when it is shown to be clearly and manifestly wrong : 10 Bom. 497, Rel. on. (*Mirza and Murphy, J.J.*) **EMPEROR v. C. E. RING.**

120 I. C. 340 = 53 Bom. 479 = 31 Bom. L. R. 545 =  
1929 Cr. C. 114 = 31 Cr. L. J. 65 =  
A. I. R. 1929 Bom. 296.

—High Court should not interfere with the verdict of jury, which cannot be said to be unreasonable. (*Rankin, C. J. and Mukerjee, J.*) **EMPEROR v. NAGAR ALI.**

116 I. C. 171 = 56 Cal. 132 =  
32 C. W. N. 952 = 30 Cr. L. J. 584 =  
12 A. I. Cr. R. 458 = A. I. R. 1929 Cal. 287.

—Where a reference to the High Court is made under S. 307, the High Court cannot go into any matter of misdirection, or interfere in any way with the result of the trial of the lower Court unless it is satisfied that the jury's verdict on the evidence is unreasonable. A. I. R. 1928 Mad. 1186 (F. B.), Discussed and Foll. but not Appr. (*Wallace and Walsh, J.J.*) **MOT-**

**CR. P. CODE (1898), S. 307—Interference in verdict—When not made.**

**TAYYA PILLAI v. EMPEROR.** 117 I. C. 787 =  
29 M. L. W. 396 = 1929 M. W. N. 194 =  
2 M. Cr. C. 31 = 30 Cr. L. J. 843 =

A. I. R. 1929 Mad. 135 = 56 M. L. J. 103.

—The High Court while considering a reference under S. 307 should interfere only when the verdict of the jury is perverse or manifestly wrong. A. I. R. 1926 Nag. 308, Foll. and A. I. R. 1928 Cal. 732, not Appr. (*Macnair, A. J. C.*) **RAMDAYAL v. EMPEROR.**

117 I. C. 277 = 30 Cr. L. J. 789 =  
A. I. R. 1929 Nag. 113.

—High Court will only interfere with a verdict of a jury when such verdict is obviously perverse or manifestly wrong or unreasonable. A. I. R. 1926 Nag. 308, Foll. (*Findlay, J. C.*) **RAMADHIN BRAHAMIN v. EMPEROR.**

112 I. C. 51 = 29 Cr. L. J. 963 =  
11 A. I. Cr. R. 302 = A. I. R. 1929 Nag. 36.

—It is the practice of Oudh Chief Court not to interfere in case of acquittal by a jury unless the acquittal stands out as patently bad. Where the verdict of the jury is patently bad and perverse the Chief Court will interfere. (*Stuart, C. J. and Pullan, J.*) **EMPEROR v. BEHARI.**

108 I. C. 900 = 3 Luck. 456 =  
10 A. I. Cr. R. 129 = 5 O. W. N. 216 =  
29 Cr. L. J. 452 = A. I. R. 1929 Oudh 86.

—The High Court will not interfere with the verdict of the jury if the verdict has turned merely upon the appreciation of oral evidence capable of being viewed either way but only where the evidence is so coercive that it is impossible to draw a conclusion except the one adverse to the verdict. (*Macpherson and Allanson, J.J.*) **RAMDAS RAI v. EMPEROR.**

117 I. C. 173 = 8 Pat. 344 = 10 P. L. T. 409 =  
30 Cr. L. J. 721 = 1929 Cr. C. 99 =  
A. I. R. 1929 Pat. 313.

—Where the verdict of the jury is not such as reasonable men properly instructed would not arrive at, the High Court should not substitute its own opinion for that of the majority of the jury. (*Rankin, C. J. and Mukerji, J.*) **EMPEROR v. KHUDAY GAZI.**

113 I. C. 285 = 48 C. L. J. 541 = 30 Cr. L. J. 125 =  
12 A. I. Cr. R. 53.

—*Where one Judge agrees with the verdict.*

The verdict of the majority of the jury should not be interfered with, unless it is apparent that the case is a very clear one, and the fact that the verdict of the jury has the assent of one of the Judges of a Division Bench is ordinarily in itself sufficient to show that the case is not such a clear one as would justify reversing the verdict of the jury. Cal. Cr. Ref. No. 26 of 1905, Foll. (*Cuning and Lort Williams, J.J.*) **EMPEROR v. YUNUS ALI.**

117 I. C. 680 = 32 C. W. N. 783 =  
30 Cr. L. J. 820.

—*Test whether reasonable men would have taken the same view.*

Where the evidence is of such a character that the jury as reasonable men can possibly take the view they have taken, the High Court should not interfere with the verdict of the jury in a reference under S. 307. The test, therefore, that has to be applied in estimating the weight of the verdict of the jury, is whether the opinion is such as could on the particular facts and evidence of the case have been held by reasonable men, however much the Judge may differ from that view. A. I. R. 1924 Cal. 956 and A. I. R. 1924 Cal. 317, Expl. (*Suhrawardy and Mitter, J.J.*) **EMPEROR v. HAR-MOHAN.**

54 Cal. 708 = 28 Cr. L. J. 908 =  
105 I. C. 231 = A. I. R. 1927 Cal. 846.

—Where there are circumstances throwing doubt on the guilt of the accused, and the jury's verdict of not

**CR. P. CODE (1898), S. 307—Interference in verdict—When not made.**

guilty is not unreasonable, the High Court will not interfere with such verdict merely because it may possibly turn out to be an incorrect view. (*Stuart, C. J. and Raza, J.*) **EMPEROR v. SHAUKAT HUSAIN.**  
 1 L. C. 335=28 Cr. L. J. 895=104 I. C. 911=  
 A. I. R. 1927 Oudh 607.

—*Verdict unsupported by evidence.*

The High Court will not interfere in a reference under S. 307 against the verdict of the jury, unless it is of opinion that the verdict of the jury could not be supported by the evidence on the record. (*Ross and Kulwant Sahay, J.J.*) **EMPEROR v. GOVIND SINGH.**  
 5 Pat. 573=8 P. L. T. 133=98 I. C. 252=  
 27 Cr. L. J. 1308=A. I. R. 1926 Pat. 535.

—*Verdict not unreasonable—Judge differing on question of fact.*

Where the Sessions Judge expressed a doubt as to prosecution evidence regarding discovery of the knife, i.e., the alleged instrument for killing the deceased and the jury disbelieved that part of the story and returned a verdict of not guilty, and the Sessions Judge expressed belief in the prosecution evidence in his letter of reference, *held*, the Sessions Judge may be right. But the jury were the judges of the facts, and having regard to the directions the Sessions Judge gave as regards the ownership of the knife and the finding of it it is impossible for High Court to hold that the jury were not entitled to take the view that it would not be safe to convict the accused and to overrule the verdict of the majority of the jury. (*Sanderson, C. J. and Chotzner, J.*) **EMPEROR v. SRISTIDHAR MAZUMDAR.**  
 81 I. C. 236=37 C. L. J. 30=25 Cr. L. J. 748=  
 A. I. R. 1923 Cal 97.

**—S. 307—Object of.**

—Relative weight to be attached to the opinion of Judge and jury is dependent in the circumstances of each case—Unanimous verdict of jury carries great weight—Speculations of Judge as to external considerations might have affected the verdict are not entitled to any weight. 20 W. R. (Cr.) 73, Foll. (*Mookerjee and Chatterjee, J.J.*) **EMPEROR v. DHANANJAY RAY.**  
 81 I. C. 246=51 Cal. 347=38 C. L. J. 384=  
 25 Cr. L. J. 758=A. I. R. 1924 Cal. 321.

**—S. 307—Powers of High Court.**

—*Where there is no misdirection or misunderstanding.*

Where a jury has given its verdict on the facts of the case, it is open to the High Court to revise that verdict on a reference by the trial Judge made under S. 307 although it is not alleged that there has been any misdirection by the Judge or any misunderstanding by the jury of the law as laid down by the Judges. (*Walsh, Lindsay and Banerji, J.J.*) **EMPEROR v. SHERA.**  
 50 All. 625=29 Cr. L. J. 353=108 I. C. 225=  
 9 A. I. Cr. R. 362=9 L. R. A. Cr. 54=  
 26 A. L. J. 321=A. I. R. 1928 All. 207 (F. B.).

—*Court of appeal.*

*Walsh, J.*—The High Court sitting under S. 307 is not sitting as a Court of appeal but it is to be clothed with the powers of a Court of appeal as regards the procedure. (*Walsh, Lindsay and Banerji, J.J.*) **EMPEROR v. SHERA.**  
 50 All. 625=  
 29 Cr. L. J. 353=108 I. C. 225=  
 9 A. I. Cr. R. 362=9 L. R. A. Cr. 54=  
 26 A. L. J. 321=A. I. R. 1928 All. 207 (F. B.).

—*Appellate Court.*

*Lindsay, J.*—The words "subject thereto" in sub-S. (3), S. 307 should be taken to refer not merely to the word "powers" which precedes them but to the exercise of the powers. That is to say, the High Court

**CR. P. CODE (1898), S. 307—Procedure.**

after resort to such of the powers of an appellate Court as it may think fit to exercise shall proceed after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, to acquit or convict the accused. (*Walsh, Lindsay and Banerji, J.J.*) **EMPEROR v. SHERA.**

50 All. 625=29 Cr. L. J. 353=108 I. C. 225=  
 9 A. I. Cr. R. 362=9 L. R. A. Cr. 54=  
 26 A. L. J. 321=A. I. R. 1928 All. 207 (F. B.).

—*Where some of the charges alone are referred.*

Some persons were charged with the offence punishable under S. 302-149, I. P. C. The jury returned a verdict of not guilty as against all the accused under Ss. 302-149. They unanimously found two of them guilty under S. 147, and the rest of the accused under S. 148. The Sessions Judge accepted the verdict of guilty under Ss. 147 and 148 against the accused persons who had been found guilty under those sections by the jury, but he did not accept the verdict of not guilty under Ss. 302-149 and referred the case to the High Court.

*Held*, that the whole case was open to High Court for consideration. 21 C. W. N. 435, Dist. (*Kulwant Sahay and Allanson, J.J.*) **EMPEROR v. WAZIRA MAHTO.**  
 9 P. L. T. 618=115 I. C. 229=  
 30 Cr. L. J. 390=A. I. R. 1928 Pat. 596.

—*To see whether the verdict is wrong or perverse.*

In a reference by the Sessions Judge the High Court is to consider whether the verdict of the jury is manifestly wrong or perverse. It is not to decide what would appeal to it as true or false but it has to consider whether the view taken by the jury was such as could not be supported on any consideration of the case whatsoever. (*Dalal, J. C.*) **EMPEROR v. MAHAMMAD SHAFI.**  
 26 Cr. L. J. 1576=90 I. C. 536=  
 A. I. R. 1926 Oudh 57.

—*Where it is neither perverse nor manifestly wrong.*

Under S. 449, in cases tried by jury, an appeal lies to the High Court on a matter of fact as well as on a matter of law, therefore in a case tried under Chapter 33 the finding of a jury on a question of fact is no longer final, according to the present Cr. P. Code, and therefore to justify an interference by High Court under S. 307, the finding of jury need not be manifestly wrong or perverse. (*Scott-Smith and Martineau, J.J.*) **CROWN v. BIMAL PRASHAD.**  
 88 I. C. 857=  
 6 Lah. 98=26 P. L. R. 263=26 Cr. L. J. 1241=  
 A. I. R. 1925 Lah. 401.

—*Considerations by Court.*

When a reference is made under the provisions of S. 307 it is necessary for the High Court to consider the evidence that was before the Jury and the view of the Sessions Judge and also the view of the Jury and after having done so to arrive at their own conclusion upon the case. The real test to be applied is to see whether it was not possible for the Jury to have arrived at the verdict at which they have arrived. (*Greaves and Duval, J.J.*) **EMPEROR v. GULAM KADER.**  
 82 I. C. 356=28 C. W. N. 876=  
 25 Cr. L. J. 1284=A. I. R. 1924 Cal. 956.

**—S. 307—Procedure.**

—*Whole case should be referred.*

When a Sessions Judge refers a case by virtue of the powers given by S. 307 he must refer the whole of the case against the particular accused, and not merely those charges on which there happens to be a finding with which he disagrees. (*Boys and Niamatullah, J.J.*) **EMPEROR v. NAWAL BEHARI.**  
 128 I. C. 5=1930 A. L. J. 1168=1930 Cr. C. 733=  
 A. I. R. 1930 All. 489.



**CR. P. CODE (1898), S. 307—Procedure.**

—*Judge's opinion and reasons therefor.*

The Judge when referring the case under S. 307 should set out in some detail his own opinion regarding the evidence and more particularly to state which part of the evidence in his opinion would entitle the Court in the interest of justice to convict the accused upon the charges referred. 6 Bom. L. R. 519; 6 Bom. L. R. 599 and 10 Bom. L. R. 173, Foll. (*Wort and Macpherson, J.J.*) SAKHICHAND KUMHAR. *In the matter of.* 9 P. L. T. 649=113 I. C. 694=

30 Cr. L. J. 210=A. I. R. 1929 Pat. 16.

—If the same body are to sit as jurymen and assessors, a reference cannot be based by the judge upon the answers of the persons who were in fact the jury in their capacity as assessors. (*Coutts Trotter, C. J., Odgers and Wallace, J.J.*) SESSIONS JUDGE OF SOUTH ARCOT v. JAILABUDDIN.

1929 M.W.N. 281 (F. B.).

—*What the reference order should contain.*

The Judge making a reference to High Court against the verdict of the jury should, in effect, show the reasons for convicting the accused in as clear a manner as he would have done if the case had not been a jury case and he had to write a convicting judgment. (*Boys and Ashworth, J.J.*) EMPEROR v. SHEO DIN.

50 All 540=26 A.L.J. 296=9 A.I. Cr. R. 146=9 L. E. A. Cr. 20=29 Cr. L.J. 342=108 I. C. 159=A. I. R. 1928 All. 622.

—The Code does not put the opinion of the jury on any higher plane than the opinion of the Judge; both should be given due weight. As a general rule, more weight should be given to the opinion of the Sessions Judge for his opinion is supported by reasons. (*Cuming and Gregory, J.J.*) EMPEROR v. RAM-CHANDRA.

55 Cal. 879=10 A.I. Cr. R. 456=29 Cr. L. J. 823=111 I. C. 327=A. I. R. 1928 Cal. 732.

—*Whole case should be referred.*

Under S. 307, Cl. (2) the Judge in referring a case to the High Court should not enter his finding on any of the charges but should refer the entire case for the consideration of the High Court. (*Suhrawardy and Pantan, J.J.*) EMPEROR v. EKABBOR.

27 Cr. L. J. 617=94 I. C. 361=A. I. R. 1926 Cal. 925.

—In dealing with a case under S. 307, the High Court has got to give due weight to the verdict of the jury and also to the opinion of the learned Judge. (*Suhrawardy and Mukerji, J.J.*) EMPEROR v. NISHI KANTA BANIKYA. 86 I. C. 453=41 C. L. J. 35=26 Cr. L. J. 805=A. I. R. 1925 Cal. 525.

—*Considerations by High Court—Judge's opinion.*

Where a Judge hears a case with a Jury and disagrees with the jury and disagrees to such an extent that he feels that he cannot accept their verdict, he is entitled to refuse to accept that verdict and then submits the case with his reasons to the High Court and the High Court then has thrown upon it the burden of examining for itself the entire evidence in the case deriving such assistance as it can by giving what is described as due weight to the opinion of the Sessions Judge and the Jury. The opinion of the Sessions Judge is the opinion as expressed in the reference or at the hearing. The opinion of the Jury might possibly be expressed in some other way but it will usually be found expressed in the verdict. The so called 'verdict' does not bind him. It becomes for all legal purposes a mere 'opinion' and this is what S. 307 refers to when it speaks of the 'opinion' of the Jury. If the Court comes to the conclusion on that evidence that it should not convict if the case came before it in the capacity of

**CR. P. CODE (1898), S. 307—Verdict of jury.**

trying Judge, and in arriving at that conclusion it must give due weight to the fact that other persons have taken other views and have seen the witnesses, in such a case it is the duty of the High Court to acquit the prisoner. (*Schwabe, C. J. and Wallace, J.*) NANNI KUDUMBAN v. EMPEROR. 76 I. C. 289=

18 M. L. W. 482=1923 M. W. N. 695=

25 Cr. L. J. 145=A. I. R. 1924 Mad. 232=

45 M. L. J. 406.

—*Opinions of Judge and jury.*

When once a reference is made to the High Court the language of the Code does not justify any undue preference being given to the opinion of Jury over that of the Judge. The High Court has to weigh both the opinions and consider the entire evidence on the record just as it would consider in any other criminal matter coming before it for decision. (*Dalal, J. C.*) EMPEROR v. RAM CHARAN.

27 O.C. 29=11 O.L.J. 210=

25 Cr. L. J. 785=81 I. C. 305=

A. I. R. 1924 Oudh 314.

—**S. 307—Scope.**

Criminal Procedure Code does not put the opinion of the jury on any higher plane than the opinion of the Judge and both should be given due weight. A. I. R. 1928 Cal. 732, Foll. (*Mohiuddin, A. J. C.*) EMPEROR v. TUKARAM. 30 Cr. L. J. 310=

114 I. C. 453=A. I. R. 1929 Nag. 84.

—Perverse verdict does not make Court improperly constituted. (*Findlay, J. C.*) RAMADIN BRAHMIN v. EMPEROR. 29 Cr. L. J. 963=112 I. C. 51=

11 A.I. Cr. R. 302=A. I. R. 1929 Nag. 36.

—*Sind Judicial Commissioner's Court.*

*Per Full Bench.*—A Judge of Sind Judicial Commissioner's Court when trying a Sessions case has no power of reference under S. 307. A. I. R. 1925 Sind 34, Affirm.; A. I. R. 1925 Sind 249 (F. B.), Expl.

*Per DeSouza, A. J. C.*—In the case of trials of persons other than a European British subject or persons jointly charged with European British subjects the Court of the Judicial Commissioner of Sind is a Sessions Court. The procedure to be followed in trials before this Court is the procedure in trials before a Sessions Judge including the right of reference under S. 307 of the Code. But in the case of trials of European British subjects or the persons jointly charged with European British subjects this Court is a High Court and the procedure to be followed is that of trials before a High Court. (*Percival, J. C. Aston, Rupchand Bilaram and DeSouza, A. J. C.*) EMPEROR v. GIAND.

22 S. L. R. 349=29 Cr. L. J. 945=111 I. C. 865=

A. I. R. 1928 Sind 149 (F. B.).

—*Judicial Commissioner's Court, Sind.*

A judge of the Judicial Commissioner's Court of Sind sitting in Sessions has no power to differ from the verdict of the jury and refer the case to the Court in its High Court jurisdiction. (*Kennedy, A. J. C.*) EMPEROR v. MITHOO. 77 I. C. 604=25 Cr. L. J. 428=

A. I. R. 1925 Sind 34.

—**S. 307—Verdict of jury.**

—*Reasons for verdict.*

Where a jury returns a unanimous verdict of not guilty against the accused and the Judge is of opinion that the verdict of the jury is manifestly wrong, he ought to ask the jury to state their reasons for disbelieving the prosecution evidence, and ought to record it for the information of the High Court. (*Mohiuddin, A. J. C.*) EMPEROR v. TUKARAM. 30 Cr. L. J. 310=114 I. C. 453=A. I. R. 1929 Nag. 84.

—*Considerations by High Court.*

High Court has to consider not whether a verdict is wrong but whether it is unreasonable. An unreason-

**CR. P. CODE (1898), S. 307—Verdict of jury.**

able verdict is one which is contrary to the evidence or at least totally unjustified by the evidence. (*Raza and Pullan, J.J.*) **KING-EMPEROR v. BHAGWAN DIN.**

116 I. C. 207=6 O. W. N. 40=30 Cr. L. J. 570=  
12 A. I. Cr. R. 442=1929 Cr. C. 13=  
A. I. R. 1929 Oudh 280.

**—Reasons for verdict.**

When the Sessions Judge finds it necessary to disagree with the verdict, he should be at pains to extract from the jury their reasons for disbelieving the evidence and should record the same for the information and guidance of the High Court. The Sessions Judge has an implied authority to follow the obviously desirable course of taking from the jury the reasons for their verdict, 36 Cal. 629, Ref. and this course in all the more desirable when the verdict is a unanimous one and the Sessions Judge disagrees with it. The High Court will interfere only when the verdict of the jury is obviously perverse or manifestly wrong or unreasonable. 41 Cal. 662; A.I.R. 1924 Cal. 321, Ref. (*Findly, O. J. C.*) **EMPEROR v. KANKAYA.**

95 I. C. 309 =  
22 N. L. R. 42=27 Cr. L. J. 773=  
A. I. R. 1926 Nag. 308.

**—When should be accepted.**

What the Court has got to find before it can refuse to accept the verdict of the jury in a case under S. 307, Cr. P. Code is if the verdict is unreasonable. (*Greaves and Mukerji, J.J.*) **EMPEROR v. PREMANANDA DUTT.**

88 I. C. 1000=29 C. W. N. 738=  
42 C. L. J. 247=52 Cal. 987=  
26 Cr. L. J. 1256=A. I. R. 1925 Cal. 876.

**—Materials for conviction under S. 366, I. P. Code—Verdict of offence under S. 363, I. P. C.—Not perverse.**

The case was one of kidnapping a girl. The Judge indicated to the jury that there was material for conviction under S. 366, I. P. C., but he left it to the jury themselves to determine whether the conviction should be recorded under S. 363 or S. 366, I. P. C.

*Held*, that though in cases of this kind there is always a probability that the girl who has been kidnapped will be submitted to illicit intercourse such a conclusion is not inevitable and a contrary conclusion on the part of the Jury need not be necessarily perverse.

*Held*, further, that there is only a technical difference between the two sections and S. 363 provides the possibility of sentence of seven years' rigorous imprisonment, and that the Judge should, in view of his own summing up, have accepted the verdict of the Jury and passed a sentence according to law. (*Pullan, A. J. C.*) **EMPEROR v. ALI RAZA.**

84 I. C. 454 =  
26 Cr. L. J. 310=28 O. C. 69=  
A. I. R. 1925 Oudh 311.

**—Misdirection by Judge.**

When the Judge in the lower Court has misdirected the jury, S. 307 does not require the High Court to consider what their verdict would have been if they had been rightly directed but only to consider whether the verdict as it is, is right on all the evidence. (*Newbould and B. B. Ghose, J.J.*) **EMPEROR v. SAGARMAL AGARWALLA.**

82 I. C. 145=28 C. W. N. 947=  
40 C. L. J. 135=25 Cr. L. J. 1217=  
A. I. R. 1924 Cal. 960.

**—Gap in the evidence—Reasons of jury not based on it—Considerations by High Court.**

To justify a conviction for murder by poison it must be proved that the accused knowingly administered poison to the deceased with at least the intention of causing him death or hurt. The most natural way in which it could be done is to trace possession of the poison to the accused. Where there is a substantial

**CR. P. CODE (1898), S. 308—Acquittal.**

gap in the chain of evidence which one generally expects to see completed in a case of murder by poisoning and though the jury had not mentioned this point in the reasons which they had given for their verdict whatever may be the proper practice as regards asking the jury for their reasons, in such a case as the present, the High Court could not leave out of sight the fact that they had reasons for their verdict which they had not mentioned in answer to the Judge's question.

*Held*, though there was a gap in the evidence which might be expected in the case, the rest of the case was not so strong that the High Court ought to set aside the unanimous verdict of the jury. (*Stephen and Chatterjee, J.J.*) **EMPEROR v. SUKHU BEWA.**

76 I. C. 389=38 C. L. J. 155=  
25 Cr. L. J. 165.

**—S. 307—Miscellaneous.****—Right of appeal to accused, negation of.**

*Walsh, J.*—It would not be anomalous for the accused to be deprived of a right of appeal against an adverse verdict on the facts, although the Sessions Judge is given what is called "an unrestricted right of appeal against a finding by the jury on the facts in favour of the accused person." (*Walsh, Lindsay and Banerji, J.J.*) **EMPEROR v. SHERA.**

50 All. 625 =  
29 Cr. L. J. 353=108 I. C. 225=  
9 A. I. Cr. R. 362=9 L. R. A. Cr. 54=  
26 A. L. J. 321=A. I. R. 1928 All. 207 (F. B.).

**—Power of reference—Exercise of.**

In a case tried by jury, the jury by a majority of four to three found the accused guilty and Judge accepted the majority verdict of the jury and convicted and sentenced the accused: He stated in his order: "While this is a case in which there are certain doubtful factors, I hesitate not to accept the majority verdict of the jury, as this is the second time the accused have been tried by a special jury and a second time a verdict of guilty has been returned by the majority. It was essentially a case in which the jury must decide and I therefore accept their decision while not agreeing with it. I shall be glad if the accused get relief in the appellate Court."

*Held*, that the power of reference was rightly not exercised as this power should always be exercised with due regard to the fact that the constitutional tribunal to decide questions of fact is the jury and not the Judge. (*Rankin, C. J. and G. C. Ghose, J.*) **BEPIN CHANDRA MANDAL v. EMPEROR.**

47 C. L. J. 483 =  
32 C. W. N. 673=10 A. I. Cr. R. 504=  
29 Cr. L. J. 819=111 I. C. 323=  
A. I. R. 1928 Cal. 444.

**—Misconduct of jurors—Allegations in reference.**

To charge rashly in a letter of Reference under S. 307 a juror that he has broken his oath, to judge impartially, is unfair, to the juror, to the Judge himself, the accused, and to the High Court. No action can be taken against jurors unless they have been proved by strictly legal evidence to have misconducted themselves.

*Quære*: What is the action to be taken when jurors have misconducted themselves. (*Mookerjee and Chatterjee, J.J.*) **MARUFU R CHOWDHURY v. EMPEROR.**

81 I. C. 264=51 Cal. 418=38 C. L. J. 397=  
25 Cr. L. J. 776=A. I. R. 1924 Cal. 323.

**—S. 308—Acquittal.****—Where entry is made that accused need not be retried.**

S. 308 provides that making entry to the effect that the accused should not be retried amounts to an acquittal. In an order under S. 308, the Judge cannot pass remarks implying the guilt of the accused. Every accused is presumed to be innocent until he is strictly proved to be guilty. (*Barlee, J.C. and Aston, A.J.C.*)

**CR. P. CODE (1898), S. 308—Acquittal.**

MIR AHMAD SHAH *v.* EMPEROR. 23 S. L. R. 397 =  
118 I. C. 195 = 1929 Cr. C. 313 = 30 Cr. L. J. 877 =  
A. I. R. 1929 Sind 145.

**—S. 308—Misconduct.**

*Inherent power to discharge.*

Where the question of misconduct on the part of the jury or other similar sufficient cause arises, the Sessions Judge has inherent power to discharge the jury and empanel another. But the power to discharge a jury on such grounds is one not to be exercised lightly nor until the Judge has satisfied himself by such form of enquiry, as in the circumstances he can adopt, that reasonable grounds for exercising such a right exist. (*Bucnakld and Cumming, J.J.*) RAHIM SHEIKH *v.* KING-EMPEROR. 73 I. C. 773 = 50 Cal. 872 =  
37 C. L. J. 595 = 24 Cr. L. J. 677 =  
A. I. R. 1923 Cal. 724.

**—S. 309—Alteration of charge.**

*Conviction without—Opinion of assessors not essential.*

Where the accused is convicted of an offence with which he was not charged according to S. 239, Cr. P. Code, it is not necessary that Judge should require the assessors to state their opinion, as there is no charge. (*Barlee, J. C. and Aston, A.J.C.*) HAROON *v.* EMPEROR. 118 I. C. 193 = 30 Cr. L. J. 875 =  
1929 Cr. C. 315 = A. I. R. 1929 Sind 147.

**—S. 309—Alternative charge.**

*Assessors' opinion on.*

It is imperative for the Judge to take the opinion of the assessors on the charge it is proposed to convict the accused on. It is not open to the Judge to put merely the charge of murder to the assessors, and when they have given their opinion on that charge and that charge only, then on his own motion and without asking any further opinion of the assessors, to find the accused guilty of something quite different. At the trial an accused may be charged with a major offence such as murder, and in the alternative with a minor offence such as being in effect an accessory to the crime. But it is only fair that a man should understand the charges that are made against him, and that the opinion of the assessors on those charges should be definitely asked, and only after this has been done a conviction on either the major or the minor charge should be sustained against the accused. (*Marten and Coyajee, J.J.*) APPAYA BASLINGAPPA *v.* EMPEROR. 25 Bom. L. R. 1318 =  
26 Cr. L. J. 394 = 84 I. C. 938 =  
A. I. R. 1924 Bom. 246.

**—S. 309—Explaining of case.**

Where the accused was charged for dacoity and the public prosecutor told the jury that there was a case of theft or an offence under S. 403 or 474, I. P. C. with none of which the accused have been charged and Judge without putting questions to the assessors on it, convicts the accused under S. 403, I. P. C.

*Held*, the Judge is not bound to ask the assessors to state their opinion as there is no charge for that offence; and as the offence of theft and one under S. 403 were also mentioned by the Public Prosecutor to the assessors, it is not a case of the Judge adopting a case not put to the assessors and even if there is irregularity it does not prejudice the accused. (*Barlee, J. C. and Aston, A. J. C.*) HAROON *v.* EMPEROR. 118 I. C. 193 =  
30 Cr. L. J. 875 = 1929 Cr. C. 315 =  
A. I. R. 1929 Sind 147.

**—S. 309—Identification of stolen property.**

In a case of identification of ornaments of small value the opinion of the assessors is of considerable value as they are well acquainted with the ways and habits of men of ordinary standing. (*Datal, A. J. C.*)

**CR. P. CODE (1898), S. 310—Procedure.**

BEHARI *v.* EMPEROR. 89 I. C. 155 =  
12 O. L. J. 339 = 2 O. W. N. 330 =  
26 Cr. L. J. 1291 = A. I. R. 1925 Oudh 452.

**—S. 309—Individual opinions.**

Each of the assessors should be asked separately to give his opinion clearly as to what happened, and he should then, if necessary, give a further opinion on such matters as intention, knowledge etc. Giving the opinion as "the same" after the first assessor has given his opinion, is not enough. (*Harrison, J.*) KHEWNA *v.* EMPEROR. 115 I. C. 66 = 30 Cr. L. J. 378 =  
A. I. R. 1929 Lah. 37.

**—S. 309—Several charges.**

The words "on all charges" must be interpreted to mean that distinct opinion on each charge must be taken and recorded. 22 W. R. Cr. 34, Foll. (*Kinkhede, A.J.C.*) MT. SHEVANTI *v.* EMPEROR. 29 Cr. L. J. 561 = 109 I. C. 497 =  
10 A. I. Cr. R. 358 = A. I. R. 1928 Nag. 257.

**—S. 310—Applicability.**

*Trial before Magistrate.*

On the 21st June the accused was charged under S. 457 and 380. On the 18th July witnesses were examined to prove a previous conviction and a charge was framed that he was liable to enhanced punishment, under S. 75 of the Penal Code, in consequence of previous conviction.

*Held*, that there was no illegality or irregularity in procedure as S. 310 of the Cr. P. Code lays down a special form of trial before the Court of Sessions only, and does not apply to trials before a Magistrate and that in the present case there was no prejudice to the accused. (*Newbould and Suhrawardy, J.J.*) DEHRI SONAR *v.* EMPEROR. 77 I. C. 991 = 50 Cal. 367 =  
25 Cr. L. J. 527 = A. I. R. 1923 Cal. 707.

**—S. 310—Evidence of previous conviction.**

*Admitted before accused entered on his defence—Trial vitiated.*

The trial is vitiated by the admission of the evidence of previous conviction prior to the accused's entering upon his defence. Where it was clear that the Magistrate was influenced by his knowledge of bad character of the petitioner.

*Held* (*Per May Oung, J.*)—It is not perhaps easy to keep the mind entirely free from prejudice when the record and the police papers show that the prisoner in the dock is an ex-convict. But the provisions of S. 310 of the Code of Criminal Procedure, whereby in Sessions trials, all knowledge of previous conviction is rightly withheld from jurors and assessors until after the accused had either pleaded, or been found guilty, indicate the importance of the complete exclusion of such knowledge when weighing the evidence as to the truth or otherwise of the main charge. The principle underlying the legal provision may also be seen in S. 54 of the Indian Evidence Act under which a previous conviction is declared inadmissible against an accused person, except where evidence of bad character is relevant. A. I. R. 1923 Cal. 707, Dist. (*May Oung, J.*) MAUNG E. GYI *v.* EMPEROR. 1 Rang. 520 = 25 Cr. L. J. 618 =  
81 I. C. 106 = A. I. R. 1924 Rang. 91.

**—S. 310—Procedure.**

*When previous convictions and admissions about the same are to be read.*

Where the charge against accused describing his present offence, as well as the further charge relating to his previous convictions was read out at the commencement of the trial and his statement containing his admissions of those convictions was also read out in the presence of the assessors,

**CR. P. CODE (1898), S. 310—Procedure.**

*Held*, that the provisions of S. 310 are imperative and that the further charge about previous convictions and the accused's statement in respect thereof should not have been read out and he should not have been questioned in respect thereof unless and until he had been convicted or the opinions of the assessors had been recorded on the charge of the subsequent offence. (*Zafar Ali, J.*) RAJU v. EMPEROR. 28 Cr. L. J. 667=103 I. C. 203=A. I. R. 1927 Lah. 774.

**—S. 326—Intention of Legislature.**

—Per *Rankin, C. J.*—It is no part of the intention of the Legislature to have a large area of selection in the persons attending upon the summons on the theory that the larger the number of effective names in the ballot box the greater the chance the persons chosen will make good jurors. (*Rankin, C. J., C. C. Ghose, Suhrawardy, Pearson and Page, J.J.*) EMPEROR v. ERMANALI. 57 Cal. 1228=123 I. C. 664=1930 Cr. C. 212=34 C. W. N. 296=51 C. L. J. 171=31 Cr. L. J. 536=A. I. R. 1930 Cal. 212 (F. B.).

**—S. 326—Number to be summoned.**

—In the case of an offence punishable with death the number of jurors to be summoned is not less than eighteen. Where this is not done, it is a breach of Cl. (1) of S. 326, entailing a breach of Cl. (2) as well. Such a breach is an illegality and not a mere irregularity which can be cured by S. 537. Cr. P. C. (*Cuming and S. K. Ghose, J.J.*) EMPEROR v. MUNSHI TAMIZADDIN AHMED. 33 C. W. N. 1054=122 I. C. 558=31 Cr. L. J. 426.

—In a murder case only fourteen jurors were summoned of whom eleven attended and seven were empanelled.

*Held*, that not less than eighteen jurors ought to have been summoned and hence the trial was vitiated because the jury was illegally constituted, there being a breach of the statutory provisions. A. I. R. 1928 Cal. 645, Rel. on. (*Suhrawardy and Graham, J.J.*) DWARIKA MALO v. EMPEROR. 122 I. C. 219=33 C. W. N. 692=56 Cal. 1154=1930 Cr. C. 12=31 Cr. L. J. 377=A. I. R. 1930 Cal. 60.

—In a case of trial by jury for an offence under S. 302, Penal Code, only 12 persons were summoned to attend the Court as jurors. Of these eight appeared on the day of the trial and from the eight who appeared, seven persons were chosen to act as the jury.

*Held*, that the tribunal was illegally constituted, as contrary to the intention of the Code and to the standard set up by the Legislature, an unreasonably small number of jurors was summoned with the result that it was not possible to have a jury of 9 and the proceedings should be set aside. (*Rankin, C. J. and Chotzner, J.*) SERAJUL ISLAM v. EMPEROR. 55 Cal. 794=29 Cr. L. J. 927=11 A. I. Cr. R. 66=111 I. C. 735=A. I. R. 1928 Cal. 645.

**—S. 326—Scope.**

—Provisions are imperative.

The provisions of Ss. 326 and 276, Cr. P. C. are imperative and their violation will render the constitution of the Court illegal. It is not a question of jurisdiction, but more a question relating to the constitution or even the very existence of a valid forum, much less is it an irregularity curable by S. 537, Cr. P. C., or with the consent of parties. (*Suhrawardy and Cammaide J.J.*) RAHAMAT SHEIKH v. EMPEROR. 54 Cal. 1026=31 C. W. N. 711=28 Cr. L. J. 615=102 I. C. 903=8 A. I. Cr. R. 265=A. I. R. 1927 Cal. 593.

**—S. 333—Effect of stay.**

—Nolle prosequi puts an end to indictment.

**CR. P. CODE (1898), S. 337—Approver's statement.**

Though an order under S. 333 does not amount to an acquittal, a *nolle prosequi* puts an end to the indictment on which the prisoner is brought before the Court, and he cannot subsequently be proceeded against on the same charge. *Queen v. Allen*, 31 L. J. M. C. 129 and *Queen v. Mitchell*, 3 Cox. 93 Foll. (*C. C. Ghose, J.*) EMPEROR v. JITENDRA NATH BOSE. 89 I. C. 709=52 Cal. 590=26 Cr. L. J. 1397=A. I. R. 1925 Cal. 902.

**—S. 337—Applicability.**

—Section is only an empowering section—Does not apply to a case under S. 161, I. P. C.

S. 337 of the Code is only an empowering section and empowers certain Courts of Justice in certain classes of cases namely those triable by Courts of Sessions and the High Court, to tender pardon to a person supposed to have been concerned in the offence under inquiry. It does not apply to a case under S. 161 of the Penal Code which is triable by a Magistrate of the First Class also But the non-applicability of the section does not render the accomplice evidence in such cases inadmissible. It only means that outside the provisions of S. 337 the Legislature has not provided any method by which a Local Government can provide an accomplice with a Judicial order which he can, if necessary, plead in bar of his own prosecution. (*Mears, C. J. and Pigott, J.*) EMPEROR v. HAR PRASAD BARGAVA. 77 I. C. 961=21 A. L. J. 42=45 All. 226=4 I. R. A. Cr. 19=25 Cr. L. J. 497=A. I. R. 1923 All. 91.

**—S. 337—Approver's commitment.**

—Procedure.

Magistrate supposing that Cl. (2-A), S. 337, Cr. P. Code, directed him to commit the approver to Sessions, committed him along with the accused to Sessions. The Sessions Judge, instead of referring the matter to the High Court in order to have the commitment quashed proceeded with the case as though there had been no commitment.

*Held*, that although the procedure of the Sessions Judge was wrong, still the irregularity committed was one which did not vitiate the trial (*Raza and Pullan, J.J.*) BHAGWAN v. EMPEROR. 6 O. W. N. 218=116 I. C. 193=30 Cr. L. J. 567=12 A. I. Cr. R. 420=4 Luck. 679=A. I. R. 1929 Oudh 190.

—Legality of.

The word "him" in S. 337 (2-A), does not refer to the person who has accepted a tender of pardon but refers to the accused. What the provision of law means is that wherever an approver is examined, the Magistrate has no jurisdiction to proceed with the trial but must commit the accused persons for trial to the Court of Sessions. It does not mean that the approver should be committed for trial along with the accused persons. (*Dalal, J.-C.*) EMPEROR v. PERU. 88 I. C. 736=2 O. W. N. 464=12 O. L. J. 542=26 Cr. L. J. 1216=A. I. R. 1925 Oudh 472.

**—S. 337—Approver's evidence.**

—Approver must be examined as witness in commitment and subsequent proceedings of every person tried for same offence—Only death of approver can absolve Court from complying with this provision—Non-compliance renders trial illegal. (*Forde and Tek Chand, J.J.*) MA HLA v. EMPEROR. 1930 Cr. C. 111=I. C. 489=31 Cr. L. J. 111=11 Lah. 230=31 P. L. R. 496=A. I. R. 1930 Lah. 95.

**—S. 337—Approver's statement.**

—Proof of.

Section 337 (1) nowhere lays down that the dislo-

**CR. P. CODE (1898), S. 337—Approver's statement.**

sure of facts shall be reduced to writing. If such disclosure is made orally, the verbal testimony of the person to whom it has been made will be sufficient to prove the statement. As a rule of caution, however, the approver's statement is always formally reduced to writing, a practice which it is obviously very desirable to observe so that no dispute may subsequently arise as to what the exact terms of the statement were. (*Fforde and Jas Lal, J.J.*) **RAM NATH v. EMPEROR.**

9 Lah. 608=10 A. I. Cr. R. 76=29 Cr. L. J. 413=  
108 I. C. 514=29 P. L. R. 165=  
A. I. R. 1928 Lah. 320.

**—Admissibility of.**

Necessarily in every case where an accused is made an approver it must be ascertained whether he is willing to tell the truth or not. No analogy exists between the case of a confession obtained from an accused person by any inducement and the case of an approver. If it were so, practically all approvers' evidence would be inadmissible. (*Baker, J.C.*) **ISMAIL PANJU v. KING EMPEROR.**

88 I. C. 283=26 Cr. L. J. 1115=  
A. I. R. 1925 Nag. 337.

**—Where no pardon given but not charged.**

No formal order of discharge was passed in respect of the approvers but their names did not appear among those of the accused actually challaned. On the contrary it was expressly stated in the challan that no proceedings were being taken against them.

*Held*, in these circumstances they clearly did not come within the definition of accused persons and so their evidence was not inadmissible. (16 Bom. 661; 23 Cal. 493 and 21 P. R. 1904, Foll.) (*Lumsden, J.*) **EMPEROR v. DARVA SINGH.** 77 I. C. 984=25 Cr. L. J. 520=  
A. I. R. 1923 Lah. 666.

**—S. 337—Competency of witness.****—Power of Local Government to grant pardon—Pardon granted before statement—Effect of.**

The local Government prosecutes offenders. There is no law that it must prosecute every offender, and it is well known that offenders do manage to conceal their misdeeds or that evidence is found insufficient. There is nothing to prevent the prosecuting authority from refraining from prosecution. The discretion to refrain from instituting a prosecution in any particular case is inherent in the authority to which the Law has entrusted the power to institute a prosecution. It makes no difference to the competency of the witness if that assurance of non-prosecuting is communicated before the witness makes any statement. The local Government is quite entitled to give such an assurance or amnesty and it is also entitled to ratify what has already been done by the enquiring officer. Such an assurance therefore in no way affects the competency of the witness to whom it is given, though it may affect the credibility of his evidence. Such an assurance is not contrary to Ss. 163 and 343 of the Cr.P. Code. A.I.R. 1923 All. 91, Foll. (*Prideaux, A.J.C.*) **ANANT WASUDEO v. EMPEROR.**

89 I. C. 1035=8 N. L. J. 138=  
26 Cr. L. J. 1467=A. I. R. 1925 Nag. 313.

**—S. 337—Discharge.****—Where pardon is to be given—Admissibility of evidence.**

Where in a trial for offence under S. 401 the case against an accomplice had been withdrawn on the ground that he had aided materially in bringing to light the operations of the gang and he was discharged under S. 494 (1) instead of tendering a pardon under S. 337 and then he was examined as a witness against his co-accused.

*Held*, that there was nothing illegal in the procedure adopted and that the accomplice was a competent

**CR. P. CODE (1898), S. 337—Forfeiture.**

witness in the case. Cr. App. No. 22 of 1913; (Nagpur J. C's. Court) and 25 Bom 422, Rel. on. (*Findlay, O. J. C.*) **MAHDEO v. KING-EMPEROR.**

27 Cr. L. J. 807=95 I. C. 471=  
A. I. R. 1926 Nag. 426.

**—S. 337—Disclosure of another offence.****—Cannot be proceeded against for such offence.**

Where an accomplice has been allowed to become an approver and in his confession he discloses offences other than that which was the subject of the charge against him and from liability to answer for the consequences of which he was, even wrongly, under the impression that he had freed himself by his confession and pardon; the Crown should not proceed against him for such other offences. No question can arise where the offence clearly pardoned and that or those further disclosed by the approver are obviously closely linked together. (*Adams and Bucknill, J.J.*) **NILMADHAB CHAUDHURY v. EMPEROR.**

7 A. I. Cr. R. 75=  
5 Pat. 171=27 Cr. L. J. 957=96 I. C. 509=  
A. I. R. 1926 Pat. 279.

**—S. 337—Effect of invalid pardon.****—Where the approver is not charged.**

Though the validity of a pardon given under S. 337 to an accused person charged with an offence specified in that section would be affected by the fact that the co-accused against whom his evidence was afterwards recorded, was ultimately convicted of a minor offence, yet even if the pardon is invalid, it would not prevent the approver being examined in the Sessions Court as a witness, if he is not committed for trial along with the accused. (*Daniels, J.*) **BANWARI PRASAD v. KING-EMPEROR.** 7 I. R. A. Cr. 132=27 Cr. L. J. 1103=  
97 I. C. 367=A. I. R. 1926 All. 590.

**—S. 337—Effect of pardon.****—Co-accused.**

The meaning of S. 337 (2-A) is simply that where a pardon has been granted to one accused the case against the other must be committed to sessions. A. I. R. 1925 Oudh 472, Ref. (*Rasa and Pullari, J.J.*) **BHAGWAN v. EMPEROR.**

6 O. W. N. 218=116 I. C. 193=  
30 Cr. L. J. 567=12 A. I. Cr. R. 420=  
4 Luck. 679=A. I. R. 1929 Oudh 190.

**—Commitment of accused to Sessions.**

It is not open to a Magistrate having powers under S. 30 of the Cr. P. Code, who has tendered a pardon to an approver to try the case in which the approver is to be examined as a witness. But the Magistrate must commit the accused to Sessions Court or to the High Court if he is satisfied that reasonable grounds exist for believing that the accused is guilty. (*Prideaux, A. J. C.*) **KISHORE v. KING-EMPEROR.**

82 I. C. 573=25 Cr. L. J. 1341=  
A. I. R. 1925 Nag. 119.

**—Case must be committed to Sessions.**

If a Magistrate who takes cognizance of an offence under S. 394, I. P. C. and grants conditional pardon to an approver, is satisfied that there is a *prima facie* case against the accused, he is bound under the provisions of S. 337 (2) (a) of the Code to commit the case to the Court of Sessions for trial. He has no jurisdiction to try the case himself. (*Brown, J.*) **NGA KIN v. EMPEROR.**

86 I. C. 477=  
4 Bur. L. J. 11=26 Cr. L. J. 829=  
A. I. R. 1925 Rang. 207.

**—S. 337—Forfeiture.****—Non-examination of approver in trial.**

The fact that the approver has not been examined at the trial of the persons he has implicated is not a breach on the part of the Crown of the conditions upon which the disclosure was made and the pardon granted so far

**CR. P. CODE (1898), S. 337—Forfeiture.**

as the trial of the approver himself is concerned. The approver has failed to comply with the condition on which a tender of pardon was made, as soon as it is established that the disclosure is not a true and full one, and that it is not a true and full disclosure becomes apparent as soon as he is shown to have made a statement entirely inconsistent with the one upon the strength of which the pardon was granted. (*Fforde and Jai Lal, J.J.*) RAM NATH v. EMPEROR. 9 Lah. 608 = 29 P. L. R. 165 = 108 I. C. 514 = 29 Cr. L. J. 413 = 10 A. I. Cr. R. 76 = A. I. R. 1928 Lah. 320.

**—S. 337—Forfeiture of pardon.**

Where a pardon is tendered on the usual conditions and in giving evidence at the trial material discrepancies are introduced into the evidence with the intention of benefiting the accused there is a forfeiture of the pardon by giving false evidence. (*Scott-Smith and Zafar Ali, J.J.*) AHMED v. EMPEROR. 91 I. C. 253 = 27 Cr. L. J. 77 = 1 L. C. 33.

**—S. 337—Inquiry.**

When a case has been reported to a Magistrate by the Police and he is asked to tender a pardon, and does so, there is an inquiry within the meaning of section 337, Cr. P. Code. The word 'inquiry' is meant to 'include' everything done in a case by a Magistrate, whether the case has been challaned or not. (*Broadway and Martineau, J.J.*) SHER MUHAMMAD v. EMPEROR. 75 I. C. 365 = 3 Lah. 431 = 24 Cr. L. J. 941 = A. I. R. 1923 Lah. 270.

**—S. 337—Oath.****—Preliminary examination of approver.**

There is no authority for preliminary examination on oath after the extension of the pardon to the approver. (*Pratt, J.*) EMPEROR v. NGA BO GVI. 89 I. C. 708 = 26 Cr. L. J. 1396 = 3 Rang. 224 = A. I. R. 1925 Rang. 286.

**—S. 337—Prior statements.**

A previous admission made by accused, who was subsequently rendered pardon, is admissible in evidence against him. 11 All. 79, Dist. (*Piggott, Lindsay and Sulaiman, J.J.*) SARDAR v. EMPEROR. 81 I. C. 604 = 22 A. L. J. 85 = 5 L. R. A. Cr. 25 = 46 All. 236 = 25 Cr. L. J. 956 = A. I. R. 1924 All. 220 (F. B.).

**—S. 337—Procedure.**

Failure to comply with provisions of S. 337 (2) is an illegality and not a mere irregularity in procedure and makes a trial void. (*Fforde and Tek Chand, J.J.*) MAHLA v. EMPEROR. 1930 Cr. C. 111 = 120 I. C. 489 = 31 Cr. L. J. 111 = 11 Lah. 230 = 31 P. L. R. 496 = A. I. R. 1930 Lah. 95.

Where after pardon the approver is classed as accused—Admissibility of evidence.

Although a pardon had been tendered to and had been accepted by one of the accused in the committing Magistrate's Court he was still considered as an accused who was to take his trial. His name was in the category of the accused and at the opening of the trial in the Sessions Court his plea was taken (the plea being one of guilty). When it was brought to the notice of the Sessions Judge that a pardon was tendered to that accused, and was accepted by him he was removed from the dock. The trial then proceeded and he was examined as a prosecution witness.

Held, that he was competent to give evidence and his evidence was admissible. (*Rankin, C. J. and C. C. Ghose, J.*) HAJI AYUB v. EMPEROR. 54 Cal. 539 = 103 I. C. 545 = 8 A. I. Cr. R. 309 = 28 Cr. L. J. 689 = A. I. R. 1927 Cal. 680.

**CR. P. CODE (1898), S. 337—Scope and object of.****—S. 337—Recording of reasons.**

Magistrate while tendering pardon ordered "the accused has stated before me that if he is to be given a pardon he would make a full and correct disclosure of the facts of the case as they happened. The Court, therefore, . . . tenders a pardon, etc."

Held, that the Magistrate stated the reason in the first sentence of his order and therefore pardon is not irregular. (*King and Bennet, J.J.*) EMPEROR v. DUKHU. 120 I. C. 126 = 1929 A. L. J. 227 = 10 L. R. A. Cr. 64 = 11 A. I. Cr. 483 = 30 Cr. L. J. 1157 = A. I. R. 1929 All. 321.

**—Omission of.**

Mere omission to record reason under S. 337 (1-A) is a defect which can be cured by S. 537. In order to vitiate the trial it must further be shown that the omission to record reason has in effect occasioned a failure of justice. (*King and Bennet, J.J.*) EMPEROR v. DUKHU. 120 I. C. 126 = 1929 A. L. J. 227 = 10 L. R. A. Cr. 64 = 11 A. I. Cr. R. 483 = 30 Cr. L. J. 1157 = A. I. R. 1929 All. 321.

**—Omission to.**

Omission to record reasons is neither an illegality nor an irregularity which vitiates the proceedings. 5 Cr. L. J. 142 Ref. (*Zafar Ali, J.*) EMPEROR v. WARYAM SINGH. 76 I. C. 398 = 5 L. J. 407 = 25 Cr. L. J. 174 = A. I. R. 1924 Lah. 90.

**—S. 337—Scope.**

Section 337 of the Code does not suggest the idea that the only method of obtaining the evidence of a co-accused against another is by tendering him a pardon with all the safeguards mentioned in the said section. (*Suhrawardy and Mitter, J.J.*) G. V. RAMAN v. EMPEROR. 121 I. C. 678 = 31 Cr. L. J. 315 = 33 C. W. N. 468 = 56 Cal. 1023 = A. I. R. 1929 Cal. 319.

**—Power to grant bail.**

*Percival, J. C.*—Section 337, which is a special section dealing with approvers, controls the general S. 498.

*Rupchand Bilaram, A. J. C.*—Cl. (3) of S. 337 should be interpreted as obligatory only on the Magistrate granting the pardon requiring him to detain the accomplice in custody and as in no way affecting the powers of the superior Courts. But the discretionary powers of superior Court to grant bail to approvers should be sparingly exercised. (*Percival, J. C. and Rupchand Bilaram, A. J. C.*) MAHOMED ABDUL MAJID v. EMPEROR. 101 I. C. 471 = 8 A. I. Cr. R. 43 = 28 Cr. L. J. 439 = A. I. R. 1927 Sind 173.

**—S. 337—Scope and object of.**

S. 337 of the Code is only an empowering section and empowers certain Courts of Justice in certain classes of cases namely those triable by Courts of Sessions and the High Court, to tender pardon to a person supposed to have been concerned in the offence under inquiry. It does not apply to a case under S. 161 of the Penal Code which is triable by a Magistrate of the First Class also. But the non-applicability of the section does not render the accomplice evidence in such cases inadmissible. It only means that outside the provisions of S. 337, the Legislature has not provided any method by which a Local Government can provide an accomplice with a judicial order which he can, if necessary, plead in bar of his own prosecution. (*Mears, C. J. and Piggott, J.*) EMPEROR v. HAR PRASAD BHARGAVAR. 77 I. C. 961 = 45 All. 226 = 21 A. L. J. 42 = 4 L. R. A. Cr. 19 = 25 Cr. L. J. 497 = A. I. R. 1923 All. 91.



**CR. P. CODE (1898).****—S. 337—Time for pardon.**

—S. 337 does not require that a trial or an enquiry should be in progress when the pardon is tendered. When the case is postponed on application under S. 526 (8) the Magistrate does not become *functus officio* in the matter of tendering pardon. (*Baurji, J.*) *BAL CHAND v. EMPEROR.* 49 All. 181=

24 A. L. J. 1050=7 L. R. A. Cr. 197=

27 Cr. L. J. 1369=98 I. C. 489=

A. I. R. 1927 All. 90.

**—S. 337—When justified.**

—Several offences—Some triable by Magistrate.

All that Ss. 337 and 338 require is that there should be an offence that is triable exclusively by the Sessions Court under inquiry or trial and the fact that there may be other offences alleged or charged which are not so triable is immaterial and will not invalidate a pardon granted in respect of the offence exclusively triable by the Sessions Court; [9 S. L. R. 43 and 246 P. L. R. 1915, Foll.] The approver is an approver as regards the whole case and not as regards some of the accused only. (*Raker, J. C.*) *ISMAIL v. EMPEROR.*

87 I. C. 965=26 Cr. L. J. 1045=

A. I. R. 1925 Nag. 409.

**—S. 339—Amendment.**

—Retrospective effect of.

S. 339 does not apply to a case in which the pardon had been declared forfeited by the Magistrate, and the proceedings against the approver after the forfeiture commenced before the amended section came into force. (*Kotval and Prideaux, A. J. Cs.*) *GANGARAM v. EMPEROR.* 82 I. C. 715=25 Cr. L. J. 1355=

A. I. R. 1925 Nag. 172.

**—S. 339—Approver's statement.**

—Contradictory statement.

The accused who was tendered pardon stated in his first statement that he accompanied the murderer and that while the murderer gagged the deceased's mouth, he caught his legs, and in his other statement he stated that he was out from the village on the night in which the murder took place, and that the accused was dead by the time he returned.

*Held*, that the two statements were directly contradictory and sanction given for his prosecution is proper, the case could be considered fit for granting *locus poenitentiae*. 11 A. L. J. 964, Ref. (*King and Bennet, JJs.*) *EMPEROR v. DUKHU.*

120 I. C. 126=1929 A. L. J. 227=

10 L. R. A. Cr. 64=11 A. I. Cr. R. 483=

30 Cr. L. J. 1157=A. I. R. 1929 All. 321.

—When admissible.

An approver's disclosure is in its very nature always the result of an inducement or promise, namely, the inducement to confess upon a promise of pardon; but should it appear that it was extorted as the result of undue duress, such as threats or violence, to that extent the provisions of S. 24 of the Evidence Act would be applicable and the confessional statement would have to be ruled out of evidence. S. 339 (2) can only contemplate the admission of a full and true disclosure made upon the inducement or promise of a pardon, and not a disclosure induced as a result of undue pressure. Such statement is not excluded from evidence by S. 24, Evidence Act. 5 A. L. J. 691, Foll. (*Fforde and Jai Lal, JJs.*) *RAM NATH v. EMPEROR.* 108 I. C. 514=

29 P. L. R. 165=29 Cr. L. J. 413=

10 A. I. Cr. R. 76=9 Lah. 608=

A. I. R. 1928 Lah. 320.

—Made before Magistrate.

The words "the statement made by a person who has accepted the tender of pardon" in sub-S. (2) are wide

**CR. P. CODE (1898), S. 339—Certificate.**

enough to cover a statement before the pardoning Magistrate. (*Kotval and Prideaux, A. J. Cs.*) *GANGARAM v. EMPEROR.* 82 I. C. 715=

25 Cr. L. J. 1355=A. I. R. 1925 Nag. 172.

—Admissibility of.

A valid pardon once given is not in any way affected by subsequent proceedings in the case. Even where the offence for which the accused are tried and convicted is not an offence triable exclusively by a Court of Sessions, the evidence of an approver is still admissible where the pardon given was in respect of an offence triable exclusively by a Court of Sessions. (*Kincad, J. C. and Aston, A. J. C.*) *FAIZULLAH v. EMPEROR.*

81 I. C. 881=19 S. L. R. 183=25 Cr. L. J. 1057=

A. I. R. 1925 Sind 105.

**—S. 339—Burden of proof.**

—When a conditional pardon has been tendered and accepted there must be good faith on both sides. It is for the Crown to prove that the pardon was forfeited. Where the evidence given by the accused person to whom a pardon had been granted differed from the confession but it appeared that alterations did not materially affect the result of the case and it further appeared that nearly five months had elapsed between the date of confession and the date on which the evidence was given.

*Held*, that the prosecution had not discharged the burden of proving that the pardon was forfeited. (*Waller and Reilly, JJs.*) *SOLIYAN v. EMPEROR.*

1930 M. W. N. 773.

**—S. 339—Certificate.**

—Sub-S. (1) of S. 339 as amended by Act of 1923 makes the certificate by a Public Prosecutor the sole basis of a prosecution of an approver and therefore an approver cannot be prosecuted at the instance of a suggestion by the presiding Judge that he should be so dealt with. (*Marten and Fawcett, JJs.*) *EMPEROR v. MARIA BASAPPA.* 26 Bom. L. R. 1240=26 Cr. L. J. 469=

85 I. C. 149=A. I. R. 1925 Bom. 135.

—The absence of certificate by the Public Prosecutor vitiates the trial. (*Scott Smith and Fforde, JJs.*) *ALI v. EMPEROR.* 5 Lah. 379=26 Cr. L. J. 237=

84 I. C. 61=A. I. R. 1925 Lah. 15.

—Commitment without—Production before trial.

On the conclusion of a trial the Magistrate ordered the police to prosecute a person who had given evidence as an approver, of the original offence for which he had been originally arrested. The Magistrate overlooked the provisions of S. 339 of the Code. The accused went before a Magistrate, who also overlooked those provisions. The Magistrate, committed the accused to the Court of Session on charges of murder, etc. On the case coming up for trial, the Sessions Judge notified the absence of the certificate from the Public Prosecutor. The trial was adjourned. On the adjourned date, a certificate was filed and accepted by the Sessions Judge, and the trial proceeded.

*Held*, that the Magistrate was duly empowered to commit the case. The proceedings before him were merely an enquiry and what was forbidden by the provisions of S. 339 was the trial of the accused which, in this particular case, had to be a trial by a Court of Session as a Court of Original jurisdiction.

*Held*, further that it was open to the Sessions Judge, to accept the commitment even if it was irregular. 9 Bom. 288 and 22 Bom. 112, Foll., 37 Cal. 467, Dist.; 42 Bom. 172 and 17 Mad. 402; Ref. to. (*Robinson, C. J. and Cunliffe, J.*) *NGA WA GVI v. EMPEROR.*

92 I. C. 430=27 Cr. L. J. 254=4 Bur. L. J. 23=

3 Rang 55=A. I. R. 1925 Rang. 219.

**CR. P. CODE (1898).****—S. 339—Forfeiture under old law.****—Trial after amendment.**

Where a pardon has been forfeited and the order directing the prosecution of the person who has forfeited the pardon has been made at a time when the old Code was in force, but the committal proceedings and the trial were held after the new Code had come into operation. (*Broadway and Zafar Ali, J.J.*) **LAL SHAH v. EMPEROR.** 96 I.C. 396 = 8 L. L. J. 305 = 27 Cr. L. J. 940 = 27 P. L. R. 489.

**—S. 339—Non-acceptance of pardon.**

A pardon is likely to be accepted when the person to whom it is tendered does volunteer to make some statement with reference to the crime. Where he expressed complete ignorance and stated that he was indifferent whether a pardon was granted to him or not.

*Held*, he did not accept the tender of pardon. (*Dalal, J.*) **PALARI RAI v. EMPEROR.**

84 I. C. 560 = 5 L. R. A. Cr. 89 = 26 Cr. L. J. 336 = A. I. R. 1924 All. 564.

**—S. 339—Pardon.****—Grounds for forfeiture of—Onus on prosecution.**

When a conditional pardon has been tendered and accepted there must be good faith on both sides. It is for the Crown to prove that the pardon was forfeited. Where the evidence is given by the accused person to whom a pardon had been granted differed from the confession but it appeared that the alterations did not materially affect the result of the case and it further appeared that nearly five months had elapsed between the date of confession and the date on which the evidence was given.

*Held*, that the prosecution had not discharged the burden of proving that the pardon was forfeited. (*Waller and Reilly, J.J.*) **SOLIVAN v. EMPEROR.**

1930 M. W. N. 773.

**—S. 339—Powers of Sessions Judge.**

A Sessions Judge is competent to order the commitment of an accused person to whom conditional pardon has been tendered if he finds that the conditions of the pardon have not been fulfilled (24 C. 492, Dist.; 42 C. 856; 31 P. R. 1904, Foll. (*Scott-Smith and Fforde, J.J.*)) **DIL BAHADUR v. EMPEROR.**

76 I. C. 185 = 25 Cr. L. J. 121 =

A. I. R. 1924 Lah. 568.

If the Sessions Judge finds that the approver had not told the truth, he can himself commit the accused to stand his trial. (*Chevis, J.*) **DAULAT v. EMPEROR.**

22 Cr. L. J. 128 = 59 I. C. 560 = 2 Lah. L. J. 653.

**—S. 339—Procedure.****—Finding as to forfeiture.**

The provisions of S. 339, Cr. P. C. are compulsory, and the accused cannot be properly tried and convicted of the offence of murder until the Court trying him has recorded a finding that he had forfeited the pardon which had been offered to him owing to non-compliance with its conditions 5 Lah. 379, Foll. (*Rasa and Pullan, J.J.*) **ITWARI v. EMPEROR.** 6 O.W.N. 372 =

116 I. C. 64 = 30 Cr. L. J. 559 =

12 A. I. Cr. R. 431 = A. I. R. 1929 Oudh 256.

**—S. 339—Rejection of pardon.****—Effect of.**

When an accused person rejects the conditional pardon tendered to him and refuses to give evidence as an approver before he is put into the box, his action does not amount to forfeiture of his pardon so as to make his case fall under S. 339 and bar his joint trial with other accused persons. The acceptance of the pardon should continue in force till the accused actually gives evidence and then if he forfeits the pardon by not making a full and true disclosure of facts within his knowledge he

**CR. P. CODE (1898), S. 339-A—Procedure.**

should be separately tried. (*Krishnan and Wallace, J.J.*) **BASSIREDDI NARAPPA v. EMPEROR.**

76 I. C. 642 = 45 M. L. J. 613 = 18 M. L. W. 606 =

33 M. L. T. 77 = 33 M. L. T. 156 =

1923 M. W. N. 697 = 25 Cr. L. J. 210 =

A. I. R. 1924 Mad. 391.

**—S. 339—Sanction.****—Certificate necessary.**

No sanction under S. 339 (3), can be given unless the Public Prosecutor certifies that in his opinion the person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made. In absence of such certificate no sanction can be granted. (*Stuart, C. J.*) **EMPEROR v. GHASITEY.** 6 O. W. N. 901 = 1929 Cr. C. 625 =

121 I. C. 83 = 31 Cr. L. J. 204 =

A. I. R. 1929 Oudh 527.

**—What must be shown before granting.**

Before sanction can be granted it must be shown that there is no intention of prosecuting the approver for the original crime or that he has already been prosecuted for it and either has been acquitted or has received or is likely to receive such a light sentence that it is not sufficient to cover his further crime of perjury. (*Hallifax, A. J. C.*) **LOCAL GOVERNMENT v. GAMBHIR BHUJUA.** 23 N. L. R. 35 = 28 Cr. L. J. 645 =

103 I. C. 101 = A. I. R. 1927 Nag. 189.

**—Contradictory statements.**

A witness, who is in any way induced to make a false statement in connection with a capital charge should be allowed every possible *locus penitentiae* but where contradictory statements have been made on different occasions sanction cannot be refused unless there be something to show that the approver made the statement alleged to be false under undue influence 11 A. L. J. 944, Ref. (*Zafar Ali, J.*) **EMPEROR v. WARYAM SINGH.** 76 I. C. 398 = 5 L. L. J. 407 =

25 Cr. L. J. 174 = A. I. R. 1924 Lah. 90.

**—S. 339—Scope.****—Necessity for complaint by Court.**

S. 339 (1) does not cancel S. 476. It merely imposes an additional condition as essential to the institution of a prosecution for perjury by an approver, and even when that condition is satisfied the prosecution can still be initiated only on a complaint by the Sessions Court or the High Court. (*Hallifax, A. J. C.*) **LOCAL GOVERNMENT v. GAMBHIR BHUJUA.** 23 N. L. R. 35 = 28 Cr. L. J. 645 = 103 I. C. 101 =

A. I. R. 1927 Nag. 189.

**—S. 339-A—Forfeiture.****—Damaging admissions in cross-examination.**

Where in examination-in-chief an approver clearly complied with the terms of the pardon adhering to the statement which he made in his confession, and when cross-examined made certain damaging admissions, but did not actually resile from his previous statement, and in re-examination he returned once more towards his previous statement.

*Held*, that he did comply with the conditions of the pardon. (*Stuart, C. J. and Gokaran Nath Misra, J.*) **KING-EMPEROR v. JAGANNATH.**

95 I. C. 288 = 13 O. L. J. 663 = 3 O. W. N. 474 =

27 Cr. L. J. 768.

**—S. 339-A—Procedure.**

Where the accused was not asked in the manner provided by the section, but was asked whether he had fulfilled the conditions on which the pardon had been granted and had given true evidence,

*Held*, there was no proper compliance with the section. (*Scott-Smith and Fforde, J.J.*) **ALI v. EMPEROR.**

**CR. P. CODE (1898), S. 339-A—Procedure.**

5 Lah. 379 = 26 Cr. L. J. 237 = 84 I. C. 61 =  
A. I. R. 1925 Lah. 15.

**—S. 340—Authority.****—Advocate.**

No appointment in writing is necessary in order to entitle an advocate or a vakil to act for an accused person in criminal cases (*Ross and Kulwant Sahay*.)  
SUBDA SANTAL v. EMPEROR.

7 P. L. T. 524 = 1926 P. H. C. C. 125 =  
27 Cr. L. J. 666 = 94 I. C. 714 =  
A. I. R. 1926 Pat. 296.

**—S. 340—Effect of representations.**

—A junior pleader, who had been engaged on behalf of the accused, was present in Court. There was another gentleman who was his senior who had also been engaged on behalf of the defence but he was absent.

*Held*, that it is not correct to say that the accused was wholly unrepresented and that it was open to the defence to challenge the jurors as their names were called out, as the junior pleader did not challenge anybody but contented himself by saying that he was only a junior, that constitution of the jury cannot be assailed. (*C. C. Ghose and Jack, J.J.*) KAZI BAZLUR RAHMAN v. EMPEROR.  
115 I. C. 561 = 48 C. L. J. 307 = 33 C. W. N. 136 =  
30 Cr. L. J. 494 = A. I. R. 1929 Cal. 1.

**—S. 340—Inquiry after dismissal.****—Notice to accused—Discretion of judge.**

The complaint of the complainant was dismissed under S. 203, Cr. P. C. after giving accused an opportunity of being heard. The Sessions Judge on being moved by the complainant set aside the order of dismissal and directed a further enquiry, without giving the accused an opportunity of being heard. The Magistrate had dismissed the complaint holding that the matter was more or less of a civil nature.

*Held*, on facts that this is one of those cases in which the accused should have been given an opportunity of being heard, before the Sessions Judge at the hearing of the application under S. 437, 15 Cal. 608 (F.B.), Foll. *Obiter*: The words used by Mr. Justice Wilson and Mr. Justice Prinsep in delivering the judgments of the Full Bench case do not imply that the discretion of the Magistrate or Sessions Judge is in all cases fettered. (*C. C. Ghose and Chotanar, J.J.*) JOGESH CHANDRA SEN v. NIKUNJA BEHARI CHOUDHURY.  
76 I. C. 236 = 27 C. W. N. 552 = 25 Cr. L. J. 140 =  
A. I. R. 1923 Cal. 651.

**—S. 340—Interview with counsel.**

—Proceedings before a Magistrate under S. 167 fall within the provisions of S. 340. It is in the interests of justice that an accused person should have access to legal advice even while he is in police custody during the course of an investigation. An interview with the legal adviser should not therefore be refused to a prisoner who is remanded to police custody under S. 160, A. I. R. 1926 Bom. 551, Foll. (*Bhide, J.*) SUNDAR SINGH v. EMPEROR.  
31 P. L. R. 780 =

1930 Cr. C. 1041 = A. I. R. 1930 Lah. 945.

—Under S. 561-A the High Court has power to interfere and direct the police to permit an interview of the accused with his legal advisers. (*Fawcett and Madgavkar, J.J.*) LLEWELYN EVANS, *In re*.

50 Bom. 741 = 28 Bom. L. R. 1043 = 97 I. C. 801 =  
27 Cr. L. J. 1169 = 7 A. I. Cr. R. 292 =  
A. I. R. 1926 Bom. 551.

**—S. 340—Original side appeal.****—Calcutta High Court Rules.**

The question whether a vakil can act for a party in a criminal appeal from the Original side of a High Court depends upon the rules of that Court and is not concluded by anything in the Cr. P. C. (*Rankin, C. J. and*

**CR. P. CODE (1898), S. 340—Reasonable opportunity.**

*Chotzner, J.*) SATYA NARAIN MOHATA v. EMPEROR.  
112 I. C. 350 = 55 Cal. 858 = 32 C. W. N. 319 =  
29 Cr. L. J. 1022 = A. I. R. 1928 Cal. 675.

**—S. 340—Preliminary inquiry.****—Right of accused to participate.**

The accused has no right to be present while a Magistrate is holding an enquiry under S. 202. It may often be a matter of convenience both to allow the accused to be present and to allow any legal adviser to watch the proceedings. But the grant of such a concession is on the part of the Magistrate a mere act of grace and the accused has no innate right to it. (*Kincal, J. C. and Kennedy, A. J. C.*) ATMARAM UDHDAS v. TOPANDUS.  
93 I. C. 894 = 20 S. L. R. 43 =  
27 Cr. L. J. 494 = A. I. R. 1926 Sind 188.

**—S. 340—Proceedings.****—Application for remand.**

An application by the police for remand falls under S. 167 and can be held to be a proceeding instituted under the Code in that Court within S. 340 (1). (*Fawcett and Madgavkar, J.J.*) LLEWELYN EVANS, *In re*.

50 Bom. 741 = 28 Bom. L. R. 1043 =  
27 Cr. L. J. 1169 = 7 A. I. Cr. R. 292 =  
97 I. C. 801 = A. I. R. 1926 Bom. 551.

**—S. 340—Public prosecutor.****—Appearing for defence.**

The District Magistrate considering it possible that the complainant against two Government Officials was a false one, made in consequence of the accused performing their duty, directed the Prosecuting Inspector to defend the accused. The trying Magistrate allowed the Prosecutor to so defend the accused.

*Held*, that though the Public Prosecutor was not a member of the Bar it could not be held that he was not a person appointed by the accused with the permission of the Court to defend them though it was desirable that they had made such appointment. A. I. R. 1926 Bom. 218, Ref. (*Macnair, A. J. C.*) EMPEROR v. CHOTEKHAN.  
122 I. C. 442 = 31 Cr. L. J. 419 =  
26 N. L. R. 172 = 1930 Cr. C. 506 =  
A. I. R. 1930 Nag. 150.

**—S. 340—Reasonable opportunity.**

—The provisions of S. 340 extend to the cases not only of a person accused of an offence in a criminal Court, but to the case of any person against whom proceedings are instituted under the Code in any Court. That section certainly contemplates that the accused should not only be at liberty to be defended by a pleader at the time the proceedings are actually going on, but also implies that he should have a reasonable opportunity if in custody, of getting into communication with his legal adviser for the purpose of preparing his defence, unless there are exceptional circumstances. (*Fawcett and Madgavkar, J.J.*) LLEWELYN EVANS, *In re*.

50 Bom. 741 = 28 Bom. L. R. 1043 =  
27 Cr. L. J. 1169 = 7 A. I. Cr. R. 292 =  
97 I. C. 801 = A. I. R. 1926 Bom. 551.

—Under S. 340 the law contemplates that access to legal advisers of the accused would be allowed before and irrespective of the charge sheet. (*Fawcett and Madgavkar, J.J.*) LLEWELYN EVANS, *In re*.

50 Bom. 741 = 28 Bom. L. R. 1043 =  
27 Cr. L. J. 1169 = 97 I. C. 801 =  
7 A. I. Cr. R. 292 = A. I. R. 1926 Bom. 551.

—A suspect is as much, if not more, entitled as a matter of right as any other person accused of a substantive offence to have a reasonable opportunity afforded to him of defending himself. (*Rupchand Bilaram, A. J. C.*) JATOI v. EMPEROR.

**CR. P. CODE (1898), S. 340—Reasonable opportunity.**

20 S. L. R. 122=27 Cr. L. J. 935=  
96 I. C. 391=A. I. R. 1926 Sind 288.

—*Spirit of the law should be adhered to.*

When after the commencement of the trial an application is made for an opportunity to engage a pleader the reasonable course to adopt would be for the Magistrate to proceed with the evidence for the prosecution-in-chief and then, to allow, if it had not already been allowed, a reasonable time for the accused to appoint a pleader. The accused's pleader ought to be given a reasonable opportunity to cross-examine the Prosecution witnesses. The fact that the accused who have been refused an opportunity to engage a pleader were asked if they wished to cross examine and that they answered that they did not wish to do so is only a literal compliance with the law and a breach of its spirit. (*Boys, J.*) PITA v. EMPEROR. 47 All. 147=26 Cr. L. J. 575=

6 L. R. A. Cr. 17=85 I. C. 719=A. I. R. 1925 All. 285.

—*Arguments by counsel.*

Though literally speaking, the Code does not provide for the legal right of the pleader for the accused to submit arguments, the Court is bound to allow to the accused a proper opportunity to be heard in argument. (*Boys, J.*) MALEK v. EMPEROR. 26 Cr. L. J. 810=

6 L. R. A. Cr. 21=86 I. C. 458=  
A. I. R. 1925 All. 282.

**—S. 340—Refusal to hear pleader.**

—Magistrate's refusal to hear a party, through his pleader, who is defending him, is not mere irregularity, but an illegality which can vitiate the proceedings. (*Reilly, J.*) MUTHANKARUPPA SERVAI v. EMPEROR. 55 M. L. J. 626=28 M. L. W. 656=

1 M. Cr. C. 324=29 Cr. L. J. 1082=

112 I. C. 586=A. I. R. 1928 Mad. 1234.

**—S. 341—Applicability.**

—Reference under S. 341 can be made only if the accused, though not insane, cannot be made to understand the proceedings, and this requirement of the law is not satisfied where the accused is a deaf-mute, but can understand the proceedings. (*Shadi Lal, C. J.*) ALLA DIA v. EMPEROR. 112 I. C. 688=

1929 Cr. C. 568=30 P. L. R. 609=

10 Lah. 566=11 A. I. Cr. R. 363=

29 Cr. L. J. 1104=A. I. R. 1929 Lah. 840.

—Where the accused was a deaf mute but he understood what was being alleged against him by the prosecution and its witnesses and was very intelligent.

*Held*, that the case did not fulfil the requirements of S. 341. (*Shadi Lal, C. J.*) EMPEROR v. GUNGA. 28 Cr. L. J. 656=103 I. C. 112=

A. I. R. 1927 Lah. 799.

**—S. 341—Conviction.**

—*Where accused is able to understand.*

Where the jury find and the Judge agrees with the jury that the accused was able to follow the proceedings in Court and to understand the same, it is the duty of the Judge to convict the accused of the offence with which he is charged and to pass a sentence on him in accordance with law. He cannot leave the question of conviction and sentence in such a case to the High Court. (*Sulaiman, J.*) EMPEROR v. BARMHA SINGH. 97 I. C. 361=7 L. R. A. Cr. 138=

27 Cr. L. J. 1097.

—A deaf and dumb accused was convicted on his confession indicated by signs of an attempt to commit suicide and the High Court sentenced him to one day's simple imprisonment. (*Marten and Fawcett, J.J.*) EMPEROR v. KHASHABA TATVAI LAWAND. 81 I. C. 148=26 Bom. L. R. 43=25 Cr. L. J. 660=

A. I. R. 1923 Bom. 194.

**CR. P. CODE (1898), S. 342—Applicability.****—S. 341—Report of Circumstances.**

—*Finding as to understanding essential.*

In a case under S. 341 it is essential for the Magistrate before convicting the accused to record a finding to the effect that he had sufficient intelligence to understand the criminal character of his act and nature of the judicial proceeding taken against him. Where no such finding is recorded by the Magistrate the accused cannot be convicted. 40 Bom. 598. Kel. on. Rat. Un. Cr. C. 696, Ref. (*Zafar Ali, J.*) EMPEROR v. GUNGA. 118 I. C. 642=30 P. L. R. 597=30 Cr. L. J. 948=

1930 Cr. C. 32=A. I. R. 1930 Lah. 64.

**—S. 342.**

Applicability.

Construction.

Joint trial.

Non-compliance.

Oath or affirmation.

Object or.

Power of Court.

Privileged occasion.

Procedure.

Scope.

Sessions Court.

Summons Case.

Time of Examination.

Written statement.

Miscellaneous.

**—S. 342—Applicability.**

—S. 488, Cr. P. Code.

The proceedings under S. 488 are not strictly speaking criminal proceedings and the person against whom action is taken under that section does not fall in the category of the "accused." Therefore, it is not incumbent on the Magistrate to examine under S. 342 the husband or the father at the case may be before an order under S. 488 can be made against him. (A. I. R. 1927 Cal. 250; A. I. R. 1921 Pat. 11; and A. I. R. 1926 Lah. 667; Diss. from. A. I. R. 1924 Mad. 150 (F.B.) and A. I. R. 1927 Lah. 435 (1), Appr.) (*Zafar Ali and Jai Lal, J.J.*) MEHR KHAN v. BAKAT BHARI. 112 I. C. 218=29 Cr. L. J. 1002=

10 Lah. 406=11 A. I. Cr. R. 312=

30 P. L. R. 549=A. I. R. 1929 Lah. 32.

—Proceedings under S. 488, Cr. P. C., are more of a civil than a criminal nature, and so S. 342 does not apply to proceedings under S. 488 because a person against whom proceedings are instituted under S. 488 is permitted to give evidence on oath on his own behalf and has a full opportunity of being heard as if he were a party in a civil suit. (25 Cr. L. J. 1091; 18 Bom. 468; and 16 Mad. 234; Foll. (*Fawcett and Mirza, J.J.*) VITHALDAS BHURABHAI IARE. 112 I. C. 475=

11 A. I. Cr. R. 271=52 Bom. 768=

30 Bom. L. R. 957=29 Cr. L. J. 1051=

A. I. R. 1928 Bom. 347.

—*Evidence under S. 428, Cr. P. Code.*

Section 342 does not apply to evidence taken under S. 428. In itself S. 342 applies only to case of original trial. There may be cases where the accused can properly be questioned by the Magistrate in regard to additional evidence taken by him under the directions of the appellate Court but if he does not do so there is no omission of anything required by law. A. I. R. 1925 Pat. 414, Foll. (*Fawcett and Mirza J.J.*) NARAYAN KESHAV v. EMPEROR. 112 I. C. 60=

11 A. I. Cr. R. 247=29 Cr. L. J. 972=

52 Bom. 699=30 Bom. L. R. 651=

A. I. R. 1928 Bom. 200.

—S. 488 Cr. P. Code.

Section 342 is not applicable to summons cases and

**CR. P. CODE (1898), S. 342—Applicability.**

therefore a case under S. 488 is not governed by the Section. A. I. R. 1926 Lah. 667, not Foll.; A. I. R. 1924 Mad. 15 (F. B.), Foll. (*Zafar Ali, J.*) SHADI KHAN v. MT. GUL BEGAM. 101 I. C. 606 = 28 Cr. L. J. 478 = A. I. R. 1927 Lah. 435.

—Sub-section (4) of S. 342 was intended to relate to the proceedings which are specified in S. 342. (*Sanderson, C. J. and Panton, J.*) GOLLGHER v. EMPEROR. 101 I. C. 657 = 54 Cal. 52 = 28 Cr. L. J. 481 = A. I. R. 1927 Cal. 307.

—S. 145, Cr. P. C.

None of the parties litigating under S. 145 can be called an accused person and so the provisions of S. 343 (4), that no oath shall be administered to an accused person, do not prevent the examination of the parties to a litigation under S. 145, Cr. P. C. on oath. (*Dalal, J. C.*) CHOUDHURI MOHAMMAD AYUB v. CHAUDHURY SARFARAZ AHMUD. 83 I. C. 630 = 26 Cr. L. J. 70 = A. I. R. 1925 Oudh 286.

—S. 428, Cr. P. Code, —Prejudice to accused.

In S. 428 of the Code there is no provision that the accused should be examined after the prosecution evidence is taken and as the examination of witnesses after remand may be made even in the absence of the accused the provisions of S. 342 do not apply to it.

Per *Bucknill, J.*—In conceivable cases where fresh evidence on a remand has been taken the applicant ought to be given on opportunity of making a statement, i. e., in effect of being examined by the Magistrate; but provided the accused has in fact had a reasonable and substantial opportunity of exercising the privilege accorded to him by the provisions of S. 342, that is of either orally or in writing saying what he wishes to say in explanation of what has been alleged against him, a technical failure or omission in the procedure ought not to be regarded as rendering a trial, wholly nugatory should such omission or failure be shown to have prejudiced the accused the matter assumes a different aspect and should be remedied, but not otherwise. (*Mulick and Bucknill, JJ.*) SAYID MOHIUDDIN v. KING-EMPEROR. 86 I. C. 459 = 6 P. L. T. 154 = 1925 P. H. C. C. 112 = 3 Pat. L. R. Cr. 110 = 26 Cr. L. J. 811 = 4 Pat. 488 = A. I. R. 1925 Pat. 414.

—S. 342—Construction.

—Court witness.

Section 342 cannot be brought into play where a court witness is examined, be he complainant or any other person. (*Adami and Sen, JJ.*) PRAYAG GOPE v. KING EMPEROR. 82 I. C. 284 = 3 Pat. 1015 = 5 P. L. T. 571 = 1924 P. H. C. C. 247 = 25 Cr. L. J. 1276 = A. I. R. 1924 Pat. 764.

—S. 342—Construction.

—Under S. 342 the accused is to be examined for the purpose of enabling him to explain the evidence against him whether such evidence be tendered by the prosecution witnesses or by witnesses called by the Court. (*DeSouza and Aston, A. J. Cs.*) ALLAH DITO v. EMPEROR. 111 I. C. 852 = 23 S. L. R. 1 = 29 Cr. L. J. 932 = A. I. R. 1929 Sind 5.

—Failure to put questions.

Noncompliance with the mandatory provisions of the second part of Cl. (1), S. 342, requiring that the Magistrate shall question the accused generally on the case after the witnesses for the prosecution have been examined and before he is called upon for his defence, is a serious illegality sufficient to vitiate the trial, at any rate from the stage at which the accused should have been so examined. (*Tek Chand, J.*) PRITCHAND v. EMPEROR. 112 I. C. 850 = 30 Cr. L. J. 18 = 11 A. I. Cr. R. 405 = A. I. R. 1928 Lah. 382

**CR. P. CODE (1898), S. 342—Construction.**

—Cr. P. C., S. 342—De novo trial.

Where the magistrate trying the case was transferred and his successor began the trial *de novo* but did not again examine the accused under S. 342.

*Held*, it is not only a rule but principle that a Magistrate, who tries a case in the sense of "decides", must give the accused an opportunity of explaining any points which may have been made against him and must hear what he has to say, and it is not sufficient for his predecessor-in-office to have done so. Where such a procedure is not followed, the whole proceedings are vitiated. (*Harrison, J.*) AKTAR MAHOMED v. EMPEROR. 106 I. C. 717 = 29 Cr. L. J. 125 = A. I. R. 1927 Lah. 720.

—Once examined.

When the accused has been examined under S. 342 after the conclusion of the prosecution evidence it is not necessary to examine him again after the further cross-examination of the prosecution witnesses. A. I. R. 1924 Lah. 84, Ref. (*Shadi Lal, C. J.*) FAZAL CARIM v. EMPEROR. 99 I. C. 842 = 26 Cr. L. J. 1418 = A. I. R. 1926 Lah. 154.

—Further examination.

The examination of prosecution witnesses under S. 540, after they are re-called by the Court, is no part of the prosecution case and the accused need not be examined under S. 342 once again after such examination. (*Hallifax, A. J. C.*) PAI MAHAMAD v. EMPEROR. 93 I. C. 699 = 27 Cr. L. J. 475 = A. I. R. 1926 Nag. 348.

—Called on his defence.

There can be no difference in the meaning between the words "called upon to enter upon his defence" in S. 253 and "called on for his defence" in S. 342 (1923 Cal. 727, Appr.) The obligation imposed by S. 256 on the Magistrate to ask the accused whether he wishes to cross-examine the prosecution witness is quite distinct from the obligation imposed by S. 342 to question the accused generally for the purposes mentioned therein. (*MacLeod, C. J. and Crump, J.*) EMPEROR v. NATHU KASTURCHAND MARWADI. 86 I. C. 66 = 27 Bom. L. R. 105 = 26 Cr. L. J. 690 = 50 Bom. 42 = A. I. R. 1925 Bom 170.

—Questioning accused is mandatory.

The word "shall" in the section makes the duty imposed on the Court, of questioning the accused generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence, mandatory. Where the accused was examined after only a part of the prosecution evidence had been recorded and was not examined again after all the witnesses for the prosecution had been examined.

*Held*, that the trial was vitiated. (*Scott-Smith, J.*) GHAZA ALI v. EMPEROR. 6 L. L. J. 618 = 27 Cr. L. J. 87 = 91 I. C. 391 = A. I. R. 1925 Lah. 288.

—When the accused is to be questioned.

The expression "after the witness for prosecution have been examined" includes their cross-examination after the charge where the accused has reralled them under S. 256, as examination of a witness means his examination in-chief, cross-examination and re-examination. Magistrates should invariably question the accused generally on the case after the examination of a prosecution witness is over, i. e., they are examined-in-chief, cross-examined and re-examined and before he enters upon his defence. The latter portion of S. 342 is imperative. (*Baker, J. C. Pridcaux and Kinkhede, A. J. Cs.*) LOCAL GOVERNMENT v. MARIA. 87 I. C. 427 = 20 N. L. R. 174 =

## CR. P. CODE (1898), S. 342—Construction.

26 Cr. L. J. 971 = A. I. R. 1925 Nag. 44 (F. B.).  
 — Examination of accused for the second time after second cross-examination of the prosecution witnesses is not necessary. [1923 M. 609] (F. B.), Foll. But even assuming that a further examination of the accused is necessary after the charge and after the prosecution witnesses have been re-called for cross-examination, the omission to make this further examination is not an illegality so as to vitiate the trial without regard to whether the accused has been prejudiced or not. 1923 All. 81 (2) Relied upon. (*Daniels, J.C.*) EMPEROR v. BRIJ BEHARI.

12 O. L. J. 182 = 2 O. W. N. 327 =  
 26 Cr. L. J. 1301 = A. I. R. 1925 Oudh 422.  
 — The examination of the accused at the close of the evidence for the prosecution in the manner required by S. 342 is imperative, and the omission to examine vitiates the trial. 5 P.L.J. 430 and 1923 Cal. 470, Ref. The first portion of S. 342 is an enabling provision. It entitles the Court "at any stage of any enquiry or trial" to put such questions to him (the accused) as the Court considers necessary. "The second portion of the section which provides for questioning the accused" generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence, is imperative. (*Jwala Prasad, J.*) RAMESHAR SINGH v. EMPEROR.

86 I. C. 991 =  
 6 P. L. T. 493 = 26 Cr. L. J. 927 =  
 A. I. R. 1925 Pat. 723.  
 — Under S. 342 (4), Criminal Procedure Code, an accused stands for a person accused and then under trial and under examination by the Court. (*Baguley, J.*) A. V. JOSEPH v. EMPEROR.

85 I. C. 236 = 26 Cr. L. J. 492 =  
 3 Bur. L. J. 265 = 3 Rang. 11 =  
 A. I. R. 1925 Rang. 122.  
 — Person called on to give security is not an "accused" (*C.C. Ghose and Cuming, J.J.*) BINODE BEHARI NATH v. EMPEROR.

81 I. C. 909 = 50 Cal. 985 = 25 Cr. L. J. 1085 =  
 A. I. R. 1924 Cal. 392.

— Fresh examination of accused after examination of prosecution witnesses recalled by accused is not necessary. But it is often desirable that the accused should be asked whether he has any additional statement to make. The reason for questioning the accused as set forth in S. 342 is to enable him to explain any circumstance in the evidence appearing against him, but an accused person does not recall the prosecution witnesses for the purpose of discovering fresh circumstances against himself. (*Campbell, J.*) R. A. BYRNE v. EMPEROR.

81 I. C. 337 = 4 Lah. 61 =  
 1 P.W.R. Cr. 1923 = 25 Cr. L. J. 801 =  
 A. I. R. 1924 Lah. 84.

## — 'Examine'

The accused was standing his trial in a warrant case on a charge under S. 500 of the Indian Penal Code. After the prosecution witnesses had been examined-in-chief the accused was questioned generally on the case by the Magistrate. Thereafter cross-examination of the prosecution witnesses took place, but the accused was not again examined generally.

*Held*, that the word "examine" in S. 342 is to be taken in the ordinary English sense in which it covers all kinds of examination including cross-examination and re-examination, and that the accused should have been examined again, after all the witnesses for the prosecution have been examined and cross-examined. (*Rankin, J.* on difference between *Buckland and Cuming, J.J.*) DIBAKANTA CHATTERJEE v. GOUR GOPAL MUKHERJEE. 75 I. C. 715 = 50 Cal. 939 =

## CR. P. CODE (1898), S. 342—Joint Trial.

27 C. W. N. 743 = 25 Cr. L. J. 27 =  
 A. I. R. 1923 Cal. 727.

— *Questioning the accused after examining the recalled prosecution witnesses.*

Cross-examination of re-called prosecution witnesses under S. 256 is not an examination of prosecution witnesses within the meaning of S. 342 and therefore omission to question the accused after this examination of re-called prosecution witnesses is not an illegality. This cross-examination is rather an evidence for the defence than evidence for the prosecution. A. I. R. 1922 M. 512; 45 Mad. 820 Overruled, 6 P.L.J. 644 Diss.

*Devadoss, J.*—The contention that, if an accused person cross-examines any of the prosecution witnesses under S. 256, the Magistrate is bound once more to examine the accused generally on the case seems untenable. S. 342 means only that the examination of the accused should take place after the prosecution has placed its whole case before the Court. The accused in a warrant case has three opportunities of cross-examining the prosecution witnesses; once before the charge is framed, secondly under S. 256 and thirdly after he has entered on his defence. The words in S. 342 "after the witnesses for the prosecution have been examined," cannot reasonably be interpreted to mean "after the accused has chosen to exercise his right of cross-examination at the very end of his defence."

*Venkatasubba Rao, J.*—(Dissenting). The point of time indicated in S. 342 is between close of the prosecution case and the entering by the accused upon his defence and non-examination after re-cross-examination vitiates trial. (*Schwabe, C. J. Phillips, Devadoss, Venkatasubba Rao and Wallace, J.J.*) VARISAI ROWTHER v. EMPEROR.

73 I. C. 163 =  
 1923 M. W. N. 477 = 24 Cr. L. J. 547 =  
 46 Mad. 449 = 17 M. L. W. 722 =  
 32 M. L. T. 385 = A. I. R. 1923 Mad. 609 =  
 44 M. L. J. 567 (F. B.).

## —S. 342—Joint Trial.

— *Statement of one accused.*

There is no provision in S. 342 which would seem to allow the statement made by one accused person to be taken into consideration against the other accused in the same trial. (*Mirza and Broomfield, J.J.*) WILLIAM COOPER v. EMPEROR. 54 Bom. 531 = 127 I. C. 105 =  
 31 Cr. L. J. 1137 = 1930 Cr. C. 786 =  
 32 Bom. L. R. 747 = A. I. R. 1930 Bom. 354.

— *Different statements.*

Where two persons are jointly tried for an offence and one of them has given an explanation upon certain matter in the case, the Judge can take in his discretion another statement from his co-accused under S. 342. (*Rankin, C. J. and Chotzner, J.*) SATYA NARAIN MOHATA v. EMPEROR.

55 Cal. 358 =  
 32 C. W. N. 319 = 29 Cr. L. J. 1022 = 112 I. C. 350 =  
 A. I. R. 1928 Cal. 675.

— *Factories Act, S. 42.*

Under S. 42. Factories Act, one proceeding is split into two proceedings—Manager or occupier initially charged with an offence under the Factories Act can go into the witness-box and give the evidence himself because, he goes into the witness-box not as an accused in the case originally started but in his own right as a complainant on the complaint against the other person whom he has brought in to prove that he has himself used diligence but that the other person has committed the offence without his knowledge. (*C. C. Ghose, and Gregory, J.J.*) SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS OF BENGAL v.



**CR. P. CODE (1898), S. 342—Joint Trial.**

MURRAY. 117 I. C. 673=32 C. W. N. 922=56 Cal. 400=30 Cr. L. J. 818=A. I. R. 1928 Cal. 557.

—The trial Court examined several accused separately before charge, but jointly after the closing up of prosecution evidence and recorded a joint statement of theirs under S. 342.

*Held*, that the procedure followed by the trial Court was illegal and vitiated the proceedings: A. I. R. 1926 Lah. 155. Foll.) (*Harrison J.*) GIRIDHARI LAL v. EMPEROR. 109 I. C. 117=10 A. I. Cr. R. 221=29 P. L. R. 436=10 L. L. J. 306=29 Cr. L. J. 469.

**—Joint statement.**

Two co-accused on trial for the same crime are not debarred from giving a concerted a statement in their examination. Where there were two accused and where when the Magistrate was examining the first accused, he found that the two accused were exchanging remarks:

*Held*, that the course that the accused attempted to follow was not an illegal or improper one and that the Magistrate was not entitled to remove the second accused from the Court and examined the first accused in his absence. (*Findlay O. J. C.*) MAHADEO SINGH v. EMPEROR.

91 I. C. 242=8 N. L. J. 190=27 Cr. L. J. 66=22 N. L. R. 1=A. I. R. 1925 Nag. 403.

**—S. 342—Non compliance.**

**Absence of prejudice.**

**Acquittal.**

**Curable defect.**

**Non-curable illegality.**

**Powers of superior Court.**

**Prejudice immaterial**

**Retrial**

**Subsequent proceedings illegal.**

**Summary trial.**

**What is.**

**Miscellaneous.**

**—S. 342—Non compliance—Absence of Prejudice.**

Where the accused have been examined, but the examination is not in conformity with the provisions of S. 342. S. 537 applies to such a case and unless a failure of justice is thereby has been occasioned, a conviction and sentence ought not for that reason to be disturbed. 5 Rang. 53 and. 34 C. W. N. 296. Ref. (*Page, C. J. and Doyle, J.*) U.B THEIN v. EMPEROR. 8 Rang. 372.

—Absence of examination of accused under S. 342 will not vitiate trial where no prejudice is caused. (*Wort J.*) SHEODATT ROY v. EMPEROR. 29 Cr. L. J. 771=110 I. C. 803=11 A. I. Cr. R. 43=10 P. L. T. 4292=A. I. R. 1929 Pat. 64.

**—Written statement.**

A trial of a case under Penal Code, S. 323 in which the Magistrate fails to examine the accused after the cross-examination of the prosecution witnesses has been completed is not illegal from that point if the irregularity has not resulted in a failure of justice. A. I. R. 1927 P. C. 44, Rel. on. Where an accused had been examined before the charge was framed when he stated that he would file a written statement and he did so but he declined to call witnesses.

*Held*, that the written statement relieved the Magistrate from the necessity of examining him orally in reference to the matters elicited in cross-examination of the prosecution witnesses when the accused was not prejudiced thereby. A. I. R. 1922 Pat. 388 and A. I. R. 1925 Pat. 414. Foll. (*Macpherson, J.*) GURDIAL SINGH v. BHOLANATH HALWAI.

120 I. C. 753=10 P. L. T. 196=31 Cr. L. J. 171.

**CR. P. CODE (1898), S. 342—Non compliance—Absence of prejudice.****—Additional evidence.**

Where after the defence evidence is concluded additional witnesses are called by Court and examined, and the accused is not examined on this evidence but the additional evidence did not disclose any fresh facts or affect the decision of the case, the omission to examine accused is not fatal. A. I. R. 1924 Pat. 764. Foll. (*De Souza and Aston, A. J. Cs.*) ALLAH DITO v. EMPEROR.

23 S. L. R. 1=29 Cr. L. J. 932=111 I. C. 852=A. I. R. 1929 Sind. 5.

—Where the Magistrate does not comply with the provisions of S. 342, whole trial is not vitiated if on examination of the circumstances it is shown that the error had not in fact occasioned a failure of justice; (A. I. R. 1923 All. 81 A. I. R. 1926 All. 358; A. I. R. 1925 Pat. 414; and A. I. R. 1923 Mad. 608 (F.B.), Foll.; A. I. R. 1923 Cal. 196. not Foll.) (*Mears, C. J. and Kendall, J.*) EMPEROR v. JHABBAR MALL.

26 A. L. J. 196=9 L. R. A. Cr. 90=10 A. I. Cr. R. 101=30 Cr. L. J. 530=115 I. C. 872=A. I. R. 1928 All. 222.

**—Some witnesses alone examined.**

Where the Magistrate examined the accused at length after only some of the witnesses for the prosecution were examined, but it was not proved that any prejudice was caused to the accused;

*Held*, that the procedure though irregular was not illegal. (*Tek Chand, J.*) PRITCHARD v. EMPEROR. 112 I. C. 850=30 Cr. L. J. 18=11 A. I. Cr. R. 405=A. I. R. 1928 Lah. 382.

—An omission to comply with the provisions of S. 342 does not necessarily vitiate the trial, and it depends on whether the accused have been prejudiced. (A. I. R. 1923 All. 81, Foll.) Where the accused were examined after the complete story told by the complainant was before the Court and they had the opportunity of filing, and did file, a lengthy written statement setting out their version of the facts and of the causes why the charge had been brought, the judgment should not be set aside on the ground of irregularity. (*Daniels J.*) KHACHOMAL v. EMPEROR.

27 Cr. L. J. 405=7 L. R. A. Cr. 76=93 I. C. 69=A. I. R. 1926 All. 358.

—An omission to comply fully with the provisions of S. 342 does not vitiate the trial unless the accused has been prejudiced. A. I. R. 1923 All. 81; A. I. R. 1925 Pat. 414 and A. I. R. 1925 Rang. 258, Foll.) (*Daniels J.*) RAMMU v. EMPEROR. 94 I. C. 911=7 L. R. A. Cr. 128=27 Cr. L. J. 719.

**—Revision.**

Although the failure to comply strictly with the provisions of S. 342 vitiates the trial, it is not incumbent on the High Court in revision to set aside a conviction in every case where an illegality has been committed, especially when no prejudice is caused by such illegality: 5 P. R. 1906, Foll.) (*Broadway, J.*) HAZARA SINGH v. EMPEROR. 8 L. L. J. 90=27 Cr. L. J. 727=27 P. L. R. 183=95 I. C. 55=A. I. R. 1926 Lah. 553.

**—Summary Trial.**

In a warrant case tried summarily, a failure to examine accused under S. 342 does not vitiate the trial, if prejudice is not caused. (A. I. R. 1925 Oudh 603, Ref.) (*Stuart, C. J.*) GIRDHARI LAL v. EMPEROR.

95 I. C. 932=3 O. W. N. 534=27 Cr. L. J. 852=A. I. R. 1926 Oudh 424.

—Where the accused is not prejudiced, a technical failure to comply strictly with the provisions of S. 342 is not fatal. A. I. R. 1925 Pat. 414. Foll. (*Macpherson, J.*) BALGOBIND THAKUR v. EMPEROR.

**CR. P. CODE (1898), S. 342—Non compliance—Absence of prejudice.**

96 I. C. 873 = 7 P. L. T. 496 = 27 Cr. L. J. 1017 = A. I. R. 1926 Pat. 393.

—Omission to examine accused at end of trial is only irregularity not amounting to illegality vitiating trial unless accused was prejudiced thereby. (*Boys, J.*) GANGA SAHAI v. EMPEROR. 83 I. C. 692 = 5 L. R. A. Cr. 124 = 26 Cr. L. J. 132 = A. I. R. 1924 All. 763.

**—S. 342—Non-compliance—Acquittal.**

—S. 342 is imperative and requires the accused to be examined after the witnesses for the prosecution have been examined. A trial without such an examination is not proper even though the accused have been acquitted. 2 L. B. C. 239, Foll. (*Held and Chari, J.J.*) KING EMPEROR. v. NGA PO BYU. 98 I. C. 484 = 27 Cr. L. J. 1364 = 4 Rang. 361 = A. I. R. 1927 Rang. 19.

—Order of acquittal was set aside on the ground that the trial had been vitiated by a failure to comply with the mandatory provisions of S. 342. (*Sahrawardy and Graham, J.J.*) REMEMBRANCE OF LEGAL AFFAIRS, BENGAL v. SATISH CHANDRA ROY. 83 I. C. 495 = 51 Cal. 924 = 39 C. L. J. 411 = 26 Cr. L. J. 15 = A. I. R. 1924 Cal. 975.

**—S. 342—Non compliance—Curable defect.**

—A number of witnesses for the prosecution were examined and then the accused himself was examined. At the next hearing two witnesses for the Crown, who had not previously been examined, were examined and after that a considerable number of the other prosecution witnesses were recalled and cross-examined. Subsequently the defence witnesses were examined but the accused was not examined and a judgment was passed against him.

*Held*, that the provisions of S. 342 were not obeyed as that section would require the accused to be re-examined when the prosecution witnesses had been recalled and cross-examined and to be further examined after two fresh Crown witnesses had been examined.

*Held*, further, that such violation if it did not lead to a failure of justice would not vitiate the proceedings and is a mere irregularity which could be cured under S. 537. (Case law discussed.) (*Carr, J.*) K. M. SUBBAYA NAIDU v. EMPEROR. 120 I. C. 230 = 7 Rang. 470 = 1929 Cr. C. 507 = 30 Cr. L. J. 1164 = A. I. R. 1929 Rang. 331.

**—Further cross-examination of witnesses.**

The fact that an accused is not further examined under S. 342 of the Cr. P. Code after the witnesses are further cross-examined under S. 257 of the Cr. P. Code after the charge is framed at the close of the entire prosecuting evidence, does not vitiate a trial. (*Hallifax, A. J. C.*) GANGADHAR v. BHANGI SAO. 81 I. C. 976 = 25 Cr. L. J. 1152 = A. I. R. 1925 Nag. 147.

**—Further cross-examination of witnesses.**

Where the accused was once examined after the prosecution evidence was over,

*Held*, that the omission to examine the accused after further cross-examination of the prosecution witnesses is nothing more than an error, omission or irregularity within the meaning of S. 537. A. I. R. 1923 Mad. 609 (F. B.), Foll.; 25 Mad. 61 (P. C.), Expl. and A. I. R. 1923 All. 81, Ref. (*Brown, J.*) NGA HLA U v. EMPEROR. 89 I. C. 312 = 26 Cr. L. J. 1336 = 3 Rang. 139 = A. I. R. 1925 Rang. 258.

**—S. 342—Non-compliance—Non-curable illegality.**

**—Fresh prosecution witnesses.**

Where, after the examination of the accused, further witnesses for the prosecution are examined, the omission

**CR. P. CODE (1898), S. 342—Non-compliance—Non-curable illegality.**

to further examine the accused vitiates the trial. (*Fawcett and Mirza, J.J.*) EMPEROR v. BHAN DHARZA. 109 I. C. 359 = 30 Bom. L. R. 385 = 10 A. I. Cr. R. 218 = 29 Cr. L. J. 535 = A. I. R. 1928 Bom. 140.

—The provisions of S. 342 (1) are mandatory and the omission to observe the provisions thereof amounts to an illegality which cannot be cured under S. 537. A. I. R. 1926 Lah. 551 and A. I. R. 1925 Pat. 342, Foll. (*Tek Chand, J.*) BAZ KHAN v. EMPEROR.

108 I. C. 381 = 10 A. I. Cr. R. 26 = 29 Cr. L. J. 382 (Lah.).

**—Cannot be waived.**

The omission to act upon the provisions of S. 342 constitutes an illegality and not a mere irregularity. Such an illegality cannot be waived by the consent of the accused or their legal representatives. 45 Bom. 672 and 46 Bom. 441, Ref. (*Fawcett and Madgavkar, J.J.*) GAMADIA v. EMPEROR. 91 I. C. 949 = 50 Bom. 34 = 27 Bom. L. R. 1405 = 27 Cr. L. J. 165 = A. I. R. 1926 Bom. 57.

—Omission to examine the accused after recording further prosecution evidence amounts to an illegality vitiating trial. (*Fforde, J.*) ISMAIL v. EMPEROR.

96 I. C. 879 = 27 Cr. L. J. 1023 = 27 P. L. R. 635 = A. I. R. 1926 Lah. 683.

—Non-compliance with the provisions of S. 342 amounts to illegality vitiating the trial. A. I. R. 1924 Lah. 104, Rel. on. (*Shadi Lal, C. J.*) DEMELLO v. MRS. DEMELLO. 96 I. C. 856 = 27 Cr. L. J. 1000 = A. I. R. 1926 Lah. 667.

—The provisions of S. 342 (1) are mandatory and not merely directory. Strict compliance with its terms is necessary. Where the Court, after recording the depositions of some of the prosecution witnesses had recorded the statements of the accused, but after further prosecution witnesses had been examined no statements of the accused were recorded,

*Held*, that the trial was illegal and it must be set aside. A. I. R. 1925 Cal. 574, Rel. on. (*Fforde, J.*) LACHMAN SINGH v. EMPEROR. 96 I. C. 863 = 7 Lah. 564 = 27 Cr. L. J. 1007 = 27 P. L. R. 427 = A. I. R. 1926 Lah. 551.

—In a trial for an attempt to commit murder the Magistrate examined the accused after taking some evidence and then framed a charge against them. After doing so he recalled the witnesses, that had already been examined, to enable the accused to cross-examine them and then examined the remaining two prosecution witnesses. After taking the evidence of these two witnesses he did not question the accused as he was required to do by S. 342.

*Held*, that the omission vitiated the trial. (*Zafar Ali, J.*) MAHAMMAD SADIQ v. EMPEROR. 89 I. C. 458 = 26 P. L. R. 533 = 26 Cr. L. J. 1370 = A. I. R. 1926 Lah. 51.

—The provisions of S. 342 are mandatory. The accused must be examined under S. 342 after the prosecution has closed and before the accused have entered upon their defence and if the provisions of that section are not observed, the trial is vitiated. (*Adami, J.*) RAM CHARAN SINGH v. EMPEROR. 89 I. C. 153 = 7 P. L. T. 259 = 26 Cr. L. J. 1289 = A. I. R. 1926 Pat. 29.

**—Further cross-examination.**

An accused person has a right to be examined and to state his case after the further cross-examination of prosecution witnesses, even though he has already been examined before the charge was framed and he was called on for his defence. That right is fundamental and the omission to so examine him cannot be regarded as a

**CR. P. CODE (1898), S. 342—Non-compliance—Non-curable illegality.**

mere error or irregularity, which can be cured by S. 537, Cr. P. Code, but vitiates the conviction. A. I. R. 1923 Cal. 104; A. I. R. 1924 Cal. 975 and A. I. R. 1922 Mad. 512, *Foll. (Godfrey, J.) AH KHAING v. EMPEROR. 92 I.C. 752=27 Cr.L.J. 336=4 Bur.L.J. 143=A. I. R. 1925 Rang. 363.*

—*Examination before cross-examination of prosecution witnesses.*

The trial Court after recording the examination-in-chief of the prosecution witnesses framed charge and on the same date recorded the statements of the accused persons. These witnesses were then cross-examined but since then no further statement of the accused persons had been recorded.

*Held*, the omission is not an irregularity which can be cured by S. 537 of the Code. (*Cumming and Ghose, J.J.*) HARO NATH MALO v. ALA BUX. 76 I.C. 961=28 C. W. N. 119=38 C. L. J. 281=25 Cr. L. J. 289=A. I. R. 1924 Cal. 182.

—If the accused are not examined under S. 342 at the trial, the proceedings are vitiated. (*Ross, J.*) BAIJ-NATH SAHAY v. KING-EMPEROR. 72 I. C. 71=4 P. L. T. 231=1923 P.H.C.C. 96=1 Pat. L. R. Cr. 34=24 Cr. L. J. 311=A. I. R. 1923 Pat. 292.

—The procedure prescribed by the section being binding on the Courts the omission to comply with the provisions of this section is not a mere irregularity such as can be cured under S. 537, Cr. P. Code, but is an illegality vitiating the trial. (*Chevis, J.*) HAJI MUHAMMAD BAKSH v. EMPEROR. 65 I. C. 618=4 L. L. J. 230=23 Cr. L. J. 154=A. I. R. 1922 Lah. 45.

**—S. 342—Non-compliance—Powers of superior Court.**

—*Appeal and revision.*

The provisions of the Cr. P. Code, in respect of examination of an accused a second time after the conclusion of the prosecution evidence are undoubtedly mandatory, and in appeal the appellate Court is bound to order a retrial from the point at which the Magistrate had failed to carry out the procedure laid down. (A.I.R. 1926 Lah. 551; 1 P. R. 1918; and A. I. R. 1921 Bom. 374, Ref.) But in the case of a revision, the Court of revision is not bound to interfere, especially when no prejudice is caused to the accused. (*Broadway and Zafar Ali, J.J.*) EMPEROR v. GIAN SINGH. 29 Cr.L.J. 905=111 I.C. 665=A.I.R. 1928 Lah. 230.

**—S. 342—Non-compliance—Prejudice immaterial.**

—*Revision.*

Whether Omission to make further examination of the accused after the charge and after prosecution witnesses have been recalled for cross-examination is or is not an illegality which vitiates the trial, without regard to whether the accused has been prejudiced or not where substantial justice has been done, High Court will refuse to interfere. A. I. R. 1925 Oudh 422, Ref. (*Dalal, J. C.*) KHUMAN SINGH v. EMPEROR. 89 I. C. 462=2 O. W. N. 378=26 Cr. L. J. 1374=A. I. R. 1925 Oudh 603.

—Where the examination of the accused persons has not been made in compliance with the provisions of S. 342, it amounts to an illegality. It is immaterial whether the accused persons were or were not prejudiced by the non-compliance with the provisions of S. 342. The High Court will in such cases interfere in revision. (*Kulwant Sahay, J.*) DURGA RAM v. EMPEROR. 86 I. C. 156=6 P. L. T. 33=26 Cr. L. J. 716=A. I. R. 1925 Pat. 342.

**CR. P. CODE (1898), S. 342—Non-compliance—Subsequent proceedings illegal.**

—Non-examination of accused after cross-examination after charge vitiates trial though accused is not prejudiced. 50 Cal. 223 at 227, *Foll. (Kinkhede, A.J.C.) KRISHNAPPA v. EMPEROR. 81 I. C. 201=25 Cr. L. J. 713=A. I. R. 1924 Nag. 51.*

**—S. 342—Non-compliance—Retrial.**

—*No record of examination.*

Where the record of the case as made by the trying Magistrate was not in accordance with the requirements of S. 370, and where the trial Magistrate examined the accused under S. 342 but did not record the substance of his examination and his plea,

*Held*, that proper procedure had not been followed and the case should be retried after setting aside the order. (*Suhrwardy and Panton, J.J.*) ISMAIL SHA v. EMPEROR. 27 Cr. L. J. 110=91 I. C. 542=A. I. R. 1926 Cal. 692.

—Where accused's statements were taken before many of the P. Ws. were examined but no statements were recorded afterwards,

*Held*, that the trial should be held afresh. (*Cumming and B. B. Ghose, J.J.*) HAMID ALI v. SRI KISSAN GOSAIN. 75 I. C. 367=37 C. L. J. 413=28 C. W. N. 118=24 Cr. L. J. 943=A. I. R. 1925 Cal. 574.

—Where there was no substantial compliance with the provisions of S. 342 and out of the sentence of rigorous imprisonment for a period of one month the petitioners had already undergone the sentence for a period of 22 days, the conviction was set aside instead of ordering retrial. (*C. C. Ghose and Cumming, J.J.*) SAILENDRA CHANDRA SINGH v. THE CROWN. 77 I. C. 812=38 C. L. J. 175=25 Cr. L. J. 460=A. I. R. 1924 Cal. 153.

—Where the trying Magistrate did not comply with the provisions of S. 342 the proper course for the superior Court to follow is to set aside the conviction and sentence of the accused and remit the case to the trial Court in order that the provisions of S. 342 may be followed and the matter disposed of in accordance with law. 45 Cal. 672; A. I. R. 1922 Pat. 158, *Foll. (Walmsley and Pearson, J.J.) KASHI PRAMANIK v. DAMU PRAMANIK. 27 C. W. N. 28=25 Cr.L.J. 524=77 I.C. 988=A. I. R. 1921 Cal. 605.*

**—S. 342—Non-compliance—Subsequent proceedings illegal.**

—The imperative provisions of law as regards the examination by the Court must be complied with, irrespective of the question whether the non-compliance has or has not prejudiced the accused on the merits. Filing of written statement by accused does not dispense with his examination by Court. Where after the examination of the accused, there was cross-examination of the prosecution witnesses, but there was no further examination of the accused,

*Held*, that the judgment was vitiated by breach of S. 342. A.I.R. 1923 Cal. 196 and A.I.R. 1925 Nag. 44 (F.B.), *Foll.*

*Held*, further, that this illegality did not vitiate the whole case so as to necessitate a trial *de novo* but only affected such portion of the trial as was subsequent to the stage where it occurred. (*Kinkhede, A. J. C.*) MD. HAYAT KHAN v. EMPEROR. 109 I. C. 123=29 Cr. L. J. 475=10 A. I. C. R. 242=A. I. R. 1928 Nag. 162.

—The success of the plea that the Magistrate has failed to make the final examination of the accused at the proper time, as required by S. 342, will not result in an acquittal, but it can be nothing more than a remand of the case for the correction of the error and a retrial

**CR. P. CODE (1898), S. 342—Non-compliance—Subsequent proceedings illegal.**

from the point at which it occurred. (*Hallifax, A.J.C.*)  
PAI MAHOMED V. EMPEROR. 27 Cr. L. J. 475=  
93 I. C. 699=A. I. R. 1926 Nag. 348.

—The entire omission to question an accused generally on the case after the prosecution witnesses have been examined and before the accused enters on his defence renders the trial from that point onwards and not *ab initio* improper or illegal. S. 537 cannot condone the error but the defect must be rectified in a fresh trial commencing from the point at which the error was committed. (*Hallifax, A.J.C.*) GANGADHAR V. BHAN-GISAO. 81 I. C. 976=25 Cr. L. J. 1152=  
A. I. R. 1925 Nag. 147.

**—S. 342—Non-compliance—Summary trial.**

—*Failure to examine accused under S. 342 in summary trials vitiates trial.*

In summary trials the failure to comply with the provisions of S. 342 as to the examination of accused vitiates the trial and the convictions must be set aside. (*Kennedy, J. C., Aston and De Souza, A. J. Cs.*) EMPEROR V. NABU. 90 I. C. 434=20 S. L. R. 34=  
26 Cr. L. J. 1554=A. I. R. 1926 Sind 1 (F. B.).

**—S. 342—Non-compliance—What is.**

—Examination of the accused, after some of the prosecution witnesses but not at the close of the prosecution evidence, with a note by Magistrate that the accused does not wish to add to his previous statement, is not a proper compliance with the mandatory provisions of S. 342. (*Addison, J.*) FAZAL AHMAD V. EMPEROR. 27 Cr. L. J. 1021=96 I. C. 877=  
A. I. R. 1926 Lah. 684.

—After the charges had been framed and the accused examined, the Magistrate recalled the Police witnesses to prove the statement alleged to have been made by one of the accused.

*Held*, that the course was illegal. (*Baguley, J.*)  
BAWA ROWTHER V. EMPEROR. 84 I. C. 545=  
26 Cr. L. J. 321=3 Bur. L. J. 245=  
A. I. R. 1925 Rang. 101.

**—Procedure.**

The omission to question the accused generally on the case as required by the latter part of S. 342 (1) of Cr. P. Code is not a mere irregularity but it is an illegality which vitiates the whole trial. S. 342 makes the examination of the accused obligatory only in cases where the accused is called on for his defence. If the Magistrate discharges the accused without framing a charge the non-examination of the accused would not vitiate the proceedings. But where a Magistrate or the Sessions Court thinks that the prosecution witnesses have made out a case which the accused has to meet, it is incumbent upon him not to put him the general question, "You have heard the prosecution witnesses against you; say what you have got to say", but to communicate to the accused by appropriate questions everything that is alleged against him in the evidence for the prosecution to its full extent, which may be found necessary to communicate in each particular case, with a view to ascertain from him what explanation or defence in law or in fact he wishes to put forward in respect thereof. Case-law fully discussed. (*Kinkhede, A. J. C.*) UDHAO PATEL V. KING EMPEROR. 77 I. C. 593=  
25 Cr. L. J. 417=A. I. R. 1924 Nag. 301.

**—Evidence in counter-case.**

Where two cross-cases of riot were tried together and the accused in one had been examined and cross-examined as prosecution witnesses in the other and the Magistrate recorded their examination under S. 342 in this form:—"My sworn evidence in cross-case is correct. I have no more to say."

**CR. P. CODE (1898), S. 342—Oath or affirmation.**

*Held*, that the provisions of S. 342 have not been properly complied with and the procedure followed is nothing short of a grave irregularity. (*Simpson, A.J.C.*)  
NAGESHAR PRASAD V. EMPEROR. 73 I. C. 693=  
24 Cr. L. J. 661=A. I. R. 1924 Oudh 111.

**—Nature of questions.**

Where there was an examination of the accused before the charges were framed, *held*, after the witnesses for the prosecution have all been examined and cross-examined and before the accused is called on for his defence, it is compulsory for the Court to question the accused in such a way as to enable him to explain any circumstances which appear in the evidence against him. The mere asking the accused as to whether they had any thing further to say is not a sufficient compliance with the second part of the provision of S. 342. The question must be framed in such a way as to enable the accused to know what he is to explain, as to what are the circumstances which are against him and for which an explanation is needed. 5 P. L. J. 430; 6 P. L. J. 147 at page 160, Foll. (*Kulwant Sahay, J.*) BHOKHARI SINGH V. EMPEROR. 81 I. C. 199=5 P. L. T. 445=  
1924 P. H. C. C. 198=25 Cr. L. J. 711=  
A. I. R. 1924 Pat. 791.

—Examination of accused after examination-in-chief of the prosecution witnesses is not sufficient; he must be examined after their cross and re-examination. 27 C. W. N. 28, Foll. (*Newbould and Suhrwardy, J.J.*) JUMMON CHRISTIAN V. EMPEROR. 81 I. C. 319=50 Cal. 308=25 Cr. L. J. 799=  
A. I. R. 1923 Cal. 668.

**—Particulars of offence.**

Where a Magistrate did not explain to the accused the particulars of the offence of which they were charged but merely told them that they were charged of an offence under S. 19 of the Burma Village Act, *held*, that this was not a compliance with the provisions of S. 342 of the Cr. P. Code. (*Maccoll, A.J.C.*) KING-EMPEROR V. NGA SEIN. 76 I. C. 1039=4 U. B. R. 127=  
25 Cr. L. J. 319=A. I. R. 1923 Rang. 132.

**—S. 342—Non-compliance—Miscellaneous.****—Obscure documents.**

Where no specific instance of theft or of receipt of stolen property is proved and the Court is asked as a result of several obscure documents found in possession of accused to infer that there has been conspiracy to commit theft, it is a dangerous thing to draw such an inference as to any such conspiracy among the accused without questioning them about the documents. 37 Cal. 467, Rel. on. (*Brown, J.*) MAUNG BA CHIT V. EMPEROR. 122 I. C. 273=7 Rang. 821=  
31 Cr. L. J. 387=1930 Cr. C. 402=  
A. I. R. 1930 Rang. 114.

**—S. 342—Oath or affirmation.**

—It is most unfortunate that the Indian law of evidence does not permit an accused person to give evidence in support of his defence. (*Courtney-Terrell, C.J., Kulwant Sahay and Macpherson, J.J.*) INDRA CHANDRA V. EMPEROR. 116 I. C. 756=  
30 Cr. L. J. 646=11 P. L. T. 45=  
13 A. I. Cr. R. 80=A. I. R. 1929 Pat. 145 (F.B.).

—*Calcutta Municipal Act, S. 363.*  
A party to a proceeding under S. 363 of the Calcutta Municipal Act relating to demolition of an unauthorised structure is not an accused person and as such is not exempted from administration of oath under S. 342 of the Cr. P. Code. A. I. R. 1925 Cal. 1251. Expl. (*Suhrwardy and Cammiade, J.J.*) KRISHEN DOYAL JALAN V. CORPORATION OF CALCUTTA. 101 I. C. 183=31 C. W. N. 506=

**CR. P. CODE (1898), S. 342—Object of.**

45 C.L.J. 469 = 28 Cr. L. J. 407 = 8 A. I. Cr. E. 35 =  
54 Cal. 532 = A. I. R. 1927 Cal. 509.

**—S. 342—Object of.**

—In both S. 209 and S. 342, the examination of the accused is stated to be "for enabling him to explain any circumstances appearing in the evidence against him." It is not proper for the Court in examining the accused to seek in any way to entrap him into admissions which may fill gaps in the prosecution case but the answers given to the accused in answer to the straightforward questions put by the Court may no doubt be taken into consideration for convicting the accused under S. 342 (3). (*Courtney Terrel, C. J. and Rowland, J.*) PHURLAI MANJHI v. EMPEROR. 9 Pat. 504 = 1930 Cr. C. 926 = 11 Pat. L. T. 706 = A.I.R. 1930 Pat. 498.

**—Complicated cases.**

Object of examination of accused is to enable him to explain anything appearing in evidence against him. In complicated cases general questions asking him what he has to say in explanation of evidence against him is insufficient. Thus where the prosecution is mainly based on the contents of the documents which are obscure and capable of more explanations than one it is of special importance that the accused should be asked specifically as to what his explanation of the doubtful passages is. A. I. R. 1925 Cal. 361 and A. I. R. 1924 Rang. 172, Rel. on; A. I. R. 1929 Rang. 331 and A. I. R. 1925 Rang. 258, Ref. (*Brown, J.*) MAUNG BA CHIT v. EMPEROR. 122 I. C. 273 = 7 Rang. 821 = 31 Cr. L. J. 387 = 1930 Cr. C. 402 = A. I. R. 1930 Rang. 114.

—S. 342 is intended for getting explanation if any which accused wishes to offer against case which Crown has proved by evidence on record—Questions in the nature of cross-examination or filling gaps in prosecution case should be avoided. Case-law discussed. (*Wild, A. J. C.*; on difference between *Percival, J. C. and Rupchand, A. J. C.*) MOHAMMAD YUSUF v. EMPEROR. 126 I. C. 449 = 31 Cr. L. J. 1026 = 1930 Cr. C. 865 = A. I. R. 1930 Sind 225.

—The object of the examination of an accused person under S. 342 being only to enable him to explain any circumstances appearing in evidence against him, the examination ought not to be conducted in the manner of cross-examination of an adverse witness. And a Court should not try to force a prisoner to commit himself by making some incriminating admissions or statements and allow additional prosecution evidence to rebut the defence disclosed. 6 Cal 96; A. I. R. 1921 Lah. 32; 6 Bom. L. R. 94; 10 Mad. 295 and A. I. R. 1922 Pat. 582, Foll. (*Bhude, J.*) FAQIR SINGH v. EMPEROR. 110 I. C. 801 = 10 Lah. 223 = 30 P. L. E. 385 = 11 A. I. Cr. R. 1 = 29 Cr. L. J. 769 = A. I. R. 1929 Lah. 382.

**—Sufficient compliance.**

What is necessary under S. 342 is that the accused should be brought face to face solemnly with an opportunity given to him to make a statement from his place in the dock in order that the Court may have the advantage of hearing his defence, if he is willing to make one with his own lips. Where five accused were tried and to all the accused the same question was put, "What is your defence," two of them replied, "I am innocent. I will file a written statement," and the other two replied, "I am innocent."

Held, that that was sufficient compliance with S. 342. A. I. R. 1923 Cal. 470, Rel. on. (*Newbould and Chakravarti, J.J.*) REZ MUHAMMAD v. EMPEROR. 90 I. C. 294 = 26 Cr. L. J. 1510 = A. I. R. 1926 Cal. 424.

**CR. P. CODE (1898), S. 342—Object of.****—Procedure.**

It is extremely desirable that Magistrates should follow the practice of warning accused persons when they invite their explanation under S. 342 that they are not obliged to say anything unless they desire to do so. The object of the section should be to give them an opportunity, if they so desire, to explain their conduct and further warn them that anything they say will be put in evidence against them at their trial. (*Coutts Trotter, C. J. and Madhavan Nair, J.*) KANNAMMAL, In re. 92 I. C. 695 = 23 M. L. W. 384 = 27 Cr. L. J. 311 = A. I. R. 1926 Mad. 570.

**—Salient points should be mentioned to accused.**

*Mukerji, J.*—The section is undoubtedly for the benefit of the accused but it cannot be said that it is intended merely for his benefit. It is a part of a system for enabling the Court to discover the truth and it constantly happens that the accused's explanation or his failure to explain, is the most incriminating circumstance against him. The result of the examination may certainly benefit the accused if a satisfactory explanation is offered by him; it may, however, be injurious to him, if no explanation or a false or unsatisfactory explanation is given. It follows from the wording of the section that the Court should not only have the power to point out to the accused the circumstances appearing in the evidence which require explanation, but that it must, out of fairness to the accused, exercise that power in such a way that the accused may know what points in the opinion of the Court require explanation, failure or refusal to give which will entitle the Court to draw an inference against him. (*Newbould and Mukerji, J.J.*) EMPEROR v. ALIMUDDI NASKAR. 85 I. C. 919 = 41 C. L. J. 101 = 29 C. W. N. 231 = 26 Cr. L. J. 631 = 52 Cal. 522 = A. I. R. 1925 Cal. 361.

**—Scope of the questions.**

The object of S. 342 is to enable the accused in his own interest to give an explanation of the circumstances appearing in the evidence against him. It is not competent for the Court to examine the accused for the purpose of filling up gaps in the evidence for the prosecution. Any examination of an inquisitorial nature is both improper and illegal. It is also not permissible for the Magistrate to examine the accused as to what certain absent defence witnesses would be likely to state and the like. 7 C. W. N. 345, Ref. (*Findlay, Offg. J. C.*) MAHADEO SINGH v. EMPEROR. 91 I. C. 242 = 8 N. L. J. 190 = 27 Cr. L. J. 66 = 22 N. L. E. 1 = A. I. R. 1925 Nag. 403.

**—Nature of questions.**

Principle requires that the accused shall not be convicted without being given an opportunity of explaining the allegations against him. Experience shows that judicial questioning must not become inquisitorial. If these essentials are secured, the trial cannot be impeached. The trial is not vitiated from any deviation from the section unless the accused has been prejudiced in his defence. Principles discussed historically and elaborately. (*Mullick and Bucknill, J.J.*) SAIYID MOHIUDDIN v. EMPEROR. 86 I. C. 459 = 4 Pat. 488 = 6 P. L. T. 154 = 3 Pat. L. E. Cr. 110 = 26 Cr. L. J. 811 = 1925 P. H. C. C. 112 = A. I. R. 1925 Pat. 414.

**—Nature of questions.**

Examination under S. 342 is intended to enable the accused to explain the circumstances appearing in the evidence against him and is not intended to supplement prosecution case and to show that the accused is guilty nor to drive him to make self-incriminating statement. The Judge is therefore not entitled to put embarrassing questions to draw admissions from accused. (*Kennedy,*

**CR. P. CODE (1898), S. 342—Object of.**

*J. C. and Raymond, A. J. C.*) TOPANDAS *v.* EMPEROR.  
81 I. C. 249 = 25 Cr. L. J. 761 =  
A. I. R. 1925 Sind 116.

**—Nature of questions.**

Where the only question asked by the Magistrate to the accused was "what have you to say regarding the statement of the complainant's witnesses?"

*Held*, this was not a sufficient compliance with the requirement of the Law. The object of the section is to enable the accused to explain each and every circumstance appearing in evidence against him. A Judge or a Magistrate should note every point which he thinks he will have to put into the scale against the accused and then question him on each point; otherwise it is impossible for the accused to know what is in the Court's mind. (*May Oung, J.*) MG. HMAN *v.* EMPEROR.

1 Rang. 689 = 2 Bur. L. J. 238 = 77 I. C. 887 =  
25 Cr. L. J. 487 = A. I. R. 1924 Rang. 172.

—S. 342 of the Cr. P. Code no doubt allows the Court, at any stage of any enquiry or trial, to put such questions to the accused as the Court considers necessary but the object of putting such questions is, as laid down in the section, "for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him." (*Scott Smith and Fforde, J.J.*) BARHATI *v.* THE CROWN. 77 I. C. 602 =  
25 Cr. L. J. 426 = A. I. R. 1923 Lah. 539.

**—S. 342—Power of Court.****—Accused declines to answer.**

If an accused prefers to be reticent the Court should not hold an inquisitorial proceeding and the fact that the accused declines to make a statement would not necessarily indicate to the Judge that the accused would not like to answer specific questions put to him. (*Mukerji and Jack, J.J.*) PRAFULLA KUMAR BOSE *v.* EMPEROR. 57 Cal. 1074 = 125 I. C. 656 = 31 Cr. L. J. 903 =  
50 C. L. J. 593 = 1930 Cr. C. 209 = A. I. R. 1930 Cal. 209.

**—Administering inquisitorial interrogatory to accused or subjecting him to cross-examination.**

Bearing in mind that the accused is not bound to set up any defence or make any statement, that what he elects to say is not evidence, that an explanation that he may proffer, need not be true; and that he does not render himself liable to punishment by refusing to answer any question that the Court may put to him or by giving a false answer to the question, it becomes obvious that the Court is not entitled under this S. 342 to administer an inquisitorial interrogatory to the accused or to subject him to cross-examination or to ask any questions of him with a view to elicit the truth of the matter, or by a series of supplementary questions to test the accuracy or reliability of the answers that he has been willing to give. An examination on these or similar lines is not within the ambit of S. 342 and all such questions are wholly inadmissible. When once the Court is satisfied that the accused appreciates the salient features of the evidence against him, its function under S. 342 is exhausted and no further examination is permissible. 50 Cal. 518. (*Page, C. J. and Doyle, J.*) U BA THEIN *v.* KING-EMPEROR. 8 Rang. 372 =  
127 I. C. 730 = 1930 Cr. C. 1179 =  
A. I. R. 1930 Rang 351.

**—Duty of Magistrate to question accused.**

It is the duty of the Magistrate, when dealing with ignorant individuals accused of technical offences, to go very thoroughly into the evidence, and where they are not defended by advocates to give them some assistance in putting up obvious defensive pleas. Where in a prosecution for an offence under S. 19 of the Arms Act the accused were ignorant and undefended and though the circumstances showed that the exception under Sch. 2

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(7) (a) of the Act might apply in favour of the accused the Magistrate omitted to question the accused regarding the defensive,

*Held*, in revision, that the conviction should be set aside. (*Doyle, J.*) ALI HOSSEIN *v.* EMPEROR.

1930 Cr. C. 1177 = A. I. R. 1930 Rang. 349.

**—Statement cannot supplement prosecution evidence.**

Per *Mukerji, J.*—If there be no sufficient evidence for the conviction or if from the vagueness of the prosecution evidence the Court is not prepared to act on it, it should not be open to the Court to supplement the prosecution evidence by selecting, out of the statement of the accused person, passages which might corroborate the prosecution evidence and to reject those passages which go to exonerate the accused person. (*Mukerji and King, J.J.*) BHOLA NATH *v.* EMPEROR, 113 I. C. 213 = 26 A. L. J. 1334 = 10 L. B. A. Cr. 1 =  
30 Cr. L. J. 101 = 51 All. 313 = 11 A. I. Cr. R. 49 =  
A. I. R. 1929 All. 1.

**—Incriminating evidence.**

Where an accused was charged under S. 307 and the trying Magistrate, in convicting him relied on the fact that some abrasions were found on his person,

*Held*, that unless an incriminating circumstance is proved by the prosecution to exist against an accused person he should not be called upon to explain away its existence. (*Subhedar, A. J. C.*) SHAMLAL *v.* EMPEROR. 120 I. C. 210 = 31 Cr. L. J. 15 =  
13 A. I. Cr. R. 157 = 1929 Cr. C. 673 =  
A. I. R. 1929 Nag. 350.

**—Court witness.**

Though the Court might in its discretion examine the accused in order to explain the circumstances appearing in the evidence of a witness examined by the Court after the case is closed, it is not obligatory on the Court to do so and the failure of the Court examine such witness does not amount to illegality. 24 Cal. 167; A. I. R. 1924 Mad. 587 and A. I. R. 1925 Bom. 170, Rel. on and A. I. R. 1928 Bom. 200, Dist. (*Patkar and Murphy, J.J.*) MAHADU *v.* EMPEROR. 30 Bom. L. R. 1086 = 29 Cr. L. J. 1057 =  
112 I. C. 561 = A. I. R. 1928 Bom. 388.

**—S. 540, Cr. P. Code.**

Where, after the defence was closed and arguments were heard the Magistrate felt on the records as they stood that some points had been left obscure and in order to elucidate them it was necessary to recall certain witnesses and to examine a new witness, and when this evidence had been recorded, he took the precaution of asking the accused if he wanted to add anything to his previous statement and on his replying in the negative he heard further arguments and then proceeded to decide the case.

*Held*, that there was no illegality in the procedure adopted nor had the petitioner been prejudiced in any way by it. 75 I. C. 541, Rel. on; A. I. R. 1924 Lah. 104 and A. I. R. 1925 Lah. 531, Dist. (*Tek Chand, J.*) MANGAT RAI *v.* EMPEROR. 110 I. C. 676 =  
10 L. L. J. 262 = 29 P. L. R. 703 =  
10 A. I. Cr. R. 519 = 29 Cr. L. J. 740 =  
A. I. R. 1928 Lah. 647.

**—Madras practice—General questioning is enough.**

Under S. 342 after the close of the prosecution evidence, the Magistrate need not put specific questions to the accused; questioning the accused generally on the case is sufficient. (A. I. R. 1926 Lah. 447 and A. I. R. 1925 Lah. 361, Not Foll.) (*Jackson, J.*) RAMASWAMI *v.* KING-EMPEROR. 28 Cr. L. J. 383 = 100 I. C. 991 =  
26 M. L. W. 33 = A. I. R. 1927 Mad. 613.

**—Specific questions.**

A formal question in general terms is a sufficient com-



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pliance with the mandatory provisions of S. 342, although in a particular case it may be open to, and advisable for the Court, in the exercise of its discretion, to put more specific questions. (Newbould, J. in A.I.R. 1925 Cal. 361, Foll.) (*Findlay, Offg. J.C.*) WASUDEO v. KING-EMPEROR. 91 I. C. 997 = 27 Cr. L. J. 181 = A. I. R. 1927 Nag. 71.

—*Statement by pleader—Personal attendance excused—Personal attendance for making statement under S. 342 is not necessary.*

Where personal attendance of the accused has been excused under S. 205, there should be no objection to allowing them to leave it to their pleader to make statements under S. 342, if any, on their behalf and this personal attendance should not be insisted upon. (*Maung Ba, J.*) MAUNG PO NYEIN v. HAKA SINGH. 99 I. C. 1026 = 4 Rang. 506 = 28 Cr. L. J. 226 = A. I. R. 1927 Rang. 73.

—*S. 540, Cr. P. Code.*

Section 540 is not controlled by S. 342 and therefore where the accused is once examined as required by S. 342 and then a witness is examined under S. 540, Cr. P. Code., a Court is not bound to examine the accused again after recording the statement of that witness. (*Shadilal, C. J.*) FAZAL KARIM v. EMPEROR. 26 Cr. L. J. 1418 = 89 I. C. 842 = A. I. R. 1926 Lah. 154.

—*Curing the defect.*

If a Magistrate fails to examine an accused after the witnesses for the prosecution have been examined, and before he is called on for his defence, he can set the matter right by again questioning the accused and then again calling on him to enter on his defence. (*Hallifax, A. J. C.*) WASUDEO v. EMPEROR. 89 I. C. 897 = 26 Cr. L. J. 1425 = A. I. R. 1925 Nag. 433.

—*Power to ask specific questions.*

It is incumbent on the Court to ask the accused generally whether he wishes to offer an explanation of any of the evidence which has been given against him and if the Court does so that would be a sufficient compliance with the section. But the section also gives the Court power to put specific questions to the accused with regard to any of the evidence adduced for the prosecution. But it is left entirely to the discretion of the Magistrates and Judges whether they should, after having put the general question, ask specific questions on particular points in the evidence. (*Macleod, C. J.*) EMPEROR v. NARAYAN SAYANNA. 26 Bom. L. B. 109 = 25 Cr. L. J. 1127 = 81 I. C. 951 = A. I. R. 1924 Bom. 334.

—*Evidence Act, S. 73—Finger impressions—Taking of.* Section 73 specifically directs that any person present in Court may be directed to make a finger impression for the purpose of comparing it with any finger impression alleged to have been his. There is no exception made in favour of an accused person. S. 342, Cr. P. Code, does not prohibit the taking of the finger impression from an accused. (10 Bom. L. T. 32, Overruled.) (*Young, Offg. C. J. T. Heald and May Oung, J.J.*) KING-EMPEROR v. NGA TUN HLAING. 83 I. C. 668 = 1 Rang. 759 = 2 Bur. L. J. 270 = 26 Cr. L. J. 108 = A. I. R. 1924 Rang. 115 (F. B.).

—*Questions during examination of P. Ws.*

A Court does not commit an illegality if it questions an accused person either after the complainant has been examined or before all the evidence for the prosecution has been recorded. It may often be very desirable that an accused should be asked certain questions at an early stage of the case and before all the prosecution evidence has been recorded as this may tend

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to avoid the introduction into the case of a mass of evidence which is unnecessary. But any questions put to an accused by a Court in the course of an inquiry or trial does not dispense with the necessity of examining the accused after all the witnesses for the prosecution have been examined and he is called upon for his defence. (*Raymond and Aston, A. J. Cs.*) DINU v. EMPEROR. 83 I. C. 895 = 25 Cr. L. J. 191 = 16 S. L. R. 201 = A. I. R. 1921 Sind 131.

—*S. 342—Privileged occasion.*

—*Defamatory statement while answering under S. 342.*

In a prosecution under S. 499, where the accused's answer, alleged to be defamatory, was relevant to the matter in issue and arose out of a question put by the Court in a previous criminal proceeding against him,

*Held*, that the provisions of S. 342 (2) applied and that the accused was not at any rate punishable for making such statement. 36 Mad. 216; A. I. R. 1921 Cal. 1 (S. B.), Ref.; A. I. R. 1926 All. 287, Dist.; A. I. R. 1926 Bom. 141 (F. B.), Expl. and Diss. from. (*Dalal, J.*) MURTI PATHAK v. EMPEROR.

8 L. R. A. Cr. 128 = 8 A. I. Cr. R. 211 = 25 A. L. J. 855 = A. I. R. 1927 All. 707.

—*No absolute privilege.*

Relevant statements made by an accused person under S. 342, Cr. P. Code, or contained in a written statement filed by him with the Court's permission are not absolutely protected from being the subject of a prosecution for defamation under S. 500, I. P. Code, on grounds of public policy or exceptions derived from the Common Law of England. 48 Cal. 388 (S. B.), Foll. (*Macleod C. J., Crump and Coyajee, J.J.*) RAI SHANTA v. UMRAO AMIR. 50 Bom. 162 = 28 Bom. L. R. 1 = 27 Cr. L. J. 423 = 93 I. C. 151 = A. I. R. 1926 Bom. 141 (F. B.).

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—*Form of question.*

In examining the accused under S. 342, Cr. P. Code, it is not proper for the court to seek in any way to entrap him with admissions which may fill gaps in the prosecution case. But the Court can take with account answers given to legitimate questions. (*Courtney-Terrill, C. J. and Rowland, J.*) KALU MANJHI v. EMPEROR. 9 Pat. 504 = 1930 Cr. C. 926 = 11 Pat. L. T. 706 = A. I. R. 1930 Pat. 498.

—*Practice in the Punjab.*

Prosecution witnesses examined in detail before charge—No fresh witnesses taken—Accused need not necessarily be asked explanation after further cross-examination. (Case - law Disc.) (*Aldison, J.*) EMPEROR v. NADIR. 116 I. C. 455 = 30 Cr. L. J. 625 = 13 A. I. Cr. R. 37 = A. I. R. 1929 Lah. 371.

—*Form of question.*

The proper method of applying S. 342 is to bring to the attention of the accused specific matters which appear in the evidence against them, and merely questioning them generally as to whether they have anything to add to what was said before the Committing Magistrate is not a satisfactory method of applying S. 342. (*Greaves and Panton, J.J.*) SHAMLAL SINGH v. EMPEROR. 85 I. C. 716 = 26 Cr. L. J. 572 = A. I. R. 1925 Cal. 980.

—*Detailed examination not necessary.*

What must be the nature of the questions put by the Court depends upon the circumstances of each case: but it would be a sufficient compliance with the provision of the Code if the Court gives to the accused an opportunity by questioning him generally on the case to explain the circumstances appearing in the case against

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him. It is neither necessary nor desirable to examine the accused in great detail or to force him to disclose his defence. (A.I.R. 1925 Pat. 342; A.I.R. 1925 Pat. 389, 29 Cal. W. N. 231, Ref.) (*Jwala Prasad, J.*)

MAHOMMAD NASIRUDDIN v. EMPEROR.

87 I. C. 106 = 6 P. L. T. 588 = 4 Pat. 459 =  
26 Cr. L. J. 954 = A. I. R. 1925 Pat. 713.

**General question is enough.**

Where after the prosecution evidence was over the Court asked the accused "Have you any statement to make"; and the accused replied in the negative,

*Held*, in the circumstances of the case, the provisions of the section were complied with. (*Foster, J.*)

BANAMALI KUMAR v. EMPEROR.

86 I. C. 58 =  
26 Cr. L. J. 682 = 3 Pat. L. R. Cr. 25 =  
6 P. L. T. 39 = A. I. R. 1925 Pat. 389.

**Refusal to answer.**

Though it is the duty of the Magistrate to question the accused generally on the case after the close of the prosecution yet when the accused refuses to answer a question, the Magistrate is not bound to go on asking questions especially where a written statement is put in at the time, meeting the points of the prosecution. (*Adami and Bucknill, J.J.*)

BHAGWAT SINGH v. EMPEROR.  
86 I. C. 996 = 4 Pat. 231 =  
6 P. L. T. 73 = 26 Cr. L. J. 932 =  
A. I. R. 1925 Pat. 378.

**Specific question.**

Under S. 342 in order to enable the accused to know what are the circumstances appearing in the evidence against him and what the Court considers to be such circumstances, it is necessary for the Court to put those circumstances directly to the accused and to ask him to explain those circumstances if he can. The object of S. 342, Cr. P. Code, is to enable the accused to know what in the opinion of the Court are the circumstances which from the evidence appear to be against him. To merely question the accused after the cross examination of the prosecution witnesses whether they had anything to say then, is not a sufficient compliance with the provisions of the law. (A.I.R. 1924 Pat. 791, Foll.) (*Kulwant Sahay, J.*)

DURGA RAM v. EMPEROR.  
86 I. C. 156 = 6 P. L. T. 33 =  
26 Cr. L. J. 716 = A. I. R. 1925 Pat. 342.

Accused must be examined even after cross-examination or re-examination of prosecution witnesses after framing of charge or after fresh evidence of the prosecution evidence after charge. (Case-law referred to.) (*Rupchand Bilaram, A. J. C.*)

THANGLI v. EMPEROR.  
81 I. C. 150 = 19 S. L. R. 104 =  
25 Cr. L. J. 662 = A. I. R. 1925 Sind 127.

**Re-calling of prosecution witnesses.**

Section 342 does not make it legally incumbent on the Magistrate to further question the accused with reference to the evidence elicited from the prosecution witnesses, after the framing of the charge, when they are re-called by the Magistrate under S. 256, Cr. P. Code. It may be highly desirable that he should so question the accused, if the evidence contains a new matter of importance. (*Ayling and Odgers, J.J.*)

THACHROTH HYDROSS. *In re*.  
75 I. C. 695 =  
18 M. L. W. 113 = 1923 M. W. N. 860 =  
25 Cr. L. J. 7 = A. I. R. 1923 Mad. 694 =  
45 M. L. J. 279.

**S. 342—Scope.**

Examination of the accused under S. 342 is imperative and the section applies both to warrant as well as summons cases. A. I. R. 1924 Mad. 15 (F. B.)

Dist.; A. I. R. 1925 Nag. 44 (F.B.) Ref. (*Findlay*

*On g. J. C.*) BHAGWAN v. EMPEROR. 9 N. L. J. 43 =

**CR. P. CODE (1898), S. 342—Summons case.**

22 N. L. R. 65 = 27 Cr. L. J. 632 = 94 I. C. 408 =  
A. I. R. 1926 Nag. 300.

**Summary trials.**

The words "if any" in S. 263 do not limit the obligation imposed on Courts by S. 342, or render it inapplicable to summary trials; they merely have reference to those cases in which owing to the admission and plea of the accused, or owing to the weakness of the evidence called in support of the prosecution, the accused can either be convicted on his own plea, without the taking of evidence or acquitted on the evidence without the examination referred to in S. 342. (*Kennedy, J. C.*)

ASTON and DeSouza, A. J. C.s.) EMPEROR v. NABU.  
90 I. C. 434 = 20 S. L. R. 34 =  
26 Cr. L. J. 1554 = A. I. R. 1926 Sind 1 (F. B.).

**Person who is not an accused.**

Section 342 of the Cr. P. Code cannot be invoked in aid of a person who not being an accused person goes to a Court and makes a false charge against other persons. That section only protects an accused person from punishment for giving false answers to the Court. (*Pullan, A. J. C.*)

MAKHDOM v. EMPEROR.  
82 I. C. 58 = 25 Cr. L. J. 1194 =  
A. I. R. 1925 Oudh 227.

**Security proceedings.**

S. 342 is not mandatory and is inapplicable to inquiries under S. 110, Cr. P. Code. The omission to call upon the person to enter upon his defence at the close of the prosecution case is an irregularity curable by S. 537 when he has not been prejudiced. (50 Cal. 223, Not Foll.) (*C. C. Ghose and Cuming, J.J.*)

BINODE BEHARI NATH v. EMPEROR.  
81 I. C. 909 =  
50 Cal. 985 = 25 Cr. L. J. 1085 =  
A. I. R. 1924 Cal. 392.

**S. 342—Sessions Court.**

The Sessions Judge, in cases tried by jury must carefully examine the accused in his own Court. (*Dulal, J. C.*)

EMPEROR v. MAHAMMAD SHAFI.  
26 Cr. L. J. 1576 = 90 I. C. 536 =  
A. I. R. 1926 Oudh 57.

**Committing Court.**

It is not obligatory on the Committing Court to examine the accused after the evidence of all the prosecution witnesses has been recorded. In a case exclusively triable by the Sessions Court it is that Court that tries the accused and calls upon him for his defence and the Sessions Court should strictly conform to the provisions of S. 342. Where this is done, the failure of the Committing Court to examine accused under S. 342 is immaterial. It is highly desirable that Committing Magistrate should adhere to the provisions of S. 342 and examine the accused after the prosecution case has been concluded. (*Raymond and Aston, A. J. C.s.*)

DINU v. EMPEROR.  
83 I. C. 895 =  
25 Cr. L. J. 191 = 16 S. L. R. 201 =  
A. I. R. 1921 Sind 131.

**S. 342—Summons case.**

Section 342 applies to summons cases. (case-law discussed). (*Rankin, C. J. and Duval J.*)

BECHU LAL v. INJURED LADY.  
54 Cal. 286 =  
45 Cr. L. J. 8 = 100 I. C. 377 = 28 Cr. L. J. 297 =  
7 A. I. Cr. R. 421 = A. I. R. 1927 Cal. 250.

S. 342 is not applicable to summons cases and where the accused files a written statement after the close of the case for the prosecution and before entering on his defence, it is not essential for the Magistrate to question him generally on the case. (*Zafar Ali, J.*)

KALE KHAN v. KING-EMPEROR. 101 I. C. 608 =  
9 L. L. J. 109 = 28 P. L. R. 228 =  
28 Cr. L. J. 480 = 8 A. I. Cr. R. 107 =  
A. I. R. 1927 Lah. 268.

**CR. P. CODE (1898), S. 342—Summons case.****—Dispensing of examination.**

S. 342 is applicable to summons cases as well as to warrant cases. It may be that in a summons case the examination of the accused may be dispensed with under the first clause of S. 245 if the Magistrate after hearing the evidence finds that there is nothing to answer. (*Daniels, J.*) **KHACHHO MAL v. EMPEROR.**

27 Cr. L. J. 405 = 7 L. R. A. Cr. 76 = 93 I. C. 69 = A. I. R. 1926 All. 358.

—S. 342 is applicable to a summons case as well as to a warrant case. A. I. R. 1923 Cal. 164 and A. I. R. 1925 Cal. 480, Foll. (*Shadi Lal, C. J.*) **DEMELLO v. MRS. DEMELLO.** 27 Cr. L. J. 1000 = 96 I. C. 856 = A. I. R. 1926 Lah. 667.

**—Provisions mandatory.**

S. 342 applies even in summons cases. The initial statement of the accused in such cases under S. 242 when he is called upon to show cause under S. 243 before evidence is led does not dispense with the necessity for the examination by the Court and the statement by the accused under S. 342 at the close of the evidence for the prosecution, in explanation of the circumstances appearing in the evidence against him. The omission is a violation of express procedure ensuring an essential right of the accused person and is not an irregularity curable under S. 537. A. I. R. 1922 Bom. 290 and 5 P. L. J. 430, Foll. (*Kennedy, J. C. and Madgavkar, A. J. C.*) **EMPEROR v. PARIO.** 19 S. L. R. 121 = 27 Cr. L. J. 1290 = 98 I. C. 186 = A. I. R. 1926 Sind 281.

—The provisions of S. 342 as to the accused's examination are mandatory and apply to summons cases. (Case-law discussed). (*Kennedy, J. C., Aston and De Souza, A. J. C.*) **EMPEROR v. NABU.** 20 S. L. R. 34 = 26 Cr. L. J. 1554 = 90 I. C. 434 = A. I. R. 1926 Sind 1 (F.B.).

—**Re-trial.**

Where the accused in a summons case was prejudiced by the failure of the Magistrate to examine him at the close of the prosecution case the trial was set aside and a fresh trial ordered. (*Dalal, J. C.*) **EMPEROR v. SHEOPAL.** 85 I. C. 943 = 26 Cr. L. J. 655 = A. I. R. 1925 Oudh 491.

**—Rule inapplicable.**

S. 342 has no application to summons cases although in summons cases where no objection to a Magistrate questioning the accused generally for the purpose of enabling him to explain the circumstances appearing in the evidence against him and in complicated cases especially where the accused is not represented by Counsel, it is a desirable course notwithstanding that it is not obligatory. Recent cases of the other High Courts reviewed and dissented from. (*Schwabe, C. J., Oldfield, Ramesam, Devadoss and Coleridge, J. J.*) **PONNUSWAMI ODAYAR v. RAMASAMI THATHAN.** 74 I. C. 945 = 46 Mad. 758 = 18 M. L. W. 478 = 1923 M. W. N. 519 = 24 Cr. L. J. 833 = A. I. R. 1924 Mad. 15 = 45 M. L. J. 224 (F.B.).

**—S. 342—Time of examination.**

—Provided the accused is examined after the evidence for prosecution is completely closed to enable him to explain the circumstance appearing in evidence against him, it makes no difference whether the examination takes place before or after the framing of the charge. (*Mirza and Broomfield, J. J.*) **VISHRAM NARAYAN DEVI v. EMPEROR.** 124 I. C. 810 = 32 Bom. L. R. 596 = 31 Cr. L. J. 743 = 1930 Cr. C. 693 = A. I. R. 1930 Bom. 241.

**—Accused entering upon defence.**

The word "examination" in S. 342 includes cross-examination and re-examination and "examined" means

**CR. P. CODE (1898), S. 342—Time of examination.**

completely examined. When the accused enters upon his defence the stage at which he must be examined under S. 342 passes. After the prosecution has closed its case by examining its witness in chief and submitting them to cross-examination and re-examination, the accused cannot re-open the prosecution case by applying for an indulgence from the Court for further cross-examination and then claim the right that he should be examined over again. A. I. R. 1923 Cal. 196 and A. I. R. 1923 Cal. 927. Ref. (*Suhrwardy and Graham, J. J.*) **OBEDAR RAHMAN v. EMPEROR.** 122 I. C. 291 = 1930 Cr. C. 219 = 56 Cal. 1157 = 31 Cr. L. J. 406 = A. I. R. 1930 Cal. 219.

—The stage for calling upon the accused to explain the circumstances appearing in the evidence against him under the latter part of S. 342 is reached when after the charge is framed the accused either declines to cross-examine the prosecution witnesses or when he expresses a wish to cross-examine and the cross-examination and re-examination is finished and the evidence of the remaining witnesses for the prosecution has been taken. Omission to question the accused to explain the circumstances under the latter part of S. 342 is not an irregularity which can be condoned under S. 537 but is an illegality which vitiates the trial. [A. I. R. 1928 Bom. 140; A. I. R. 1926 Bom. 57, Rel. on; A. I. R. 1923 Mad. 609, (F. B.), not Foll.] Where the accused was questioned prior to framing of the charge and after charge, the case was posted for further cross-examination of prosecution witnesses and on that day the accused declined to do so but merely put in a list of defence witnesses,

*Held*, that the latter part of S. 342 was not complied with and it vitiated the trial. (*Patkar and Wild, J. J.*) **EMPEROR v. VENU GOPAL.** 122 I. C. 424 =

31 Cr. L. J. 402 = 31 Bom. L. R. 1134 = 1929 Cr. C. 559 = A. I. R. 1929 Bom. 447.

—The accused should be examined just before he enters on to his defence and any irregularity in omitting to examine him at proper time will come within the purview of S. 537 and will call for interference, if it has occasioned a failure of justice. A. I. R. 1923 Mad. 609 (F. B.), Rel. on. (*Ashworth, J.*) **SUDAMAN v. EMPEROR.** 49 All. 551 = 25 A. I. J. 379 = 8 L.R.A. Cr. 51 = 28 Cr. L. J. 399 = 7 A. I. Cr. R. 343 = 100 I. C. 1055 = A. I. R. 1927 All. 475.

—S. 537, Cr. P. Code.

*Cuming, J. (Obiter).*—An omission to examine the accused at the stage indicated by the section is an irregularity curable under S. 537. (*Cuming and Gregory, J. J.*) **TAMEJ KHAN v. RAJABALI MIR.** 31 C. W. N. 337 = 28 Cr. L. J. 347 = 100 I. C. 827 = 7 A. I. Cr. R. 553 = 45 C. L. J. 591 = A. I. R. 1927 Cal. 330.

—S. 342 is mandatory, and a breach of its provisions cannot be condoned and the accused should be examined after the prosecution witnesses have been cross-examined and re-examined and not before that stage. A. I. R. 1923 Cal. 470; A. I. R. 1924 Pat. 376; A. I. R. 1923 Cal. 727 and A. I. R. 1925 Bom. 170, Rel. on. (*Tyabji, A. J. C.*) **MOTAN KHAN v. EMPEROR.** 21 S. L. R. 331 = 28 Cr. L. J. 417 = 101 I. C. 449 = A. I. R. 1927 Sind 175.

—The Code intends that the accused shall be given an opportunity of explaining any circumstances appearing in the evidence against him. That must mean the whole of the evidence against him and any examination under S. 342 before that evidence is closed cannot possibly fulfil the conditions of the section. The stage in the trial prescribed by S. 342, when accused has to be ques-

**CR. P. CODE (1898), S. 342—Time of examination.**

tioned generally on the case for the prosecution, is after the prosecution evidence is complete and before he is called upon to enter on his defence. (*MacLeod, C. J. and Crump, J.*) **EMPEROR v. NATHU KASTURCHAND MARWADI.** 50 Bom. 42=27 Bom. L. R. 105=26 Cr. L. J. 690=86 I. C. 66=A. I. R. 1925 Bom. 170.

—The examination of the accused must take place at the close of the prosecution case and before the accused have entered on their defence, and it is no compliance with the section if the examination takes place at a later stage. (*Greaves and Duval, J.J.*) **SURENDRA LAL SHAHA v. ISAMADDI** 84 I. C. 325=51 Cal. 933=26 Cr. L. J. 261=A. I. R. 1925 Cal. 480.

**—Examination before prosecution evidence.**

Where the accused is examined by the Court before any evidence for the prosecution has been taken, his examination cannot be said to be under S. 342. (*Scott-Smith and Fford, J.J.*) **BAHAWALA v. CROWN.**

88 I. C. 854=6 Lah. 183=26 P. L. R. 331=26 Cr. L. J. 1238=A. I. R. 1925 Lah. 432.

—Accused should be examined after cross-examination of prosecution witnesses, even where the cross-examination is adjourned at the request of accused. (*Bucknill, J.*) **BALDEO DUBEY v. KING-EMPEROR.**

72 I. C. 891=1 Pat. L. R. Cr. 29=24 Cr. L. J. 475=A. I. R. 1924 Pat. 376.

—The provisions of S. 342 as to the stage at which the examination of the accused person should take place imperative and non-compliance with them is an illegality vitiating the entire proceedings. (*Moti Sagar, J.*) **NANAK CHAND v. CROWN.** 81 I. C. 796=25 Cr. L. J. 1020=A. I. R. 1924 Lah. 734.

**—S. 342—Written statement.**

—*Query*—Does a written statement of the accused dispense entirely with the operation of S. 342? (*Mears, C. J. and Kendall, J.*) **EMPEROR v. JHABBAR MAL.** 115 I. C. 872=10 A. I. Cr. B. 101=26 A. L. J. 196=9 L. R. A. Cr. 90=30 Cr. L. J. 530=A. I. R. 1928 All. 222.

**—Effect of.**

Where an accused had been examined before the charge was framed when he stated that he would file a written statement and he did so but he declined to call witnesses,

*Held*, that the written statement relieved the Magistrate from the necessity of examining him orally in reference to the matters elicited in cross-examination of the prosecution witnesses when the accused was not prejudiced thereby. A. I. R. 1929 Pat. 388 and A. I. R. 1925 Pat. 414, *Foll.* (*Macpherson, J.*) **GURDIAL SINGH v. BHOLANATH HALWAI.** 120 I. C. 753=10 P. L. T. 196=31 Cr. L. J. 171.

**—Prejudice.**

Where the accused were examined after the complete story told by the complainant was before the Court and they had the opportunity of filing, and did file, a lengthy written statement setting out their version of the facts and of the causes why the charge had been brought, the judgment should not be set aside on the ground of irregularity. (*Daniels, J.*) **KHACOMAL v. EMPEROR.** 93 I. C. 69=27 Cr. L. J. 405=7 L. R. A. Cr. 76=A. I. R. 1926 All. 358.

—The immunity conferred by S. 342 (2) does not extend to a written statement by accused. (*Daniels, J.*) **MT. CHAMPA DEVI v. PIRBHU LAL.** 92 I. C. 429=24 A. L. J. 329=27 Cr. L. J. 253=7 L. R. A. Cr. 64=A. I. R. 1926 All. 287.

—Accused putting in written statement on questioning by Magistrate—Omission to orally examine is

**CR. P. CODE (1898), S. 342—Miscellaneous.**

not illegality. (*Fauzett and Madgavkar, J.J.*) **EMPEROR v. HARJIVAN VALJI.** 98 I. C. 407=50 Bom. 174=28 Bom. L. R. 115=27 Cr. L. J. 1335=A. I. R. 1926 Bom. 231.

**—Substitute for oral statement.**

S. 256 of the Code directs the Court to accept a written statement and it is intended that the Court should read it; and if an accused states that he will file a written statement, the writing is to be accepted in lieu of his oral statement.

Where after the examination-in-chief of the Prosecution witnesses, the accused was examined and afterwards the prosecution witnesses were cross-examined and re-examined and the accused was asked as to whether he had anything to say, and the accused also filed a written statement,

*Held*, that the fact that the accused was asked whether he had anything more to say, after the cross-examination and re-examination of the prosecution witnesses made it unnecessary to apply the principle of *Mitrajit Singh v. Emperor*, (1921) 2 P. L. T. 520.

*Held*, further that even if the Magistrate had not taken the precaution to examine the accused orally as said above the written statement filed by the accused after the cross-examination of the prosecution witnesses would have relieved the Magistrate from the necessity of examining him orally in reference to the matters elicited in the cross-examination, and re examination of the prosecution witnesses. (*Mullick and Bucknill, J.J.*) **SAIVID MOHIUDDIN v. EMPEROR.** 86 I. C. 459=4 Pat. 488=6 P. L. T. 154=3 Pat. L. R. Cr. 110=26 Cr. L. J. 811=1925 P. H. C. C. 112=A. I. R. 1925 Pat. 414.

—S. 342—Miscellaneous.

**—Cannot fill up gap in prosecution evidence.**

The Crown has to rely on the prosecution story and the evidence called in support of it. It cannot fill up a gap in the evidence for the prosecution by a statement made by the accused in his examination under S. 342, and *a fortiori* it cannot for such purpose rely on an admission in the statement of the accused divorced from its context. 26 Cal. 49 and 27 Mad. 238, *Rel. on.* (*Percival, J. C. and Aston, A. J. C.*) **SALEH v. EMPEROR.** 120 I. C. 95=30 Cr. L. J. 1135=1929 Cr. C. 683=24 S. L. R. 10=A. I. R. 1929 Sind 255.

**—Practice—Allahabad High Court—False affidavit by accused.**

According to the practice approved by the Allahabad High Court, an accused person can legally tender his own affidavit in support of an application for transfer, whether the affidavit is tendered and the application made in a subordinate Court or in the High Court, and he can be prosecuted in regard to any false statement made in the affidavit. (*Boys, J.*) **BADDU KHAN v. EMPEROR.** 108 I. C. 124=29 Cr. L. J. 336=9 A. I. Cr. R. 91=9 L. R. A. Cr. 3=A. I. R. 1928 All. 182.

**—Incomplete challan put by police—Confession under retraction.**

A was charged of murder. Before police investigation had been concluded, an incomplete challan was placed before the committing Magistrate who, after recording the evidence of some witnesses, examined the prisoner under S. 342, wherein A admitted his participation in assault. But when he was again examined he denied having committed the murder and attributed his previous statement to a promise of pardon by the police and also to the ill-treatment by the investigation officer. It was found that the incomplete challan was produced

**CR. P. CODE (1898), S. 342—Miscellaneous.**

with the object of avoiding mandatory provisions of S. 164.

*Held*, that an attempt by the police to get over the mandatory provisions of S. 164 must be deprecated and such a confession must be excluded from consideration. (*Shadi Lal, C. J. and Coldstream, J.*) SULLAH v. EMPEROR.

110 I. C. 329 = 2 P.L.R. 388 =  
10 L. L. J. 311 = 10 A.I.Cr. R. 508 =  
29 Cr. L. J. 697 = A. I. R. 1928 Lah. 724.

**—Evidence taken after statement.**

Evidence recorded after examination of accused without further explanation from him cannot be taken into account. (*Dalip Singh, J.*) MANGTA v. EMPEROR.

29 Cr. L. J. 11 = 106 I. C. 347 =  
A. I. R. 1927 Lah. 916.

**—Principle.**

It is repugnant to all principles of criminal law as administered in India to compel a person to give evidence in the very matter in which he is accused or is liable to be accused, and then to base the charge on such evidence, and at the trial of the accused to use such evidence given on oath as a statement tending to prove the guilt of the accused. (*Taraporewala, J.*) EMPEROR v. KAZI DAWOOD.

50 Bom. 56 =  
28 Bom. L. R. 79 = 27 Cr. L. J. 433 = 93 I. C. 225 =  
A. I. R. 1926 Bom. 144.

**—Use of statement.**

The accused's statement under S. 342 can, and in cases of circumstantial evidence must, be taken into consideration. (*Fawcett and Madgavkar, JJ.*) EMPEROR v. ABDUL.

49 Bom. 878 =  
27 Bom. L. R. 1373 = 27 Cr. L. J. 114 = 91 I. C. 690 =  
A. I. R. 1926 Bom. 71.

**—Warrant case.**

In a warrant case it is imperative on the Magistrate to draw up a formal charge against the accused in manner indicated in S. 254 and to comply strictly with the provisions of S. 342. (*C. C. Ghose and Duval, JJ.*) MAHOMED RAFIQUE v. EMPEROR.

43 C.L. J. 100 = 27 Cr. L. J. 406 = 93 I. C. 70 =  
A. I. R. 1926 Cal. 537.

**—Suspicious circumstances—Explanation of.**

Per *Mookerjee, J.*—Though the proof of the case against the prisoner must depend for its support, not upon the absence of explanation on the part of the prisoner, but upon the positive affirmative evidence of his guilt given by the Crown, yet if he is involved by such evidence in a state of considerable suspicion, he is called upon, for his own sake and for his own safety, to state and elucidate the circumstances, whatever they may be which might reconcile such suspicious appearances with perfect innocence. (*Mookerjee, Richardson, C.C. Ghosh, Cuming and Page, JJ.*) EMPEROR v. BARENDRA KUMAR GHOSE.

81 I. C. 353 =  
28 C. W. N. 170 = 38 C.L.J. 411 =  
25 Cr. L. J. 817 = A. I. R. 1924 Cal. 257 (F.R.).

**—Need not speak truth.**

An accused person is not bound to speak the truth and he cannot be pinned down to any statement that he may have made. (*Broadway and Campbell, JJ.*) KAKAR SINGH v. THE CROWN.

81 I. C. 717 = 6 L.L.J. 575 = 25 Cr. L. J. 1005 =  
A. I. R. 1924 Lah. 733.

**—S. 343—Amnesty.**

The local Government which has the power to institute and refrain from prosecuting offenders can give an assurance of amnesty to a witness even before he makes a statement. Such assurance does not affect the competency though it may affect the credibility of the witness. There is nothing in S. 343, Cr. P. C., against it. (*Prideaux, A. J. C.*) ANANT WASUDEO CHAN.

**CR. P. CODE (1898), S. 344—Discretion.**

DEKAR v. EMPEROR. 89 I. C. 1035 = 8 N.L.J. 138 =  
26 Cr. L. J. 1467 = A. I. R. 1925 Nag. 313.  
—S. 343—Scope.

—It is not the duty of the accused person to produce his absconding co-accused persons before the Court and a Court of justice is not justified in exercising any pressure upon an accused person before it with the object of coercing him to produce persons who are fugitives from justice. (*Agha Haidar, J.*) FAKIR MAHAMMAD v. EMPEROR.

1930 Cr. C. 1049 = A. I. R. 1930 Lah. 953.

**—S. 344—Advancement of hearing.****—Notice to accused.**

When a case is fixed for a future date, it can be heard at an earlier date, provided due notice is given to the accused or his pleader. The intention of the Code is that a criminal trial should proceed forthwith and should be continued from day to day until its termination. The changing of the date is not even a technical irregularity and the procedure is not illegal or irregular. (*Staples, A. J. C.*) ROUTMAL v. SAMPAT.

11 N.L.J. 260 = 29 Cr. L. J. 1092 = 112 I. C. 676 =  
11 A.I.Cr. R. 368 = A.I.R. 1929 Nag. 42.

**—S. 344—Costs.****—Adjournment.**

A Magistrate is not justified in ordering costs of adjournment to be paid by complainant for failure to produce evidence when one of the accused is not present on the date and an adjournment is necessary in order to procure the attendance of the absent accused. (*Shadi Lal, C. J.*) BISHA BAR v. RAM CHAND.

27 Cr. L. J. 572 = 94 I.C. 140 = A. I. R. 1926 Lah. 407.

—After the framing of a charge in a non-compoundable warrant case the position of the complainant is reduced to that of a witness, and he cannot be ordered to pay the costs of an adjournment occasioned by his failure to attend on any particular date of hearing. (*Zafar Ali, J.*) NABI BAKSH v. EMPEROR.

76 I. C. 23 = 25 Cr. L. J. 87 = A.I.R. 1924 Lah. 627.

**—S. 344—Court hours.**

Court has no right to take up a case after prescribed Court time without parties' consent. Where a party was asked to cross-examine a witness at 6-30 P.M. when he asked for adjournment on the ground that his pleader was not then available,

*Held*, that he was within his right to have the case adjourned. (*Jwala Prasad, J.*) GULAI JAH v. EMPEROR. 9 P.L.T. 344 = 29 Cr. L. J. 299 = 107 I. C. 827 =  
10 A. I. C. R. 23 = A. I. R. 1928 Pat. 277.

**—S. 344—Discretion.**

—Magistrate should refrain from granting adjournments save in cases where they are clearly necessitated for the purpose of justice. (*Courtney-Terrell, C. J. and James, J.*) NARAYAN MAHARANA v. EMPEROR.

125 I. C. 134 = 11 Pat. L. T. 772 = 31 Cr. L. J. 789 =  
1930 Cr. C. 509 = 9 Pat. 113 =  
A. I. R. 1930 Pat. 241.

—It is the policy of the law that a Court should proceed to enquire into and try the case as soon as it takes cognizance of a complaint, but it is not prevented by any provision of the law from postponing the enquiry or trial if in its opinion there are sufficient and reasonable grounds for so doing. (*Kulwant Sahay, J.*) RAM SARAN SINGH v. NIKHAD NARAIN. 88 I. C. 603 =  
3 Pat. L. R. Cr. 134 = 6 P. L. T. 477 =  
26 Cr. L. J. 1179 = A. I. R. 1925 Pat. 619.

—Real question under Section is as to reasonable cause for postponement—High Court will not interfere where discretion has been judicially exercised. (*Kulwant Sahay, J.*) RAM SARAN SINGH v. NIKHAD NARAIN. 88 I. C. 603 = 3 Pat. L. R. Cr. 134 =

**CR. P. CODE (1898), S. 344—Frequent adjournments.**

6 P. L. T. 477=36 Cr. L. J. 1179=  
A. I. R. 1925 Pat. 619.

**—S. 344—Frequent adjournments.**

—It is not at the sweet will of the prosecution to go on with a case or get it adjourned, and the Court ought not to do anything which will encourage a contrary idea. (*Newbould and Mukerji, J.J.*) RASH BEHARY KARURY v. CORPORATION OF CALCUTTA.  
26 Cr. L. J. 1050=87 I. C. 970=  
A. I. R. 1926 Cal. 102.

**—S. 344—Grounds.**

—Where the accused did not ask for fresh process after the witness failed to attend though served adjournment was held to have been rightly refused. (*Wallace, J.*) DERWISH HUSSAIN, *In re*.

71 I. C. 212=17 M. L. W. 18=32 M. L. T. 100=  
46 Mad. 253=24 Cr. L. J. 84=  
A. I. R. 1923 Mad. 185=44 M. L. J. 84.

**—S. 344—Inherent power.**

—Per *Graham, J.*—The Magistrate has jurisdiction to postpone his enquiry, even apart from S. 344, under inherent jurisdiction. (*Suhrawardy and Graham, J.J.*) RAM GOLAM v. SURAT CHANDRA.

49 C. L. J. 388=121 I. C. 414=  
A. I. R. 1929 Cal. 281.

—Magistrate trying a case has inherent jurisdiction to adjourn inquiry or trial in a pending case. (*Mirza and Patkar, J.J.*) JAHANGIR PESTONJI WADIA v. FRAMJI RUSTOMJI WADIA.

112 I. C. 477=  
30 Bom. L. R. 962=29 Cr. L. J. 1053=  
11 A. I. Cr. R. 318.

**—S. 344—Petty case.**

—In a petty criminal case both parties should appear on the first day of hearing ready for the completion of the entire trial at a single hearing. (*Courtney-Terrell, C.J. and James, J.*) NARAYAN MAHARANA v. EMPEROR.

11 Pat. L. T. 772=125 I. C. 134=  
31 Cr. L. J. 789=1930 Cr. C. 509=9 Pat. 113=  
A. I. R. 1930 Pat. 241.

**—S. 344—Procedure.**

—No pending case should ever be postponed without a date being fixed. (*Daniels, J.*) KEVAL RAM v. EMPEROR.

7 L. R. A. Cr. 101=27 Cr. L. J. 560=  
93 I. C. 1056=A. I. R. 1926 All. 421.

**—S. 344—Process.****—Inherent power.**

S. 344 is applicable to cases even before the issue of process under S. 204 and the Magistrate is entitled under S. 344, if there be a reasonable cause for doing so, to postpone any enquiry or trial and to postpone the issue of process under S. 204 even if the case be a warrant case. (*Kulwant Sahay, J.*) RAM SARAN SINGH v. NIKHAI NARAIN.

88 I. C. 603=  
3 Pat. L. R. Cr. 134=6 P. L. T. 477=  
26 Cr. L. J. 1179=A. I. R. 1925 Pat. 619.

**—S. 344—Remand.****—Remaining witnesses—Examination of.**

The fact that the remaining witnesses could give further evidence implicating the accused is a reasonable cause for a remand, but a reasonable cause for a remand is not in itself sufficient to satisfy the requirements of S. 344. It is within the Court's discretion to postpone or not to postpone a case, and if it has within its discretion refused to postpone the case for the examination of the remaining witnesses remand is unnecessary. (*Kennedy, J. C. and Aston, A. J. C.*) ALI SHER v. MIR MAHOMED.

87 I. C. 110=  
26 Cr. L. J. 958=A. I. R. 1925 Sind 315.

**—S. 344—Revision.**

—High Court will not ordinarily interfere, if the

**CR. P. CODE (1898), S. 345—Arbitration.**

Court refusing to Act under S. 344, Cr. P. Code, has exercised a judicial discretion. (*Jackson, J.*) RAMIAH v. NATUKULA RAMIAH.

50 Mad. 839=

26 M. L. W. 113=39 M. L. T. 14=

1927 M. W. N. 672=104 I. C. 252=28 Cr. L. J. 812=

A. I. R. 1927 Mad. 778=53 M. L. J. 265.

**—S. 344—Scope.**

—Powers of postponements or adjournments are regulated by S. 344 after a Magistrate takes cognizance of a case. (*Greaves and Panton, J.J.*) BHOLANATH DAS v. EMPEROR.

83 I. C. 628=

28 C. W. N. 490=26 Cr. L. J. 68=

A. I. R. 1924 Cal. 614.

**—S. 344—Stay.****—Pending civil suit.**

An order staying criminal proceedings pending decision in civil suit, is in essence only justifiable on special grounds, the general rule being that High Court should avoid staying proceedings in lower Courts, particularly when the civil suit is instituted after the commencement of the criminal case with the object of postponing the criminal trials. A. I. R. 1927 Mad. 778 and 2 Weir 415, Ref. (*Macpherson, J.*) BHAGAWAT PRASAD v. RAMAKISUN RAM SONAR.

125 I. C. 124=

31 Cr. L. J. 766=1930 Cr. C. 723=11 P. L. T. 310=

A. I. R. 1930 Pat. 351.

—A Court has no power to stay proceeding in its own Court; it may adjourn a case from time to time. (*Jackson, J.*) MURUGAN v. GUTHA RAMI NAIDU.

26 M. L. W. 405=39 M. L. T. 103=

1927 M. W. N. 694=9 A. I. Cr. R. 7=

28 Cr. L. J. 849=104 I. C. 625=

A. I. R. 1927 Mad. 851=53 M. L. J. 455.

**—Pending civil suit.**

Applications for staying of criminal proceedings during the pendency of a civil suit are sometimes argued as if there were an invariable rule that when the same issue is agitated both in the civil and criminal side, the civil shall take precedence of the criminal Court. This is not so. Each case must be considered on its own merits and the only general rule that can be adumbrated is that every Court should be left as far as possible to dispose of the cases on its file with the utmost expedition.

It must be assumed that in either Court justice will be done and which Court precedes the other is merely a question of convenience. (*Jackson, J.*) CHITRALA RAMIAH v. NATUKULA RAMIAH.

104 I. C. 252=50 Mad. 839=26 M. L. W. 113=

39 M. L. T. 14=1927 M. W. N. 672=

28 Cr. L. J. 812=A. I. R. 1927 Mad. 778=

53 M. L. J. 265.

—Application for stay of criminal proceedings pending civil suit cannot be made to the High Court unless Magistrate has refused it. (*Spencer, J.*) Y. ANKANNA v. ADRI BHOTLU.

73 I. C. 528=

18 M. L. W. 236=24 Cr. L. J. 640=

A. I. R. 1924 Mad. 235.

**—S. 345—Applicability.**

—An offence of wrongful restraint is compoundable by the person restrained, and it is not necessary that a composition should be arrived at after a complaint has been filed in Court. 41 Mad. 685, Rel. on (*Dalal, J.*) TORPEY, F. M. v. EMPEROR.

101 I. C. 671=25 A. L. J. 396=8 L. R. A. Cr. 49=

7 A. I. Cr. R. 339=28 Cr. L. J. 495=49 All. 484=

A. I. R. 1927 All. 375.

**S. 345—Arbitration.**

—A criminal complaint cannot be referred to arbitration and therefore, the award following it cannot be made a rule of civil Court. (*Addison, J.*) MALKA v.



**CR. P. CODE (1898), S. 345—Arbitration.**

**SARDAR.** 116 I. C. 215 = 30 P. L. R. 122 = 11 L. L. J. 89 = A. I. R. 1929 Lah. 394.  
 —Both parties to a proceeding under S. 427, I. P. Code, filed a petition of compromise agreeing to be bound by the decision of arbitrators named therein and asked for adjournment for settlement of their dispute. The arbitrators made an award, which was objected to by the complainant.

*Held*, that the agreement to refer the case to arbitration was not a final settlement of the dispute which the Court was bound to accept as it was not the intention of the parties to treat the reference to arbitration as taking the case out of the jurisdiction of the criminal Court. (*Newbould and B. B. Ghose, J.J.*) **SRISH CHANDRA GHOSE v. ABANI NATH HAZRA.**

90 I. C. 544 = 42 C. L. J. 139 = 26 Cr. L. J. 1584 = A. I. R. 1926 Cal. 266.

—*No composition.*

Pending a criminal case of defamation the parties entered into an agreement referring to certain arbitrators the decision of all their disputes including the criminal case within 15 days.

*Held*, that until the arbitrators decided the dispute, the offence cannot be treated as compounded. 21 Cal. 103, Foll. (*Krishnan, J.*) **RAMALINGA AIYAR v. VARADARAJULU AIYAR** 90 I. C. 666 = 26 Cr. L. J. 1594 = 22 M. L. W. 390 = 1925 M. W. N. 753 = A. I. R. 1925 Mad. 1211 = 49 M. L. J. 544.

—*Power of Court—Compounding offence by award.*

A criminal case is not a matter between parties as a civil case is. A Magistrate is not bound to recognize a reference to arbitration and wait for the arbitrators to make the award though it will be reasonable to do so. If he does not choose to wait, he will not be doing anything illegal. But if he chooses to wait and then there is an award, that award may amount to a compounding of the offence in question, and if it is an offence compoundable under S. 345 effect will be given to such compounding. But till the actual compounding takes place the Magistrate is not bound at all to stay his hands but may go on with the trial of the case himself. (*Krishnan, J.*) **RAMALINGA AIYAR v. BUDDA VARADARAJULU AIYAR.** 90 I. C. 666 = 26 Cr. L. J. 1594 = 22 M. L. W. 390 = 1925 M. W. N. 753 = A. I. R. 1925 Mad. 1211 = 49 M. L. J. 544.

—**S. 345—Composition by agent.**

—*Legality of.*

A compounded a complaint of grievous hurt filed by his wife without obtaining her signature on the application of compromise on the other party's (*H's*) passing an unregistered document that *A* shall be allowed to stay in a certain house for his lifetime free of rent. A suit was brought by *H* for ejectment of *A*, alleging that the agreement was illegal and was inoperative as it was unregistered. *Held*, that the consideration for the agreement was not illegal and the agreement was not void merely because of the absence of the signature of *A's* wife. 37 All. 419 and 37 Mad. 385, Dist. (*Madgavkar, J.*) **AHMED HASAN v. HASAN MAHOMED MALEK.** 112 I. C. 459 = 52 Bom. 693 = 30 Bom. L. R. 885 = A. I. R. 1928 Bom. 305.

—*Who can compound.*

A complaint was filed by the wife for cheating her husband and was compounded by the wife and the accused was acquitted; the husband subsequently filed another complaint against the same accused for cheating. *Held*, that the composition of the previous complaint by wife, not having been arrived at with the husband, the real person aggrieved, is not a valid composition which will bar a subsequent prosecution. 21

**CR. P. CODE (1898), S. 345—Effect of composition.**

Cal. 103 and 37 Bom. 369, Rel. on.

*Patkar, J.*—Any person may set the criminal law in motion, but it is only the person specified in S. 345, who can compound the offence. (*Fawcett and Patkar, J.J.*) **DAJIBA RAMAJI v. EMPEROR.** 102 I. C. 549 = 51 Bom. 512 = 29 Bom. L. R. 718 = 28 Cr. L. J. 581 = 8 A. I. Cr. R. 236 = A. I. R. 1927 Bom. 410.

—*Authority of agent.*

Court can acquit accused on the representation of an agent, who had filed complaint on another's behalf, that he desired to compound the offence, without enquiring into the agent's authority to compound. (*Boys, J.*) **HARBANS v. KING-EMPEROR.** 83 I. C. 658 = 22 A. L. J. 820 = 5 L. R. A. Cr. 143 = 26 Cr. L. J. 98 = A. I. R. 1924 All. 778.

—**S. 345—Compounding by agent.**

—*If permissible*

Court can acquit accused on the representation of an agent, who had filed complaint on another's behalf, that he desired to compound the offence without enquiring into the agent's authority to compounds. (*Boys, J.*) **HARBANS v. EMPEROR.** 83 I. C. 658 = 22 A. L. J. 820 = 5 L. R. A. Cr. 143 = 26 Cr. L. J. 98 = A. I. R. 1924 All. 778.

—**S. 345—Duty of Court.**

—Where the offence is compoundable by parties without consent of Court, and it is so compounded and a deed of composition filed by all parties present in Court inasmuch as only verification necessary is whether parties signed it and understood contents, the Magistrate should not adjourn case for verification but do it without unnecessary delay acquitting the accused. (*Young, J.*) **JHANGTOO BARAI v. EMPEROR.**

52 All. 254 = 127 I. C. 420 = 31 Cr. L. J. 1215 = 1930 A. L. J. 281 = 1930 Cr. C. 525 = A. I. R. 1930 All. 409.

—Determination of whether or not offence is compoundable depends on offence directly charged in complaint and not that which might have been spelled out of the complaint. 20 C. W. N. 946, Rel. on. (*Misra, J.*) **SAKTAY SHAH v. MAHADIN.**

125 I. C. 385 = 1930 Cr. C. 957 (2) = 4 Luck. 669 = 7 O. W. N. 575 = A. I. R. 1930 Oudh 196.

—Before composition is allowed the Court must be satisfied that the composition is legal and valid in law. 21 Cal. 103, Foll. (*Patkar and Baker, J.J.*) **HANMANT SHRINIVAS v. EMPEROR.**

122 I. C. 118 = 31 Cr. L. J. 353 = 31 Bom. L. R. 789 = 1929 Cr. C. 322 = A. I. R. 1929 Bom. 375

—**S. 345—Effect.**

—When the case is once brought in the Court and the parties have adjusted the matter between themselves and the matter is compoundable with the permission of the Court, the composition does not mean hushing up the matter. (*Ross, J.*) **SINGHESHWAR PRASAD v. ALI HASAN.** 11 Pat. L. T. 492 = 124 I. C. 95 = 31 Cr. L. J. 607 = 1929 Cr. C. 272 = A. I. R. 1929 Pat. 512.

—Composition of compoundable offence results in an immediate acquittal of the accused. Therefore once a composition has been effected, complainant cannot be permitted to withdraw from it. (*Moti Sagar J.*) **RAM RICHAPAL v. MATA DIN.** 25 Cr. L. J. 810 = 81 I. C. 346 = A. I. R. 1925 Lah. 159.

—**S. 345—Effect of composition.**

—*Magistrate becomes functus officio.*

Where a case is compoundable without the permission of the Court, a Magistrate has no jurisdiction to go on with the case after composition but is bound to give effect to the composition as soon as the petition of com-

**CR. P. CODE (1898), S.345—Effect of composition.**

promise is put in. (*Addison, J.*) MAHOMED ALI v. EMPEROR. 112 I. C. 562=29 Cr. L. J. 1058.

**—S. 345—Late stage.****—Permission of Magistrate.**

A Magistrate is not bound to entertain an application for composition, preferred at a late stage of the case and subsequently retracted by party thereto and where some of the offences for which accused is charged are non-compoundable. (*Pathar and Baker, J.J.*) HANMANT SHRINIVAS v. EMPEROR. 122 I.C. 118=31 Cr. L. J. 553=31 Bom. L. R. 789=1929 Cr. C. 322=A. I. R. 1929 Bom. 375.

**—S. 345—Permission.**

According to law the Magistrate trying the case has to exercise his own discretion as to whether a compromise is to be allowed or not in a challan case. He is wrong when he refers the case to the District Magistrate. (*Shadi Lal, C. J.*) PARTAB SINGH v. EMPEROR. 127 I. C. 712=1930 Cr. C. 304=31 P. L. R. 121=A.I.R. 1930 Lah. 272.

**—Absence of.**

In cases governed by S. 345 (2), Cr. P. Code, the permission of the Court before which a prosecution is pending is essential before the case can be validly compounded, and so no effect can be given to a compromise as a plea in bar of conviction unless the Court has given its sanction. Without the sanction of the Court, the so-called compromise arrived at between the parties, outside the Court, is of no legal effect and cannot be taken cognizance of by any Court dealing with the offence. 41 Mad. 685, Rel. on 39 Mad. 946, Dist. (*Shadi Lal, C. J. and Agha Haidar, J.*) NAURANG RAI v. KEDAR NATH. 9 Lah. 400=29 Cr. L. J. 585=109 I. C. 601=29 P. L. R. 510=10 A. I. Cr. R. 302=A. I. R. 1928 Lah. 232.

**—Nature of the complaint not the result.**

The procedure under which a case is tried is governed by the nature of the offence complained of and not by the ultimate result. The same analogy applies to a case of compounding. The question of a case being compoundable or not must be decided with reference to the state of facts existing at the date of the application to compound. It is not possible for a Court to see what the ultimate result of the case will be. Where at the stage at which the application to compound was presented, the case was going on as a case under S. 325, I. P. C., which is not compoundable without the leave of the Court.

Held, that the application for compromise without Court's leave was properly rejected. 3 C. W. N. 322, Dist.) *Baker, J. C.*) MT. RAVI v. MT. JAIWANTI.

89 I. C. 900=26 Cr. L. J. 1428=A. I. R. 1925 Nag. 395.

**—When given.**

Where the trial Court declined to grant permission of a compromise in a case under S. 417, I. P. C., on the ground that the offence related to Public trust property but it was found that matter would not be suitably dealt with in a criminal case and the compromise was sought at an early stage, the High Court allowed the case to be compounded. (*Macpherson, J.*) NEHAL AHMAD KHAN v. EMPEROR. 89 I. C. 385=3 Pat. L. R. Cr. 75=26 Cr. L. J. 1345=A.I.R. 1925 Pat. 583.

**—S. 345—Revision.****—Discretion.**

Where a Magistrate refuses to allow composition, and the offence is compoundable with leave of the Court and the Court does not rightly exercise the discretion, High Court can intervene in revision and allow composition. (*Ross, J.*) SINGHESHWAR PRASAD v. ALI HASAN

**CR. P. CODE (1898), S. 345—Several offences.**

11 Pat. L. T. 492=124 I. C. 95=31 Cr. L. J. 607=1929 Cr. C. 272=A. I. R. 1929 Pat. 512.

**—Interference in.**

Under the new Code, S. 345, sub-clause 5-A, a High Court acting in the exercise of its powers of revision under S. 439, may allow any person to compound any offence which he is competent to compound under this section and under Sch. 2, Chapter V, an offence under S. 420, Penal Code, is made compoundable by the new Code. (*Sulaiman, J.*) BRIJ BEHARI v. EMPEROR.

81 I. C. 717=46 All. 91=21 A. L. J. 838=5 L. R. A. Cr. 8=25 Cr. L. J. 1005=A. I. R. 1924 All. 209.

The High Court may allow an offence under S. 498 Penal Code to be compounded in revision 17 O. C. 92, Foll. (*Kanhaiya Lal J. C.*) CHHOTAI SINGH v. EMPEROR. 73 I. C. 334=24 Cr. L. J. 590=A. I. R. 1924 Oudh 260.

**—S. 345—Right to compound.**

Where the offence charged is non-compoundable the settlement must be deemed to be invalid, but where the offence charged is compoundable the settlement cannot be deemed to be invalid because the Legislature itself allows a settlement of such case and it cannot, therefore, be said that the object of such an agreement is opposed to public policy. (*Misra, J.*) SAKTAY SHAH v. MAHADIN. 125 I. C. 385=1930 Cr. C. 957=4 Luck. 669=7 O.W.N. 575=A. I. R. 1930 Oudh 196.

**—S. 345—Several accused.**

The compounding of an offence with one or more of several accused persons has not the effect of acquittal in respect of the remaining accused between whom and the complainant no composition has been arrived at. (*Shadi Lal, C. J.*) EMPEROR v. MOHNA.

7 Lah. 344=27 Cr. L. J. 576=27 P. L. R. 493=94 I. C. 144=A. I. R. 1926 Lah. 424.

**—S. 345 - Several offences.**

Where in a joint complaint with reference to distinct and independent transactions there is composition with respect to one transaction the effect of such composition is acquittal with respect to charges brought under the particular transaction. The composition does not operate as acquittal with reference to the offence committed in the other transaction. (*Sen, J.*) HUKUM SINGH v. EMPEROR. 120 I. C. 117=1930 Cr. C. 81=1930 A. L. J. 85=30 Cr. L. J. 1149=A. I. R. 1930 All. 92.

Where, in a trial under Ss. 147 and 325, Penal Code, the accused was acquitted under S. 147, but convicted under S. 325, and where during the pendency of the appeal against this conviction, the matter was compromised, *Held*, that there was no reason for rejecting the application praying that the compromise might be allowed, as the offence was a compoundable one. (*Chotzner and Gregory, J.J.*) TITAM PRAMANIK v. CHITAN PRAMANIK. 55 Cal. 1190=115 I. C. 528=30 Cr. L. J. 484=A. I. R. 1929 Cal. 96.

**—Procedure.**

Where in a trial of the accused for offences under the Penal Code Ss. 147 and 325, the Court sanctions the compromise of the charge under S. 325, the prosecution for the offence under S. 147 does not *ipso facto* fail. If in such a case, the circumstances require it, the Court can discharge the accused in respect of the charge under S. 147. (*Campbell, J.*) EMPEROR v. JAMALI.

86 I. C. 62=26 Cr. L. J. 686=26 P. L. R. 35=A. I. R. 1925 Lah. 464.

Where the complaint was in respect of two offences, one against the complainant and the other against

**CR. P. CODE (1898), S. 345—Several offences.**

another person the complainant alone cannot compound the whole case and he can compound the offence committed against him. (*Newbould and Suhrwardy, J.J.*) SHIB CHANDRA CHAKRAVARTY v. RABBANI MONDAL. 73 I. C. 322=27 C. W. N. 168=37 C. L. J. 254=24 Cr. L. J. 578=

A. I. R. 1923 Cal. 168.

**—S. 345—Stage.**

—S. 342, I. P. C.

The offence under S. 342, Penal Code, is compoundable without permission of the Court and the fact that the prosecution evidence has been closed and that a charge is framed against the accused is no bar to the composition as the offence can be compounded at any time before passing of the sentence. (*Addison, J.*) MUHAMMAD ALI v. EMPEROR, 112 I. C. 562=29 Cr. L. J. 1058.

**—S. 341, I. P. C.**

An offence of wrongful restraint is compoundable by the person restrained and it is not necessary that a composition should be arrived at after a complaint has been filed in Court: (41 Mad. 685, Rel. on.) (*Datal, J.*) MRS F. M. TORPEY v. EMPEROR.

101 I. C. 671=49 All. 484=25 A. L. J. 396=

8 L. R. A. Cr. 49=7 A. I. Cr. R. 339=

28 Cr. L. J. 495=A. I. R. 1927 All. 375.

**—S. 345—Subsequent to charge.**

The fact that the prosecution evidence had been closed and that a charge was framed against the accused is no bar to the composition of the offence. (*Addison, J.*) MAHOMED ALI v. EMPEROR.

112 I. C. 562=29 Cr. L. J. 1058.

**—S. 345—Validity of agreement.**

A compounded a complaint of grievous hurt filed by his wife without obtaining her signature on the application of compromise on the other party's (*H's*) passing an unregistered document that A shall be allowed to stay in a certain house for his life-time free of rent. A suit was brought by H for ejectment of A, alleging that the agreement was illegal and was inoperative as it was unregistered. Held, that the consideration for the agreement was not illegal and the agreement was not void merely because of the absence of the signature of A's wife. (37 All. 419 and 37 Mad. 385, Dist.) (*Madgavkar, J.*) AHMED HASSAN v. HASSAN MD. MALEK, 112 I. C. 459=

52 Bom. 693=30 Bom. L. R. 885=

A. I. R. 1928 Bom. 305.

**—S. 345—Withdrawal.**

Composition once effected cannot be withdrawn. (3 C. W. N. 322; 3 C. W. N. 548; 39 Mad. 946; 21 Cal. 103; 41 Mad. 685 and A. I. R. 1925 Lah. 159, Rel. on.) (*Young, J.*) JHANGTOO BARAI v. EMPEROR.

127 I. C. 420=52 All. 254=

1930 A. L. J. 281=1930 Cr. C. 525=

A. I. R. 1930 All. 409.

**—S. 346—'Evidence'.**

—Scope of.

The word "evidence" in S. 346 is not restricted to depositions recorded by Magistrate but includes all facts and statements disclosed by his enquiry. (*Wallace, J.*) BALKRISHNA REDDIAR v. EMPEROR. 100 I. C. 992=28 Cr. L. J. 384=7 A. I. Cr. R. 545=

A. I. R. 1927 Mad. 591.

**—S. 346—Graver and lesser offence.**

—Jurisdiction.

Where the offence complained of was one under S. 430, I. P. C., but the Bench tried the accused for a lesser offence under S. 426, I. P. C. and it appeared that they had jurisdiction to try the former and not the latter offence,

**CR. P. CODE (1898), S. 347—Defective procedure.**

Held that the proceeding was not void. (24 M. 675 and 27 M. L. J. 594, Followed.) (*Sundaram Chetti, J.*) PICHAKUDUMBAN v. SERVAIKARA THEVAN. 1930 M. W. N. 770.

**—S. 346—'Inquiry'**

—Scope of.

Where a Magistrate directs under S. 202 an inquiry by another Magistrate or Police Officer or other person, he is doing so in the course of his own inquiry into the offence and his inquiry therefore has already begun within the meaning of S. 346 of the Code. (*Wallace, J.*) BALAKRISHNA v. EMPEROR. 100 I. C. 992=28 Cr. L. J. 384=7 A. I. Cr. R. 545=

A. I. R. 1927 Mad. 591.

**—S. 346—Scope.**

The terms of sub-S. (2), S. 346 are quite clear and sufficiently wide to embrace a reference back of the case to the Magistrate who originally submitted it. (A. I. R. 1923 Mad. 51, Expl. and Appr.; (1890) Rat. Un. Cr. C. 499 and (1891) Rat. Un. Cr. C. 554, Expl.) (*Beasley, C. J. and Anantakrishna Ayyar and Curgenven, J.J.*) POLUR REDDI v. MUNUSAMI REDDI.

126 I. C. 495=1930 Cr. C. 961=32 M. L. W. 381=

31 Cr. L. J. 1010=1930 M. W. N. 493=

A. I. R. 1930 Mad. 765=59 M. L. J. 308 (F. B.).

**—S. 346—Validity of transfer.**

—Charge sheet before Referring Sub-Magistrate.

Where on a reference under S. 202, Cr. P. C., the Police sent a charge sheet to the Referring Sub-Magistrate who accepted it and sent it up under S. 346 to the Sub-Divisional Magistrate as in his opinion the case was a first class one,

Held: that the Sub-Magistrate had jurisdiction to do so. (*Wallace, J.*) BALAKRISHNA v. EMPEROR.

100 I. C. 992=28 Cr. L. J. 384=7 A. I. Cr. R. 545=

A. I. R. 1927 Mad. 591.

**—S. 347—Concurrent jurisdiction.**

—Reasons for committal.

Where an offence is triable both by the Sessions Court and by a Magistrate, the latter can commit an accused to Sessions only if he is of opinion that the case ought to be tried by the Sessions Court. He must give reasons for his entertaining that opinion, for the order of commitment is a judicial order: (11 Bom. L. R. 18 and 24 Cal. 429, Foll.) (*Jwala Prasad, J.*) EMPEROR v. DEO NARAIN MULLICK.

109 I. C. 804=29 Cr. L. J. 612=

10 A. I. Cr. R. 347=A. I. R. 1928 Pat 551.

**—S. 347—Defective procedure.**

—Construction—Depositions not read over.

The phrase: "Under the provisions hereinbefore contained" relates to those provisions in Chap. 18 of the Code which define the procedure to be adopted in the inquiries into cases triable by the Court of Session. Where according to provisions of S. 360 read with Ss. 207 and 208 of Chap. 18 the evidence recorded is not read over to each witness in the presence of the accused no commitment can be made. S. 347 in no way overrides and in no way dispenses with the obligation of following Chap. 18. The omission to read over the depositions to the witness is not mere formal omission but may deprive the accused of the valuable right to contradict the witnesses during the Sessions trial by reference to their prior statements. The accused has a right to claim that the provisions relating to inquiries before commitment shall be observed irrespective of the consideration as to whether he is prejudiced or not. (23 I. C. 734, Ref.) (*Curgenven, J.*) DAMODARAN v. EMPEROR. 121 I. C. 618=52 Mad. 995=30 M. L. W. 646=2 M. Cr. C. 293=1929 M. W. N. 894=

**CR. P. CODE (1898), S. 347—Defective procedure.**

1929 Cr. C. 602 = 31 Cr. L. J. 273 =  
A. I. R. 1929 Mad. 862 = 57 M. L. J. 555.

**—S. 347—Proper commitment.**

—*Importance and nature of the case.*

It is not open to a Magistrate to decline to commit a case to High Court Sessions on the ground that there is congestion of work in High Court Sessions.

K, the Editor of a widely circulated vernacular paper in Bombay was charged with offence under S. 124-A, I. P. C.

Held, that having regard to the seriousness of the offence and large circulation the case was of public importance and the accused was entitled to be tried before the High Court Sessions. Case Law Reviewed. (*Mirsa and Patkar, J.J.*) KRISHNAJI PRABHAKAR v. EMPEROR. 119 I. C. 666 = 53 Bom. 611 =

31 Bom. L. R. 602 = 30 Cr. L. J. 1090 =  
1929 Cr. C. 124 = A. I. R. 1929 Bom. 313.

—*Commitment for part.*

Magistrate taking cognizance under Ch. 21—Accused found not guilty with respect to part but Magistrate finding *prima facie* grounds for commitment with respect to another part—He should acquit in respect of former and commit in respect of latter. (*Wazir Hasan and Neave, A.J.Cs.*) BISHAMBAR NATH v. EMPEROR. 85 I. C. 360 = 26 Cr. L. J. 520 =

A. I. R. 1925 Oudh 547.

**—S. 347—Scope.**

A Magistrate has power at any stage of the proceedings to decide that the case is one which he ought not to try and which ought to be committed to the Sessions and he should ordinarily commit the case for a trial, provided the evidence has been completed. (*Graham and Puncckridge, J.*) PANCHANAN SARKAR v. EMPEROR. 1930 Cr. C. 1058 =

A. I. R. 1930 Cal. 666.

—*Discretion—S. 254, Cr. P. Code.*

Before the commencement of the enquiry or trial if the Magistrate is of opinion that the case is one which for any reason ought to be tried by the Court of Sessions then he has ample power to inquire into the case with a view to commitment and subsequently to commit, if the evidence justifies the Court. S. 347 is couched in general terms and gives the Magistrate very wide powers. There is no suggestion that the only possible reason for a competent Magistrate to commit a case is that he will not be able to pass a sufficiently severe sentence. The discretion vested in the Magistrate cannot be limited by the provisions of S. 254. (*Brown, J.*) EMPEROR v. ISHAHAT. 89 I. C. 525 = 26 Cr. L. J. 1389 =

3 Rang. 42 = A. I. R. 1925 Rang. 207.

—*Procedure—Chapter XVIII.*

Section 347 is subject to the provisions of Ch. 18 and even when a committal order is made under S. 347 the Magistrate has to conform to the provisions of Ch. 18 and cannot deprive the accused of any right he has under this chapter. S. 347 appears in Ch. 24 of the Code which contains general provisions for inquiries or trial and is one of those sections providing what a Magistrate should do when in the course of an inquiry he finds that he should not finally deal with the case himself. But when he does make up this mind to commit he cannot disregard the provisions of Ch. 18. 36 Mad. 321, Foll. (*Raymond and Madgavkar, A.J.Cs.*) UTILIBAI v. EMPEROR. 83 I. C. 708 =

17 S.L.R. 188 = 26 Cr. L. J. 148 =  
A. I. R. 1924 Sind 61.

**—S. 349—Conviction and reference.**

—*Legality of.*

A Magistrate, while sending up a case under S. 349

**CR. P. CODE (1898), S. 349—Jurisdiction.**

is prohibited from passing a sentence, but he is not necessarily prohibited from finding the accused guilty, and any such conviction will not preclude the Sub-Divisional Magistrate from proceeding under S. 349. The conviction is a mere surplusage. There is no legal objection to the conviction being treated as such surplusage and as a legal nullity, so that the Magistrate to whom the case is sent can proceed with it without a reference to the High Court for the purpose of having the conviction formally quashed. (1888) Unrep. Cr. Case No. 387, Expl. (*Fawcett and Mirza, J.J.*) EMPEROR v. NARAYAN DHAKU BIL. 52 Bom. 456 = 30 Bom. L. R. 620 = 29 Cr. L. J. 904 = 11 A. I. Cr. R. 119 = 111 I. C. 664 = A. I. R. 1928 Bom. 240.

—*Procedure.*

If the Magistrate considers a person to be guilty and to deserve a larger penalty than the Magistrate himself can impose, the Magistrate should send the case to a superior Court for imposing a fitting sentence. He should not convict the accused but after an expression of opinion as to the accused's guilt, the Magistrate should forward the case without any record of conviction. (*Adami and Sen, J.J.*) PRAYAG GOPE v. KING-EMPEROR. 82 I. C. 284 = 3 Pat. 1015 =

5 P. L. T. 571 = 1924 P.H.O.C. 247 =  
25 Cr. L. J. 1276 = A. I. R. 1924 Pat. 764.

**—S. 349—Joint trial.**

—*Legality of reference of one.*

The accused were tried before a Magistrate. The Magistrate convicted accused 1 and 2 and sent up accused 3 to the Sub-Divisional Magistrate under S. 349.

Held, that the action of the Magistrate in sending up only one accused under S. 349 was clearly illegal. (*Devadoss, J.*) MURUGESA KOUNDAN v. EMPEROR. 109 I. C. 816 = 10 A. I. Cr. R. 273 = 1928 M. W. N. 72 = 29 Cr. L. J. 624 = 1 Mad. Cr. C. 32.

—*Reference of one.*

Under S. 349 (1) (a) only the case of those accused who are in the opinion of the Magistrate guilty should be forwarded to the Sub-Divisional Magistrate and the rest acquitted. If a Magistrate refers the case of accused who are not guilty also to Sub-Divisional Magistrate, his order is illegal and without jurisdiction. (*Sulaiman, J.*) S. MAHAMMAD KHAN v. EMPEROR. 24 A.L.J. 80 = 6 L.R.A. Cr. 194 =

26 Cr. L. J. 1630 = 90 I. C. 926 =  
A. I. R. 1926 All. 176.

—*Reference should be of all.*

Where two or more accused are tried for an offence and the Magistrate cannot inflict an adequate sentence on one of them he should under S. 349 send up all the accused to the higher Court and not only the one whom he cannot adequately punish. But in such a case if only one accused is sent up he alone may be tried. (*Kennedy, J.C. and De Souza, A.J.Cs.*) EMPEROR v. DODO. 18 S.L.R. 216 = 26 Cr. L. J. 1363 = 89 I. C. 451 =

A. I. R. 1926 Sind 48.

—*Reference with respect to some.*

It is doubtful whether in a case where adults and adolescents are tried jointly, even if the case of the adolescents could have been validly referred under S. 349, that of the adult accused jointly tried with them can also be referred. (*Kotwal, A.J.C.*) RABA v. EMPEROR. 74 I. C. 66 = 22 N.L.R. 166 =

24 Cr. L. J. 738 = A. I. R. 1924 Nag. 37.

**—S. 349—Jurisdiction**

—*Nagpur City.*

Nagpur City has not been declared a sub-division of

**CR. P. CODE (1898), S. 349—Jurisdiction.**

the Nagpur District and until therefore action is taken in this respect with reference to Ss. 4 (u), 8 and 13, the City Magistrate, Nagpur cannot be described as a Sub-Divisional Magistrate for the purposes of having cases referred to him under S. 349 by 2nd and 3rd Class Magistrates in Nagpur City. An order of the City Magistrates disposing of a reference to him is therefore void as being made without jurisdiction. (*Findlay, J.C.*) **RAJARAM v. EMPEROR.**

101 I. C. 665 = 28 Cr. L. J. 489 =  
8 A. I. Cr. E. 167 = A. I. E. 1927 Nag. 209.

**—S. 350—Applicability.**

*U. P. Municipalities Act, S. 247.*

The provisions of S. 350 Cr. P. Code apply to an enquiry, under S. 247 of the, U.P. Municipalities Act. (*Daniels, J.*) **BARANTI v. EMPEROR.**

25 Cr. L. J. 651 = 81 I. C. 139 =  
A. I. R. 1925 All. 245.

**—Summons case.**

A person against whom proceedings are taken under S. 107 of the Cr. P. Code, can claim that upon the first Magistrate ceasing to have jurisdiction and a second Magistrate to re-commencing the proceedings, the witnesses or any of them should be heard afresh or summoned. S. 350 is applicable to summons cases as well as warrant cases. (*Dalai, A.J.C.*) **BAJI NATH SAH v. EMPEROR.** 83 I. C. 340 = 25 Cr. L. J. 1380 = 27 O. C. 323 = A. I. R. 1925 Oudh 228.

**—More than two successive Magistrates.**

Section 350 (a) applies at the time when the succeeding Magistrate begins to exercise jurisdiction that is every time another Magistrate takes cognizance of a matter which has been begun or continued by his predecessor. On principle if a second magistrate can act on evidence recorded wholly or partly by his predecessor and partly by himself there seems to be no reason why a third Magistrate should not act on evidence recorded by his predecessors. (*Olgers, and Hughes, J.J.*) **V. GOVINDAN NAIR v. KRISHNAN NAIR.**

81 I. C. 54 = 47 Mad. 245 = 18 M. L. W. 949 =  
33 M. L. T. 189 = 1923 M. W. N. 815 =  
25 Cr. L. J. 566 = A. I. R. 1924 Mad. 227 =  
45 M. L. J. 808.

**—S. 145 Cr. P. Code.**

S. 350 applies only in part to proceedings under S. 145; consequently an order on evidence partly recorded by the magistrate's predecessor and partly by himself is valid notwithstanding demand for a *de novo* trial by one of the parties. (*Foster, J.*) **SONDI SINGH v. SRI GOVIND SINGH.**

76 I. C. 25 = 5 Pat. L. T. 237 = 2 Pat. L. R. Cr. 108 =  
25 Cr. L. J. 89 = A. I. R. 1924 Pat. 786.

**—S. 350—Commitment.**

**Admissibility of statement before first Magistrate.**  
Where the Magistrate, who recorded the statement of the accused, was transferred, and the case was eventually committed to the Court of Sessions by his successor,

*Held*, that the statement was admissible in evidence under S. 287, in view of S. 350 of the Code. (*Shadi Lal, C. J. and Zafar Ali, J.*) **GHULAM JANNAT v. EMPEROR.** 7 Lah. 70 = 27 Cr. L. J. 627 = 27 P. L. R. 534 = 94 I. C. 403 = A. I. R. 1926 Lah. 271.

**—S. 350—De novo trial.**

Where proceedings are in the nature not of a trial but merely of an enquiry preparatory to commitment, the necessity of any provision for *de novo* trial does not exist. (*Graham and Panckeridge, J.J.*) **PANCHANAN SARKAR v. EMPEROR.** 1930 Cr. C. 1058 = A. I. R. 1930 Cal. 666.

**—S. 350—Evidence.**

*Right only to the accused.*

**CR. P. CODE (1898), S. 350—Procedure.**

Under proviso (a) the right given to an accused person is the right of demanding that the prosecution witnesses, or any of them, be re-summoned and re-heard. It does not say that the trial must be begun again, from the beginning. The provision is one entirely in the interests of an accused person and when the accused is exercising his right under the proviso, the complainant cannot claim that he must demand a *de novo* trial from the beginning. Where the accused exercises his right under proviso (a) he has every option of withdrawing from the exercise of that right. (*Wallace, J.*) **VUDIGALA PUDI GADU, In re.** 85 I. C. 366 = 26 Cr. L. J. 526 = 20 M. L. W. 916 = A. I. R. 1925 Mad. 317.

**—S. 350—Evidence Act.**

*Evidence Act, S. 33.*

The general provisions of S. 33 of the Evidence Act are in no way affected by S. 350 of the Cr. P. Code. (*Ffcrde and Addison, J.J.*) **LEKAL v. EMPEROR.** 101 I. C. 483 = 28 P. L. R. 199 = 28 Cr. L. J. 451 = 8 A. I. Cr. R. 83 = 8 Lah. 570 = A. I. R. 1927 Lah. 332.

**—S. 350—Judgment.**

*Consideration of evidence.*

S. 350 authorizes a Magistrate to try a case on evidence recorded by his predecessor, but he cannot deliver a judgment written out by his predecessor without considering the evidence on the record and without hearing the arguments, if any, on behalf of the accused. (*C. C. Ghose and Duval, J.J.*) **MAHOMED RAFIQUE v. EMPEROR.** 43 Cr. L. J. 100 = 27 Cr. L. J. 406 = 93 I. C. 17 = A. I. R. 1926 Cal. 537.

**—By predecessor—Jurisdiction.**

The Cr. P. Code makes no provision for delivery of judgment written by the Magistrate who heard the case after he had ceased to have jurisdiction in the district. Even if the Magistrate after his transfer, himself delivers judgment, he would act without jurisdiction. S. 350 does, under certain circumstances, give the Magistrate jurisdiction to decide the case on evidence recorded by his predecessor, but it does not give him jurisdiction to deliver a judgment written by his predecessor. 3 All. 563, Foll. (*Newbould and Suhrwardy, J.J.*) **BAISNAB CHARAN DAS v. AMIN ALI.** 72 I. C. 953 = 38 C. L. J. 202 = 50 Cal. 664 = 24 Cr. L. J. 489 = A. I. R. 1924 Cal. 55.

**—S. 350—Procedure.**

*Right only to the accused.*

After a case was charged, there was a transfer of Magistrate, and in exercise of his privilege under S. 350, Cr. P. Code, the accused asked that the prosecution witnesses might be re-summoned and re-heard. When they appeared, he said he would be content to cross-examine them.

*Held*, that the accused could change his mind and leave the Court free to exercise its statutory option and act upon the evidence recorded by its predecessor. The complainant has no privilege under S. 350, and if the accused declines to act under sub-cl. 1 (a), the complainant of necessity must suffer any disadvantage which follows upon the Magistrate electing to proceed upon the evidence already recorded. (*Jackson, J.*) **ARULAY, In re.** 27 Cr. L. J. 659 = 94 I. C. 707 = A. I. R. 1926 Mad. 815.

**—Case transferred after charge framed**

Where after hearing the evidence for the prosecution, the Magistrate frames a charge against the accused and transfers the case to another Magistrate, and where the accused claims what is usually known as a *de novo* trial, what the latter under S. 350 can legally do is to recommence the trial and not merely to allow further

**CR. P. CODE (1898), S. 350—Procedure.**

cross-examination of the complainant and the other prosecution witnesses, and generally to proceed with the case from the stage where the charge was framed. 11 Bur. L.R. 58, Rel. on; 38 Mad. 585, Dist. (*Kincaid, J.C. and Lobo, A.J.C.*) *SIDIK v. EMPEROR*.  
20 S. L. R. 50 = 27 Cr. L. J. 332 = 92 I. C. 748 = A. I. R. 1926 Sind 158.

**—S. 350—Reference.**

—S. 349, Cr. P. Code.

Under S. 350, cl. (2) a Magistrate to whom an accused is sent up under S. 349 need not hold a trial *de novo*. (*Kennedy, J.C. and DeSouza, A.J.C.*) *EMPEROR v. DODO*.  
18 S. L. R. 216 = 26 Cr. L. J. 1363 = 89 I. C. 451 = A. I. R. 1926 Sind 48.

**—S. 350—Remand.**

—When a case is remanded for taking of further evidence to the trial Court, and where it is found that when the case returns to the trial Court the Magistrate or the Officer trying the case has been transferred and a new Judicial Officer has taken his place, the latter is bound to accede to the request of the accused to try the case *de novo* (25 Cal. 863, Rel. on.) (*Bucknill, J.*) *DAROGA SINGH v. EMPEROR*. 8 P. L. T. 181 = 97 I. C. 645 = 27 Cr. L. J. 1125 = A. I. R. 1927 Pat. 5.

**—S. 350—Retrial.**

—Condition as to *de novo* trial.

The District Magistrate cannot impose, without the consent of the accused while transferring a case, a condition that there would be no *de novo* trial, the right being recognized by S. 350 (1). (*Jai Lal, J.*) *GOWARDHAN DAS KAPUR v. ABBAS ALI*. 121 I. C. 374 = 1930 Cr. C. 176 = 31 Cr. L. J. 257 = A. I. R. 1930 Lah. 168.

**—Power to summon witnesses afresh.**

The Sessions Judge sitting in revision against an order of discharge directed further inquiry for finding out whether the offence was committed on the evidence already adduced and further directed that the inquiry should be made by the same Magistrate who originally tried the case. Eventually, however, the District Magistrate had to transfer the case to another Magistrate, who proceeded to examine the witnesses afresh.

*Held* further, that the Magistrate to whom the case was transferred could summon the witnesses afresh in the exercise of the discretion vested in him under S. 350 (1). (*Sundaram Chetty, J.*) *RAMASWAMI TEVAR v. M. SUBBAN*.  
1930 M. W. N. 911 = 1930 Cr. C. 1199 = 32 M. L. W. 782 = A. I. R. 1930 Mad. 983.

—Discretion given to a Magistrate to act or not to act upon evidence recorded by his predecessor is controlled by proviso (1) to S. 350—Option is given to accused and it can be exercised only once when second Magistrate commences proceedings. (*Suh'adar, A.J.C.*) *EMPEROR v. J. B. SANE*.  
121 I. C. 646 = 1930 Cr. C. 147 = 31 Cr. L. J. 282 = A. I. R. 1930 Nag. 59.

**—Use of records of the former trial.**

Magistrate retrying whole case transferred to him—Using both his own record and that of his predecessor is illegal. (*Dalip Singh, J.*) *KARTAR SINGH v. EMPEROR*.  
28 Cr. L. J. 302 = 100 I. C. 382 = 8 A. I. Cr. R. 109 = A. I. R. 1927 Lah. 238.

**—Re-transfer to the first Magistrate.**

Where the Magistrate, who has partly tried the case, is transferred and the succeeding Magistrate has taken cognizance of the case *de novo*, the case cannot again be transferred to the Magistrate who first tried it. (*Wallace, J.*) *SHRIRANGA CHETTIAR v. SUBRAMANIAM ASARI*.  
24 M. L. W. 640 = 99 I. C. 55 =

**CR. P. CODE (1898), S. 350—Scope.**

38 M. L. T. 137 = 28 Cr. L. J. 23 = A. I. R. 1927 Mad. 81.

**—Re-transfer to original Magistrate—Hardship—Revision.**

The Magistrate who tried the case was transferred when most of the witnesses had been examined. The succeeding Magistrate granted a *de novo* trial. After this Dt. Magistrate transferred the case to the previous Magistrate who had been transferred, on the ground that the small amount of work that remained to be done could best be done by the same Magistrate who had tried the case so far and that to transfer the case to him was therefore preferable to the whole case being heard again by a new Magistrate.

*Held*, that even the Magistrate to whom the case was thus transferred could not take up the case from the point at which he had left it and that he must start the case only *de novo* all the previous proceedings being considered to have been wiped out.

*Held*, further that the Dt. Magistrate's order of transfer took no notice of the hardship and inconvenience of parties and witnesses by such transfer and that it must be set aside. (*Madhavan Nair, J.*) *SARDAR KHAN v. ATHAULLA*. 85 I. C. 254 = 26 Cr. L. J. 510 = 20 M. L. W. 847 = A. I. R. 1925 Mad. 174 = 47 M. L. J. 926.

**—Arguments not finished.**

Under S. 350, accused cannot demand a *de novo* trial on transfer of a trying Magistrate, on the ground that the trying Magistrate had not heard his counsel. (*Kendall, A.J.C.*) *CHANDIKA PRASAD v. KING EMPEROR*.  
81 I. C. 899 = 11 O. L. J. 725 = 25 Cr. L. J. 1075 = 28 O. C. 109 = A. I. R. 1925 Oudh 62.

**—S. 350—Retrial, what is.**

—Permitting cross-examination alone.

*De novo* trial means a new trial from the very beginning of the case. The object of granting a *de novo* trial is to enable the Magistrate who hears the case to see the way in which the witnesses give evidence before him to mark their demeanour, and thereby to be in a position to judge of their credibility. That object is lost if the witnesses are not examined again but are only allowed to be cross-examined by the accused. Such a course is not in accordance with the provisions of S. 350. (*Krishnan, J.*) *NARAYANA REDDI v. E. ROJAMMA*.  
90 I. C. 668 = 26 Cr. L. J. 1596 = 1925 M. W. N. 652 = A. I. R. 1925 Mad. 1280 = 49 M. L. J. 423.

**—S. 350—Right of accused.**

—The accused under S. 350, Cr. P. Code, has a right to demand that the witnesses or any of them be summoned and re-examined when the case will be tried by the Magistrate to whom it will be transferred for trial. (*Jwala Prasad and Ross, J.J.*) *CHHANU PRASAD SINGH v. EMPEROR*.  
107 I. C. 160 = 9 A. I. Cr. R. 486 = 29 Cr. L. J. 229.

**—S. 350—Scope.**

—Further inquiry by same Magistrate—Power of Magistrate to summon witnesses.

The Sessions Judge sitting in revision against an order of discharge directed further inquiry for finding out whether the offence was committed on the evidence already adduced and further directed that the inquiry should be made by the same Magistrate who originally tried the case. Eventually, however, the District Magistrate had to transfer the case to another Magistrate who proceeded to examine the witnesses afresh.

*Held* (*Ohiter*) that the order of the Sessions Judge directing inquiry by the same Magistrate was not quite in consonance with S. 436, 10 Cal. 207, Rel. on.



**CR. P. CODE (1898), S. 350—Scope.**

Held further, that the Magistrate to whom the case was transferred could summon the witnesses afresh in the exercise of the direction vested in him under S. 350 (1). (*Sundaram Chetty, J.*) RAMASWAMI THEVAR v. M. SUBBAN. 1930 M. W. N. 911 = 1930 Cr. C. 1199 = 32 M. L. W. 782 = A. I. R. 1930 Mad. 983.

**—S. 350-A—Presence at trial.****—Bench Magistrates.**

Where out of three Magistrates constituting the Bench only one is present on all hearings throughout the trial, sitting sometimes with one, sometimes with the other and sometimes with both, the trial is bad as it contravenes the provisions of S. 350 A, even though the quorum consisted of two: (A. I. R. 1926 Lah. 304, Foll.) (*Stuart, C. J.*) SURAJ BALI v. EMPEROR. 4 O. W. N. 1240 = 107 I. C. 875 = 9 A. I. Cr. R. 414 = 29 Cr. L. J. 310 = A. I. R. 1928 Oudh 212.

—A trial by a Bench of Magistrates is bad if the quorum of Magistrates constituting the Bench is not present throughout the whole of the proceedings. (*Broadway, J.*) BANWARI v. EMPEROR. 7 Lah. 122 = 27 Cr. L. J. 463 = 27 P. L. R. 131 = 93 I. C. 255 = A. I. R. 1926 Lah. 304.

**—S. 352—Police officer.**

—Police officer can be ordered to be absent from Court room—Accused objecting to his presence—Reasonableness of his fear is guiding factor and not the convenience of prosecution. (*Kotval, A. J. C.*) NATHU SINGH v. THE CROWN. 88 I. C. 362 = 8 N. L. J. 95 = 26 Cr. L. J. 1130 = A. I. R. 1925 Nag. 296.

**—S. 353—Absence of accused.**

—Prosecution witnesses examined in—No chance given for cross-examining them—Conviction invalid.

Where important prosecution witnesses who have been examined in the absence of accused, were never called again, or examined in his presence, nor was he allowed any chance of cross-examining them and yet he had been convicted, Held, that the conviction was illegal. (*Gokaran Nath Misra, J.*) CHHOTELAL v. EMPEROR. 103 I. C. 836 = 8 A. I. Cr. R. 566 = 28 Cr. L. J. 756 = A. I. R. 1927 Oudh 353.

**—S. 353—Absent witness.**

—A and B were jointly tried. Prior to this another criminal proceeding was going on between B and the present complainant. The Magistrate admitted depositions of three witnesses in the previous proceedings in the present trial although A was not a party to those proceedings, at the request of the accused's counsel or at least with his consent.

Held: further A was entitled to have had the evidence of the absent witnesses recorded in his presence under the provisions of S. 353, Cr. P. Code. His conviction was based partially on testimony which was not evidence against him and since it was impossible to say how far the Magistrate was impressed by such testimony in the conclusion he arrived at, it was impossible to say that A has not been prejudiced by the illegal admission of evidence against him. (*Darwood, J.*) ABDUL GAFFOOR v. GOVIND PRASAD. 30 Cr. L. J. 736 = 117 I. C. 241 = A. I. R. 1928 Rang. 284.

**—S. 353—Non-compliance.****—Illegality.**

The provisions of S. 353 require that with certain exceptions the evidence should be taken in the presence of the accused or when his personal attendance is dispensed with, in the presence of his pleader. A contravention of this express provision does not come within the description of error, omission or irregularity and the

**CR. P. CODE (1898), S. 353—Procedure—Illegal.**

waiver of any objection by the accused's pleader on this score does not improve the case for the prosecution. (*Adam and Scroope, J.J.*) BIJAN SINGH v. EMPEROR. 6 Pat. 691 = 107 I. C. 530 = 29 Cr. L. J. 260 = 9 P. L. T. 327 = 9 A. I. Cr. R. 450 = A. I. R. 1928 Pat. 143.

—An order is wholly illegal if it is based on evidence which is recorded behind the back of a party at a time when he was not a party to the proceedings at all. (*Findlay, Offg. J.C.*) NARAYAN v. CHANDRABHAGA. 89 I. C. 153 = 26 Cr. L. J. 1289 = A. I. R. 1925 Nag. 457.

**—S. 353—Procedure—Illegal.**

—Witness examined in the absence of the accused not deposing against him—Accused stating he did not wish to examine him—Examination in his absence—Trial vitiated.

Where a witness gave no evidence which was, or could be, used against an absent accused, and at a latter date that accused put in a statement that he did not wish to examine that witness the examination of that witness in the absence of the accused did not vitiate the trial. (*Reilly, J.*) PUBLIC PROSECUTOR, MADRAS v. CHOCKALINGA AMBALAM. 52 Mad. 355 = 29 M. L. W. 108 = 1929 M. W. N. 60 = 2 M. Cr. C. 1 = 118 I. C. 274 = 30 Cr. L. J. 908 = A. I. R. 1929 Mad. 201 = 56 M. L. J. 216.

—Charge for two offences—Witnesses same—Evidence let in one case—Copies of the evidence recorded in the other—Procedure illegal.

A person was charged with two offences namely under S. 307, I.P. C. and under S. 20, Indian Arms Act. The witnesses in the two cases were more or less the same. The trying Magistrate recorded the evidence of the witnesses in the case under S. 307 and copies of the evidence of these witnesses were placed on the record of the case under S. 20, Arms Act expect the case of one witness who did not appear in the case under S. 307.

Held, that the procedure was illegal and the trial was vitiated. The general rule in the case of criminal trial is that there should be a separate trial with respect of each distinct offence. The object evidently is that the attention of the trial Court should be directed to the evidence relating to the charge under inquiry and irrelevant matter should be excluded. This object is not achieved but defeated by placing on the record mere copies of the statements of witnesses recorded during the course of a trial relating to another charge. A. I. R. 1924 Lah. 104, Rel. on. (*Bhide, J.*) MAHOMMED KHAN v. EMPEROR. 9 L. L. J. 329 = 29 Cr. L. J. 521 = 109 I. C. 345 = A. I. R. 1928 Lah. 34.

—Three persons were prosecuted and tried for murder of two persons in two trials. The defence evidence given by the accused in the first trial was, with their consent, treated as evidence in the second.

Held, that the defence evidence in the second trial was not duly recorded as required by S. 353, that the fact of the accused consenting to the irregularity would not give the procedure legal sanction and that the irregularity vitiated the trial. (A. I. R. 1924 Lah. 104, Foll.) (*Tek Chand and Coldstream, J.J.*) THAKAR SINGH v. EMPEROR. 28 Cr. L. J. 771 = 104 I. C. 99 = A. I. R. 1927 Lah. 781.

—De novo trial—Witness not examined—Deposition in previous trial exhibited—Proceedings vitiated—Consent no cure.

Where in a trial de novo the depositions of witnesses examined at the previous trial were exhibited without the witnesses being examined de novo, Held, there has been a deviation from the rule that 'in cases of life no

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evidence is to be given against a prisoner but in his presence" and that such deviation will vitiate the proceedings. The consent of the accused will not cure the irregularity in the reception of evidence not taken in his presence at the trial. (*Oldfield and Ramesam, J.J.*)  
V. K. UMMAR MAJI, *In re*. 69 I. C. 636=

16 M. L. W. 697=1922 M. W. N. 644=  
23 Cr. L. J. 748=46 Mad. 117=  
A. I. R. 1923 Mad. 32=43 M. L. J. 659.

**—S. 355—Applicability.**

—S. 355 does not apply to offences coming under S. 261, cl. (b). (*Fawcett and Patkar, J.J.*) CHIMANLAL MANEKLAL v. EMPEROR. 102 I. C. 345=

29 Bom. L. R. 710=28 Cr. L. J. 537=  
8 A. I. Cr. R. 168=A. I. R. 1927 Bom. 426.

**—S. 355—Scope.**

—Ss. 263 and 264, *Cr. P. Code*.

The provisions of Ss. 263 and 264, in cases in which these sections are applicable, are not controlled by S. 355. In cases in which Ss. 263 and 264 are applicable, the Magistrate is perfectly free to take such notes as he pleases, or, if he prefers, to take none at all and if he takes down any notes for his own use they form no part of the record and are the private property of the Magistrate. A.I.R. 1921 Cal. 165, Diss. from. (*Walsh, Ag.C.J. and Banerji, J.*) MANTO TEWARI v. EMPEROR. 49 All. 261=8 L. R. A. Cr. 12=

25 A. L. J. 140=28 Cr. L. J. 97=99 I. C. 225=  
7 A. I. Cr. R. 131=A. I. R. 1927 All. 124.

**—S. 356—Destruction.**

—*Revision*.

The record of the evidence if taken becomes part of the record of the case and must not be destroyed. Where the evidence was recorded and was subsequently destroyed, as the High Court was not in a position to form an opinion on the propriety of the conviction, the conviction in revision was set aside. (*Mookerjee, Ag. C. J. and Fletcher, J.*) SATISH CHANDRA MITRA v. MANMATHA NATH MITRA. 61 I. C. 846=48 Cal. 280=22 Cr. L. J. 462=

A. I. R. 1921 Cal. 165.

**—S. 356—Non-compliance.**

—*When there is no failure of justice.*

Where the evidence was recorded in the language of the Court by Magistrate's reader and the Magistrate did not make a memorandum of the statement of each witness, but he applied his mind to the evidence, and took considerable care in sifting the evidence and arrived at a correct conclusion,

*Held*, that in the circumstances the irregularity did not occasion a failure of justice and was covered by the provisions of S. 537, *Cr. P. Code*. (*Stuart, C. J.*) SURMAN SINGH v. EMPEROR. 4 O. W. N. 1200=

29 Cr. L. J. 70=106 I. C. 582=  
9 A. I. Cr. R. 372=A. I. R. 1928 Oudh 112.

**—S. 356—Scope.**

—S. 145, *Cr. P. Code*.

The proceedings under S. 145 are of a quasi civil nature and the procedure prescribed in S. 356 applies for taking evidence in such cases. (*Dalal, J.C.*) CHOUDHURI MOHAMMAD AYUB v. CHAUDHURY SARFARAZ AHMAD. 83 I. C. 630=

26 Cr. L. J. 70=A. I. R. 1925 Oudh 286.

**—S. 357—Signature.**

—*Several judges.*

It cannot be contended that, where a Court is composed of more than one Judge, the deposition of a witness must necessarily be signed by all the Judges of the Court before whom the witness is examined, and that, if it is signed by only one of them that irregularity alone vitiates the deposition. (*Shadi Lal, C. J.*)

**CR. P. CODE (1898), S. 360—Applicability.**

TAJ MOHAMMAD v. EMPEROR. 29 P.L.R. 14=  
107 I. C. 100=29 Cr. L. J. 212=  
9 A. I. Cr. R. 505=A. I. R. 1928 Lah. 125.

**—S. 360.**

*Applicability.*

*Construction.*

*Effect of non-compliance.*

*Endorsement and Party's presence.*

*Explaining discrepancies.*

*Intention.*

*Interpretation.*

*Objection.*

*Perjury charge.*

*Sufficient compliance.*

**—S. 360—Applicability.**

—S. 360 applies to proceedings before Commissioners under defence of India Act. (*Shadi Lal, C. J.*) TAJ MAHOMMAD v. EMPEROR. 29 P. L. R. 14=107 I. C. 100=

29 Cr. L. J. 212=9 A. I. Cr. R. 505=  
A. I. R. 1928 Lah. 125.

**—S. 200, *Cr. P. Code*.**

The principle underlying S. 360, cl. (i) should be made applicable on grounds of public policy to the substance of the examination of the complainant on oath, if the accuracy of the record of such examination is to be vouchsafed, particularly when it is to be utilized as a basis for a possible perjury in future; for it would be unsafe to use against a complainant what on the face of it purports to be only a substance and not the full version of his examination without some such sufficient and adequate safeguards as to its completeness and accuracy. (*Kinkhede, A. J. C.*) BHAGIRATHIBAI v. EMPEROR. 26 Cr. L. J. 1401=89 I. C. 713=

A. I. R. 1926 Nag. 141.

**—Ch. 12, *Cr. P. Code*.**

The parties to proceedings under Chap. 12 of *Cr. P. Code* are not persons referred to by the words "the accused" in S. 360 (1) of that Act. S. 360 has no application to proceedings under Chap. 12, and in such proceedings it is not obligatory on the Court to read over the depositions to the witnesses. (*Sukrawardy, J. dissenting*). Case-law discussed. Meaning of the word "accused" discussed. (*Sukrawardy, Cuming and Buckland, J.J.*) ISHAN CHANDRA SAMANTA v. HRIDAY KRISHNA BOSE. 86 I. C. 979=41 C. L. J. 357=29 C. W. N. 475=

26 Cr. L. J. 915=A. I. R. 1925 Cal. 1040 (F.B.).

**—S. 117, *Cr. P. Code*.**

The provisions of S. 360, *Cr. P. Code*, are applicable to proceedings under S. 117 when a person is called upon to show cause why he should not furnish security for good behaviour and failure to comply with the provisions of that section would vitiate the enquiry or trial which has resulted in an order under S. 118 of the *Code*.

Per *B. B. Ghose, J.*—There is considerable doubt whether S. 360, *Cr. P. Code*, applies to proceedings under Chap. VIII of that *Code*. (*Newbold and B.B. Ghose, J.J.*) SANATAN BHATTACHARYA v. EMPEROR. 88 I. C. 856=52 Cal. 632=41 C. L. J. 352=

26 Cr. L. J. 1240=A. I. R. 1925 Cal. 720.

**—Ch. 12, *Cr. P. Code*.**

The word "accused" in S. 360, sub-S. (1) means a person over whom a Criminal Court is exercising jurisdiction. S. 360, *Cr. P. Code*, is applicable to enquiries held under Ch. XII. 28 C. W. N. 968, Foll. (*Sukrawardy and Mukerjee, J.J.*) ASWINI KUMAR DUTT v. PUTI. 86 I. C. 978=52 Cal. 437=29 C. W. N. 474=

26 Cr. L. J. 914=A. I. R. 1925 Cal. 678.

## CR. P. CODE (1898),

## —S. 360—Construction.

—S. 360 of the Cr. P. Code is mandatory. (*Sultan Ahmed, J.*) *BARHAMDEO SINGH v. EMPEROR*. 62 I. C. 584 = 2 P. L. T. 380 = 22 Cr. L. J. 568 = 1921 P. H. C. C. 139 = A. I. R. 1921 Pat. 149.

## —S. 360—Effect of non-compliance — Failure to read over.

—When a deposition is not read over to witness in accordance with the requirements of the law under which it was taken, it cannot be used against him on a charge of perjury. 6 Cal. 762; 42 Cal. 240; 12 C.W.N. 845; 28 Mad. 308 and 12 P.R. 1917, (Cr.), Rel. on. (*Shadi Lal, C.J.*) *TAJ MOHAMMAD v. EMPEROR*.

29 P. L. R. 14 = 107 I. C. 100 = 29 Cr. L. J. 212 = 9 A. I. Cr. R. 505 = A. I. R. 1928 Lah. 125.

—It is dangerous in cases of criminal law to accept equivalents, and except in cases where reading over to the witness would be absurd, as, for example, with a stone deaf person, the provision should be complied with. 36 Cal. 955, Appr. (*Lord Phillimore*.) *V. M. ABDUL RAHMAN v. EMPEROR*.

5 Rang. 53 = 54 I. A. 96 = 25 A. L. J. 117 = 31 C. W. N. 271 = 1927 M. W. N. 103 = 38 M. L. T. 64 = 4 O. W. N. 283 =

8 P. L. T. 155 = 100 I. C. 227 = 28 Cr. L. J. 259 = 6 Bur. L. J. 65 = 29 Bom. L. R. 813 = 45 C. L. J. 441 = 7 A. I. Cr. R. 362 =

A. I. R. 1927 P. C. 44 = 52 M. L. J. 585 (P. C.).

—When depositions are not read over to the witnesses as required by S. 360, Cr. P. Code, the trial is not vitiated unless the omission to read over the evidence to the witnesses did in fact occasion a failure of justice. A.I.R. 1927 P.C. 44, Foll. (*Lindsay, J.*) *BAJAI v. RAM SARUP*.

8 A. I. Cr. R. 145 = 8 L. R. A. Cr. 117 = 28 Cr. L. J. 596 = 102 I. C. 772 = A. I. R. 1927 All. 757.

## —Accuracy challenged—Retrial.

Failure to read over the evidence of a witness does not necessarily vitiate the trial. Where the accuracy of the record had been challenged, and a statement of one of the witnesses which was relevant to the case was omitted from the record,

*Held*, that the proceeding must be quashed and a new trial ordered. (*Doyle, J.*) *E. E. MAYETH v. EMPEROR*. 3 Rang. 612 = 4 Bur. L. J. 257 = 27 Cr. L. J. 857 = 95 I. C. 937 = A. I. R. 1926 Rang. 78.

—Omission to read over the evidence to the witness does not vitiate the order under S. 145. (*Foster, J.*) *SONDI SINGH v. SRI GOVIND SINGH*.

76 I. C. 25 = 5 P. L. T. 237 = 2 Pat. L. R. Cr. 108 = 25 Cr. L. J. 89 = A. I. R. 1924 Pat. 786.

—The word "accused" in S. 360 does include persons against whom an order under S. 145 (1) has been drawn up and in the case of proceedings under Chapter XII the evidence must be read over to the witnesses. But the omission to do so cannot make the Magistrate's order based thereon *ultra vires*, though it may exempt the witnesses from prosecution for perjury. (*Ross, J.*) *RAMNARAIN SINGH v. DHONRAI GOPE*.

65 I. C. 557 = 3 Pat. L. T. 291 = 23 Cr. L. J. 125 = A. I. R. 1922 Pat. 371.

## —S. 360—Effect of non-compliance—Non-compliance in general.

## —Admissibility of subsequent trial.

An omission to comply with the provisions of S. 360, Cr. P. Code, in recording depositions in a former case is a bar to the use of such deposition as evidence in any subsequent proceedings (*e.g.*, trial under S. 211, Penal Code.) (*Newbould and B. B. Ghose, J.J.*)

## CR. P. CODE (1898), S. 360—Effect of non compliance—Non-compliance in general.

## CHOYENUDDIN PRAMANIK v. EMPEROR.

A. I. R. 1928 Cal. 271.

—A mere omission or irregularity to comply with S. 360 unaccompanied by any probable suggestion of any failure of justice having been thereby occasioned, is not enough to warrant the quashing of a conviction. (*Lord Phillimore*.) *V. M. ABDUL RAHMAN v. KING-EMPEROR*.

100 I. C. 227 = 31 C. W. N. 271 =

25 A. L. J. 117 = 1927 M. W. N. 103 =

38 M. L. T. 64 = 4 O. W. N. 283 =

8 P. L. T. 155 = 54 I. A. 96 = 28 Cr. L. J. 259 =

5 Rang. 53 = 6 Bur. L. J. 65 =

29 Bom. L. R. 813 = 45 C. L. J. 441 =

7 A. I. Cr. R. 362 = A. I. R. 1927 P. C. 44 =

52 M. L. J. 585 (P. C.).

—An omission to comply with the terms of S. 360 only amounts to an irregularity which if a failure of justice has not been caused, will not necessitate the setting aside of the proceedings. However, Magistrates should follow the procedure strictly. A.I.R. 1927 P.C. 44, Foll. (*Boys and Kendall, J.J.*) *JIWAN SINGH v. SHEONANDAN SINGH*.

7 A. I. Cr. R. 530 =

8 L. R. A. Cr. 78 = 102 I. C. 210 =

28 Cr. L. J. 514 = A.I.R. 1927 All. 764.

—Non-compliance with the strict provisions of S. 360 only amounts to an irregularity and is cured by S. 537 of the Code. A.I.R. 1927 P.C. 44, Foll. (*Lindsay, J.*) *SHEU MAHOMED v. RIHARI*. 8 A. I. Cr. R. 108 = 8 L. R. A. Cr. 110 = 102 I. C. 782 = 28 Cr. L. J. 606 =

A. I. R. 1927 All. 755.

—Any non-compliance with provisions of S. 360 which has not resulted in any failure of justice does not vitiate the trial. (*Duval and Mitter, J.J.*) *FATIAH BAP v. EMPEROR*.

31 C. W. N. 691 = 103 I. C. 799 = 28 Cr. L. J. 751 = 8 A. I. Cr. R. 380 =

A. I. R. 1927 Cal. 575.

## —Evidence Act, S. 145—Admissibility of evidence

## —Subsequent trial.

Depositions of the witnesses in a previous case in which there has been no compliance with the provisions of S. 360 may not possibly be used as evidence in the case in which they were made, but nevertheless they can be used on a subsequent occasion to contradict the witnesses under S. 145, Evidence Act. (*Adami and Scroope, J.J.*) *FAZLUR RAHMAN v. KING-EMPEROR*.

104 I. C. 100 = 6 Pat. 478 = 8 P. L. T. 773 =

8 A. I. Cr. R. 555 = 28 Cr. L. J. 772 =

A. I. R. 1927 Pat. 315.

—Illegal. Non-compliance with the provisions of S. 360 vitiates trial. (*Newbould and B. B. Ghose, J.J.*) *ADILADDI v. EMPEROR*.

26 Cr. L. J. 1016 = 87 I. C. 840 =

A. I. R. 1926 Cal. 423.

## —Provisions mandatory.

In a criminal trial the deposition of each of the prosecution witnesses was not read over or explained to him after it had been recorded but the depositions of the witnesses examined on the day were read to them after the close of the day's proceedings.

*Held*, that that is not sufficient compliance with the provisions of S. 360. S. 360 is mandatory and its provision must be strictly complied with. This view is based on the wording of the section itself and on the policy underlying it, namely, to protect the witness and also to safeguard the interest of the accused by affording to the witness as well as the accused an opportunity of finding any inaccuracy in the record of the deposition. A. I. R. 1924 Cal. 889 and A.I.R. 1925 Cal. 831, Appr. (*Sukrawardy and Panton, J.J.*) *ABDUL MALLICK v. EMPEROR*. 42 C. L. J. 585 = 30 C. W. N. 644 =

**CR. P. CODE (1898), S. 360—Effect of non-compliance—Non-compliance in general.**

27 Cr. L. J. 375=92 I. C. 887=  
A. I. R. 1926 Cal. 157.

**—Illegality.**

The non-compliance with the provisions of S. 360 vitiates the proceedings under S. 110. (*Sukrawardy and Mukerjee, J.J.*) NAWAB ALI v. EMPEROR.

88 I. C. 849=26 Cr. L. J. 1233=52 Cal. 470=  
A. I. R. 1925 Cal. 816.

**—Test for illegality.**

When the question arises, whether the violation of S. 360 will vitiate the trial, the test will be whether the accused has been prejudiced. If the accused is not prejudiced, nothing short of an illegal or irregular exercise of jurisdiction would vitiate the trial. (*Mullick and Bucknill, J.J.*) SAIYID MOHIUDDIN v. EMPEROR.

86 I. C. 459=4 Pat. 488=3 Pat. L. E. Cr. 110=  
6 P. L. T. 154=26 Cr. L. J. 811=

1925 P. H. C. C. 112=A. I. R. 1925 Pat. 414.

—The violation of S. 360 vitiates the trial. (*Newbould and Mukerji, J.J.*) HIRALAL GHOSE v. EMPEROR.

83 I. C. 905=52 Cal. 159=

28 C. W. N. 968=26 Cr. L. J. 201=

41 C. L. J. 224=A. I. R. 1924 Cal. 889.

**—Illegality.**

The omission to comply with the provisions of the section, is an irregularity which is not curable by the provisions of S. 537. (*Cuming and B. B. Ghosh, J.J.*) HARO NATH MALO v. ALA BUX.

76 I. C. 961=

28 C. W. N. 119=38 C. L. J. 281=

25 Cr. L. J. 289=A. I. R. 1924 Cal. 182.

**—Admissibility of record.**

The provisions of S. 360 are mandatory. But non-compliance does not legally result in the total inadmissibility of the record of evidence and in the absence of any definite provision of law entailing inadmissibility, each case of non-compliance must be considered by the Court on its own merits and the document which purports to be the record can be admitted, but without the presumption laid down in S. 80 of the Evidence Act, and, therefore, open to question by the defence and appraisal by the Court. (*Madgavkar, A. J. C.*) PITOMAL v. EMPEROR.

86 I. C. 33=

26 Cr. L. J. 657=16 S. L. E. 255=

A. I. R. 1921 Sind 151.

**—Plea of accused if charge is based on the record.**

Any irregularity in recording the statement under S. 360 will not render it totally inadmissible in evidence. If a statement is properly recorded under S. 360 then under S. 80 of the Evidence Act a strong presumption arises that the deponent stated in his evidence what appears in the deposition. If however S. 360 is not complied with, that presumption does not arise, and it is necessary for the person who alleges that the memorandum, which purports to be a deposition, but has been irregularly recorded, is accurate, to prove that it is accurate, if its accuracy is challenged. Where therefore a deponent is being tried for making a false deposition and where the provisions of S. 360 have not been strictly complied with, it would always be open for the deponent to say that it was unjust that he should be prosecuted for a perjured statement because if he had been given full opportunity he would have stated the truth in Court. But this sort of plea will not avail an abettor. (*Kennedy, J. C. and Aston, A. J. C.*) PITOMAL v. EMPEROR.

88 I. C. 449=26 Cr. L. J. 1137=

18 S. L. R. 342=A. I. R. 1921 Sind 16.

**—S. 360—Endorsement and party's presence.****—Right of accused to read over.**

The provisions of S. 360 do not require that an endorsement or certificate should be given that the state-

**CR. P. CODE (1898), S. 360—Interpretation.**

ment of a witness was read over to him. Further, the section does not lay down that the deposition should be read over to the witness within the hearing of the accused. The purpose of the section is to enable the witness to safeguard himself. If the accused or his pleader is doubtful as to the manner in which statements of a witness have been recorded or as to any point in the deposition, they would have a right to ask that the deposition should be read over to them, so that they can satisfy themselves as to what has been actually recorded, but that demand should be made at once. (*Adami, J.*) ARJUN KURMI v. EMPEROR.

99 I. C. 109=8 P. L. T. 166=28 Cr. L. J. 77=

A. I. R. 1927 Pat. 100.

—Per majority of the F. B.—The provisions of S. 360, Cr. P. Code, apply to proceedings under S. 145, Cr. P. Code, to this extent at least, that as the evidence of each witness is completed it must be read over to him. But the parties to the proceedings are not "accused" and their attendance at the reading over is not necessary. (*Walmsley, Greaves, Cuming, Mukerji and Chakravarti, J.J.*) NARENDRA CHANDRA RUDRA PAL v. SABARALI v. BHUIYA.

88 I. C. 714=

41 C. L. J. 479=29 C. W. N. 701=52 Cal. 721=

26 Cr. L. J. 1194=A. I. R. 1925 Cal. 822 (F. B.).

—Depositions being read by witnesses themselves is not sufficient. They should be read over in accused's presence. Recording of the fact of the deposition having been read over is not imperative but desirable. (*Jwala Prasad, J.*) RAMESHWAR SINGH EMPEROR.

86 I. C. 991=6 P. L. T. 493=26 Cr. L. J. 927=

A. I. R. 1925 Pat. 723.

**—S. 360—Explaining discrepancies.****—When can be made.**

There is no provision of law which requires that a witness should be given an opportunity to explain discrepancies in his evidence. But it is open to a witness if he wishes to do so to explain at the time when the deposition is read out to him. (*Sukrawardy and Graham, J.J.*) KAMINI KUMAR CHAKRAVARTY v. EMPEROR.

122 I. C. 209=31 Cr. L. J. 373=

33 C. W. N. 664=1929 Cr. C. 26=

A. I. R. 1929 Cal. 390.

**—S. 360—Intention.**

—The object of reading over the deposition is to obtain an accurate record from the witness of what he really means to say, and to give him an opportunity of correcting the words which the Magistrate or his clerk has taken down. It is not to enable the accused or his advocate to suggest corrections. (*Lord Phillimore.*) V. M. ABDUL RAHMAN v. KING-EMPEROR.

5 Rang. 53=54 I. A. 96=25 A. L. J. 117=

31 C. W. N. 271=1927 M. W. N. 103=

38 M. L. T. 64=4 O. W. N. 283=

8 P. L. T. 155=100 I. C. 227=28 Cr. L. J. 259=

6 Bur. L. J. 65=29 Bom. L. R. 813=

45 C. L. J. 441=7 A. I. Cr. R. 362=

A. I. R. 1927 P. C. 44=52 M. L. J. 585 (P. C.).

**—Section is mandatory.**

The provisions of S. 360 are mandatory and their intention is to protect the witnesses as also to help the accused. But the absence of a memorandum subjoined to a deposition and stating the fact of compliance does not itself prove that the provisions of the section have not been observed. (*Adami and Bucknill, J.J.*) BHAGWAT SINGH v. EMPEROR.

86 I. C. 996=

26 Cr. L. J. 932=4 Pat. 231=6 P. L. T. 73=

A. I. R. 1925 Pat. 378.

**—S. 360—Interpretation.****—Deposition in Vernacular.**

Sub-S. (3) of 360 does not require that the deposition

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recorded in English should be translated into the vernacular to a witness who has deposed in the vernacular, after having first been read over to him in English. If such had been the intention of the legislature, one would have expected the word "also" to stand between the words "shall" and "be interpreted" in sub-s. (3). (*Buckland, Suhrawardy and Cammiade, J.J.*) HARI NARAYAN CHANDRA v. EMPEROR.

106 I. C. 545=46 C. L. J. 368=29 Cr. L. J. 49=9 A. I. Cr. R. 228=A. I. R. 1928 Cal. 27.

—*Translating it to accused.*

Where the accused does not understand either the language of the Court or of the witness, there is no provision for the deposition of a witness being interpreted to the accused after it has been read over and interpreted to the witness. (*Lord Phillimore.*) V. M. ABDUL RAHMAN v. KING-EMPEROR.

100 I. C. 227=5 Rang. 53=54 I. A. 96=25 A. L. J. 117=31 C. W. N. 271=1927 M. W. N. 103=38 M. L. T. 64=4 O. W. N. 283=8 P. L. T. 155=28 Cr. L. J. 259=6 Bur. L. J. 65=29 Bom. L. R. 813=45 C. L. J. 441=7 A. I. Cr. R. 362=A. I. R. 1927 P. C. 44=52 M. L. J. 585 (P. C.)

—*Failure to comply—Irrregularity.*

Per *Maung Ba, J.*—The sole object of this provision of the law seems to be to ensure the accuracy of the record. A proposition that failure to strictly comply with the provisions of S. 360 will under any circumstances vitiate a trial, no matter whether it has caused a failure of justice or not, is too broad. Failure to strictly comply with the provision of S. 360 should be considered as a mere irregularity curable by S. 537 if no prejudice is caused. Each case should be decided on its own merits.

Per *Doyle, J.*—Disobedience of S. 360 of the Code of Criminal Procedure is an irregularity not amounting to an illegality. The convenience of advocates or a desire to accelerate the disposal of a case are not sufficient reasons for disobeying a mandatory injunction. Expediency *per se* has never been regarded as a warrant for a deliberate violation of law. (*Maung Ba and Doyle, J.J.*) ABDUL RAHMAN v. EMPEROR.

94 I. C. 717=4 Bur. L. J. 213=27 Cr. L. J. 669=A. I. R. 1926 Rang. 53.

**—S. 360—Objection.**

—*When to be raised.*

If an objection is taken on the ground that the provisions of S. 360 have not been observed, that objection should be taken at once after there has been a neglect of the provisions of the law. Such objection cannot be raised for the first time in revision. (*Adami, J.*) ARJUN KURMI v. EMPEROR.

99 I. C. 109=8 P. L. T. 166=28 Cr. L. J. 77=A. I. R. 1927 Pat. 100.

**—S. 360—Perjury charge.**

—When a deposition is not read to witness in accordance with the requirements of the law under which it was taken, it cannot be used against him on a charge of perjury. 6 Cal. 762; 42 Cal. 240; 12 C. W. N. 845; 28 Mad. 308 and 12 P. R. 1917. (Cr.) Rel. on. (*Shadi Lal, C. J.*) TAJ MOHAMED v. EMPEROR.

107 I. C. 100=29 P. L. R. 14=29 Cr. L. J. 212=9 A. I. Cr. R. 505=A. I. R. 1928 Lah. 125.

**—S. 360—Sufficient compliance.**

—Reading over to a witness his evidence even after some days of his examination-in-chief but immediately after his cross-examination is sufficient compliance with S. 360. A. I. R. 1927 P. C. 44, Foll.; A. I. R. 1926 Cal. 563, Dist. (*Suhrawardy and Graham, J.J.*)

**CR. P. CODE (1898), S. 360—Sufficient compliance.**

KAMINI KUMAR v. EMPEROR. 122 I. C. 209=31 Cr. L. J. 373=33 C. W. N. 664=1929 Cr. C. 26=A. I. R. 1929 Cal. 390.

—*Accused absent.*

When accused is absent, the reading over of a deposition in the presence of a pleader during the temporary absence of the prisoner represented by such pleader, is a sufficient compliance with the provisions of S. 360. A. I. R. 1926 Cal. 528, Expl. (*Buckland, Suhrawardy and Cammiade, J.J.*) HARI NARAYAN CHANDRA v. EMPEROR.

106 I. C. 545=46 C. L. J. 368=29 Cr. L. J. 49=9 A. I. Cr. R. 228=A. I. R. 1928 Cal. 27.

—*Failure to read over as and when each witness is closed.*

Where the witnesses were examined one after another until the midday adjournment, when their depositions were read over to them during the interval, and the depositions of the witnesses examined one after another in the afternoon were similarly read over to them in the afternoon after the close of the day,

*Held*, that the trial was vitiated by the irregularity. A. I. R. 1926 Cal. 157, Ref. (*Suhrawardy and Panton, J.J.*) SAMSERALI HAZI v. EMPEROR. 94 I. C. 736=53 Cal. 129=27 Cr. L. J. 688=A. I. R. 1926 Cal. 563

—*Presence of accused.*

If the accused is in attendance the evidence must be read over in his presence; it is only when the accused appears by a pleader that reading over of the evidence in the presence of the accused's pleader is sufficient. (*Newbould and Mukerji, J.J.*) KASIM ALI v. SARADA KRIPA.

93 I. C. 973=30 C. W. N. 336=27 Cr. L. J. 509=A. I. R. 1926 Cal. 528.

—*Reading over while magistrate is taking other evidence.*

After depositions of some of the witnesses are completed, their being read over to the witnesses by the Bench Clerk and witnesses' signature taken while the Court is recording the examination of other witnesses, is a procedure not warranted by the law and it is not a compliance with the provisions of S. 360. (*Newbould and B. B. Ghose, J.J.*) ADILADDI v. EMPEROR.

87 I. C. 840=26 Cr. L. J. 1016=A. I. R. 1926 Cal. 423.

—*Where the witness reads himself.*

Although the deposition of a witness is not read over to him, but the witness reads it himself still the deposition is legal evidence. (*Mullick, Ag. C. J. and Jwala Prasad, J.*) JAGWA DHANUK v. EMPEROR.

93 I. C. 884=5 Pat. 63=7 P. L. T. 396=27 Cr. L. J. 484=A. I. R. 1926 Pat. 232.

—*Where the witness reads himself.*

Reading the deposition by a witness himself and an admission by him that it was correct is not by itself a sufficient compliance. (*Newbould and Mukerji, J.J.*) SAHORALI MOLLA v. EMPEROR. 87 I. C. 103=26 Cr. L. J. 951=A. I. R. 1925 Cal. 1120.

—*Reading over when magistrate is taking other evidence.*

At the hearing of a case before the committing Magistrate, though the depositions of the witnesses were read over to them as required by S. 360, Cr. P. Code, this was done while the other witnesses were being examined.

*Held*, that commitment should be quashed as this is not sufficient compliance with the provisions of S. 360, Cr. P. Code, since the object of that section is that the accused may have the opportunity of ascertaining that the evidence has been correctly recorded.

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*Held*, further that this is of great importance in an enquiry with a view to commitment, since under certain circumstances the evidence then taken may be used as evidence against him at the trial. (*Newbould and B. B. Ghose, J.J.*) **MANIK v. EMPEROR.** 88 I. C. 1043 = 41 C. L. J. 393 = 26 Cr. L. J. 1267 = A. I. R. 1925 Cal. 933.

—*Reading over while Magistrate is taking other evidence.*

Where while evidence of one witness is being read over to him the evidence of another witness is taken in the Court, there can be said to be no sufficient compliance with S. 360 and retrial should be ordered. (*Newbould and Mukerjee, J.J.*) **DARGAHI v. EMPEROR.** 88 I. C. 733 = 52 Cal. 499 = 26 Cr. L. J. 1213 = A. I. R. 1925 Cal. 831.

—*Reading over of the evidence by witness himself.*

Under S. 360 the witnesses whose statements have been recorded and the accused who is on trial are to be given an opportunity of knowing what has been recorded and a mere reading over of the evidence by the witnesses themselves cannot convey to the accused what has been recorded as the evidence given by the witnesses. Evidence not duly recorded as required by S. 360 cannot be used as the foundation of a conviction. (*Walmsley and Mukerji, J.J.*) **MAHAMMAD YASIN v. EMPEROR.** 88 I. C. 602 = 52 Cal. 431 = 29 C. W. N. 650 = 26 Cr. L. J. 1178 = A. I. R. 1925 Cal. 782.

—*Reading depositions of witnesses after the examination of all is over—Procedure is illegal and not only irregular.* (*Devadoss, J.*) **KUPPA MUDALIAR, In re.** 90 I. C. 659 = 1925 M. W. N. 795 = 26 Cr. L. J. 1587 = 49 Mad. 71 = 22 M. L. W. 339 = A. I. R. 1925 Mad. 1206 = 49 M. L. J. 421.

—*S. 361—Interpreter.*

—*Who can be.*

Interpretation of evidence to accused—Witness taking active part during proceedings previous to the trial and even ready to depose in the Sessions Court as prosecution witness should not be chosen to be interpreter. (*C. C. Ghose and Duvall, J.J.*) **AH SOI v. EMPEROR.** 95 I. C. 469 = 53 Cal. 659 = 30 C. W. N. 696 = 27 Cr. L. J. 805 = A. I. R. 1926 Cal. 922.

—*S. 361—Translation.*

—An accused person is often in a much better position than his pleader to follow the drift of the evidence and it is obvious that he ought to be kept informed of what is being said. Where, therefore, certain witnesses at the original trial give evidence in English, translation of such evidence should be made, for the first two paragraphs of S. 361 are not mutually exclusive. A. I. R. 1928, Cal. 27. Diss. from. (*Jackson, J.*) **ERRAPA v. EMPEROR.** 125 I. C. 253 = 31 Cr. L. J. 827 = 1930 Cr. C. 186 = 31 M. L. W. 386 = 1929 M. W. N. 898 = 2 M. Cr. C. 252 = A. I. R. 1930 Mad. 186.

—*S. 362—Compliance.*

—A Magistrate must comply with the provisions of S. 362 (1) and (2) where, he deals with a case under S. 457 read with S. 511, I.P.C. and passes a sentence of one year's rigorous imprisonment though the sentence is to be served in the Dharwar juvenile jail. (*Marten and Fawcett, J.J.*) **MAHOMED ROSHAN v. EMPEROR.** 85 I. C. 134 = 26 Bom. L. R. 1232 = 26 Cr. L. J. 454 = A. I. R. 1925 Bom. 147.

—*S. 363—Refusal to refresh memory.*

—When a Sub-Inspector does not remember what witnesses stated at the investigation and refuses to refresh his memory from the diaries, the Court should

**CR. P. CODE (1898), S. 364—Omission to record.**

compel him to look into the diaries for the purpose of answering the question. (*Adami, J.*) **MOHIUDDIN KHAN v. EMPEROR.**

2 Pat. L. R. Cr. 202 = A. I. R. 1924 Pat. 829.

—*S. 363—Scope.*

—*Deposition.*

It is one thing to record remark about demeanour of witness and quite another to make or record remark or opinion about substance of deposition of witness—S. 363 makes incumbent on Magistrate the former but it does not entitle him to do the latter. (*Jailal, J.*) **SIKANDAR LAL PURI v. EMPEROR.** 113 I. C. 321 = 10 Lah. 778 = 12 A. I. Cr. R. 96 = 30 Cr. L. J. 129 = A. I. R. 1928 Lah. 975.

—*S. 364—Long questions.*

—Where the Magistrate instead of asking separate questions to the accused puts him a long composite question, the examination of the accused is irregular and not in accordance with law. (*Tek Chand, J.*) **HASNI v. EMPEROR.** 103 I. C. 847 = 28 Cr. L. J. 767 = A. I. R. 1927 Lah. 650.

—*S. 364—Non-compliance*

—The provisions of S. 364, Cr. P. Code are mandatory. Omission to comply with the provisions of S. 364 vitiates the trial. (*Newbould and B. B. Ghose, J.J.*) **MESSER BEPARI v. EMPEROR.** 29 C. W. N. 939 = 26 Cr. L. J. 1032 = 87 I. C. 920 = A. I. R. 1926 Cal. 430.

—A record of the examination of the accused made under the provisions of S. 364 is obligatory and the absence of it will vitiate the trial. (*Suhrawardy and Mukerji, J.J.*) **SARAT CHANDRA KAR v. EMPEROR.** 88 I. C. 860 = 52 Cal. 446 = 26 Cr. L. J. 1244 = A. I. R. 1925 Cal. 821.

—*S. 364—Omission to record.*

—*How cured.*

Where a Magistrate while recording a confession of the accused fails to reduce into writing the questions and answers as required by S. 364, the defect is curable under S. 533 by examining the Magistrate as a witness provided no injury is caused to the accused as to his defence on the merits. Further the confession recorded by the Magistrate is itself admissible because the expression "such statement" in S. 533 refers to statement regarding which the Magistrate is called to give evidence. 21 Bom. 495; 23 Bom. 221; 9 Mad. 224; A. I. R. 1923 All. 90; A. I. R. 1925 Pat. 191, Rel. ont (*Mirza and Patkar, J.J.*) **RAMA KARIYAPPA PICHU v. EMPEROR.** 120 I. C. 350 = 31 Bom. L. R. 565 = 31 Cr. L. J. 97 = A. I. R. 1929 Bom. 327.

—If the prisoner is not prejudiced in any way by the omission to record questions put to him the absence of the questions does not make the confession inadmissible. 12 C. L. R. 129, Foll.; A. I. R. 1922 Lah. 237, Dist. (*Harrison and Agha Haidar, J.J.*) **NAWAB v. EMPEROR.** 28 Cr. L. J. 341 = 100 I. C. 821 = 7 A. I. Cr. R. 562 = A. I. R. 1927 Lah. 285.

—*Trial vitiated.*

Of an examination of the accused under S. 342 there was no record made and the only indication of it was to be found in the order sheet which contained the following remark:—"The accused declined to make any statement in this Court and on being asked whether they would adduce any evidence they replied in the negative".

*Held*, that the provisions of S. 364 were violated and that the trial being therefore vitiated should be held afresh. (*Suhrawardy and M. N. Mukerjee, J.J.*) **EMPEROR v. NANI MANDAL.** 86 I. C. 345 = 41 C. L. J. 50 = 52 Cal. 403 = 26 Cr. L. J. 761 = A. I. R. 1925 Cal. 575.



## CR. P. CODE (1898).

## —S. 364—Questions to accused.

—Where there has been no enquiry.

Section 364 authorizes a Magistrate to put questions to accused in order to enable him to explain any evidence that may have been produced against him during the inquiry or trial but where no inquiry had been made, the accused cannot be questioned. A Magistrate before whom a person accused under S. 302, I. P. C. was produced and who had made a confession, after asking him the preliminary questions for satisfying himself that he was making the confession voluntarily, put him the following question, instead of allowing him to make any statement he liked, "Did you on 27th August at M, commit murder of S, deceased, intentionally causing injuries to him with a hatchet".

*Held*, that the question was not justified under the circumstances, as there were no facts before the Magistrate nor was there any evidence on which he could formulate such question. S. 364 had no application to a case like this. No inquiry having been made or commenced in the Court, the question could not be asked under S. 364. (*Jai Lal and Bhide, J.*) PAHLAWAN v. EMPEROR. 31 Cr. L. J. 533=123 I. C. 540=1930 Cr. C. 558=A. I. R. 1930 Lah. 454

## —S. 364—Right of accused.

—Additions when reading over.

Under S. 364, the accused is entitled to explain or add to his answers when the statement is shown or read over to him and it is the statement as finally declared by him to be true that is to be accepted as representing his defence. (*Bhide, J.*) FAKIR SINGH v. EMPEROR. 110 I. C. 801=10 Lah. 223=30 P. L. B. 385=11 A. I. Cr. R. 1=29 Cr. L. J. 769=A. I. R. 1929 Lah. 382.

## —S. 364—Statements before trial.

—S. 164, Cr. P. Code.

S. 364, Cr. P. Code, makes it obligatory upon the Magistrate who examines a person as an accused to record the whole of the questions put to him and answers given by him. But statements whether in the nature of information given by witnesses about a crime or admissions by persons who have taken part in a crime, if made during the course of an investigation but before the commencement of trial or inquiry are governed by S. 164 which permits but does not compel the Magistrate to record the same. (*Spencer and Kumaraswami Sastri, J.*) TANGEDUPALLE PEDDA OBIGADU v. PULLASI PEDDA. 69 I. C. 264=45 Mad. 230=30 Mad. L. T. 107=23 Cr. L. J. 680=14 M. L. W. 542=1921 M. W. N. 779=A. I. R. 1922 Mad. 40=42 M. L. J. 37.

## —S. 364—Summary trial.

—There is nothing in the Code which requires a magistrate in a summary case to place upon the record the notes of the evidence or a full statement of the examination of the accused persons. The whole object of entrusting qualified Magistrates to try certain cases summarily will be defeated if Courts in revision lay down rules of procedure for the hearing of summary cases which would in effect provide a procedure similar to the procedure required in cases which are not tried summarily. (*Stuart, C. J.*) BHAWANI BHIK v. EMPEROR. 99 I. C. 108=3 O. W. N. 946=28 Cr. L. J. 76=A. I. R. 1927 Oudh 42.

—Where the examination of an accused person is a proper examination as prescribed by S. 342, it is not necessary in a summary trial in a warrant case for the Magistrate to record the examination in detail. A. I. R. 1922 Pat. 5, Ref. (*Kulwant Sahay and Allanson, J.*)

## CR. P. CODE (1898), S. 367—Appellate judgment.

PARSOTIM DAS v. EMPEROR.

6 Pat. 504=

8 P. L. T. 757=28 Cr. L. J. 1037=106 I. C. 221=

A. I. R. 1927 Pat. 369.

## —S. 366—Bench Court.

—Judgment—Writing and delivering of.

Section 366 requires that the judgment of a criminal Court should be pronounced by the Court. When the members composing the Bench leave the Bench, there is no Court at all. The mere fact that the presiding officer sits in the Court-room and writes his judgment, will not make that a Court. The mere delivery of a judgment may be left to the presiding officer by the other members of the Bench, but they must be aware of what the judgment contains. Judgment prepared by the presiding officer after other members left the Bench, is not a proper judgment at all. (*Devadoss, J.*) RAMAKOTIAH v. SUBBA RAO. 28 M. L. W. 498=1928 M. W. N. 785=11 A. I. Cr. R. 265=1 M. Cr. C. 298=29 Cr. L. J. 973=112 I. C. 61=52 Mad. 237=A. I. R. 1928 Mad. 1172=55 M. L. J. 576.

## —S. 366—Contents.

—Discussion of evidence.

The Court of first instance ought to help an appellate Court by making some definite statements, as for instance pointing out the exact evidence showing the complicity of each accused in the crime. (*Dalal, J. C.*) ILU v. EMPEROR. 81 I. C. 529=27 O. C. 32=25 Cr. L. J. 913=A. I. R. 1924 Oudh 335.

## —S. 366—Judgment.

—A refusal by the Magistrate under S. 476, to file a complaint against an accused person, does not attract the applicability of the doctrine of *autre fois acquit* enunciated by S. 403, nor does it amount to judgment within the meaning of Ss. 366 and 369 which may not therefore be subsequently reviewed. (*Wild, J. C. and Rupchand, A. J. C.*) RAJABALI HASSANALI v. EMPEROR. 1930 Cr. C. 1147=A. I. R. 1930 Sind 315.

## —S. 366—Pronouncing before writing.

—Failure of justice.

Though it is desirable that Magistrates should obey the express provisions of the law, yet the omission to write a judgment before pronouncing a sentence should not necessarily vitiate the trial, unless such omission has in fact occasioned a failure of justice. 14 All. 242 and 27 Mad. 237, not foll.; 23 Cal. 502, Rel. on. (*Maung Ba, J.*) MD. HAYAT MULLA v. EMPEROR. 120 I. C. 225=1930 Cr. C. 203=7 Rang. 370=30 Cr. L. J. 1166=A. I. R. 1930 Rang. 77.

—Irregularity.

Where after a long trial, the assessors unanimously gave their verdict of not guilty and the Judge also agreeing with them told the accused that they were acquitted and in fact gave his full reason for the acquittal at another time and it ended there.

*Held*, assuming that the method adopted by the Judge in this case is not a full compliance with sections 366 and 367 it is a mere irregularity and it is not open to the High Court to set aside the acquittal on that ground alone. 23 Cal. 502, Ref. (*Schwabe, C. J. Oldfield and Coutts-Trotter, J.*) A. T. SANKARALINGA v. NARAYANA. 68 I. C. 615=45 Mad. 913=16 M. L. W. 413=1922 M. W. N. 579=31 M. L. T. 342=23 Cr. L. J. 583=A. I. R. 1922 Mad. 502=43 M. L. J. 369.

—S. 367—Appellate judgment.

—Discussion of evidence.

Where there is no discussion or setting out of the evidence, on which conclusions are based in an appellate judgment, such a judgment is not a proper judgment and it should be set aside. (*Broadway, J.*) DALIP

**CR. P. CODE (1898), S. 367—Appellate judgment.**

SINGH v. EMPEROR. 112 I.C. 359 = 10 L. L. J. 347 =  
11 A. I. Cr. R. 354 = 29 Cr. L. J. 1031.

**—Court deciding without issuing notice.**

Where the appellant's pleader fails to make out a case for the issue of notice to the Public Prosecutor and the appellate Court thinks fit to decide the case without such notice, a formal order or judgment giving reasons is necessary to dispose of the appeal. There must be sufficient material in the appellate judgment itself to show that the appeal has been properly tried. The judgment or order must bear marks of such intelligent appreciation on the part of the appellate Court of the necessary facts and materials as would warrant the High Court to infer that the conclusions were properly arrived at by the lower appellate Court. A.I.R. 1921 Lah. 102 and 20 C. W. N. 1296, Ref. 13 N. L. R. 169, Rel. on. (*Kinkhede, A. J. C.*) MAROTI v. KASABAI. 98 I. C. 716 = 27 Cr. L. J. 1404 = 7 A. I. Cr. R. 471 = A. I. R. 1927 Nag. 88.

**—Complicated cases.**

Judgment of an appellate Court ought to contain particulars so as to satisfy the revisional Court that the case has been examined from every aspect. In simple cases where the facts are clear no further reason than that the evidence is accepted by the Judge may be strictly required. In complicated cases, however, specially when there are more than one question, both of law and fact, arising, a mere statement of this kind will have to be accepted with difficulty as amounting to a reason for the dismissal of the appeal. 19 All. 506, Rel. on. (*Sulaiman, J.*) SHANKER v. EMPEROR.

24 A. L. J. 318 = 7 L. R. A. Cr. 55 =  
27 Cr. L. J. 449 = 93 I. C. 241 =  
A. I. R. 1926 All. 318.

**—Curable irregularity.**

Where the only case in appeal was one of considering whether the evidence did justify the conclusion that the accused persons were responsible for a particular act, and the appellate Court did not state in its judgment the points for determination, and the reasons for a finding on each point specifically in the manner contemplated by Ss. 367 and 424, but in fact it had gone into the case and said, "The Magistrate's findings of fact are fully justified by the evidence",

*Held*, there was not an "absence" of a judgment and the irregularity in drawing up the judgment was curable under S. 537. (*Fawcett and Madgavkar, J.J.*) PATIL v. BUVA RAOJIBALA v. EMPEROR. 28 Bom. L. R. 1029 = 27 Cr. L. J. 1153 = 97 I. C. 737 = A. I. R. 1926 Bom. 512.

—Where a Court does not discuss the facts nor the grounds of appeal its judgment is not in accordance with law and must be set aside in revision. A. I. R. 1921 Lah. 102, Foll. (*Shadi Lal, C. J.*) HURMAT ALI v. EMPEROR. 91 I.C. 690 = 27 C.L.J. 114 (Lah.).

**—What it should contain.**

The judgment of any appellate Court other than a High Court shall, among other things, contain the point or points for determination, the decision thereon, and the reasons for the decision. 37 Cal. 194, Foll. (*Kincaid, J. C. and Lobo, A.J.C.*) DWARKA v. EMPEROR. 20 S. L. R. 82 = 27 Cr. L. J. 343 = 92 I. C. 855 = A. I. R. 1926 Sind 275.

**—Discussion of evidence.**

If the judgment of an appellate Court does not discuss evidence and does not give facts indicating the occurrence dealt with in it the judgment is not a judgment under S. 367, Cr. P. Code. Such a judgment must be set aside. (*Sanderson, C. J. and Chotzner, J.*) GAHARALI v. EMPEROR. 81 I. C. 437 = 25 Cr. L. J. 901 = A. I. R. 1925 Cal. 266

**CR. P. CODE (1898), S. 364—Applicability.**

—In view of the provisions of S. 424 an appellate Court's judgment must comply with the provisions of Section 367, Criminal Procedure Code. (*Sanderson, C. J. and Chotzner, J.*) GAHARALI v. EMPEROR. 81 I. C. 437 = 25 Cr. L. J. 901 = A. I. R. 1925 Cal. 266.

**—Dismissal under S. 423.**

Where an appeal is dismissed under S. 423, the appellate Court is bound to write a judgment stating the points for determination and the reasons for its decision. (*Martineau, J.*) THAKAR SINGH v. EMPEROR. 89 I. C. 516 = 26 Cr. L. J. 1380 = A. I. R. 1925 Lah. 644.

**—Several accused.**

The judgment of an appellate Court should show on the face of it that the case of each accused in joint trial has been separately taken into consideration. The appellate Court should so far as necessary state reasons showing that it has devoted judicial attention to the case of each accused. The judgment must be such that the High Court as a Court of revision might be in a position to see what the case was and how the Court of appeal has considered the evidence as to the guilt or innocence of each of the accused. Therefore the appellate Court should give an explicit opinion as to the question of facts involved in the case and must form its opinion about the evidence after perusing the record. (*Newbould and C.C. Ghosh, J.J.*) INATULLA SARKAR v. EMPEROR. 81 I. C. 820 = 39 C. L. J. 117 = 25 Cr. L. J. 1044 = A. I. R. 1924 Cal. 618.

**—Should be complete by itself.**

Where the appellate court's judgment disposed of appeals in two cases, one dealing with five accused and the other with three, but it did not mention the name of any of the accused or the name of any of the witnesses produced by the prosecution or the defence, and thus it was impossible to follow the appellate judgment without reading the judgment of the court of first instance, *held* that the judgment was not in accordance with S. 367. An appellate judgment must be a self-contained document and it cannot be read in connection with and supplementary to the judgment of the trial court. 2 Lah. 308 and 35 Cal. 138, Foll. (*Shadi Lal, C. J.*) SOLHU v. KISHNA RAM. 76 I. C. 177 = 25 Cr. L. J. 113 = A. I. R. 1924 Lah. 660.

**—Should be complete by itself.**

Under S. 424 of the Cr. P. Code the rules contained in S. 367 as to the judgment of a Criminal Court of original jurisdiction apply to the judgment of any appellate Court other than a High Court. The High Court will not in revision make up for the deficiency of the appellate judgment by having recourse to that of the Court of first instance. 2 Lah. 308, Foll. (*Moti Sagar, J.*) RAHM ALI v. THE CROWN. 76 I. C. 710 = 25 Cr. L. J. 246 = A. I. R. 1923 Lah. 344.

**—S. 367—Applicability.****—Karachi Sessions Court.**

The Judges of Judicial Commissioner's Court, sitting as Sessions Judges for the District of Karachi, should follow as closely as possible the provisions of S. 367 and S. 424. But the omission to do so cannot vitiate and nullify the whole proceeding before the Sessions Court. The clause "so far as may be practicable" that occurs in S. 424 would certainly bring the error within the scope of S. 537. (*Kincaid, J. C. and Tyabji, A.J.C.*) FAKIR BUX v. EMPEROR. 95 I. C. 753 = 20 S. L. R. 261 = 27 Cr. L. J. 833 = A. I. R. 1926 Sind 244.

## CR. P. CODE (1898).

## —S. 367—Contents.

Merely saying "I substantially agree with the trial Court" is no judgment where the appeal is not summarily dismissed and such judgment is liable to be set aside. (*Walmsey and Chotzner, J.J.*) BASHNAV CHARAN DAS v. EMPEROR. 72 I. C. 71= 24 Cr. L. J. 311=A. I. R. 1924 Cal. 537.

## —S. 367—Defective procedure.

## —Sentence before completing judgment.

Pronouncing sentence before completing the judgment, that is to say before preparing the essential parts of it, such as the statement of points for determination and the reasons for decision, makes the sentence illegal and vitiates conviction 14 All. 242 and 27 Mad. 237, Foll. 21 Cal. 121, Dist. (*Jwala Prasad and Jams, J.J.*) JHARI LAL v. EMPEROR. 122 I. C. 531= 1930 Cr. C. 90=11 P. L. T. 195=8 Pat. 904= 31 Cr. L. J. 416=A. I. R. 1930 Pat. 148.

## —S. 367—Delivery of judgment.

Pronouncing sentence before writing judgment is an irregularity covered by S. 537 and is curable except in case of failure of justice. 14 All. 242, Diss. (*Moti Sagar, J.*) ATA MAHAMMAD v. EMPEROR. 81 I. C. 193=25 Cr. L. J. 705= A. I. R. 1925 Lah. 137.

## —Predecessor in office—Preparation by.

The succeeding magistrate cannot be said to act without jurisdiction in pronouncing judgment signed and written by his predecessor. A.I.R. 1923 All. 276 and A.I. R. 1924 Cal. 55, Dist. (*Kendall, A.J.C.*) CHANDIKA PRASAD v. KING-EMPEROR. 81 I. C. 899= 11 O. L. J. 725=25 Cr. L. J. 1075= 28 O. C. 109=A. I. R. 1925 Oudh 62.

## —S. 367—Erroneous verdict.

## —Proof of.

Although it is desirable that the record of heads of charges should indicate far more fully than mere enumeration of the numbers of the sections, in order to entitle the High Court to interfere with the verdict of the jury and set it aside, it must be affirmatively proved that there has been misdirection and misunderstanding and the verdict is erroneous owing to misdirection by Judge and misunderstanding on the part of the jury of the law as laid down by him. Cr. App. No. 248 of 1929 and 47 Cal. 796, Ref. (*Jack and Panckridge, J.J.*) HAFIZ-ALI HALDAR v. EMPEROR. 1930 Cr. C. 1112=A. I. R. 1930 Cal. 712.

## —S. 367—Expunging of remarks.

## —When it can be done.

Remarks upon the evidence tendered before the court of trial are the proper subject of comment by that court and such comments will not be varied or expunged by the High Court except in an appeal preferred against the decision based on the evidence. Thus the High Court will not revise the judgment of the lower court to the extent of expunging the objectionable matter. 44 A. 401 Rel. on. (*Krishnan Pandalai, J.*) ANGA MUTHU PILLAI v. EMPEROR. 1930 M. W. N. 791.

## —S. 367—Finding.

If in a case of rioting with common intention of taking possession of complainant's land, the Magistrate does not decide as to possession on the ground that another case under S. 145 is pending and acquits the accused, his decision ought to be set aside. (*C. C. Ghose and Duval, J.J.*) SURENDRA NATH SINGH v. JANKI NATH GHOSE. 96 I. C. 527=53 Cal. 471=

## CR. P. CODE (1898), S. 367—Sentence of death.

27 Cr. L. J. 975=7 A. I. Cr. R. 55= A. I. R. 1926 Cal. 945.

## —S. 367—Non-compliance.

## —Illegal.

The language of S. 367 is peremptory on the point that the judgment shall contain point or points for determination, the decision thereon and reasons for the decision and consequently if an appellate Court fails to comply with these requisitions, the irregularity amounts to an illegality and vitiates the order. A.I.R. 1926 Bom. 512, Dist. (*Mirza and Broomfield, J.J.*) SHANMUKH BASAPPA v. EMPEROR. 125 I. C. 710= 31 Cr. L. J. 925=32 Bom. L. R. 353= 1930 Cr. C. 487=A. I. R. 1930 Bom. 163.

## —S. 367—Oral evidence.

## —Omission to refer.

All that S. 367 requires is that the point for determination should be stated, the decision thereon, and the reasons for the decision. It cannot be assumed that because the Magistrate has not referred to the oral evidence but has drawn inferences from documents and from probabilities, therefore he has not considered the evidence. Where he has given strong and legal reasons for his conclusion there is no reason to say that his judgment is defective. (*Ross, J.*) DURGA SINGH v. EMPEROR. 71 I. C. 597=24 Cr. L. J. 181= 2 Pat. L. R. Cr. 154=A. I. R. 1924 Pat. 181.

## —S. 367—Reasons.

Where a large number of persons has participated in a murder, in deciding as to whether some or all of them are to be sentenced to death after a conviction for murder it has long been settled that *prima facie* all the persons convicted should be sentenced to the extreme penalty and it is only where special circumstances are shown in favour of any individual that the Court would sentence such individual to the alternative punishment of transportation for life. (*Courtney-Terrell, C. J. and Macpherson, J.*) SHAFI KHAN v. EMPEROR. 117 I. C. 176=8 Pat. 181=30 Cr. L. J. 737= A. I. R. 1929 Pat. 161.

## —S. 367—Sentence of death.

Where the Sessions Judge passed a sentence of transportation for life on a youthful offender on the ground that he was young, that he may reform, and that the murder was committed without premeditation but otherwise it appeared that the murder was brutal and cold blooded,

Held, in appeal that the sentence of death should have been passed. (*Raza and Pullan, J.J.*) EMPEROR v. BHAGWANDIN. 7 O. W. N. 767= 1930 Cr. C. 965.

## —When need not be passed.

Apparently the provision in S. 367 (5) contemplates that death sentence is to be passed as a matter of course unless there is sufficient reason to the contrary. But the Court must consider the question of sentence with reference to the circumstances and if these circumstances justify the passing of a sentence other than the sentence of death, the Court must pass that sentence. Therefore, in fixing the measure of punishment one is to be guided not by S. 367, but by various other matters, for instance, the enormity or otherwise of the offence and the particular circumstances under which the accused committed it.

D, a mere lad of twenty, went to retire with his wife and shut himself in the upper room. In the morning the door was found open and the girl was found murdered. D was found absconding and remained hiding for some six weeks.

Held, that on consideration of his age, good character, the provocation at the unsympathetic treatment he

**CR. P. CODE (1898), S. 367—Sentence of death.**

had been getting ever since his marriage from his wife's relations, a sentence of transportation for life instead of death, would meet the ends of justice. (*C. C. Ghose, J.*) on difference between *Cuming and S. K. Ghose, J.J.*) **EMPEROR v. DUKARI CHANDRA KARMAKAR.**

125 I. C. 305 = 33 C. W. N. 1226 = 1930 Cr. C. 225 = 31 Cr. L. J. 817 = A. I. R. 1930 Cal. 193.

—*When need not be passed.*

Where a large number of persons has participated in a murder, in deciding as to whether some or all of them are to be sentenced to death after a conviction for murder it has long been settled that *prima facie* all the persons convicted should be sentenced to the extreme penalty and it is only where special circumstances are shown in favour of any individual that the Court would sentence such individual to the alternative punishment of transportation for life. (*Courtney-Terrell, C. J. and Macpherson, J.*) **SHAFI KHAN v. EMPEROR.**

117 I. C. 176 = 8 Pat. 181 = 30 Cr. L. J. 737 = A. I. R. 1929 Pat. 161.

—*Quarrel.*

Where the murder was not a deliberate one but occurred suddenly after mutual abuse, and the accused who did not belong to a turbulent class took up on the spur of the moment the weapon and killed the deceased with it, a sentence of transportation for life was substituted for the death sentence. (*Addison and Dalip Singh, J.J.*) **GAMAN v. EMPEROR.**

116 I. C. 187 = 11 L.L. J. 1 = 12 A. I. Cr. R. 453 = 30 Cr. L. J. 571 = A. I. R. 1928 Lah. 913.

—*Youth—Tool in the hands of others.*

Youth alone does not constitute such an extenuating circumstance as would justify the imposition on the lesser penalty prescribed by the law.

But where a youth charged under S. 302 had no personal enmity with the victim, and he was found to be only a tool in the hands of the enemies of the victims,

*Held*, the extreme penalty of the law should not be exacted in the case. (*Shadi Lal, C. J. and Coldstream, J.*) **HARNAMUN v. EMPEROR.**

110 I. C. 234 = 10 A. I. Cr. R. 501 = 29 Cr. L. J. 682 = A. I. R. 1928 Lah. 855.

—*Youth.*

Youth alone in every case is not such an extenuating circumstance as would justify an imposition of the lesser penalty. A.I.R. 1922 L.B. 34 and A.I.R. 1922 Nag. 65, Foll. (*Shadi Lal, C. J. and Agha Haidar, J.*) **ISMAIL v. EMPEROR.**

109 I. C. 364 = 10 A. I. Cr. R. 212 = 29 Cr. L. J. 540.

—*Reasons for not awarding.*

It is necessary for the Judge to state the reason, when convicting an accused of an offence punishable with death, why he is not passing a sentence of death. (*Stuart, C. J. and Raza, J.*) **DWARKA v. EMPEROR.**

105 I. C. 804 = 4 O. W. N. 977 = 28 Cr. L. J. 980 = A. I. R. 1927 Oudh 588.

—*Doubt as to the cause of death.*

If a person is convicted of an offence punishable with death, the fact that the accused murdered his victim merely to escape from custody, is not a sufficient reason for imposing the lesser sentence.

But where the case rested entirely on circumstantial evidence and it was open to question whether the injuries to the head would have caused death had not the deceased been drowned,

*Held*, there can be other reasons for inflicting the lesser punishment. (*Wasir Hasan and Pullan, J.J.*) **EMPEROR v. MANNUN.**

104 I. C. 636 = 4 O. W. N. 754 = 9 A. I. Cr. R. 46 = 28 Cr. L. J. 860 = A. I. R. 1927 Oudh 352.

**CR. P. CODE (1898), S. 367—Signing of Judgment.**

—*Voluntary drunkenness.*

The reasons justifying the infliction of the lesser penalty under S. 367 (5) must be such as are in accord with established legal principles; unless drunkenness either amounts to unsoundness of mind so as to enable insanity to be pleaded by way of defence, or the degree of drunkenness is such as to establish incapacity in the accused to form the intent necessary to constitute the crime, drunkenness is neither a defence nor a palliation and is not a reason for inflicting a sentence of transportation for life instead of the death sentence. 28 P.R. (Cr.) 1917, Expl. (*Harrison and Fford, J.J.*) **WARYAM SINGH v. THE CROWN.**

95 I. C. 284 = 7 Lah. 141 = 27 P. L. R. 332 = 27 Cr. L. J. 764 = A. I. R. 1926 Lah. 428.

—*Accused a woman.*

Mere absence of premeditation or deliberate intent to kill is not an adequate reason for not passing sentence of death, so also the fact that the accused is a woman is not a conclusive reason for not passing a sentence of death. (*Young, Off. C. J. and May Oung, J.*) **MI SHE YI v. EMPEROR.**

81 I. C. 945 = 1 Rang. 751 = 2 Bur. L. J. 277 = 25 Cr. L. J. 1121 = A. I. R. 1924 Rang. 170.

—**S. 367—Signing of judgment.**

—*Bench Magistrates—Signing in Register of convictions.*

The intention of S. 265 is that by whomsoever the judgment and record may have been written, they shall be signed by all the members present. The words "presiding officer of the Court" do not afford any assistance in the construction of S. 265 and do not show that the judgment may be signed only by the Chairman of the Benches; they are no more than a compendious description of all classes of judicial officers, Magistrates and Judges who have to pronounce judgments. But the failure to comply with a mandatory provision of the Code is not necessarily an illegality and thus where all the members of the Bench sign the register, in which the sentences are embodied, and thus agree in the judgment, their omission to comply with the technical requirements of the law in the fact that the judgment is signed only by the Chairman is a mere irregularity which occasions no failure of justice. A. I. R. 1928 Mad. 1172, Doubted. (*Waller and Cornish, J.J.*) **T. M. A. NATHAN v. EMPEROR.**

124 I. C. 501 = 31 Cr. L. J. 715 = 53 Mad. 165 = 1930 Cr. C. 187 = 1930 M. W. N. 78 = 30 M. L. W. 883 = 2 M. Cr. C. 222 = A. I. R. 1930 Mad. 187 = 57 M. L. J. 763.

—Where a Magistrate prepares a judgment but does not sign it, such omission to sign the judgment amounts to a mere irregularity curable by S. 537. A. I. R. 1925 All. 299, Rel. on. (*Maung Ba, J.*) **MD. HAYAT MULLA v. EMPEROR.**

120 I. C. 225 = 1930 Cr. C. 203 = 7 Rang. 370 = 30 Cr. L. J. 1166 = A. I. R. 1930 Rang. 77.

—*Bench Magistrates.*

If the record is prepared by a member of the Bench and not by the presiding officer, it shall have to be signed by each member of the Bench taking part in the proceedings, as required by S. 265 (2). But where a judgment of a Bench is prepared by the presiding officer it is sufficient, if he alone signs it. (*Devadoss, J.*) **RAMAKOTIAH v. SUBBA RAO.**

112 I. C. 61 = 28 M. L. W. 498 = 1928 M. W. N. 781 = 1 M. Cr. C. 298 = 29 Cr. L. J. 973 = 11 A. I. Cr. R. 265 = 52 Mad. 237 = A. I. R. 1928 Mad. 1172 = 55 M. L. J. 576.

**CR. P. CODE (1898), S. 367—Signing of Judgment.**

—Where the judgment was entirely in the handwriting of the Magistrate,

*Held*, in the circumstances of the case, irregularity of the judgment not being signed, was covered by S. 537. (*Mukerji, J.*) **RAM SUKH v. EMPEROR.**

86 I. C. 64=47 All. 284=26 Cr. L. J. 688=  
6 L. R. A. Cr. 41=23 A. L. J. 8=  
A. I. R. 1925 All. 299.

**—S. 367—Trial by jury.**

—As assessors and as jury—Judge not giving reasons in the former.

Where in a joint trial of several accused persons for various offences, some triable by jury and others triable with the aid of assessors, the Judge summed up the case at some length to the jury with regard to all the charges, but when he came to write his judgment with regard to the charges triable by himself with the assessors, he merely referred to the charge to the jury without giving any reasons for agreeing with the jury,

*Held*, there was no sufficient compliance with the requirements of S. 367 in respect of the offences triable with the aid of assessors and the judgment was therefore defective. Rat. Un. Cr. Case 426, Rel. on. (*Odgers, J.*) **THANGAYA NADAR v. EMPEROR.**

97 I. C. 748=27 Cr. L. J. 1164=  
A. I. R. 1927 Mad. 56.

**—What the charge should be.**

Under S. 367 the Judge is not to write a judgment but to record the heads of the charges to the jury, but as an appeal lies to the High Court in jury trials, it is necessary that the charge recorded should be such as to convey sufficient information to the High Court as to the explanation of the law by the Judge and about important questions of fact. (*Suhrawardy and Duvval, J.J.*) **EMPEROR v. G. C. WILSON.**

96 I. C. 270=  
30 C. W. N. 693=43 C. L. J. 537=  
27 Cr. L. J. 926=A. I. R. 1926 Cal. 895.

**—What the charge to jury should be.**

According to the proviso to S. 367 (5) the recording of "heads of charge to the jury" need not be a verbatim reproduction of the Judge's summing up; nor is it necessary that the charge should be written out before it is delivered. But whether the heads of charge are written out before delivery or not, they should be placed on record by the Judge as soon as it is possible for him to do so and whilst what he said is fresh in his recollection.

The heads of charge need not be meticulous or lengthy but must give accurately the substance of what the Judge said to the jury so that the High Court may, if occasion arises, be able to ascertain from the record whether the law and the facts relative to the case were fairly and properly put to the jurors.

Where the records of the heads of charge merely stated that certain sections of the Penal Code had been "read over and explained".

*Held*, that this was not a sufficient compliance with the law. 57 I. C. 934 and 1 Pat. L. J. 317, Rel. on. (*Bucknill and Kulwant Sahay, J.J.*) **RUPAN SINGH v. EMPEROR.**

91 I. C. 225=4 Pat. 626=  
7 P. L. T. 239=27 Cr. L. J. 49=  
A. I. R. 1925 Pat. 797.

**—S. 369—Discharge.**

—Order of discharge under S. 209 or 203 is not judgment within the meaning of S. 369. (*Suhrawardy and Graham, J.J.*) **DEBIDAS KARMAKAR v. EMPEROR.**

121 I. C. 401=33 C. W. N. 974=  
1930 Cr. C. 13=31 Cr. L. J. 260=  
A. I. R. 1930 Cal. 61.

**CR. P. CODE (1898), S. 369—Revision petition.****—S. 369—Dismissal for default.****—Review.**

"Judgment" contemplated by S. 369 is only a decision on the merits. A dismissal for default of appearance, therefore, is not a judgment and High Court has power to review a dismissal order for default of appearance passed in its appellate jurisdiction. 46 Cal. 60, Foll.; 21 Cal. 121, Rel. on. (*Maung Ba, J.*) **IBRAHIM v. EMPEROR.** 117 I. C. 243=30 Cr. L. J. 749=  
A. I. R. 1928 Rang. 288.

**—S. 369—Finality.**

—Judgment in contemplation of enhancement of sentence.

Where in appeal the Judicial Commissioner's Court alters the conviction but does not enhance the sentence and contemplates further action by that Court in case the Local Government decided to move in the matter, subsequent proceedings in revision by that Court at the instance of the Local Government must be regarded as a completion of or necessary addendum to the judgment delivered by that Court in appeal. (*Findlay, Offg. J. C. and Halsfax, A. J. C.*) **LOCAL GOVERNMENT v. DOMA KUNBI.**

27 Cr. L. J. 339=  
92 I. C. 851=A. I. R. 1926 Nag. 323.

**—S. 369—High Court.**

—Power to reconsider—S. 561-A, Cr. P. Code.

Section 561-A does not confer any new powers but merely declares that such inherent powers as the Court may possess shall not be deemed to be limited or affected by anything contained in the Code. There is no conflict between that section and S. 369. (*Fforde and Agha Haidar, J.J.*) **RAJU v. EMPEROR.**

110 I. C. 221=10 Lah. 1=10 A. I. Cr. R. 494=  
29 Cr. L. J. 669=30 P. L. R. 247=  
A. I. R. 1928 Lah. 462.

—Power to reconsider—S. 561-A, Cr. P. Code.

Section 561-A is in no way limited or governed by S. 369 and the High Court has power to reconsider the question of sentence when the ends of justice require it. A. I. R. 1927 Lah. 139, Rel. on. (*Nanavutti, J.*) **EMPEROR v. SHIVA DATTA.**

111 I. C. 573=  
5 O. W. N. 641=29 Cr. L. J. 893=  
3 Luck. 680=A. I. R. 1928 Oudh 402.

—Power to reconsider—S. 561-A, Cr. P. Code.

Section 561-A is in no way limited or governed by S. 369 and High Court has power to reconsider the question of sentence when the ends of justice require it. (*Broadway, J.*) **MATHRA DAS v. THE CROWN.**

9 L. L. J. 42=99 I. C. 1039=28 Cr. L. J. 239=  
A. I. R. 1927 Lah. 139.

**—Finality of Judgment.**

A judgment even of a High Court, when it is signed, becomes final, and it is not thereafter open to review. Where an appeal was disposed of by a Judge of the High Court but by mistake, the appeal filed through Counsel was not posted along with it and he was not consequently heard,

*Held*, that was no ground for re-hearing the appeal, as the appeal has been disposed of and the High Court has no power of Review and the judgment had become final. There is no rule in the Madras High Court similar to Rule 83 of Allahabad High Court as to the sealing of orders. The Judgment has become final when it was delivered and signed. (*Srinivasa Iyengar, J.*) **ARUMUGHA PADAYACHI, In re.**

23 M. L. W. 56=  
1926 M. W. N. 147=27 Cr. L. J. 184=  
91 I. C. 1000=A. I. R. 1926 Mad. 420=  
50 M. L. J. 51.

**—S. 369—Revision petition.**

—Alteration after.

Where a revision petition against conviction has

**CR. P. CODE (1898), S. 369—Revision petition.**

been dismissed by a High Court Judge, that judgment cannot be again reviewed. (*Addison and Coldstream, J.J.*) **EMPEROR v. DHANNA LAL.**

117 I. C. 669=30 P. L. E. 409=  
1929 Cr. 429=10 Lah. 241=30 Cr. L. J. 815=  
A. I. R. 1929 Lah. 797.

**—S. 369—Scope.**

It is not open to a Magistrate to review an order which is a final order, so far as one party is concerned, under S. 145. (*Findlay, Offg. J. C.*) **NARAYAN v. CHANDRABHAGA.**

89 I. C. 153=  
26 Cr. L. J. 1289=A. I. R. 1925 Nag. 457.

The Court has no jurisdiction to review or revise its own orders in criminal matters. A.I.R. 1923 M. 426, Foll. (*Wazir Hasan, A.J.C.*) **PARAS RAM v. EMPEROR.**

85 I. C. 383=26 Cr. L. J. 543=  
A. I. R. 1925 Oudh 476.

**—S. 369—Void judgment.**

*Enhancement without notice to accused.*

A reasonable opportunity for the accused to be heard is an essential condition precedent to the exercise of jurisdiction under S. 439, when the Court is considering the question of enhancing the punishment inflicted on him. Where the conditions laid down by law as precedent and requisite to the hearing of a case are not observed, the Court acts without jurisdiction, and its order is, therefore, void *ab initio* and the case can be re-heard. (Case-law discussed.) (*Odgers and Wallace, J.J.*) **SOMU NAIDU, In re.**

84 I. C. 850=  
47 Mad. 428=20 M. L. W. 18=34 M. L. T. 218=  
26 Cr. L. J. 370=A. I. R. 1924 Mad. 640=  
46 M. L. J. 456.

**—S. 370—Non-compliance.**

*No record of examination under S. 342.*

Where the record of the case as made by the trying Magistrate was not in accordance with the requirements of S. 370, and where the trial Magistrate examined the accused under S. 342, but did not record the substance of his examination and his plea,

*Held*, that proper procedure had not been followed and the case should be re-tried after setting aside the order. (*Suhrawardy and Panton, J.J.*) **ISMAIL SHA v. EMPEROR.**

27 Cr. L. J. 110=91 I. C. 542=  
A. I. R. 1926 Cal. 692.

**—S. 370—Omissions.**

*Forms—Substantial compliance.*

Where the various particulars required to be recorded under S. 370 were not recorded in the usual way on the printed form provided for the purpose, but all the important items of these particulars were recorded,

*Held*, that the omission to comply with the provisions of S. 370 was no more than an irregularity and was not an illegality which vitiated the trial. (*Newbould and B. B. Ghose, J.J.*) **BISHNUPADA DEB v. EMPEROR.**

30 C. W. N. 981=27 Cr. L. J. 1131=  
7 A. I. Cr. B. 168=97 I. C. 651=  
A. I. R. 1926 Cal. 1109.

**—S. 370—Plea of accused.**

*Substantial compliance.*

While the column provided for making a record of the plea and examination of the accused in the form prescribed under S. 370 must be filled, there is no rule as to how that should be done. So the entry "denies" made in that column is sufficient if when the plea was taken and when the accused was examined he merely denied having committed the offence. (*Mukerji, J.*) **SADAGAR CHAUDHURI v. EMPEROR.**

49 C. L. J. 261=33 C. W. N. 543=115 I. C. 604=  
30 Cr. L. J. 526=56 Cal. 1067=  
12 A. I. Cr. B. 334=1929 Cr. C. 30=  
A. I. R. 1929 Cal. 406.

**CR. P. CODE (1898), S. 374—Principle.****—S. 370—Reasons.**

*Omission to record.*

Hony. Prescy. Magistrate should record reasons for conviction where imprisonment is inflicted. The omission to record the reasons is, however, only an irregularity and where the accused has not been prejudiced, revision will not be allowed. (*Odgers and Wallace, J.J.*) **THURMAN, In re.**

81 I. C. 908=  
20 M. L. W. 330=25 Cr. L. J. 1084=  
A. I. R. 1924 Mad. 799.

**—S. 370—Reasons for imprisonment.**

*Bench of Magistrates.*

A Bench of Magistrates cannot imprison a person without giving its reasons. Where the record was too meagre and there was nothing to show that justice has been done, *held*, that it is a proper case in which the High Court should interfere. 46 Mad. 253, Ref. (*Jackson, J.*) **MAHABOOB KHAN v. EMPEROR.**

1929 M. W. N. 892.

**—S. 370—Reference to documents.**

Under S. 370 there is no serious objection to the Magistrate's referring to a document on the record instead of taking the trouble to re-write those portions of it which should have been included in his final order. (*Newbould and B. B. Ghose, J.J.*) **BISHNU PADA DEB v. EMPEROR.**

30 C. W. N. 981=27 Cr. L. J. 1131=  
7 A. I. Cr. B. 168=97 I. C. 651=  
A. I. R. 1926 Cal. 1109.

**—S. 373—Duty of High Court.**

*Reference.*

The questions of misdirection are of less importance in a case of reference, for in a case of reference the High Court has to come to its own independent conclusion as to the guilt or innocence of the accused person independently of the verdict of the jury or of the opinion of the Judge. (*Cuming and Mukerji, J.J.*) **HAZRAT GUL KHAN v. EMPEROR.**

47 C. L. J. 240=32 C. W. N. 345=  
29 Cr. L. J. 546=109 I. C. 482=  
10 A. I. Cr. B. 259=A. I. R. 1928 Cal. 430.

**—S. 374—Powers of High Court.**

The powers of the High Court are not limited in the case of a reference as they are ordinarily limited in the case of an appeal from a trial held by a jury. It is open to the High Court to come to the conclusion that the finding of the jury is unsafe and unjustified by the evidence on the record. But it does not mean that the Court is, for that purpose, to deal with the case merely on the paper-book. The Judge and the jury have had the advantage of seeing the witnesses and watching the development of the case for the prosecution and the defence in all its various stages and the High Court will always attach the greatest possible weight to the conclusion of the jury. (*Rankin, C.J., C. C. Ghose and Patterson, J.J.*) **EMPEROR v. PANCHU SHAIKH.**

34 C. W. N. 1154 (F.B.).

*Where there is no proper trial.*

No doubt the entire case is open to the High Court under S. 374, but that assumes that whatever has happened, before the case comes to the High Court, has been done in strict accordance with the provisions of the law. But if there has been no proper trial then the only course that is open to the High Court is to direct a re-trial. (*C.C. Ghose and Graham, J.J.*) **EMPEROR v. RAJAB ALI FAKIR.**

46 C.L.J. 31=  
31 C. W. N. 881=103 I. C. 790=  
8 A. I. Cr. B. 316=28 Cr. L. J. 742=  
A. I. R. 1927 Cal. 631.

**—S. 374—Principle.**

*Certainty of guilt—Distinction between Ss. 374 and 423.*



**CR. P. CODE (1898), S. 374—Principle.**

If the evidence in a case affords such a degree of certainty of the guilt of the accused as is mentioned in S. 3 of the Evidence Act, the sentence must be based on the facts found proved by however little the proof of them exceeds the standard stated in that section; otherwise the accused must be acquitted. A Judge or Magistrate who says an accused person is proved guilty, but should be lightly punished because the proof of his guilt is weak, contradicts and stultifies himself. The sentence of death is not an exception to this principle either at the trial or in appeal. But the law naturally makes full provision for the undoubted fact that a capital sentence differs from all others in being irrevocable after it has been carried out, and if the matters to be considered under S. 423 are left out there is nothing left to be considered under S. 376 except the one matter whether the certainty of guilt is sufficiently in excess of the minimum certainty required by S. 3 of the Evidence Act to remove the danger of the carrying out of the sentence on an innocent person. (*Hallifax and Kinkhede, A. J. Cr.*) **DADI LODHI v. EMPEROR.** 27 Cr. L. J. 731=95 I. C. 59= A. I. R. 1926 Nag 368.

**—S. 374—Sentence when confirmed.****—Doubt as to identification.**

Certain persons were tried with the aid of jury upon charges under S. 120-B read with Ss. 302 and 34 of the Penal Code. The jury returned a unanimous verdict of guilty on both the charges and the Judge accepting and agreeing with the verdict sentenced the accused to death. There was no eye-witness to the occurrence, and there was a real doubt as to the identification of the accused. Inspiration and manipulation were apparent in the retracted confession of the accused. Murder was found to be the result of a severe struggle between the accused and the murdered.

*Held*, that verdict of jury was not justified under the circumstances. (*Chotsner and Lort Williams, J.J.*) **PONCHU MONDAL v. EMPEROR.**

111 I. C. 385=32 C. W. N. 702= 29 Cr. L. J. 833=11 A. I. Cr. R. 123.

—When a man rushes into a brawl with a heavy hatchet and strikes with all his force one of his neighbours who is unable to defend himself upon the head with the hatchet and kills him, then it is not a case for the exercise of clemency and capital sentence should not be reduced. (*Stuart, C. J. and Raza, J.*) **MADARU v. EMPEROR.**

5 O. W. N. 29=107 I. C. 177= 29 Cr. L. J. 230=9 A. I. Cr. R. 438= A. I. R. 1928 Oudh 221.

—In a reference under S. 374 the High Court must be satisfied that the finding of fact is justified by the evidence on the record. (*Newbould and Mukerji, J.J.*) **ARSHAD ALI v. EMPEROR.** 92 I. C. 890= 30 C. W. N. 166=27 Cr. L. J. 378.

**—S. 375—Scope.****—Distinction between Ss. 375 and 428.**

In S. 428 the word "necessary" does not import that it is impossible to pronounce judgment without the additional evidence. S. 375 says that "additional evidence may be taken upon any point bearing upon the guilt or innocence of the convicted person," whereas all that S. 428 (1) says is "in dealing with any appeal the appellate Court if it thinks additional evidence to be necessary, etc." There is no restriction in the wording of the section either as to the nature of the evidence or that it is to be taken for the prosecution only that the provisions of the section are only to be invoked when formal proof for the prosecution is necessary. (*Odgers and Wallace, J.J.*) **M. P. NARAYANA MENON, In re.**

**CR. P. CODE (1898), S. 386—Revision.**

77 I. C. 481=25 Cr. L. J. 401= A. I. R. 1925 Mad. 106.

**—S. 376—Improper sentence.**

—While confirming sentence of death, if the High Court thinks that it would be wrong and improper that the sentence of death passed on the accused should be carried out, it may decline to confirm it. 17 C. W. N. 1213, Appl. (*Findlay, J.C. and Pradeaux, A. J. Cr.*) **MADHO v. EMPEROR.** 22 N. L. R. 104=

27 Cr. L. J. 955=7 A. I. Cr. R. 37= 96 I. C. 507=A. I. R. 1926 Nag. 461.

**—S. 379—Scope.**

—S. 379, Cr. P. Code., is not applicable to civil detention. (*Carr, J.*) **EMPEROR v. MA KHAI GVI.**

86 I. C. 469=26 Cr. L. J. 821= 4 Bur. L. J. 9=3 Rang. 93= A. I. R. 1925 Rang. 202.

**—S. 386—Civil Court's power.****—Execution of warrant.**

Where a Civil Court is executing a warrant of attachment issued by a Magistrate which becomes a decree of such Civil Court under S. 386, Cr. P. Code the mere fact that the procedure of Criminal Courts is different from that of Civil Courts is not sufficient to give jurisdiction to such executing Court, when it tries summarily a claim petition, to go behind such decree. (*Devadoss, J.*) **S. KUPPUSWAMI AYYAR v. SECY. OF STATE.** 119 I. C. 33=A. I. R. 1929 Mad. 383.

**—S. 386—Condition precedent.****—Sentence essential.**

Mere report from Traffic Inspector of a railway that a certain sum should be recovered from an owner of a motor car for covering damage to a carriage of the railway company is not sufficient for issuing warrant under S. 386. It is necessary that the Court issuing such warrant should have sentenced the offender to pay a fine. That is a condition precedent to the issue of any warrant under S. 386. (*Wort, J.*) **ABDUL MAJID v. N. L. MUKHERJI.** 10 P. L. T. 124=

116 I. C. 524=30 Cr. L. J. 635= 13 A. I. Cr. R. 67=A. I. R. 1929 Pat. 108.

**—S. 386—Immovable property.****—Punjab Land Alienation Act, S. 16.**

The combined effect of S. 386, Cr. P. Code, and S. 16, Punjab Land Alienation Act, is that the land belonging to a member of an agricultural tribe cannot be sold in pursuance of a warrant issued by a Magistrate to the Collector and sent to the nearest Civil Court for execution. (*Jai Lal, J.*) **EMPEROR v. MILKHA SINGH.** 119 I. C. 227=30 Cr. L. J. 1006=

1929 Cr. C. 212=A. I. R. 1929 Lah. 667.

—Immovable property of an agriculturist can be attached and sold in execution of an order passed under S. 386. (*Fawcett and Madgavkar, J.J.*) **COLLECTOR OF SATARA v. MAHADU.** 50 Bom. 844=

99 I. C. 310=28 Bom. L. R. 1231= A. I. R. 1926 Bom. 582.

**—S. 386—Joint family property.**

—Per *Fawcett, J.*—The words "moveable property belonging to" suffice to cover a share in a joint Hindu family estate so far as it consists of moveable property. (*Fawcett and Madgavkar, J.J.*) **SHIVLINGAPPA v. GURLINGAVA.** 49 Bom. 906=27 Bom. L. R. 1363= 27 Cr. L. J. 652=94 I. C. 604= A. I. R. 1926 Bom. 103.

**—S. 386—Revision.****—Karachi Port Trust Act, S. 84.**

Order of a Magistrate directing a warrant to issue under S. 386, Cr. P. Code, for recovery of an amount due to the Karachi Port Trust on application being made to him for the purpose under S. 84 of the Karachi Port

**CR. P. CODE (1898), S 386—Revision.**

Trust Act, is not a judicial order but is merely a consequential or an executive order passed for the purpose of carrying out the effective order of the Port Trust directing the applicant to pay a certain sum of money in consequence of his failure to pay their dues and is therefore not subject to revision. (*Kennedy, J.C. and Raymond, A. J. C.*) *YUSIFALI LOOKMANJI v. EMPEROR*.  
20 S. L. R. 63=26 Cr. L. J. 1263=  
88 I. C. 1007=A. I. R. 1926 Sind 57.

**—S. 386—Scope.**

*Dekhan Agriculturists' Relief Act, S. 22.*

A Court is not justified in saying that because a warrant under S. 386, sub-S. (3), Cr. P. Code, is to be deemed a decree, therefore the exceptional provisions of S. 22 must be held applicable to such a warrant. 37 Bom. 614; 8 Bom. 20, Rel. on. 14 S. L. R. 217, Appr. (*Fawcett and Madgavkar, J.J.*) *COLLECTOR OF SATARA v. MAHADU*.  
50 Bom. 844=  
28 Bom. L. R. 1231=99 I. C. 310=  
A. I. R. 1926 Bom. 582.

**—S. 390—Time of execution.**

*—S. 391, Cr. P. Code.*

It cannot be held that under S. 390 the sentence of whipping must be executed on the very day that the sentence is passed. The words "at such place and time as the Court may direct" are very wide and give a discretion to the Court; and a direction that the sentence of whipping should be executed "as soon as practicable" is one that in a case not falling under (a) or cl. (b) sub S. (1). S. 391 is a proper order to pass. (1897) Rat. Unrep. Cr. Case 906 held obsolete. (*Fawcett and Mirsa, J.J.*) *EMPEROR v. GOPALA MURGIS*.  
30 Bom. L. R. 389=29 Cr. L. J. 573=  
109 I. C. 509=10 A. I. C. R. 306=  
A. I. R. 1928 Bom. 138.

**—S. 393—Interpretation.**

*—Burma Act VIII of 1927.*

The word "sentenced" which occurs in S. 393, Cr. P. Code, and in the Burma Act (8 of 1927,) must be read in a general sense, and, if a person is sentenced for any period exceeding the period fixed by the Act whether in conviction in one case or more than one, he cannot be punished with whipping. 1 Mad. 56, Rel. on. (*Chari, J.*) *NGA NYI GYI v. EMPEROR*.  
120 I. C. 697=7 Rang. 769=31 Cr. L. J. 176=  
1930 Cr. C. 305=A. I. R. 1930 Rang. 138.

**—S. 397—Concurrent sentences.**

*—Sections 401, 457 and 411, I. P. C.*

Where accused are sentenced under Ss. 457 and 411, Penal Code, and also they are sentenced for an offence under S. 41 with other accused, the sentences being passed on the same day although in separate trials, the sentences can be ordered to run concurrently. The accused may be considered to have been convicted of the offence under S. 401 first and from the moment of their conviction the term of imprisonment may be deemed to have begun. (*Finlay, Offg. J.C.*) *MAHADEO v. KING-EMPEROR*.  
27 Cr. L. J. 807=  
95 I. C. 471=A. I. R. 1926 Nag. 426.

**—S. 397—Consecutive sentences.**

*—Conviction under S. 400, I. P. C., for dacoity.*

A conviction can be had under S. 400 even where no actual commission of a dacoity is proved. The element of the offence is association with the knowledge that it is formed for the purpose of committing dacoities habitually. Hence where sentence is already passed for the offence of committing dacoity there is no bar to the passing of a sentence under S. 400. (*Dalal and Neave, A. J. C.*) *MURLI BRAHMAN v. KING-EMPEROR*.  
89 I. C. 836=27 O. C. 385=  
26 Cr. L. J. 1412=A. I. R. 1925 Oudh 374.

**CR. P. CODE (1898), S. 403—Applicability.****—S. 397—Powers of High Court.**

High Court has power to direct separate sentences of separate trials to run concurrently. (*Dalal, J.*) *SIS RAM v. EMPEROR*.  
118 I. C. 384=  
1929 A. L. J. 800=10 L. R. A. Cr. 103=  
30 Cr. L. J. 904=12 A. I. Cr. R. 92=  
51 All. 888=1929 Cr. C. 175=  
A. I. R. 1929 All. 585.

**—S. 397—'Undergoing.'**

A prisoner begins to undergo the sentence of imprisonment from the moment at which the sentence is pronounced. (*Carr, J.*) *EMPEROR v. NGA PO THAUNG*.  
82 I. C. 478=3 Bur. L. J. 32=  
25 Cr. L. J. 1310=A. I. R. 1924 Rang. 307.

**—S. 401—Grounds.**

Offence under Penal Code, Ss. 302—149—Young age, minor part played, and influence of bad company were considered as extenuating circumstances. (*Zafar Ali and Bhude, J.J.*) *JOGAH SINGH v. EMPEROR*.  
11 L. L. J. 203=1929 Cr. C. 165=  
A. I. R. 1929 Lah. 601.

*—Accused suffering from epileptic fits.*

Where the accused, convicted on a charge of murder, had and was suffering from epileptic fits, and owing to them he was of irritable temper, liable to lose self-control on the most trivial provocation, a recommendation of the exercise of the prerogative of mercy was made. 30 P. R. 1918; A. I. R. 1924 All. 413 and 23 Cal. 604, Ref. (*Zafar Ali and Tek Chand, J.J.*) *TOLA RAM v. EMPEROR*.  
102 I. C. 774=8 Lah. 684=  
28 Cr. L. J. 598=29 P. L. R. 104=  
A. I. R. 1927 Lah. 674.

Where a young girl of 18 years was married to a boy 13 years old, and she contracted an intimacy with one S. and became pregnant, and when she suddenly gave birth to an illegitimate child, she strangled it owing to her anxiety to conceal her shame.

Held, that she was rightly convicted of murder and sentenced to transportation for life, but that it was a fit case in which, in view of the mitigating circumstances, the Local Government should exercise the powers vested in it by Ss. 401 and 402. (*Shadi Lal, C. J. and Zafar Ali, J.*) *GHULAM JANNAT v. EMPEROR*.  
94 I. C. 403=7 Lah. 70=27 Cr. L. J. 627=  
27 P. L. R. 534=A. I. R. 1926 Lah. 271.

**—S. 403.**

**Applicability.**

**Burden of proof.**

**Discharge of accused.**

**Dismissal of Complaint.**

**Fresh trial barred.**

**Fresh trial not barred.**

**Incompetency of Court.**

**Principle.**

**Miscellaneous.**

**—S. 403—Applicability.**

S. 403 does not apply to a case where the accused has once been convicted for misappropriation of particular sums of money on certain dates and is again tried for the misappropriation of a different sum of money on a date falling within the same interval. In such a case, the second trial is not illegal. (*Krishnan Pandalai, J.*) *KANAKAYYA v. EMPEROR*.  
1930 M. W. N. 1097=  
32 M. L. W. 789=1930 Cr. C. 1194=  
A. I. R. 1930 Mad. 978=59 M. L. J. 854.

*—Same transaction—More than one offence.*

As S. 236 does not contemplate a case in which the series of acts complained of may constitute more than one offence, therefore, S. 403 (1) has no application to a case where more than one offence has been committed by the same transaction (*Courtney Terrell, C. J. and*

**CR. P. CODE (1898), S. 403—Applicability.**

*Rowland, J.*) BABULAL MAHTON *v.* RAMSARAN SINGH. 117 I. C. 625 = 30 Cr. L. J. 806 = 1930 Cr. C. 2 = 9 Pat. 585 = 11 P. L. T. 722 = A. I. R. 1930 Pat. 26.

**—Series of acts—Different offences.**

Section 403 (2) limits or rather explains the common law rule as meaning that the acquittal or conviction for the offence constituted by acts *A, B* and *C*, will not bar a subsequent trial in respect of the offence constituted by the acts *B, C* and *D*. The offences are distinct and the evidence necessary in the first case is different from the evidence necessary in the second. This sub-section has no application to a case in which entire series of acts constituted both offences. (*Courtney Terrell, C. J. and Rowland, J.*) BABULAL MAHTON *v.* RAM SARAN SINGH. 117 I. C. 625 = 30 Cr. L. J. 806 = 11 P. L. T. 722 = 1930 Cr. C. 2 = 9 Pat. 585 = A. I. R. 1930 Pat. 26.

**—Refusal to file complaint under S. 476.**

The doctrine of *autre fois acquit* does not apply to a refusal by the Magistrate under S. 476 to file complaint against an accused. (*Wild, J. C. and Rupchand, A. J. C.*) RAJABALI *v.* EMPEROR. 1930 Cr. C. 1147 = A. I. R. 1930 Sind 315.

**—Conviction and acquittal not in force.**

Section 403 (1) forbids a retrial only where a person has been convicted or acquitted and such conviction or acquittal remains in force. When the conviction is set aside and is no longer in force and no acquittal also is in force, a retrial can be ordered. (*Boys and Bennett, J.J.*) AZAM ALI *v.* EMPEROR. 121 I. C. 248 = 31 Cr. L. J. 230 = 10 L.R.A. Cr. 108 = 1929 Cr. C. 294 = 12 A. I. Cr. R. 118 = A. I. R. 1929 All. 710.

**—Offence falling within two definitions.**

A case under sub-S. (2), S. 235, is covered by the main provisions of S. 403. 9 N. L. R. 26, Foll. (*Fawcett and Mirza, J.J.*) DAGDI DAGDYA *v.* EMPEROR. 109 I. C. 346 = 30 Bom. L. R. 342 = 10 A. I. Cr. R. 187 = 29 Cr. L. J. 522 = A. I. R. 1928 Bom. 177.

**—Facts different.**

The principle of *autre fois acquit* is not applicable, when, though the section is the same in both trials, the facts on which the prosecution rests, are wholly and completely different.

The previous acquittal of an accused under S. 498, I. P. C. is no bar to subsequent proceedings on a charge of subsequent detention, as this cannot be said to be a case of a person being tried for the same offence. (*Harrison, J.*) WARYAM SINGH *v.* EMPEROR.

106 I. C. 339 = 9 A. I. Cr. R. 315 = 29 P. L. R. 52 = 29 Cr. L. J. 3.

**—Test is whether the evidence is the same.**

The real test to determine whether the charge under which the accused was previously charged and acquitted is different from the charge upon which he was subsequently tried is whether the evidence is the same in both cases. (*Wort, J.*) CHHANU PRASAD SINGH *v.* EMPEROR. 110 I. C. 792 = 11 A. I. Cr. R. 29 = 29 Cr. L. J. 760 = 10 P. L. T. 446 = A. I. R. 1928 Pat. 577.

**—Village court.**

*Quære*.—Whether the dismissal by a Village Magistrate of a complaint for default of appearance tantamounts to an acquittal and whether the acquittal by a village Court not a recognized tribunal under the Cr. P. Code, will attract the application of the general principle of *autre fois acquit* apart from the Code. (*Waller, J.*) RAMA NAIDU *v.* VENKATASWAMI NAIDU. 101 I. C. 891 = 28 Cr. L. J. 507 = 8 A. I. Cr. R. 178 = A. I. R. 1927 Mad. 695 = 53 M. L. J. 102.

**CR. P. CODE (1898), S. 403—Burden of proof.****—Condition—Trial and acquittal.**

A verdict of acquittal is immune from challenge; but it is only when an accused has been "tried" and acquitted of an offence that the immunity arises. 31 All. 317, Ref. (*C. C. Ghose and Duval, J.J.*) P. BANERJEE *v.* BEPIN BEHARY. 43 C. L. J. 110 = 30 C.W.N. 382 = 27 Cr. L. J. 751 = 95 I. C. 79 = A. I. R. 1926 Cal. 691.

**—Release in a warrant case under S. 249.**

S. 249 is only intended to apply to summons cases instituted otherwise than upon complaint and not to warrant cases. If an order of release is passed in a warrant case under S. 249, the order is void and the case still being on the file a fresh case respecting the same offence cannot be started on a complaint by a private party. (*Adami and Bucknill, J.J.*) FIRANGI SINGH *v.* DURGA SINGH. 5 Pat. 243 = 7 P. L. T. 449 = 94 I. C. 890 = 27 Cr. L. J. 698 = A. I. R. 1926 Pat. 292.

**—Change under S. 401, I. P. C.—Acquittal of—Subsequent charge under S. 413, I. P. C.**

Where the charge for an offence under S. 401, I. P. C. rested primarily on the approver's statement about the accused having been present at a meeting held for the purpose of forming the gang, and where it was because that statement was disbelieved that the prosecution failed and where the approver's statement was in fact part of the material on which the prosecution for the offence under S. 413, I. P. C. had been instituted, but that prosecution would be based entirely on the evidence as to the discovery of the stolen property in the accused's house, which, it was held in the former trial, did not prove his membership of the gang,

*Held*, that the two trials were not based on the same facts and S. 403 (1) did not apply. (*Martineau, J.*) CHHAJJU *v.* EMPEROR. 88 I. C. 185 = 26 P. L. R. 470 = 26 Cr. L. J. 1097 = A. I. R. 1925 Lah 537.

**—Trial and acquittal for mischief on certain facts precludes fresh charge for rioting on nearly the same facts.**

Where an accused was alleged to have gone with a number of others to a palmyra tope and it was alleged that some of the members in that assembly climbed up the trees and cut the spathes of the palmyra trees and threw down the pots attached to the spathes in which toddy was being collected and the accused was once charged with mischief under S. 427 of the Penal Code and acquitted on the ground that he was not present at the scene of occurrence, *Held*, he could not subsequently be charged with rioting under S. 147 of the Penal Code on the allegation that he along with the same body of people as on the former occasion went to the tope and that some of them destroyed the spathes in pursuance of the common object, *viz.*, of committing mischief by destroying the spathes and breaking the pots because the two transactions were so closely overlapping that it was open to the prosecution to have framed an alternative charge of mischief and rioting under S. 236. Section 403 is not a section easy of construction but the general principle underlying it is to be borne in mind namely that a man should not be put upon his trial twice over on the same facts as it is a great hardship for a man to stand more than one trial for any one offence. (*Krishnan, J.*) CHINNAPPA NAIDU, *In re*. 76 I. C. 708 = 19 M. L. W. 31 = 33 M. L. T. 269 = 1924 M. W. N. 153 = 25 Cr. L. J. 244 = A. I. R. 1924 Mad. 478.

**—S. 403—Burden of proof.****—'Competency to try' explained.**

The words "competent to try the offence" mean that in order to obtain the advantage of the common-law rule, the accused on the second occasion must show that

**CR. P. CODE (1898), S. 403—Burden of proof.**

the former Court was in a position had it so chosen, to try and acquit or convict the accused of the offence subsequently charged. The words "competent to try" are also equivalent to "in a legal position to have tried and acquitted or convicted." They refer narrowly to the legal position of the Court at the time of the former trial in relation to the particular offence committed by the accused and not broadly to the jurisdiction of the Court with regard to the class of offence in general. 37 All. 107 and 17 Bom. L. R. 678, Rel. on; 36 Mad. 308, not foll. (*Courtney-Terrell, C. J. and Rowland, J.*) **BABULAL MAHTON v. RAM SARAN SINGH.**

117 I.C. 625 = 30 Cr. L.J. 806 = 1930 Cr. C. 2 = 11 P.L.T. 722 = 9 Pat. 585 = A.I.R. 1930 Pat. 26.  
—*Plea can be raised at any stage.*

It is for the accused to show that he has been acquitted in circumstances which entitle him to a verdict of not guilty on the plea of *autre fois acquit*, and he can raise this plea and substantiate it at any stage of the proceeding. (*Wort, J.*) **CHHANU PRASAD v. EMPEROR.**

11 A.I. Cr. R. 29 = 29 Cr. L.J. 760 = 110 I.C. 792 = 10 P.L.T. 446 = A.I.R. 1928 Pat. 577.

—*Receipt of stolen properties.*

Property stolen on different dates. That it is received by receiver on different dates, can be presumed—Burden lies on accused receiver to prove that he received it at one and the same time—Otherwise previous acquittal of receiver does not bar his subsequent trial for receiving another item. 27 Cr. L. J. 872, Foll.; 15 Cal. 511; A.I.R. 1923 All. 547 and A.I.R. 1925 Pat. 20, not foll. (*Kincaid, J.C. and Barlee, A.J.C.*) **DADLOMAL v. EMPEROR.**

21 S.L.R. 154 = 27 Cr.L.J. 1256 = 98 I. C. 104 = A.I.R. 1927 Sind 53.

**S. 403—Discharge of accused.**

—*No bar.*

An order dismissing a complaint or discharging an accused person does not operate as an acquittal under S. 403 and does not bar the taking cognizance of a fresh complaint of the same offence even though the order of dismissal or discharge has not been set aside by a competent authority. (28 Cal. 652; 29 Cal. 726 and 29 Mad. 126 (F.B.), Rel. on. (*Brown, J.*) **DHANA REDDY v. EMPEROR.**

8 Rang. 11 = 1930 Cr. C. 588 = 125 I.C. 341 = 31 Cr. L.J. 824 = A.I.R. 1930 Rang. 156.

—*What is.*

Where the Magistrate states that he did not frame a charge under a particular section, that is tantamount to the discharge of the accused from that offence and not to acquittal. (*Dalal, J.*) **ABDUL RASHID v. HARISH CHANDRA.**

120 I.C. 121 = 30 Cr. L. J. 1153 = 1930 A.L.J. 218 = 11 L.R.A. Cr. 25 = 1929 Cr. C. 668 = A.I.R. 1929 All. 940.

—*Complainant's default—No bar.*

Where an order of discharge is passed merely because the complainant and his pleader were absent at the appointed hour, the same Magistrate can take cognizance of second complaint by the same complainant on same facts for the same offence. (1887) Rat. Un. Cr. C. 350; A.I.R. 1925 Bom. 258; 29 Cal. 726, (F.B.); 29 Mad. 126 (F.B.) and 36 All. 129, Foll. (*Madgavkar and Baker, J.J.*) **EMPEROR v. AMANAT KODAR.**

116 I.C. 251 = 31 Bom. L.R. 146 = 30 Cr. L.J. 594 = 13 A.I.Cr.R. 7 = A.I.R. 1929 Bom. 134.

—*Practice.*

Magistrate of co-ordinate jurisdiction should not entertain fresh complaint after discharge on same facts and evidence and if complainant is aggrieved by refusal of the first Magistrate to examine witnesses as to alleged admissions of guilt he must appeal to higher Court.

**CR. P. CODE (1898), S. 403—Dismissal of complaint.**

(*Rupchand and DeSouza, A.J.Cs.*) **EMPEROR v. ALIAS.**  
124 I. C. 384 = 31 Cr. L.J. 687 = 1929 Cr. C. 536 = A.I.R. 1929 Sind 242.

—When one Magistrate has discharged an accused person, another Magistrate of a different Court cannot entertain a fresh complaint on the same facts for the same offence: 22 All. 106, Foll. (*Walsh, J.*) **NANDA v. EMPEROR.**

7 A. I.Cr. R. 532 = 8 L.R.A. Cr. 79 = 102 I.C. 344 = 28 Cr. L.J. 536 = A. I. R. 1927 All. 815.

—*Proceedings dropped as not maintainable—Change in the law—Fresh proceedings.*

Petitioner deposited a sum of money along with a mortgage deed, under S. 83, T. P. Act praying for redemption of the mortgage. The deed was suspected to be forged and the opposite party applied to start proceedings under S. 476. The Court held that proceedings under S. 83, T.P. Act were not of a judicial character and therefore dropped the proceedings. After the amended Code came into force under which the proceedings in respect of which the offence is alleged to have been committed need not be of a judicial character, the public prosecutor again moved the Court for taking the same action against the same person.

Held, that the petitioner could be proceeded against. (*Adami and Sen, J.J.*) **CHAMARI SINGH v. PUBLIC PROSECUTOR OF GAYA.**

83 I.C. 730 = 4 Pat. 24 = 6 P.L.T. 225 = 3 Pat. L.R. Cr. 51 = 26 Cr.L.J. 170 = A.I.R. 1925 Pat. 330.

—Fresh complaint is not barred by reason of discharge of accused person under S. 494 (a). (28 Cal. 652 (F. B.); 29 Cal. 726, 2 P. L. J. 34 and 40 Cal. 71, Foll.) (*Kulwant Sahay, J.*) **RAMANAND LAL v. ALI HASSAN.**

83 I. C. 689 = 1924 P. H. C. C. 226 = 26 Cr. L. J. 129 = A. I. R. 1924 Pat. 797.

—*Of offence under S. 352, I. P. C.—Charge under S. 384, I. P. C.*

It is open to the complainant, after the disposal of the case under S. 352, I. P. C., which is the only offence which a Magistrate was investigating to move the officer empowered to take cognizance thereof, to proceed with the trial of the charge under S. 384, I. P. C. (*Mullick and Kulwant Sahay, J.J.*) **GOBIND SWAIN v. KING-EMPEROR.**

83 I. C. 345 = 2 Pat. 333 = 1923 P. H. C. C. 47 = 1 Pat. L. R. Cr. 109 = 25 Cr. L. J. 1385 = A. I. R. 1923 Pat. 228.

**—S. 403—Dismissal of complaint.**

—*Default of complainant.*

After the dismissal of a complaint of simple hurt under S. 259 for default of appearance of complainant and consequent discharge of the accused, the complainant submitted a fresh complaint in the same terms with an application that it should be restored to file. The Magistrate deeming the explanation for the complainant's absence satisfactory took the case on file and convicted the accused.

Held, that the Magistrate had jurisdiction to restore the case after having passed the order of discharge. 29 Mad. 126 (F.B.), Rel. on (*Curgewen, J.*) **VENKANNA v. KING-EMPEROR.**

28 Cr. L. J. 304 = 100 I. C. 384 = A. I. R. 1927 Mad. 503.

—*Application under S. 488, Cr. P. C.*

When a Magistrate to whom an application for maintenance is made, knows or has reason to believe that a similar application on the same facts has previously been adjudicated on, he ought not to act on the application without considering the previous decision, but he is not wrong in law when he does so, and his proceedings are not necessarily bad and void, regardless of the merits.

**CR. P. CODE (1898), S. 403—Dismissal of complaint.**

When the previous application was never adjudicated upon, being dismissed for default, the subsequent application is not barred. 1 U. B. R. 64. Expl.; 4 L. B. R. 337, Rel. on.; 5 All. 224, Ref. (*Darwood, J.*) MAUNG HLA HAUNG v. MA ON KIN. 105 I. C. 240 = 5 Rang. 697 = 6 Bur. L. J. 200 = 28 Cr. L. J. 912 = A. I. R. 1927 Rang. 328.

Where a complaint is dismissed under S. 203 and the order dismissing the complaint is not set aside under S. 437, fresh complaint on the same facts is not barred. 22 All. 106, not Foll. 36 All. 129; and 36 All. 53, Foll. (*Damels J.*) PURAN v. EMPEROR.

27 Cr. L. J. 383 = 7 L. R. A. Cr. 89 = 92 I. C. 895 = A. I. R. 1926 All. 298.

A complaint dismissed under S. 259 can be revived on a fresh complaint as it is not an acquittal. 28 Mad. 310; 29 Mad. 126 (F. B.) and 28 Cal. 652 (F. B.), Foll. Where the original complaint was entertained by Magistrate A only because another Magistrate D who had the jurisdiction in the place was on leave,

Held, that a subsequent complaint could be taken up by Magistrate D. (*Baker, J. C.*) ASHGAR ALI v. AKBAR ALI. 87 I. C. 928 = 26 Cr. L. J. 1040 = A. I. R. 1925 Nag. 432.

**—S. 403—Fresh trial barred—Connected offence.**

If in a previous trial for offence under a different Act a person is convicted and the sentence enhanced in view of another offence under Penal Code for which no charge was framed, there cannot be subsequent trial for that offence inasmuch as the Court has taken account of the same previously though indirectly. (*Suhrawardy and Graham Jj.*) KAILASHPATI UPADHYA v. GOPI KOERI. 124 I. C. 69 = 33 C. W. N. 948 = 1930 Cr. C. 12 = 31 Cr. L. J. 613 = A. I. R. 1930 Cal. 60.

**—Separate charges.**

Reading Cl (2) in conjunction with Cl. (1) it follows that when a separate charge has been framed against person under any of the sub-sections other than sub-S. (1), S. 235, he cannot be tried for separate charge when he has once been convicted or acquitted of one charge. 10 C. W. N. 518, Rel. on. (*Dalal, J.*) GHAMANDI NATH v. BABU LAL. 119 I. C. 575 = 1929 Cr. C. 491 = 10 L. R. A. Cr. 122 = 1929 A. L. J. 1056 = 30 Cr. L. J. 1089 = 51 All. 977 = 12 A. I. Cr. R. 202 = A. I. R. 1929 All. 899.

**—Breaches of trust, etc.**

If a person commits breach of trust of or misappropriates different sums of money he commits so many offences. But it is not desirable that he should be tried as many times when he could have been tried for all of them at one trial. 2 A. L. J. 673, Cr. Rev. No. 934 of 1919, Rel. on.; A. I. R. 1923 Cal. 179, Ref. (*Suhrawardy and Mukerji, Jj.*) SIDH NATH v. EMPEROR. 49 C. L. J. 378 = 33 C. W. N. 454 = 57 Cal. 17 = 1929 Cr. C. 91 = A. I. R. 1929 Cal. 457.

An accused once acquitted cannot be convicted for another offence in respect of the same facts. (*Addison, J.*) SORHA MAL v. EMPEROR. 107 I. C. 766 = 29 Cr. L. J. 282 = A. I. R. 1928 Lah. 332.

**—Imprisonment for failure to give security.**

Where accused were sent to jail for failure to furnish security under S. 108, Cr. P. Code, on a charge of sedition and they were subsequently convicted under S. 124-A for the same offence,

Held, that the latter conviction was not proper, (*Pratt, J.*) NGA MY GYI v. EMPEROR.

**CR. P. CODE (1898), S. 403—Fresh trial barred—Connected offence.**

116 I. C. 477 = 13 A. I. Cr. R. 66 = 30 Cr. L. J. 630 = A. I. R. 1928 Rang. 135.

**—Identical facts.**

Accused were charged on a charge under S. 193, Penal Code and were acquitted after a careful trial. Subsequently the accused were charged with offences under Ss. 467 and 471 read with S. 120-B, Penal Code, upon the facts wholly inseparable from the facts upon which the previous case was proceeded with.

Held, that the subsequent charges could not be proceeded with. (*Suhrawardy and Mukerji, Jj.*) CHERAGALI BEPARI v. SATISCHANDRA GHOSE. 87 I. C. 847 = 30 C. W. N. 384 = 26 Cr. L. J. 1023 = A. I. R. 1926 Cal. 450.

**—Same facts.**

Where accused were convicted under S. 297, I. P. C., for entering a Muhammedan graveyard and cutting a tree there and were acquitted in appeal,

Held, that they cannot be again prosecuted for theft on the same facts. 48 Cal. 78; 31 Cal. 1007 and 40 Bom. 97, Cons. (*Harrison, J.*) FATEH MUHAMMAD v. EMPEROR. 96 I. C. 875 = 8 Lah. 52 = 28 P. L. R. 518 = 27 Cr. L. J. 1019 = A. I. R. 1926 Lah. 639.

**—Ss. 121-A and 120-B, I. P. C.**

There do not exist two conspiracies, one for the overawing the Government and the other for killing Europeans, where a conspiracy to overawe the Government by means of criminal force, namely, by causing bombs to be thrown at British officers is proved. The conspiracy is one and the same, the killing of Europeans being only the means to an end, viz., the object of overawing the Government by criminal force. In such a case when once there has been a conviction under S. 121-A a fresh conviction, under S. 120-B, cannot be founded on the same facts. (*Martineau, J.*) HUSSAIN v. EMPEROR. 82 I. C. 169 = 25 Cr. L. J. 1241 = A. I. R. 1925 Lah. 157.

**—Receipt of stolen properties.**

Where stolen properties are found in possession of the accused at one and the same time and he has already been convicted under S. 411, I. P. C., for the receipt of one of the properties, he cannot be convicted again, for the other property unless there is distinct evidence that the property of the second case was received by the appellant under different circumstances and at a different time from those of the first property. (*Dalal, J. C.*) MUNWA v. EMPEROR. 83 I. C. 481 = 26 Cr. L. J. 1 = A. I. R. 1925 Oudh 298.

**—Charge which could have been joined.**

The trial Judge acquitted the accused from the offence of abetment of theft though he found him guilty of receiving stolen property but he did not charge him for it as he could have done under S. 236, Ill. (a) and acquitted him on a charge under S. 411, I. P. C.

Held, that a second trial was barred as the charges could have been joined in the first trial under S. 236, Ill. (a) of Cr. P. C. (*Macleod, C. J. and Shah, J.*) PUNDLIK SHANKAR GUJAR, In re. 86 I. C. 479 = 26 Bom. L. R. 440 = 26 Cr. L. J. 831 = A. I. R. 1924 Bom. 448.

**—Stolen properties in possession of accused—Prescription as to a single offence.**

Where some items of stolen property, viz., some carpets, some postage stamps and some padlocks were found in the possession of one accused and they were charged under S. 411, I. P. C., as regards possession of the carpets and one was convicted and subsequently they were again charged as regards the possession of the

**CR. P. CODE (1898), S. 403—Fresh trial barred—Connected offence.**

postage stamps and they pleaded *autre fois acquit and convict*.

*Held*, they in effect claim the presumption in their favour that their retention of all these goods was one offence and one transaction and to the benefit of this presumption they are entitled. The fact that one has been acquitted and the other convicted makes no difference. The contention that as the articles recovered from their possession were of very diverse character, the offences of the dishonest retention of each set of articles were distinct offences is negated by the definition of what the same offence is as defined in sub-S. (2) of S. 234 of the Criminal Procedure Code. It is there prescribed that offences are of the same kind when they are punishable with the same section of the Indian Penal Code, (1888) 15 Cal. 511; (1893) 15 All. 317; 1923 Cal. 557; (1905) 9 C. W. N. 1027 Disc. (*Adami and Bucknill, J.J.*) **EMPEROR v. BISHUN SINGH**, 81 I. C. 226 = 3 Pat. 503 = 5 P. L. T. 319 = 1924 P. H. C. C. 126 = 2 Pat. L. R. Cr. 131 = 25 Cr. L. J. 738 = A. I. R. 1925 Pat. 20.

—*Same facts*. Where an accused was alleged to have gone with a number of others to a palmyra tope and it was alleged that some of the members in that assembly climbed up the trees and cut the spathes of the palmyra trees and threw down the pots attached to the spathes in which toddy was being collected and the accused was once charged with mischief under S. 427 of the Penal Code and acquitted on the ground that he was not present at the scene of occurrence. *Held*, he could not subsequently be charged with rioting under S. 147 of the Penal Code on practically the same allegations because the two transactions were so closely overlapping that it was open to the prosecution to have framed an alternative charge of mischief and rioting under S. 236. Section 403 is not a section easy of construction but the general principle underlying it is to be borne in mind, namely, that a man should not be put upon his trial twice over on the same facts as it is a great hardship for a man to stand more than one trial for any one offence. (*Krishnan, J.*) **CHINNAPPA NAIDU, In re**, 76 I. C. 708 = 19 M. L. W. 31 = 33 M. L. T. 269 = 1924 M. W. N. 153 = 25 Cr. L. J. 244 = A. I. R. 1924 Mad. 478.

—*Same facts*. The petitioner was originally summoned to answer a charge under S. 426, I. P. C. During the pendency of that case the Magistrate acquitted him under S. 247, Cr. P. C., on the ground of the absence of the complainant. The complainant submitted a petition to the District Magistrate who revived the complaint but directed that prosecution should proceed under S. 379, I. P. C., instead of under S. 426. *Held*, the proceedings from the date of the revival of the case are vitiated by want of jurisdiction. (*Newbould and Sukrawardy, J.J.*) **FAZZAR PRAMANIC v. KING-EMPEROR**, 76 I. C. 293 = 37 C. L. J. 253 = 25 Cr. L. J. 149 = A. I. R. 1923 Cal. 407.

—**S. 403—Fresh trial barred—Same offence.**

—*Different complainants*. A judgment-debtor escaped from the Amin who had arrested him. The decree-holder then lodged a complaint against him but he was acquitted. Thereupon the Amin lodged another complaint. *Held*, that the judgment-debtor's acquittal in the decree-holder's complaint is an effective bar against the subsequent complaint by the Amin under S. 403, A. I. R. 1928 Bom. 143 and 36 Mad. 308, Ref. (*Jackson, J.*) **KOLANDASWAMI PILLAI v. RAJARATNA MUDALIAR**, 31 M. L. W. 755 = 1930 M. W. N. 532 = 1930 Cr. C. 896 = 127 I. C. 645 = A. I. R. 1930 Mad. 785 = 58 M. L. J. 579.

—*Composition*. Composition has the effect of acquittal only as between the person who is entitled to compound on the one hand and the accused with whom the composition takes place on the other. Where the accused are not tried for the specific offences for which a charge is subsequently laid and there has been no composition with the person entitled to compound, the later prosecution can be proceeded with. (*Krishnan Pandalai, J.*) **VENKATASWAMI v. NARAPPA**, 1930 M. W. N. 692.

—*Acquittal—When can be passed*. Under S. 247 it is not necessary that the summons should be served on the accused or that he should be present in the Court before an order of acquittal can be passed in his favour on account of the absence of the complainant. The word "tried" in S. 403 does not necessarily mean tried on merits and such acquittal bars fresh trial. Case-law discussed. (*Pakar and Baker, J.J.*) **SHANKAR DATTATRAYA v. DATTATRAYA SADA-SIVA**, 126 I. C. 321 = 31 Cr. L. J. 1000 = 53 Bom. 693 = 31 Bom. L. R. 795 = 1929 Cr. C. 436 = A. I. R. 1929 Bom. 408.

—*'Tried', meaning of—Acquittal under S. 247*. The meaning of the word "tried" in S. 403 (1) does not necessarily import a decision of a case on merits, but only refers to the nature of the proceedings that were had; or in other words, means that the proceedings in which the acquittal was passed were in the nature of a trial. Therefore, an acquittal under S. 247 would bar a further trial under S. 403 (1). 34 Mad. 253, Appr.; 40 Mad. 976; 7 C. W. N. 493 and 7 C. W. N. 711, Ref. (*Mukerji and Graham, J.J.*) **SUKU RAM v. KRISHNA DEB**, 49 C. L. J. 119 = 33 C. W. N. 260 = 116 I. C. 174 = 30 Cr. L. J. 585 = 12 A. I. Cr. R. 463 = A. I. R. 1929 Cal. 189.

—*Cheating*. In a charge of cheating the complainant must disclose all the evidence of deception at the first trial and he cannot institute a series of trials each based upon different evidence of deception. 28 All. 313, Rel. on. (*Jackson, J.*) **MOOKA PILLAI v. EMPEROR**, 99 I. C. 1035 = 25 M. L. W. 220 = 28 Cr. L. J. 235 = 7 A. I. Cr. R. 390 = A. I. R. 1927 Mad. 444.

—*'Trial', meaning of—Acquittal under S. 247*. The word "trial" in S. 403 does not necessarily import a decision of any case on the merits. A trial commences, if not from the moment an accused is served with summons, certainly from the moment he appears in Court on the case being called. An acquittal under S. 247 is a bar to further prosecution. A. I. R. 1923 All. 360; 4 C. W. N. 346; 34 Mad. 253 and 40 Mad. 976, Foll. (*Findlay, J. C.*) **YASHODA v. MT. BANUBAI**, 28 Cr. L. J. 183 = 99 I. C. 855 = A. I. R. 1927 Nag. 388.

—*Fraud—Acquittal by*. Acquittal of accused brought about by fraud established against third person in proceedings to which the accused were not parties is valid unless set aside by independent proceedings. (*Boys, J.*) **HARBANS v. EMPEROR**, 83 I. C. 658 = 22 A. L. J. 820 = 5 L. R. A. Cr. 143 = 26 Cr. L. J. 98 = A. I. R. 1924 All. 778.

—*Trial in Native State*. Where accused committed dacoity in British India but were caught with the stolen property in a Native State and were tried and convicted under S. 411 by the State Court and had undergone the period of im-



**CR. P. CODE (1898), S. 403—Fresh trial barred—Same offence.**

prisonment, *held* another trial for the same offence on the same facts in British India was barred. (*Harrison, J.*) TEJA SINGH v. EMPEROR. 73 I. C. 939 = 5 Lah. L. J. 574 = 24 Cr. L. J. 715 =

A. I. R. 1924 Lah. 238.

—Acquittal even under wrong section is a bar to further trial on same facts. (*Ashworth, A. J. C.*) RAM NIDH v. RAM SARAN. 26 O. C. 282 = 81 I. C. 314 = 25 Cr. L. J. 794 = A. I. R. 1924 Oudh 64.

—*Acquittal under S. 247.*

Order under S. 247 Cr. P. Code, before accused was served with summons is a bar to fresh complaint on the same facts. (*Foster, J.*) KIRAN SIKKAR v. KING-EMPEROR. 74 I. C. 719 = 5 Pat. L. T. 15 = 2 Pat. L. R. Cr. 10 = 24 Cr. L. J. 815 =

A. I. R. 1924 Pat. 140.

—*Burma Village Act (III of 1889).*

The Burma Village Act has conferred on the village Headman the power to try, as a Court, offences under S. 294, I. P. Code, and other offences and therefore where the accused has been once tried by him for an offence and has been convicted of such offence, he is not liable to be tried again for the same offence by the Township Magistrate. (*May Oung, J.*) NGA E v. KING-EMPEROR. 1 Rang. 449 = 2 Bur. L. J. 149 = 76 I. C. 697 = 25 Cr. L. J. 233 = A. I. R. 1924 Rang. 23.

**—S. 403—Fresh trial barred—Under different law.**

—Where the goods which formed the subject of a charge under Ch. 17, Penal Code, and of a charge under S. 54-A, Calcutta Police Act, were identical.

*Held*, that the accused should have been tried for all these offences at one trial and should not have been subjected to two trials in respect of his possession of the same goods. (*Greaves and Pantton, J.J.*) CHAITO KALWAR v. EMPEROR. A. I. R. 1928 Cal. 240.

—*Distinct offence—Burma Forest Act, S. 61 and R. 21—Ss. 379 and 411, I. P. Code.*

On the same facts a plea of *autre fois acquit* cannot be sustained for a different offence unless the requirements of S. 403 (1) are fulfilled. Conversely the plea of *autre fois acquit* in similar circumstances cannot be defeated except under sub-S. (2) of the same section. The key to sub-S. (2) lies in the words "distinct offence." By "distinct offence" is meant that it must be an offence entirely unconnected with a former offence charged. A general offence of theft is wholly not unconnected with an offence of extracting teak timber without a license. *A* was prosecuted under Burma Forest Act under R. 21 for extracting teak timber without a licence and under S. 61 for counterfeiting akauk mark upon teak timber stolen by him. He was acquitted of these charges. Subsequently, *A* was prosecuted on the same facts under Ss. 379 and 411, Penal Code. It was contended that *A* was entitled to set up a plea of *autre fois acquit*.

*Held*, that in the circumstances the plea was maintainable. (*Cunliffe, J.*) YEOK KUK v. EMPEROR. 6 Rang. 386 = 111 I. C. 850 =

29 Cr. L. J. 930 = A. I. R. 1928 Rang. 252.

—S. 160, Penal Code—Bombay District Police Act, S. 61 (o).

Failure to frame alternative charges both under S. 160, I. P. Code, and also under S. 61 (o), Bombay District Police Act, and acquittal under the former operate as a bar to the fresh prosecution under the latter. 45 Cal. 727 and 1 B. L. R. 15, Foll. (*Patkar and Baker, J.J.*) EMPEROR v. KALLASANI. 29 Bom. L. R. 1478 = 28 Cr. L. J. 1032 =

106 I. C. 216 = A. I. R. 1927 Bom. 629.

—*Calcutta Police Act, S. 68 and Merchant Ship-*

**CR. P. CODE (1898), S. 403—Fresh trial not barred—*bang Act, S. 103* (4).**

Where the accused, an officer of a steamship, was convicted under S. 68 of the Calcutta Police Act on a charge of drinking and disorderly conduct creating a disturbance by assaulting the Captain of the vessel and sentenced to pay a fine, and the Captain subsequently filed a complaint on the same facts under S. 103 (4) of the Merchants Shipping Act charging the accused with having assaulted him and he was convicted under the said section and sentenced.

*Held*, that the substantial charge under the Police Act being "assault," Cr. P. Code, S. 403 (1), 2nd part, is a bar to a second conviction upon the same facts under a different enactment, namely, the Merchants Shipping Act. (*Rankin and Chotzner, J.J.*) ALFRED LAIRD v. EMPEROR. 31 C. W. N. 195 =

99 I. C. 1033 = 28 Cr. L. J. 233 =

7 A. I. Cr. R. 386 = A. I. R. 1927 Cal. 224.

—*Forgery—Registration Act.*

Where an accused has been tried and acquitted under sections of the I. P. Code of offences of forgery and abetment thereof, his subsequent trial for offences under the Registration Act, on the same facts is barred under S. 403, Cr. P. Code. (*Pratt, J.J.*) MAUNG SAING v. EMPEROR. 1 Rang. 299 = 25 Cr. L. J. 191 =

76 I. C. 431 = A. I. R. 1924 Rang. 213.

**—S. 403—Fresh trial not barred.**

—*Essentials of autre fois acquit—Joint complaint—Composition with one—Effect of.*

To set up the plea of *autre fois acquit* it is essential that there must have been a previous trial of the offence terminating in the order of acquittal. It must be established that the offences were substantially the same and grew out of same facts. Where the two indictments are essentially different and relate to separate and independent transactions affecting distinct individuals it cannot be held that acquittal with reference to complaint of the one is a bar to entertainment of the second complaint. It is not necessary that both complaints should be before the same person but before the presiding officer of the same Court. *B* and *C* instituted a joint complaint against *H*. Transactions out of which the complaints arose were different and independent, and separate complaints ought to have been presented. *B* and *H* compounded the case with the result that *C*'s case was no longer subject of judicial inquiry. *C* filed a fresh complaint, *H* contended that he had been acquitted of all charges in the original complaint and no fresh complaint could be entertained under S. 403.

*Held*, that the effect of acquittal with reference to *B*'s complaint was no bar to the entertainment of the complaint by *C*. No order for acquittal had been passed with reference to *C*'s complaint and *H* was not ordered to be discharged on the same. 9 All. 52; (1895) A. W. N. 86; 5 A. L. J. 137; 29 All. 7 and 36 All. 129, Ref.; 4 C. W. N. 242; 34 Mad. 253 and 41 Mad. 685, Dist. (*Sen, J.*) HUKUM SINGH v. EMPEROR. 120 I. C. 117 = 1930 Cr. C. 81 =

1930 A. L. J. 85 = 30 Cr. L. J. 1149 =

A. I. R. 1930 All. 92.

—*Directors of company—S. 91-B, Companies Act—S. 409, I. P. C.*

Two persons, who were the directors of a Bank, were prosecuted, tried for and convicted under S. 91-B, Companies Act. They were further prosecuted for criminal breach of trust. It was contended that under S. 403 a person could not be charged on the same facts for any other offence for which a different charge from the one made against him might have been made under S. 236, or for which he might have been convicted under S. 237.

*Held*, that the offence under S. 91-B, Companies Act,

**CR. P. CODE (1898), S.403—Fresh trial not barred.** had nothing to do with the alleged offence of criminal breach of trust of the Bank's funds. No alternative charge was possible in the proceedings under S. 91-B, Companies Act and that the case was governed by S. 403 (2), Cr. P. Code. 5 S.L.R. 16 Foll. and 23 Cal. 174, Appr.; A. I. R. 1926 Lah. 639; 45 Cal. 727; 29 P. L.R. 52; A.I.R. 1927 Bom. 629 and A. I. R. 1928 Lah. 332, Ref. (*Johnstone, J.*) **MANGALSEN v. EMPEROR.**

118 I. C. 650 = 30 Cr. L. J. 954 = 1930 Cr. C. 25 = A. I. R. 1930 Lah. 57.

—An occupier of premises within the jurisdiction of Union Board failed to remove encroachment of which notice was given to him. He was found guilty but on appeal he was acquitted on the ground that in a previous trial he was tried upon the same facts. The previous case was brought by the District Board in which the accused was acquitted because the encroachment was within jurisdiction of the Union Board and not of the District Board.

*Held*, that the present case was not upon the same facts as the previous one and so the acquittal was wrong. (*Pandalai, J.*) **UNION BOARD, AYYAMPET v. RAMACHANDRA AIYAR.** 1930 M. W. N. 500 = 1930 Cr. C. 1187 = A. I. R. 1930 Mad. 971.

—*Subsequent charge for which the original Magistrate cannot try.*

While a Magistrate, with first class powers, was conducting a trial, the accused, suddenly stood up in Court, shouted "Jai Mahabir" and beat another person with a shoe. The accused thereby committed two offences under Penal Code, Ss. 228 and 355. The presiding Magistrate exercising his powers under S. 480, Cr. P. Code, punished him for the offence under S. 228, Penal Code. Thereafter the assaulted person filed a complaint in Sub-Divisional Officer's Court who convicted the accused under S. 355. In appeal and revision the accused pleaded bar of S. 403, Cr. P. Code.

*Held*, that the Magistrate had no cognizance of the offence under S. 355, Penal Code and therefore, in the absence of this condition precedent was incompetent to try the accused for it. Consequently the accused was never in peril of punishment and cannot rely on the plea of the *autre fois convict*. (*Courtney-Terrel, C. J. and Rowland, J.*) **BABULAL MAHTON v. RAM SARAN SINGH.** 117 I. C. 625 = 30 Cr. L. J. 806 = 1930 Cr. C. 2 = 11 P. L. T. 722 = 9 Pat. 585 = A. I. R. 1930 Pat. 26.

—*Distinct offences.*

Where a man has been tried and acquitted on a charge of being in dishonest possession of property stolen in a dacoity knowing or having reason to believe that the property was stolen in a dacoity, it is open to the Crown to prove that he actually took part in the dacoity, for the latter was not the offence of which he was acquitted. Even if he has been acquitted on a charge of dacoity it is open to the Crown to prove that the day before the dacoity he was seen in the neighbourhood of the dacoity. A. I. R. 1928 Oudh 430, Ref. (*Rasa and Nanavutty, JJ.*) **BACHCHU v. EMPEROR.** 7 O. W. N. 862 = 1930 Cr. C. 1079 = A. I. R. 1930 Oudh. 455.

—*Distinct offences.*

Where the two offences committed are quite distinct and committed against distinct persons, S. 403 is no bar to prosecution for the second offence. (*Dalal, J.*) **ABDUL RASHID v. HARISH CHANDRA.**

120 I. C. 121 = 30 Cr. L. J. 1153 = 1930 A. L. J. 218 = 11 L. R. A. Cr. 25 = 1929 Cr. C. 668 = A. I. R. 1929 All. 940.

—*Conviction for affray—Subsequent charge for hurt.*

Conviction of an accused for an offence under S. 160, Penal Code, on prosecution initiated by the police against both accused and the complainant in which both

**CR. P. CODE (1898), S.403—Fresh trial not barred.** were sentenced to varying fines, does not bar the subsequent prosecution of the accused for offences under Ss. 323 and 147, Penal Code, on complaint laid by the complainant. For in the previous prosecution the charges under Ss. 323 and 147, could have been joined against the present accused under S. 235 (1). A. I. R. 1925 All. 299, Rel. on.; A. I. R. 1927 Bom. 629, Dist. (*Patkar and Wild, JJ.*) **DODBU CALU MAHAR, In re.**

118 I. C. 693 = 1929 Cr. C. 510 = 31 Bom. L. R. 922 = 30 Cr. L. J. 965 = A. I. R. 1929 Bom. 451.

—*S. 19 (e), Arms Act and S. 324, I. P. C.*  
The offence under S. 19 (e) Arms Act is distinct from offence under S. 324, I. P. C. and therefore a trial for an offence under S. 324, I. P. C., would not be a bar to the proceedings under S. 19 (e), Arms Act 40 Bom. 97 and 23 Cal. 174, Rel. on. (*Mirza and Patkar, JJ.*) **MANJUBHAI GORDHANDAS v. EMPEROR.**

119 I. C. 641 = 53 Bom. 604 = 31 Bom. L. R. 536 = 1929 Cr. C. 38 = 30 Cr. L. J. 1059 = A. I. R. 1929 Bom. 283.

—Persons jointly tried—Some acquitted and some convicted—Appeal against conviction but not appeal against acquittal—Appellate Court declaring trial as void and ordering fresh trial—Acquittal also becomes void—Persons acquitted can be tried for any other offence—Any person added at the fresh trial is not affected by previous acquittals of some accused—Any person convicted or acquitted of any offence may also be tried for another offence subsequently if the first Magistrate was not competent to try the subsequent charge. (7 Mad. 557, Ref.) (*Subbedar, A. J. C.*) **MAMJI JAIRAM BHATE v. KALEKHAN.**

117 I. C. 267 = 30 Cr. L. J. 763 = 1929 Cr. C. 51 = A. I. R. 1929 Nag. 161.

—*Motor Vehicles Act (VIII of 1914), S. 5—Prosecution under S. 338, I. P. C.*

Where a driver of a motor lorry was once convicted of an offence under S. 5, Motor Vehicles Act (VIII of 1914) for reckless driving which had resulted in the lorry knocking against a chabutra and fracturing the bones of the leg of a person sitting on it,

*Held*, that the one act was the act of rash driving, and even if the applicant's lorry had not knocked against the chabutra and had not injured the person, he would still have been liable for reckless driving. There was not only one act of reckless driving, but a subsequent act of knocking against a man during such rash driving and, therefore, his conviction for rash driving cannot protect him from prosecution for the consequences of such rash driving under S. 325 or S. 338 I. P. C.; but he cannot be tried under S. 279. (*Dalal, J.*) **GUR NARAIN v. EMPEROR.** 107 I. C. 687 = 26 A. L. J. 160 = 9 A. I. Cr. E. 99 = 9 L. R. A. Cr. 11 = 29 Cr. L. J. 271 = A. I. R. 1928 All. 191.

—*Ss. 193 and 182, I. P. C.*  
The accused filed a complaint before the District Magistrate charging certain police patels with ill-treatment. Subsequently she preferred a complaint to the Sub-divisional Magistrate charging a certain Sub-Inspector and a head constable with ill-treatment in the course of an enquiry. The Sub-divisional Magistrate charged her under S. 193, I.P.C. but she was acquitted under S. 494 (b), Cr. P. C. Subsequently the District Magistrate made a complaint against her under S. 182, I. P. C.

*Held*, that the case is one where there can be said to have been a series of acts so connected together as to form the same transaction, within the meaning of sub-S. (1), S. 235; that in that series of acts more offences than one were committed by the same person; that the

**CR. P. CODE (1898), S. 403—Fresh trial not barred.** wording of sub-S. (1), S. 235, did cover the case and that the previous acquittal did not bar the subsequent prosecution. (*Fawcett and Mirza, J.J.*) **DAGDI DAGDYA v. EMPEROR.** 109 I. C. 346 = 30 Bom. L. R. 342 = 10 A. I. Cr. R. 187 = 29 Cr. L. J. 522 = A. I. R. 1928 Bom. 177.

—*Withdrawal of two successive complaints as being under a wrong section and by a wrong person.*

A complaint under S. 173, Penal Code, was filed against the accused, but was withdrawn on the ground that it was under a wrong section, namely, S. 173 instead of S. 174, and the accused was acquitted under S. 248, Cr. P. Code. A second complaint filed on the same facts by the same nian, a head constable, under S. 174, Penal Code, was also withdrawn on the ground that the head constable was not the proper complainant and a second time the accused was acquitted under S. 248, Cr. P. Code. A third complaint was filed by the Sub-Inspector on the same facts under S. 174, Penal Code, and the accused was convicted.

*Held*, that the conviction was proper and the trial was not barred by the previous acquittals. 22 Bom. 711; 40 Bom. 97; and 37 All. 107. *Foll.*; 36 Mad. 308, *Diss.* from. (*Fawcett and Mirza, J.J.*) **EMPEROR v. AMBAJI.** 109 I. C. 481 = 52 Bom. 257 = 30 Bom. L. R. 380 = 29 Cr. L. J. 545 = 10 A. I. Cr. R. 288 = A. I. R. 1928 Bom. 143.

—*Cheating—False personation before Sub-Registrar.* Where a person executed a mortgage and registered it and was subsequently tried and acquitted under Ss. 419-114, Penal Code.

*Held*, that his subsequent trial under S. 82 (c), Registration Act, was not barred as he committed two entirely distinct offences: one was cheating by personation when he executed the deed of mortgage; and the other an offence under the Registration Act, when he represented himself at the registration office to be another, and that the offence of personation at the registration office was a totally different and subsequent one to the offence of cheating. A. I. R. 1924 Rang. 213, *Ref.* (*Darwood, J.*) **ME TOK v. KING EMPEROR.** 105 I. C. 236 = 6 Bur. L. J. 201 = 28 Cr. L. J. 908 = A. I. R. 1927 Rang. 303.

—*Distinct offences.*

Where the accused was convicted for theft as he was found removing gunny bags with opium inside,

*Held*, his conviction for theft does not bar his trial for being in possession of opium, under S. 9 of the Opium Act. (*Daniels, J.*) **DEOKI KOERI v. EMPEROR.** 95 I. C. 287 = 48 All. 496 = 24 A. L. J. 559 = 7 L. R. A. Cr. 95 = 27 Cr. L. J. 767 = A. I. R. 1926 All. 405.

—*First trial failing for want of sanction.* Where a previous prosecution has failed on the ground that sanction under S. 196 has not been obtained, a subsequent prosecution on the same facts and for the same offence, is not illegal if it is launched after obtaining of such sanction, the first Court not being competent to try for the offence subsequently charged within S. 403 (4). (*Sulaiman, J.*) **RAM NATH v. KING-EMPEROR.** 94 I. C. 897 = 24 A. L. J. 180 = 7 L. R. A. Cr. 18 = 27 Cr. L. J. 705 = A. I. R. 1926 All. 231.

—Trial and acquittal of an accused under Penal Code, S. 325 with 147 does not bar his subsequent trial on the same facts under Penal Code, S. 302. 42 All. 128 and 24 Mad. 16, *Foll.* (*Kanhaiya Lal and Boys, J.J.*) **YAD RAM v. EMPEROR.** 94 I. C. 359 = 7 L. R. A. Cr. 115 = 27 Cr. L. J. 615.

—*A's trial and acquittal with Magistrate's expression that further proceedings in regard to the subject-matter should not be taken—Plea of autre fois acquit*

**CR. P. CODE (1898), S. 403—Incompetency of Court.**

is not available to B but Magistrate may consider the acquittal of A for the same offence for determining sufficient ground for issue of process under S. 204. 37 Cal. 680; 36 All. 168 and 41 Cal. 754, *Appr.*; 7 C. W. N. 493 and 7 C. W. N. 711, *Diss.* from. (*Page and Mukerji, J.J.*) **SUBAL CHANDRA v. AHADULLAH SHEIKH.** 95 I. C. 388 = 53 Cal. 606 = 44 C. L. J. 114 = 27 Cr. L. J. 788 = 30 C. W. N. 546 = A. I. R. 1926 Cal. 795.

—*Bengal Food Adulteration Act, S. 21.*

Prosecution of an accused under S. 21 of Bengal Food Adulteration Act without any order or consent in writing of the Municipal Commissioners within the meaning of S. 15 of the Act, and his subsequent acquittal under S. 245, Cr. P. Code, is no bar to his subsequent trial on the same facts for the same offence. (*C. C. Ghose and Duval, J.J.*) **P. BANERJEE v. BEPIN BEHARY GHOSE.** 95 I. C. 79 = 43 C. L. J. 110 = 30 C. W. N. 382 = 27 Cr. L. J. 751 = A. I. R. 1926 Cal. 691.

—Conviction for affray is no bar to subsequent conviction for causing hurt in the affray. (*Mukerji, J.*) **RAM SUKH v. EMPEROR.** 86 I. C. 64 = 47 All. 284 = 23 A. L. J. 8 = 26 Cr. L. J. 688 = 6 L. R. A. Cr. 41 = A. I. R. 1925 All. 299.

—Where a woman has been abducted and detained an acquittal on a charge of abduction is no bar to the trial of a charge of detention. (*Broadway, J.*) **MAH-BUB ALI KHAN v. EMPEROR.** 74 I. C. 444 = 24 Cr. L. J. 780 = A. I. R. 1924 Lah. 330.

—**S. 403—Incompetency of Court.**

—*Want of sanction.*

Where the appellate Court acquits the accused on the ground that the conviction was recorded without the sanction necessary under S. 195, and that therefore the Magistrate had no jurisdiction, the provisions of S. 403 will not bar a second prosecution. 37 All. 107, *Rel. on.* (*Dalal, J.*) **ABDUL RASHID v. HARISH CHANDRA.** 120 I. C. 121 = 30 Cr. L. J. 1153 = 1930 A. L. J. 218 = 11 L. R. A. Cr. 25 = 1929 Cr. C. 668 = A. I. R. 1929 All. 940.

—*Uncommunicated order of stay.* Where an additional District Magistrate took the case on his own file and ordered further proceedings to be stopped but the order was not communicated to the proper Court and where therefore the lower Court ordered acquittal under S. 247, Cr. P. Code,

*Held*, that S. 403, Cr. P. Code, was no bar for a retrial of the accused. 34 Mad. 253; 4 C. W. N. 346 and 7 C. W. N. 711, *Ref.* (*C. C. Ghose and Jalk, J.J.*) **MUSA SINGH v. GOSTHA BEHARY.** 1929 Cr. C. 327 = A. I. R. 1929 Cal. 657.

—When the acquittal is not by a Court of competent jurisdiction, there can be no bar under S. 403. (*Pathar and Baker, J.J.*) **SHANKAR TULSHIRAM, In re.** 113 I. C. 70 = 30 Cr. L. J. 54 = 53 Bom. 69 = 11 A. I. Cr. R. 510 = 30 Bom. L. R. 1435 = A. I. R. 1928 Bom. 530.

—Where a person is acquitted under S. 498, Penal Code, by a Magistrate, who was not competent to try him under S. 494, he can subsequently be tried under S. 494, and the finding of the former Magistrate is not binding on the Magistrate trying him under S. 494. (*Zafar Ali, J.*) **MT. ALLAH DI v. EMPEROR.** 110 I. C. 383 = 29 P. L. R. 533 = 10 A. I. Cr. R. 500 = 29 Cr. L. J. 701 = A. I. R. 1928 Lah. 844.

—An accused is not entitled to have a verdict of not guilty entered on the plea of *autre fois acquit* in a second prosecution for an offence constituted by the same acts, if the Court by which the first case was tried was not competent to try the offence subsequently

**CR. P. CODE (1898), S. 403—Incomptency of Court.**

charged. (*Wort, J.*) CHHANU PROSAD *v.* EMPEROR. 110 I.C. 792=11 A. I. Cr. R. 29=29 Cr. L. J. 760=10 P. L. T. 446=A. I. R. 1928 Pat. 577.

—*Absence of complaint under S. 195.*

The absence of a complaint in writing as required by S. 195 (1), of the public servant concerned or his superior makes the Court a Court not of competent jurisdiction and therefore, renders valueless the plea of previous acquittal as a bar to his re-trial on the same facts after proper complaint is made. S. 537 (a) does not apply, as in the first trial, there cannot be said to be an error, omission or irregularity in a complaint, but an absence of complaint altogether. (*Kincaid, J.C. and Tyabji, A.J.C.*) FAKIRI MOHAMMED *v.* EMPEROR. 97 I.C. 417=21 S.L.R. 1=27 Cr. L. J. 1105=

A. I. R. 1927 Sind 10.

—S. 403, cl. (4) allows a second prosecution for an offence constituted by the same acts if the Court by which the first case was tried was not competent to try the offence subsequently charged. S. 403 does not apply to such cases. (*Krishnan, J.*) PALANI GOUNDAN *v.* EMPEROR. 88 I. C. 31=26 Cr. L.J. 1087=

22 M.L.W. 205=1925 M. W. N. 553=A. I. R. 1925 Mad. 711=48 M. L. J. 490.

—**S. 403—Principle.**

—It is a fundamental common law rule that no one may be punished twice for the same offence and this has long been held to mean that he may not be punished twice for the same acts or omissions irrespective of the exact terms of the charge, and that the test of similarity is whether or not the evidence to obtain a legal conviction on the first charge was in substance the same as that necessary to sustain the second charge. The specific statement of this common law rule together with its limitations is contained in S. 403. (*Courtney-Terrell, C.J. and Rowland, J.*) BABULAL MAHTON *v.* RAM SARAN SINGH. 117 I. C. 625=30 Cr.L.J. 806=1930 Cr. C. 2=9 Pat. 585=11 P. L. T. 722=A. I. R. 1930 Pat. 26.

—Though there is no absolute bar to an accused person being put in peril of a fresh trial in respect of the same offence in a case where the first trial has ended in an order of discharge, it is a well recognized and salutary rule of law, that a Magistrate of co-ordinate jurisdiction should not entertain a fresh complaint in respect of the same offence when it is based on facts which were known to the complainant and on evidence which was available when the first trial was held, merely on the ground that he had no proper hearing on his previous complaint. A.I.R. 1929 Sind 242, Foll.; and A. I. R. 1929 Sind 61, Rel. on. (*Percival, J.C. and Rupchand Bilaram, A.J.C.*) PARSRAM BHAGWANDAS *v.* EMPEROR. 115 I.C. 309=30 Cr. L. J. 444=12 A.I.Cr.R. 444 (Sind).

—**S. 403—Miscellaneous.**

—*Second revision.*

Fresh application for revision on the same grounds is not maintainable. A.I.R. 1922 All. 502, Dist. (*Ashworth, J.*) SRIPAT NARAIN SINGH *v.* GAHVAR RAI. 25 A.L.J. 1010=8 A.I.Cr.R. 337=

8 L. R. A. Cr. 135=A. I. R. 1927 All. 724.

—*Complaint under S. 195, Cr. P. C.*

Proceedings to which S. 195 refers are among the exceptions, and the operation of S. 403 in such cases must necessarily be complex and difficult; S. 403 itself does not refer to the identity of parties in the first and second trials as a necessary condition to the plea of *autre fois acquit*; it refers only to the identity of the charges, in which respect it may be contrasted with the doctrine of *res judicata* in Civil Procedure, and yet in the

**CR. P. CODE (1898), S. 407—Change in powers.**

trial of the offences to which S. 195 refers, the personality of the complainant is a matter of primary importance; unless the proper complainant is before the Court, it is required to desist from taking cognizance of the complaint. (*Kincaid, J.C. and Tyabji, A.J.C.*) FAKIRI MAHOMED *v.* EMPEROR. 21 S.L.R. 1=27 Cr.L.J. 1105=97 I.C. 417=A.I.R. 1927 Sind 10.

—*Scope is wide.*

The wording of S. 403 is very wide and the jurisdiction of the Court does not merely refer to the character and status of the Court to try the offence, but also refers to want of jurisdiction on other grounds as shown by illustrations (f) and (g) to the section. It also covers cases where the trial is held to be without jurisdiction for want of a sanction under S. 195. Where there was no trial of the accused on the merits as the conviction was set aside on the ground of want of jurisdiction in the Court to try the accused, S. 403 (1) does not operate as a bar to his second trial. (36 Mad. 308, Dist. from; 39 All. 293; 46 I.C. 716; *Rex v. Marsham* (1912), 2 K. B. 362; *Peter v. John* (18 L.J.M.C. 189); and 2 W.R. 10 (Cr.) Foll.) (*Ross and Kulwant Sahay, J.J.*) MOHAMMAD YASIN *v.* EMPEROR. 5 Pat. 452=7 P. L. T. 383=27 Cr.L.J. 849=

95 I. C. 929=A. I. R. 1926 Pat. 302.

—**Ch. 31, (Ss. 404 to 431)—Limitation.**

—The time spent in obtaining a copy of the diary orders in the case, which were filed with the appeal, should not be deducted while computing the period of limitation for filing an appeal. (*Robinson, C.J. and Maung Gyi, J.*) U. ZAGRIYA *v.* EMPEROR. 89 I. C. 459=26 Cr. L.J. 1371=4 Bur. L.J. 44=

3 Rang. 220=A. I. R. 1925 Rang. 239.

—**S. 404—Interlocutory order.**

—Interlocutory order on question whether Magistrate has jurisdiction—Neither revision nor appeal lies—There is no provision in the Code for an interlocutory appeal or revision against a Magistrate's decision that he has jurisdiction in a case. (*Stuart, C.J.*) KASHIKAM KHOSLA *v.* R. L. DIKSHIT. 1 Luck. 48=3 O.W.N. 104=27 Cr. L. J. 191=91 I. C. 1007=

13 O.L.J. 662=A.I.R. 1926 Oudh 280.

—**S. 406—Re-trial.**

—In the case of an appeal under S. 406 from the order under S. 107, the appeal is not one from conviction and therefore, apart from the provisions of S. 423, appellate Court can order re-trial. (*Walsh and Dalal, J.J.*) BHAGWAT SINGH *v.* EMPEROR. 48 All. 501=27 Cr. L. J. 945=24 A.L.J. 566=

7 L.R.A.Cr.121=96 I.C. 497=A.I.R. 1926 All. 403.

—**S. 407—Change in powers.**

—Where a second class Magistrate takes cognizance of a case and he is subsequently invested with first class powers, and the greater part of the trial takes place before him, as a first class Magistrate, an appeal from conviction by such Magistrate does not lie to District Magistrate but the case falls under S. 408. 17 Bom. L.R. 895, Rel. on. (*Fawcett and Patkar, J.J.*) EMPEROR *v.* MAGANLAL JHAVERCHAND. 29 Bom.L.R. 482=101 I.C. 602=28 Cr. L.J. 474=

8 A.I.Cr. R. 70=A.I.R. 1927 Bom. 366.

—In a case where the accused are convicted on a trial held by a Magistrate who started with second class powers, but at the time when he concluded the trial was possessed of first class powers the appeal lies to the Sessions Judge. A. I. R. 1925 Patna 472, Foll. (*Broadway, J.*) BABU RAM *v.* EMPEROR. 8 Lah. 203=28 P. L. R. 489=104 I. C. 109=28 Cr. L. J. 781=A. I. R. 1927 Lah. 398.

—*Part of case tried as second class Magistrate and part as first class—Appeal lies to Sessions Judge.*

**CR. P. CODE (1898), S. 407—Change in powers.**

It is not the conviction by a second Class Magistrate but the holding of a trial by such Magistrate that determines the forum of the appeal. Where the Magistrate was vested with first class powers some time before the hearing of the arguments in the case, *i. e.*, part of the trial was held by him as a second class Magistrate and part as a first class Magistrate.

*Held*, that the proper tribunal for hearing the appeal was the Sessions Judge and not the District Magistrate 8 Cr. L. J. 48 Ref. (*Mullick and Bucknill, J.J.*) SHEOBHANJAN SINGH v. EMPEROR. 86 I. C. 978= 6 P. L. T. 554=3 Pat. L. R. Cr. 100= 26 Cr. L. J. 914=1925 P. H. C. C. 120= A. I. R. 1925 Pat. 472.

**—S. 408—Applicability.**

Courts of Sessions in British Baluchistan have the same powers over European British subjects and other persons as are held by Courts of Sessions in British India. A Court of Session, therefore, in British Baluchistan can hear such appeals as the Code of Cr. Procedure prescribes. 5 P. R. 1907 (Cr.), Rel. on. (*Addison and Johnstone, J.J.*) B.I.E. BARNFIELD v. EMPEROR. 118 I. C. 438=30 Cr. L. J. 918= A. I. R. 1929 Lah. 187.

**—S. 408—Change in powers.**

The moment a Second Class Magistrate is invested with the powers of a First Class Magistrate he becomes a First Class Magistrate and any convictions by him in cases which were taken up by him as a Second Class Magistrate would be only convictions as a First Class Magistrate and an appeal would lie to the Court of Sessions. A. I. R. 1925 Pat. 472, Appl. (*Devadoss and Madhavan Nair, J.J.*) VENKATAREDDI v. RAMAYYA. 51 Mad. 257=1 M. Cr. C. 100= 106 I. C. 583= 29 Cr. L. J. 71= 1927 M. W. N. 669=26 M. L. W. 685= 39 M. L. T. 497=A. I. R. 1928 Mad. 55= 53 M. L. J. 733.

Where a Magistrate who begins as a Second Class Magistrate and completes the case as a First Class Magistrate, passes a higher sentence in the latter capacity, the course of appeal is to the Sessions Judge and not to the District Magistrate. 4 L. B. R. 239, Not Foll. A. I. R. 1925 Pat. 472, Foll. (*Harrison, J.*) DURGA DAS v. EMPEROR. 28 Cr. L. J. 50= 99 I. C. 82=A. I. R. 1927 Lah. 138.

**—S. 408—Sentence.**

*Separate sentences to run consecutively—Appeal to High Court, maintainable.*

Where the accused was convicted and sentenced under Ss. 366 and 376, I. P. C., and it appeared that the sentence for each offence was less than four years but the aggregate of the two exceeded that term, *Held*, that the sentences should be treated as a simple sentence because of S. 35 (3) and that an appeal was maintainable under S. 408 (b). (*Sulaiman, J.*) EMPEROR v. HAMID. 1930 A. L. J. 1260.

*Total term of imprisonment not exceeding four years—Other concurrent sentence of lesser period need not be considered.*

Where the total term of imprisonment, to which an appellant has been sentenced, either by an Assistant Sessions Judge or by a S. 30 Magistrate does not exceed four years the appeal undoubtedly lies to the Court of the Sessions Judge; (15 C. W. N. 734 and 17 C. W. N. 72, not Foll. A. I. R. 1921 Cal. 152 Foll.) The fact that other concurrent sentence of a lesser period has been passed against the appellant under provisions of the Penal Code, does not preclude the Sessions Court from dealing with the appeal. A. I. R. 1921 Cal. 152, Foll. Further, appellate Court in such a matter is only

**CR. P. CODE (1898), S. 414—Forum.**

concerned with the actual substantive sentence imposed so far as the question of where the appeal lies is concerned, and the fact that the Magistrate, in determining the length of the sentence took into account the length of time the appellant had been under trial, will not affect the question. (*Findlay, J. C.*) JAGADISH CHANDRA RAY v. KING EMPEROR.

10 N. L. J. 135=28 Cr. L. J. 672=103 I. C. 208= 8 A. I. Cr. R. 295=A. I. R. 1927 Nag. 255.

**—S. 408—Several accused.**

*Some accused sentenced to less and some to more than four years at one trial—Appeals of all accused lie to High Court.*

When one accused has been sentenced to more than four years, all other accused persons convicted at the same trial, have to appeal to the High Court even though they themselves have received smaller sentences and this is so even if the accused, who has got more than four years, does not choose to appeal, 37 All. 471, Rel. on. (*Sulaiman, J.*) DEBI DIN v. KING EMPEROR. 24 A. L. J. 151=7 L. R. A. Cr. 8=7 L. R. A. Cr. 17= 27 Cr. L. J. 175=91 I. C. 959= A. I. R. 1926 All. 160.

**—S. 408—When appeal lies.**

Where two sentences of fine exceeding in the aggregate fifty rupees are passed by a Magistrate, an appeal lies to the Court of Sessions under S. 408. (*Macleod, C. J. and Coyajee, J.*) SHIDLINGAPPA v. EMPEROR. 28 Bom. L. R. 668=96 I. C. 270=

27 Cr. L. J. 926=A. I. R. 1926 Bom. 416.

An appeal lies under S. 408, Cr. P. Code, from an order passed under S. 562 (1): A. I. R. 1925 Cal. 329. Foll. (*Macleod, C. J. and Shah, J.*) MADHAV v. EMPEROR. 28 Bom. L. R. 671=

96 I. C. 121=27 Cr. L. J. 873= A. I. R. 1926 Bom. 382.

**—S. 410—Question of fact.**

It is a question of fact whether a statement made to a police officer in the course of an investigation comes under S. 162 or is made by way of complaint to commence an investigation under S. 154. (*Rankin, C. J. and C. C. Ghose, J.*) OSMAN GAIN MISTRY v. EMPEROR. 1930 Cr. C. 130=125 I. C. 111=

31 Cr. L. J. 771=A. I. R. 1930 Cal. 130.

**—S. 412—Applicability to revision by High Court.**

The High Court in revision is not bound by S. 412 but may examine the record for the purpose of seeing whether the accused have had a fair trial and whether the plea was based on a proper conception of the facts. (*Doyle, J.*) ALI HOSSEIN v. EMPEROR.

1930 Cr. C. 1177=A. I. R. 1930 Rang. 349.

**—S. 412—Legality of conviction.**

Conviction of accused on the plea of guilty does not bar an appeal on the point of legality of the conviction. (*Fawcett and Madgavkar, J.J.*) CHUNI LAL HARGOVAN v. EMPEROR. 28 Bom. L. R. 1023= 97 I. C. 668=27 Cr. L. J. 1148=

A. I. R. 1927 Bom. 67.

**—S. 412—Limitation.**

The time spent in obtaining a copy of the diary orders in the case, which were filed with the appeal, should not be deducted while computing the period of limitation for filing an appeal. (*Robinson, C. J.*) U. ZAGRIYA v. EMPEROR. 89 I. C. 459=

4 Bur. L. J. 44=3 Rang. 220=26 Cr. L. J. 1371= A. I. R. 1925 Rang. 239.

**—S. 414—Forum.**

Appeal lies to the Sessions Judge from the order of a Magistrate under S. 562. (*Boys, J.*) HIRA LAL v. EMPEROR. 82 I. C. 172=46 All. 928=

22 A. L. J. 751=5 L. R. A. Cr. 131=

## CR. P. CODE (1898), S. 414—Re trial.

25 Cr. L. J. 1244 = A. I. R. 1924 All. 765.

## —S. 414—Re trial.

—Case of simple theft tried summarily—Appeal.

Where the accused a railway watchman is sentenced on summary trial to one month's rigorous imprisonment for theft of a silver-topped stick from a Railway carriage, the charge is a simple charge of theft of the kind suitable for summary trial and retrial cannot be ordered even though the accused may be liable to be dismissed as a result of conviction. 6 Mad. 396, Dist. (*James, J.*) JAGDISH PRASAD v. EMPEROR. 118 I. C. 312 =

30 Cr. L. J. 869 = 1929 Cr. C. 588 =

A. I. R. 1929 Pat. 716.

## —S. 417—Acquittal—What is.

Where an accused being charged under S. 302 is convicted under S. 302/109 his conviction under S. 302-109 can be regarded as an acquittal on the charge under S. 302 and an appeal from such acquittal is competent. A. I. R. 1928 P. C. 254, Rel. on. (*Broadway and Tapp, J.J.*) EMPEROR v. SADA SINGH. 127 I. C. 855 = 12 Lah. L. J. 33 = 1930 Cr. C. 386 = A. I. R. 1930 Lah. 338.

Change of conviction from Penal Code, S. 353, to one under S. 352 does not amount to acquittal under S. 353 and no appeal lies. A. I. R. 1927 Lah. 369, Foll. (*Broadway and Zafar Ali J.J.*) EMPEROR v. GIAM SINGH. 29 Cr. L. J. 905 = 111 I. C. 665 =

A. I. R. 1928 Lah. 230.

Order under S. 118 is not a "conviction" or "acquittal"

The terms "conviction" and "acquittal" are nowhere applied throughout the Code to an order under S. 118, and they are, in fact, wholly inapplicable to the same: (1898) A. W. N. 127; 13 C. W. N. 420; and 9 Cal. 878, Rel. on. Therefore, no appeal lies on behalf of Government against an order of a Sessions Judge setting aside the order of a Magistrate calling upon a person to furnish security for good behaviour. (*Boys and Iqbal Ahmad, J.J.*) EMPEROR v. BABU RAM. 8 L. B. A. Cr. 163 = 8 A. I. Cr. R. 557 =

26 A. L. J. 99 = 29 Cr. L. J. 92 = 106 I. C. 684 = A. I. R. 1928 All. 1.

Security order—Reversal of, on appeal if an acquittal.

Order of Sessions Judge on appeal under S. 406 reversing the order of Sub-Div. Magistrate directing certain persons to show cause why they should not find security to be of good behaviour for one year on the ground that they were habitual thieves, is not an original or an appellate order of acquittal within the meaning of S. 417 and no appeal lies but the Local Government has a right to apply in revision. (*Stuart, C. J. and Husan, J.*) EMPEROR v. SAMAI DEEN. 1 Luck. 231 = 13 O. L. J. 276 = 3 O. W. N. 390 =

94 I. C. 402 = 27 Cr. L. J. 626 =

A. I. R. 1926 Oudh 329.

Accused acquitted of more serious offence and convicted of less serious one—Government can appeal.

The legislature cannot have intended to deprive the Local Government of its right to appeal in cases where an accused person has been acquitted of a very serious charge, merely because at the same trial he was convicted of some other charge, possibly receiving a merely nominal sentence. (*Simpson and Gokaran Nath Misra, A. J. Cs.*) SITARAM v. EMPEROR. 89 I. C. 452 = 12 O. L. J. 421 = 2 O. W. N. 550 =

26 Cr. L. J. 1364 = A. I. R. 1925 Oudh 723.

## —S. 417—Applicability.

Orders passed under the Upper Burma Ruby Regulations of 1887, S. 6 are within the scope of the Cr. P. Code as regards appeal and revision though

## CR. P. CODE (1898), S. 417—Grounds for interference.

no provision is made in the Regulation for an appeal or revision. (*Duckworth, J.*) MAUNG PO LON v. EMPEROR. 84 I. C. 433 = 2 Rang. 321 =

3 Bur. L. J. 168 = 26 Cr. L. J. 289 = A. I. R. 1925 Rang. 12.

## —S. 417—Burden of proof.

Appeal against acquittal—Crown must show conclusively that inference of guilt is irresistible.

In an appeal by Government against an acquittal the accused starts with a double presumption in his favour. Firstly, there is the rule that it is for the prosecution to make out their case and that until they do so beyond all reasonable doubt the accused must be presumed to be innocent and secondly that the accused having succeeded in securing an acquittal from a Court, a superior Court will not interfere until the Crown shows conclusively that the inference of guilt is irresistible. (*Mullick, Ag. C. J. and Wort, J.*) EMPEROR v. GHULAM NABIR. 6 Pat. 768 = 107 I. C. 835 =

9 A. I. Cr. R. 385 = 29 Cr. L. J. 301 =

A. I. R. 1928 Pat. 146.

Appeal by Government—Acquittal on the ground of giving benefit of doubt—Onus is heavy to succeed in appeal.

An appeal by Government must be considered on its merits just as any other appeal always must be. The onus is on the appellant and this onus is all the heavier if the judgment appealed from is one which approaches the consideration of the question from a correct point of view and gives the accused the benefit of a reasonable doubt which exists in the mind of the Judge. (*Walsh and Sulaiman, J.J.*) EMPEROR v. AUTAR. 86 I. C. 52 = 26 Cr. L. J. 676 = 47 All. 306 =

23 A. L. J. 25 = 6 L. B. A. Cr. 68 =

A. I. R. 1925 All. 315.

## —S. 417—Evidence.

As to appreciation of evidence there is no difference between an appeal from conviction and an appeal from acquittal. The Code makes no distinction between an appeal from an acquittal and an appeal from a conviction. In an appeal from an acquittal if the Court thinks the lower Court has taken an erroneous view of the evidence it has no jurisdiction to refuse to convict. The power of appeal under S. 417 is one that should be exercised sparingly by Government. But the discretion to exercise the right to appeal appertains to Government and is not subject to the control of the Court. 20 All. 459; 19 Bom. 51; 17 Cal. 485; 38 Mad. 1028 Foll. 4 All. 148, 16 All. 212, Dist. (*Pratt and Fawcett, J.J.*) EMPEROR v. MOTI KHODA. 26 Bom. L. R. 113 =

25 Cr. L. J. 786 = 81 I. C. 306 =

A. I. R. 1924 Bom. 335.

## —S. 417—Exclusion of evidence.

Order excluding evidence can legitimately be attacked in an appeal against the order of acquittal. (*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*) EMPEROR v. STEWART. 21 S. L. R. 55 =

27 Cr. L. J. 1217 =

97 I. C. 1041 = A. I. R. 1927 Sind 28.

## —S. 417—Grounds for interference.

Appeal from acquittal by lower appellate Court—High Court can interfere to set it aside.

Whatever may be the value of the judgment of a trial Court, which has had the opportunity of seeing the witnesses and observing their demeanour, no such reason can apply where the trial Court convicts the accused and it is the appellate Court which acquits. In such case the High Court is in a better position to weigh the evidence as the lower appellate Court



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and can interfere to set aside the lower Court's order of acquittal; 11 P. R. 1903, Cr., Diss. from; A. I. R. 1927 Lah. 178; 7 P. R. 1904 and A. I. R. 1929 Pat. 491, Ref. (*Shadilal, C. J. and Dalip Singh, J.*) **EMPEROR v. MAHAMMAD KHAN.**

1930 Cr. C. 463 = A. I. R. 1930 Lah. 403.

—*Appeal against acquittal when can interfere.*

An appeal on behalf of Government in the exercise of the powers conferred by S. 417 should not be entertained when the judgment appealed from is based upon facts and the conclusions of the Court are such as may reasonably be arrived at upon the facts found. Where, therefore, the High Court cannot say that there were not some grounds which might justify the acquittal of the respondent and that the judgment of the learned Sessions Judge is perverse or one which no reasonable man could have come to on the facts, it should not interfere with that judgment even if it comes to the conclusion that upon the evidence the prosecution case was sufficiently strong to justify a conviction. 16 All. 212 and 16 Cr. L. J. 529, Appl. (*Beasley, C. J. and Pandalai, J.*) **PUBLIC PROSECUTOR v. LAKSHMAMMA.**

125 I. C. 538 = 31 Cr. L. J. 897 =

1930 Cr. C. 761 = 31 M. L. W. 716 =

A. I. R. 1930 Mad. 704 = 59 M. L. J. 520.

—It must be only in very exceptional circumstances that a Court dealing with an appeal against an acquittal should reverse that finding by accepting oral evidence which the trial Court after enjoying the advantage of hearing the witnesses has disbelieved. (*Curgenv, J.*) **PUBLIC PROSECUTOR v. PAKKIRISWAMI.**

30 M. L. W. 791 = 1929 M. W. N. 785 =

2 M. Cr. C. 307 = 1929 Cr. C. 614 =

A. I. R. 1929 Mad. 846 = 122 I. C. 648 =

31 Cr. L. J. 449 = 57 M. L. J. 548.

—Where the question involved relates purely to facts and the decision of acquittal was arrived at by unanimous verdict of assessors and the Judge, the High Court would not disturb the findings of the lower Court unless it comes to the conclusion that the decision was one which no body of sensible men could arrive at. (*Courney-Terrel, C. J. and Dhanle, J.*) **EMPEROR v. RAM PRASAD NONIA.**

119 I. C. 901 =

30 Cr. L. J. 1116 = 1929 Cr. C. 268 =

A. I. R. 1929 Pat. 508.

—*Appeal from acquittal—Interference is justified if finding is wrong—It need not be perverse.*

In order to justify interference with a judgment of acquittal on a question of fact, it is sufficient if the finding is clearly wrong on the evidence and unreasonable in the opinion of the appellate Court, whether or not the unreasonableness amounts to perversity, stupidity or incompetence, or the Court below can be said to have obstinately blundered in coming to it, but upon sound principles of criminal jurisprudence the indications of error in the judgment of acquittal ought to be clearer and more palpable and the evidence more cogent and convincing in order to justify its being set aside than would be necessary in the case of a judgment of conviction. 7 P. R. 1904, (Cr.) Foll. (*Addison and Kemp, J.J.*) **EMPEROR v. BAKHWAR LAL.**

102 I. C. 492 = 8 A. I. R. 196 = 28 P. L. R. 313 =

28 Cr. L. J. 556 = A. I. R. 1927 Lah. 549.

—In an appeal against an acquittal High Court is not entitled to weigh the evidence and decide whether or not the trial Magistrate has come to a wrong conclusion, unless it is able to hold that the finding of the trial Court is manifestly wrong or perverse, or such as no reasonable man could have arrived at upon that evidence. (*Fforde and Addison, J.J.*) **EMPEROR v.**

**CR. P. CODE (1898), S. 417—Reference.**

ABDUL LATIF.

99 I. C. 87 = 28 Cr. L. J. 55 =

A. I. R. 1927 Lah. 178.

—It is the practice of the Sind Judicial Commissioner's Court in all appeals, especially criminal appeals, to pay great deference to the opinion of the Judge presiding over the trial Court, but it will not hesitate to convict in an acquittal appeal more than it should hesitate to acquit in an appeal from a conviction, provided that there are valid grounds for reversing the decision of the learned Judge of the lower Court. 9 S. L. R. 17 and A. I. R. 1924 Bom. 335, Foll. (*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*) **EMPEROR v. SUL-LEMAN KHAN.** 98 I. C. 467 = 27 Cr. L. J. 1347 =

21 S. L. R. 141 = A. I. R. 1927 Sind 92.

—An order of acquittal arrived at upon evidence should not, as a rule, be set aside unless the appellate Court holds it to be manifestly wrong or perverse or unless it can be said that the Court who tried the case has manifestly erred. (*Scott-Smith and Zafar Ali, J.J.*) **EMPEROR v. RAM KARAN.**

88 I. C. 453 =

7 L. L. J. 528 = 26 P. L. R. 295 =

26 Cr. L. J. 1141 = A. I. R. 1925 Lah. 600.

—*High Court very reluctant to interfere.*

The High Court is very reluctant to interfere with an order of acquittal and it does not do so unless the necessity is clearly made out. (*Kennedy, J. C. and Aston, A. J. C.*) **EMPEROR v. SUNDER DAS.**

87 I. C. 916 = 19 S. L. R. 111 = 26 Cr. L. J. 1028 =

A. I. R. 1925 Sind 295.

—An appellate Court will not interfere with the Trial Court's finding, when the evidence is all oral and not too strong to be rejected. (*Shadi Lal, C. J. and Leslie Jones, J.*) **EMPEROR v. SAMAND.**

59 I. C. 924 = 22 Cr. L. J. 172 (Lah.).

—**S. 417—Petty cases.**

—*Interference in acquittal—Not usual for High Court.*

High Court will not ordinarily interfere to set aside acquittals in petty assaults. (*Jackson, J.*) **NAGOOR KANNI NADURA v. SITHU NAICK.**

99 I. C. 346 = 25 M. L. W. 43 = 38 M. L. T. 35 =

1927 M. W. N. 40 = 28 Cr. L. J. 138 =

A. I. R. 1927 Mad. 298 = 52 M. L. J. 32.

—**S. 417—Private individual.**

—Power to appeal against acquittal is a power vested in the Local Government, and that no right to appeal is possessed by a private person. (*Kinkhede, A. J. C.*) **SHER KHAN v. ANWAR KHAN.**

23 N. L. R. 40 =

102 I. C. 219 = 28 Cr. L. J. 523 =

A. I. R. 1927 Nag. 170.

—*Government alone has the right to appeal against acquittal (Obter.)*

The practice in the Patna High Court is not to grant applications made by private persons for setting aside orders of acquittal. There is always a remedy in the hands of such a person who feels himself really aggrieved by an order of acquittal and that is to go to the Government legal advisers and if he could show them that he had good ground for being aggrieved by an order of acquittal they would on his behalf take it up; and, in such circumstances, the position of the Crown, which, alone has the conduct of prosecutions is entirely different when applying to the High Court against an order of acquittal from the position which a private person has. (*Adami and Bucknill, J.J.*) **ANANT SINGH v. HARI CHARAN.**

85 I. C. 356 =

2 Pat. L. R. Cr. 250 = 26 Cr. L. J. 516 =

A. I. R. 1925 Pat. 321.

—**S. 417—Reference**

—*Reference by Sessions Judge to set aside erroneous acquittal is ordinarily acceptable but not one by Dis-*

**CR. P. CODE (1898), S. 417—Reference.**

*strict Magistrate as he can proceed under S. 417.*

A reference under S. 438 by the Sessions Judge, recommending that an erroneous acquittal by a Subordinate Court be set aside, is acceptable even in ordinary cases, for an appeal against such acquittal under S. 417 by the Local Government is restricted to only exceptional cases. However, such references by the District Magistrate, who has means to communicate with and move the Local Government under S. 417, may not be acceptable. (*Wort and Macpherson, J.J.*) *WAZIR KUNJRA v. EMPEROR*.  
116 I. C. 768 = 7 Pat. 579 =

30 Cr. L. J. 675 = 13 A. I. Cr. R. 112 =  
A. I. R. 1929 Pat. 139.

**—S. 417—Refusal to amend charge.**

*Order refusing to amend charge followed by acquittal is appealable.*

Although S. 417 gives no power of appeal against an order refusing to amend charges, but if such order is followed by an original or appellate order of acquittal, the Local Government may direct the Public Prosecutor to present an appeal. *Telang, J.*, in 16 Bom. 414, Not Foll.

Per *Rupchand Bilaram, A. J. C.* An interlocutory order which has resulted in the acquittal of the prisoner on charges for which he was tried, may, no doubt, be made a ground of appeal under S. 417, Cr. P. Code. But where the interlocutory order is an order passed under S. 227, Cr. P. Code, refusing to add a fresh charge and for which a fresh prosecution is permissible, in that case there has been no acquittal of the prisoner in respect of such additional charge, and cannot be relied on as a ground in support of an appeal against the acquittal on other charges altogether. *Telang, J.*, in 16 Bom. 414, Foll. (*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*) *EMPEROR v. STEWART*.  
97 I. C. 1041 = 21 S. L. R. 55 = 27 Cr. L. J. 1217 =  
A. I. R. 1927 Sind 28.

**—S. 417—Revision.**

*Complainant aggrieved by order of acquittal should move District Magistrate to initiate appeal—No revision lies.*

The proper course for a complainant who is aggrieved by an order of acquittal by a Magistrate is to move the District Magistrate to initiate an appeal by Government under S. 417. The High Court will not interfere, by way of revision, with the order although it involves irregularities of procedure. A. I. R. 1922 Sind 22, Rel. on, (*Wild, J. C. and Aston, A. J. C.*) *EMPEROR v. DITO*.  
114 I. C. 110 = 30 Cr. L. J. 251 =

12 A. I. Cr. R. 200 = A. I. R. 1928 Sind 176.

**—S. 417—Right of accused.**

*Appeal against acquittal—Ground for—Perverse view of evidence.*

In an appeal from an acquittal, as in the case of an appeal from a conviction the appellant is entitled to go into facts and ask the appellate Court to take a view of the facts different from that taken by the trial Court. But the accused in an appeal from an acquittal retains his right of being presumed to be innocent until the charge is fully brought home to him. He has the right which he had in the trial Court of being given the benefit of a reasonable doubt as to his guilt. He must also have the benefit of the opinion of the trial Court upon the credibility of the witnesses whom that Court had the advantage of seeing face to face and judging of their demeanour and he has a right to ask that the acquittal should not be set aside unless the trial Court has taken a perverse view of the evidence and has arrived at an unnatural and distorted conclusion. 4 All. 148; 18 C. W. N. 666; 20 C. W. N. 128; A. I. R. 1923 Pat. 119 and 7 P. R. 1904 (Cr.) Cons. (*Mullick and Jwala Pra-*

**CR. P. CODE (1898), S. 419—Discretion.**

*sad, J.J.*) *EMPEROR v. DEBOO SINGH*.

120 I. C. 634 = 31 Cr. L. J. 148 = 8 Pat. 496 =  
1929 Cr. C. 243 = 10 P. L. T. 838 =  
A. I. R. 1929 Pat. 491.

**—S. 418—Discrepancies in evidence.**

*—It there are any discrepancies in the evidence as recorded in a Magistrate's Court and the Sessions Court it is for the accused to bring them on the record of the Sessions Court so as to afford an opportunity to the prosecution to explain them. The High Court will not look into such evidence. (Wild, J. C. and Rupchand, A. J. C.) MAHOMED KHAN v. EMPEROR.*

1930 Cr. C. 1145 = A. I. R. 1930 Sind 308.

**—S. 418—Verdict of jury.**

*Misdirection or non direction is matter of law.*

Where there has been a trial by jury the appeal has to be confined within the restricted limits prescribed by the legislature. Misdirection or non-direction is a matter of law. If the verdict of the jury has been influenced by evidence which was inadmissible or proceeds upon no evidence at all, this is a matter of law. If this defect has affected the Crown or the accused prejudicially the order passed by the Court below ought to be set aside. (*Young and Sen, J.J.*) *EMPEROR v. MOHAMMAD ISRAIL*.  
120 I. C. 264 = 1929 A. L. J. 1261 =

31 Cr. L. J. 33 = 1930 Cr. C. 40 =  
A. I. R. 1930 All. 24.

*—Jury Trial—Verdict of not guilty—Evidence for conviction slender—No interference.*

Where in a case of dacoity against a number of persons the evidence of identification was slender in the case of all the accused except one and there was evidence which threw doubt upon the genuineness of the test identification,

*Held*, it was not a proper case in which the High Court would interfere with the verdict of the jury. (*Ross and Wort, J.J.*) *RAMJAG AHIR v. EMPEROR*.  
7 Pat. 55 = 9 P. L. T. 567 = 29 Cr. L. J. 466 =

109 I. C. 114 = A. I. R. 1928 Pat. 203.

*—S. 418 is not narrowed down by S. 423 (2).*

S. 423 (2) only applies if it becomes necessary to consider whether the verdict of the jury was erroneous owing to a misdirection by the Judge. It does not narrow down S. 418 which allows an appeal in a jury trial on a question of law. 29 Mad. 569, Dist. (*Addison, J.*) *FITZ MAURICE v. EMPEROR*.  
27 Cr. L. J. 793 = 95 I. C. 393 =

A. I. R. 1926 Lah. 193.

**—S. 419—Copy of judgment.**

*Connected applications—Full order in one only—Copy of, not filed in appeal—Effect.*

Where the full order appealed against was on one of the connected applications and the order on the other applications was to the effect—See my order in "Application No. 4 of 1927, decided to-day. I dismiss this application", although a copy of the full order should also have been attached, it is hard on the appellant to dismiss any of the appeals on this mere technical ground and it is unusual to adopt such a course in criminal appeals. (*Bhude, J.*) *PARMANAND v. MOHAN LAL*.  
114 I. C. 61 = 30 Cr. L. J. 235 = 1929 Cr. C. 183 =  
12 A. I. Cr. R. 222 = A. I. R. 1929 Lah. 614.

**—S. 419—Discretion.**

*—Production of copy of order may be dispensed with.*

Section 419 gives the appellate Court discretion to dispense with a copy of the order appealed against and its wording does not preclude the exercise of this discretion even at the stage when appeals are admitted specially when the matter is not noticed when appeals are admitted. (*Bhude, J.*) *PARMANAND v. MOHAN*

## CR. P. CODE (1898), S. 419—Discretion.

LAL. 114 I. C. 61=30 Cr. L. J. 235=  
1929 Cr. C. 183=12 A. I. Cr. R. 222=  
A. I. R. 1929 Lah. 614.

## —S. 419—Joint trial.

—Appeals by different persons convicted by one judgment in a joint trial may be heard together, but they must be made separately. (*Hallifax, A. J. C.*) MAHARAJESING GOND v. EMPEROR. 97 I. C. 38=27 Cr. L. J. 1062=A. I. R. 1927 Nag. 48.

## —S. 420—Argument.

—The objection to permit convict appellants appealing from jail, arguing in person is founded in the main not on convenience to prosecution but on their own interests. (*Stuart, C. J. and Raza, J.*) RAM PRASAD v. EMPEROR. 2 Luck 631=6 L. C. 339=8 A. I. Cr. R. 449=106 I. C. 721=A. I. R. 1927 Oudh 369.

## —S. 420—Counsel.

—Appeal from jail—Counsel appointed by Government for accused—Accused refusing to instruct—Counsel should still argue the case on his behalf.

If an appeal is filed in person under S. 419—a procedure which is only possible when the appellant is not in jail—the appellant is permitted to argue in person under the provisions of S. 423; but a person appealing from jail is not permitted to argue in person and ordinarily jail appeals are heard *ex parte*. Where the Government has granted, as a concession to a prisoner sentenced to death subject to confirmation by a High Court, the privilege of being represented by counsel at the cost of the Crown, but the accused refuses that help, it is still the duty of the counsel engaged to conduct the appeal without considering what the accused would say on the subject. (*Stuart, C. J. and Raza, J.*) RAM PRASAD v. EMPEROR. 4 O. W. N. 638=103 I. C. 407=28 Cr. L. J. 679=A. I. R. 1927 Oudh 312.

## —S. 420—Summary dismissal.

—The practice of the Court, in dismissing summarily appeals filed by accused through jailor under S. 420, without calling on the appellant to appear is a correct procedure. (*Kennedy and Tyabji, A. J. C.*) LOUNG v. EMPEROR. 20 S. L. R. 189=7 A. I. Cr. R. 15=27 Cr. L. J. 933=96 I. C. 389=A. I. R. 1927 Sind 223.

—S. 421—Appellant in jail.

—Where a Sessions Judge in ignorance of the fact that a convict had already preferred an appeal through a mukhtar, rejected his appeal subsequently preferred through jail, the High Court in revision set aside the order of rejection and directed the Judge to re-hear the appeal preferred through mukhtar. (*Daniels, J.*) EMPEROR v. MEWA RAM. 48 All. 208=23 A. L. J. 1051=6 L. R. A. Cr. 202=26 Cr. L. J. 1621=90 I. C. 917=A. I. R. 1926 All. 178.

—Petition of appeal sent through jail being dismissed by the High Court, no subsequent appeal filed through a counsel can be entertained. (*Wazir Hasan, J. C.*) RAM AUTUR v. EMPEROR. 82 I. C. 545=11 O. L. J. 536=25 Cr. L. J. 1313=A. I. R. 1924 Oudh 425.

## —S. 421—Default of appearance.

—Appeal cannot be dismissed for non-appearance of appellant. (*Shadi Lal, C. J.*) ROORA v. EMPEROR. 11 Lah. 242=31 P. L. R. 501=1930 Cr. C. 803=126 I. C. 77=31 Cr. L. J. 979=A. I. R. 1930 Lah. 659.

—Even though no one may appear in a criminal appeal it is the duty of the Court to examine the matter and to come to some sort of decision on the merits.

## CR. P. CODE (1898), S. 421—Hearing appellant.

(*Bucknill, J.*) BALDEO DUBEY v. KING-EMPEROR. 72 I. C. 891=1 Pat. L. R. Cr. 29=24 Cr. L. J. 475=A. I. R. 1924 Pat. 376.

## —S. 421—Effect.

—*De Souza, A. J. C.*—The order summarily dismissing the appeal virtually amounts to an order affirming the findings both of fact and of law recorded by the lower Court and there is no reason to discriminate between an order summarily dismissing the appeal under S. 421 and an order dismissing the appeal after hearing under S. 424 so far as its liability to attach in revision for purposes of S. 439, Cl. (6) is concerned. (*Aston and De Souza, A. J. C.*) EMPEROR v. SHIDER. 22 S. L. R. 453=111 I. C. 856=29 Cr. L. J. 936=A. I. R. 1929 Sind 26.

## —S. 421—Effect of admission of Appeal.

—Appeal once formally admitted, cannot be summarily dismissed. (*Sanderson, C. J. and Panton, J.*) RAM HARI CHAKRAVARTY v. SANTOSH KUMAR MANNA. 69 I. C. 461=23 Cr. L. J. 733=A. I. R. 1924 Cal. 642.

## —S. 421—Hearing appellant.

—Presentation of appeal—Hearing at time of—Propriety.

In the great majority of cases when an appeal is presented, neither the appellant nor the pleader may be in a position to straightaway argue in support of the appeal and therefore it may be a wise rule in proceeding under S. 421 to give sufficient time to the appellant or his pleader and to inform him that he will be heard on a particular day in support of the appeal with a view to action being taken under S. 421, and consequently provided the pleader had a reasonable opportunity of being heard, hearing the appeal when presented is not improper. A. I. R. 1924 Mad. 895 Expl. (*Pandalai, J.*) KOLAPALLI NARASIMHAMURTI v. EMPEROR. 53 Mad. 865=127 I. C. 803=1930 M. W. N. 686=32 M. L. W. 203=1930 Cr. C. 1039=A. I. R. 1930 Mad. 863=59 M. L. J. 836.

—The provisions of S. 421 (1) are mandatory. Before an appeal, filed under S. 419, is dismissed S. 421 (1) requires that the appellate Court should give the appellant before him or his pleader a reasonable opportunity of being heard in support of the same. (*Subbendar, A. J. C.*) CHANDRA SEKHAR v. RAJARAM. 117 I. C. 279=30 Cr. L. J. 791=1929 Cr. C. 19=A. I. R. 1929 Nag 150.

—Appeal filed beyond time—Appellant's pleader should be heard before dismissal. (*Fawcett and Patkar, J. J.*) EMPEROR v. NURUDDIN SHAIKH. 29 Bom. L. R. 701=28 Cr. L. J. 653=103 I. C. 109=A. I. R. 1927 Bom. 445.

—Appellant's pleader heard at the time of presenting the appeal—Record sent for them—Summary dismissal without giving further opportunity of being heard is not illegal.

Ordinarily, if the Court does send for the record, it is preferable to hear the pleader when the record is before the Court but there is nothing in S. 421 to prevent the Court from hearing the appellant's pleader at the time when he presents the appeal, if the appellant's pleader desires that course; and if the Court desires to send for the record then it is not an illegality to summarily dismiss the appeal without giving further opportunity of being heard to the appellant's pleader. A. I. R. 1926 Cal. 174 and A. I. R. 1926 Cal. 161, Considered. (*Fawcett and Patkar, J. J.*) EMPEROR v. BASAVANAPPA BASAVA. 29 Bom. L. R. 488=101 I. C. 595=28 Cr. L. J. 467=8 A. I. Cr. R. 81=A. I. R. 1927 Bom. 361.

—After the record is sent for and received, the

**CR. P. CODE (1898), S. 421—Hearing appellant.**

appellate Court is bound to hear the pleader and cannot dismiss the appeal summarily without hearing him. (*Chatterjee and B. B. Ghose, J.J.*) LALIT KUMAR SEN v. EMPEROR. 42 C. L. J. 551=27 Cr. L. J. 382=92 I. C. 894=A. I. R. 1926 Cal. 174.

—Where the Judge sends for the record under S. 421, the appellant is entitled to be heard in support of his appeal. (*Chatterjee and B. B. Ghose, J.J.*) SURENDRA NATH v. EMPEROR. 42 C. L. J. 554=27 Cr. L. J. 412=93 I. C. 76=A. I. R. 1926 Cal. 161.

—A posting for the purpose of hearing under S. 421 must be a special posting after reasonable time—not less than a week, and the appeal should not be heard at the time of the presentation of the papers even for dismissal under S. 421. If questions of fact are argued in the appeal, the appeal ought not to be disposed of without sending for the original records of the Court below. (*Ramesam, J.*) TURKA HUSSAIN v. CROWN. 84 I. C. 1051=20 M. L. W. 623=1924 M. W. N. 893=48 Mad. 385=26 Cr. L. J. 411=A. I. R. 1924 Mad. 895=47 M. L. J. 661.

—Appeal admitted—Bail granted—Order dismissing appeal without notice of hearing to advocate is a grave irregularity. (*Lentaigne, J.*) TA PU v. EMPEROR. 3 Bur. L. J. 18=81 I. C. 549=25 Cr. L. J. 933=A. I. R. 1924 Rang. 294.

**—S. 421—Postponement of hearing.**

—So long as a reasonable opportunity is given to the appellant or his pleader to be heard in support of the appeal there is no legal requirement as to any postponement of the hearing after the presentation of the appeal. (1924) M. W. N. 893, Considered. (*Krishnan Pandalai, J.*) NARASIMHAMURTHI v. EMPEROR. 53 Mad. 865=127 I. C. 803=1930 Cr. C. 1039=1930 M. W. N. 686=32 M. L. W. 203=A. I. R. 1930 Mad. 863=59 M. L. J. 836.

—S. 421—Procedure.

—Appeal from convictions on two separate charges—One summarily dismissed and the other admitted—Procedure is not illegal.

Applicant was convicted in one trial on two separate charges of cheating. On appeal the appellate Court summarily dismissed the appeal on one charge and admitted the appeal on the other. The appeal on the second charge was ultimately successful.

Held, that the procedure of the appellate Court in disposing of the appeal piecemeal was unusual and undesirable but not illegal. (*Pratt, J.*) L. M. ISMAIL v. KING-EMPEROR. 5 Rang. 274=103 I. C. 845=28 Cr. L. J. 765=A. I. R. 1927 Rang. 239.

**—S. 421—Recording of reasons.**

—Judge should, except in exceptional cases, give reasons for summary dismissal.

It is true that where an appeal is summarily dismissed under S. 421, it is not necessary to deliver a formal judgment in accordance with the provisions of S. 367. But a Sessions Judge or Magistrate, whose orders are subject to revision by the High Court, ought, save in very exceptional cases, to give some reasons for his decision which will show that he had really considered the points raised by the appellant and the appeal actually is without foundation. 2 P. L. J. 695, Rel. on. (*James, J.*) THAKUR SAHU v. EMPEROR. 125 I. C. 121=31 Cr. L. J. 760=11 P. L. T. 242=1930 Cr. C. 616=A. I. R. 1930 Pat. 331.

—Appellate Court summarily dismissing appeal under S. 421 does not act illegally but takes risk that appeal should be remanded unless High Court is satisfied that appellate Court has considered arguments

**CR. P. CODE (1898), S. 422—Appellant in jail.**

adduced. 43 I. C. 439, Ref. (*James, J.*) KRISHNA PATI, BRUNDABAN PATI v. EMPEROR.

127 I. C. 897=1930 Cr. C. 1016=A. I. R. 1930 Pat. 520.

—No reasons need be recorded in support of the summary dismissal of an appeal. (*Mukerji, J.*) KALUCHAND GHOSE v. TATU (TAHIR SHAIK).

1929 Cr. C. 517=50 C. L. J. 285=123 I. C. 243=31 Cr. L. J. 474=A. I. R. 1929 Cal. 773.

—Judgment, dismissing the appeal summarily under S. 421 (1), need not be elaborate but must be such as to show on the face of it that the appellate Court has applied its mind to the consideration of the evidence on record and the pleas raised by the accused both in the Court below and in the memorandum of appeal. 38 All. 393; 13 N. L. R. 169; 36 All. 496 and 8 N. L. R. 84, Ref. (*Subhedar, A.J.C.*) CHANDRA SEKHAR v. RAJARAM. 117 I. C. 279=30 Cr. L. J. 791=1929 Cr. C. 19=A. I. R. 1929 Nag. 150.

—An appeal can be rejected under S. 421 without any formality. There need be no recorded judgment or reason of any description. (*Addison, J.*) NAZAR MD. KHAN v. HARA SINGH BEDI. 26 P. L. R. 616=27 Cr. L. J. 23=91 I. C. 55=A. I. R. 1926 Lah. 196.

—A Court when rejecting an appeal in a criminal case under the provisions of S. 421 should record shortly its reasons for such rejection in view of the possibility of such order being challenged by an application for revision. 17 A. 247, Foll. (*Dalal, J.C.*) BRIJ MOHAN LAL v. EMPEROR. 83 I. C. 484=26 Cr. L. J. 4=A. I. R. 1925 Oudh 290.

—An appellate Court is not required by law to write a judgment when dismissing an appeal summarily. It is no doubt necessary that in dismissing the appeal summarily the appellate Court should give the reasons for dismissing the same. A mere order to the effect that the appeal is summarily dismissed, without giving any reason whatsoever, would be bad in law. (*Kulwant Sahay, J.*) JAGARNATH SINGH v. EMPEROR. 82 I. C. 165=25 Cr. L. J. 1237=A. I. R. 1925 Pat. 183.

**—S. 421—Sending for record.**

—It cannot be said as a rule of law that the Court is bound to send for the papers before taking action under S. 421. (1924) M. W. N. 893 considered. (*Krishnan Pandalai, J.*) NARASIMHAMURTHI v. EMPEROR. 1930 M. W. N. 686=32 M. L. W. 203=53 Mad. 865=127 I. C. 803=1930 Cr. C. 1039=A. I. R. 1930 Mad. 863=58 M. L. J. 836.

**—S. 421—Validity.**

—An appeal under S. 476-B, Cr. P. Code, may be summarily dismissed—Such appeals are subject to all provisions applicable to criminal appeals as laid down in S. 419 and following sections. (*Suhrawardy and Costello, J.J.*) MAHOMED BOYA TULLA v. EMPEROR. 34 C. W. N. 923.

**—S. 422—Appellant in jail.**

—Where the stage has been reached of an appellant from jail being given notice under S. 422, he is entitled, if he so desires, to appear in person, if he is not represented by a pleader, to argue his case. 13 All. 171 (F.B.) and A. I. R. 1927 Oudh 312, Diss. from. (*Lindsay, Boys and Iqbal Ahmad, J.J.*) LAL BAHADUR v. EMPEROR. 50 All. 543=29 Cr. L. J. 334=108 I. C. 122=9 A. I. R. 1926 Pat. 150=26 A. L. J. 275=9 L. R. A. Cr. 22=A. I. R. 1928 All. 84 (F.B.).

## CR. P. CODE (1898),

## —S. 422—Dismissal.

—Appeal admitted—Bail granted—Order dismissing appeal without notice of hearing to advocate is a grave irregularity. (*Lentaghe, J.*) TA PU v. KING-EMPEROR. 81 I. C. 549=3 Bur. L. J. 18=

25 Cr. L. J. 933=A.I.R. 1924 Rang. 294.

## —S. 422—Grounds for admission.

—The practice of admitting appeals only on the question of sentence is incorrect. 41 Cal. 406, Foll. (*Buckmill and Ross, J.J.*) GAYA SINGH v. EMPEROR.

86 I.C. 718=4 Pat. 254=6 P. L. T. 381=

3 Pat. L. R. Cr. 80=26 Cr. L. J. 862=

A.I.R. 1925 Pat. 453.

## —S. 422—Notice to accused.

—Notice of appeal under, should be given to accused though no express provision exists.

Where an appeal is preferred against an order directing payment of compensation to accused, held, that although there is no express provision nevertheless on the principle *audi alteram partem* the accused should have notice of the appeal in order that they should have an opportunity of supporting the order passed in their favour. 29 Mad. 187 and 38 Mad. 1091, Foll. (*Campbell, J.*) RAM CHAND v. JESA RAM.

76 I.C. 641=25 Cr. L. J. 209=

A. I. R. 1924 Lah. 675.

## —S. 422—Notice to complainant.

—Appeal—Notice should be given to complainant where compensation has been awarded to him.

Though there is no express provision of law in case of an order under S. 250 or S. 545, Cr. P. Code, with regard to notice upon the opposite party, one of the fundamental principles of law is that no order should be passed to the detriment or prejudice of a party without giving him an opportunity of being heard in defence, and therefore a Court hearing the appeal would be exercising proper discretion to give notice to the complainant, who has been awarded compensation, of the hearing of the appeal. (*Suhrawardy and Duval, J.J.*) BHARASA NOW v. SUKDEO. 53 Cal. 969=

43 C. L. J. 583=27 Cr. L. J. 1086=

7 A.I. Cr. R. 94=97 I.C. 62=A.I.R. 1926 Cal. 1054.

## —S. 422—Notice to District Magistrate.

—Where the rules require notice to the District Magistrate the fact that the appeal which is ultimately heard by a joint Magistrate was originally filed before the District Magistrate does not relieve the joint Magistrate of his duty of giving notice to the District Magistrate. (*Venkatasubba Rao, J.*) MD. MUSTAFA ROTHER v. SHANMUGA THEVAN. 83 I. C. 349=

25 Cr. L. J. 1389=A.I.R. 1925 Mad. 375.

## —S. 422—Omission of notice.

—Failure to issue notice to Crown by appellate Court under S. 422 is a sufficient ground to set aside the appellate order. (*Suhrawardy and Duval, J.J.*) BHARASA NOW v. SUKDEO. 53 Cal. 969=

43 C.L.J. 583=27 Cr. L. J. 1086=7 A. I. Cr.R. 94=

97 I. C. 62=A.I.R. 1926 Cal. 1054.

—*Quære* :—Whether omission to give notice to the officer mentioned in the section is an illegality or mere irregularity. (*Venkatasubba Rao, J.*) MD. MUSTAFA ROTHER v. SHANMUGA THEVAN.

83 I. C. 349=25 Cr. L. J. 1389=

A. I. R. 1925 Mad. 375.

—In the absence of notice to the District Magistrate the order of acquittal on appeal from conviction is revisable but not at the instant of the complainant. (*MacLeod, C.J. and Crump, J.*) DEVENDRA MARAPPA v. SHETTAPPA HOOLEPPA. 86 I. C. 287=

25 Bom. L. R. 251=26 Cr. L. J. 751=

A. I. R. 1923 Bom. 264.

## CR. P. CODE (1898), S. 423—Alteration of conviction.

## —S. 423.

## Alteration of conviction.

## Dismissal.

## Duty of appellate Court

## Enhancement of sentence.

## New case.

## Powers of appellate Court.

## Remand.

## Retrial.

## Reversal of finding.

## Revision.

## Right to reply.

## Verdict of Jury.

## Miscellaneous.

## —S. 423—Alteration of conviction.

—It is not open to an appellate Court to alter the sentence of the trial Court and substitute a sentence of whipping, a sentence not within the power of trial Court. Though such course be most suitable it must be considered to be an enhancement and hence becomes illegal (*Shadi Lal, C.J.*) YUSUF v. MUNICIPAL COMMITTEE, MURREE. 120 I. C. 787=31 Cr. L. J. 166=

1930 Cr. C. 350=1 P. L. R. 2643=

A. I. R. 1930 Lah. 318.

—Appellate Court can alter conviction from one under S. 380 to one under S. 403, Penal Code, the two offences being of the same nature. (*Tek Chand, J.*) BIRU v. EMPEROR. 115 I. C. 25=11 L. L. J. 113=

30 Cr. L. J. 413=1929 Cr. C. 61=

12 A. I. Cr. R. 378=A. I. R. 1929 Lah. 508.

—Charge of criminal breach of trust—Altering the conviction on appeal to abetment of the offence is unfair.

If in the case of a breach of trust where proof of abetment differs from proof of substantive offence in material particulars, if the attention of the accused is not directed at the time of framing the charges or during the trial to the fact that he might have to meet a charge of abetment, it would be highly unfair for the High Court on appeal to alter the conviction to one of abetment. (*Tekchand, J.*) PRITCHARD v. EMPEROR. 112 I. C. 850=30 Cr. L. J. 18=

11 A. I. Cr. R. 405=A. I. R. 1928 Lah. 382.

—The only section under which the appellate Court can base a conviction for abetment on acquitting the accused of the main charge is S. 423. (*Pullan, J.*) MAHABIR PRASAD v. EMPEROR. 97 I. C. 430=

49 All. 120=24 A. L. J. 998=7 L. R. A. Cr. 180=

27 Cr. L. J. 1118=A. I. R. 1927 All. 35.

—Charge and conviction under S. 379, Penal Code—Alteration to conviction under S. 143, Indian Penal Code by appellate Court—Accused is prejudiced.

If the prosecution establishes certain acts constituting an offence and the Court misapplies the law by charging and convicting an accused person for an offence other than that for which he should have been properly charged, and if notwithstanding such error the accused by his defence endeavoured to meet the accusation of the commission of these acts, then the appellate Court may alter the charge or finding and convict him for an offence which those acts properly constitute, provided the accused be not prejudiced by the alteration in the finding. Such an error is one of form rather than of substance. But where the accused is charged under S. 379, Indian Penal Code, and the appellate Court alters the conviction to one under S. 143, Indian Penal Code, the accused is prejudiced. 26 Cal. 363, Rel. on. (*Suhrawardy and Cammiade, J.J.*) DEBAKAR v. SAKLIDHAR KABIRAJ. 101 I. C. 180=

54 Cal. 476=31 C. W. N. 527=28 Cr. L. J. 404=

8 A. I. Cr. R. 56=A. I. R. 1927 Cal. 520.

**CR. P. CODE (1898), S. 423—Alteration of conviction.**

—*Changing conviction of graver offence to minor offence—Maintaining the sentence is not necessarily illegal.*

Where the petitioner was convicted of voluntarily causing hurt with a dangerous weapon under S. 324, I. P. Code, and was sentenced to rigorous imprisonment for two months, and in appeal the conviction was altered into one under S. 323, I. P. Code, but the sentence was maintained.

*Held*, that where the appellate Court adopts the view taken by the original Court as to the act committed by the accused and only differs from it in the application of the law, neither the letter nor the spirit of S. 423 is broken by maintaining the sentence. (*Curgunven, J.*) RANGASWAMI KANDU PILLAI v. KING-EMPEROR.

104 I. C. 440 = 39 M. L. T. 20 = 28 C. L. J. 824 = A. I. R. 1927 Mad. 789 = 53 M. L. J. 694.

—Sessions Judge can alter finding under Ss. 205 and 109 to one under S. 419, Penal Code, maintaining the sentence. (*Ross and Kulwant Sahay, J.J.*) GANPAT LAL v. KING-EMPEROR. 102 I. C. 337 = 28 Cr. L. J. 529 = 8 A. I. C. B. 117 = A. I. R. 1927 Pat. 199.

—In the absence of a charge under S. 323, Penal Code, framed during the trial, the conviction under S. 147, Penal Code, cannot be altered to one under S. 323, Penal Code. 18 C. W. N. 1276 and 30 Cal. 288, Foll. (*Newbould and Mukerji, J.J.*) RAKHAL CHANDRA v. JAMINIKANTA. 87 I. C. 842 = 26 C. L. J. 1018 = 30 C. W. N. 528 = A. I. R. 1926 Cal. 431.

—In appeal High Court is not justified in altering the conviction under S. 302, I. P. Code, to a conviction under one of the sections dealing with offences against property. A. I. R. 1925 P. C. 130, Dist.; A. I. R. 1924 Lah. 109, Foll. (*Shadi Lal, C. J. and Coldstream, J.*) GHAUNS v. EMPEROR. 96 I. C. 860 = 7 Lah. 561 = 27 P. L. R. 611 = 27 Cr. L. J. 1004 = 7 A. I. Cr. R. 31 = 9 L. L. J. 39 = A. I. R. 1926 Lah. 691.

—The fact that an accused person has been charged with dacoity does not necessarily invalidate a verdict of guilty of abetment of robbery though he was not charged with abetment. Where a person was charged only under section 398, I. P. Code, but convicted of abetting the offence under the section and the evidence showed abetment of the commission of the attempted robbery, the appellate Court altered the conviction to one under S. 393/114, I. P. Code. 8 L. B. R. 274, Rel. on. (*Duckworth, J.*) NGA PU v. EMPEROR. 5 Bur. L. J. 103 = 27 Cr. L. J. 1285 = 98 I. C. 181 = A. I. R. 1926 Rang. 207.

—*Lower Court convicting under one section—Appellate Court cannot set aside conviction under that section and convict under another section.*

The accused was convicted by the trial Court of an offence under S. 159 of the Madras Local Boards Act (XIV of 1920). The appellate Magistrate after having found that S. 159 (1) had no application went on to convict the accused, under S. 163 (1) of that Act.

*Held*, that the action of the Appellate Magistrate was illegal as no charge had been framed under S. 163 (1) and the accused had not been tried for that offence or convicted by the first Court of any such offence. (*Srinivasa Aiyangar, J.*) KADULNATHA PILLAI, *In re.* 87 I. C. 924 = 26 Cr. L. J. 1036 = 21 M. L. W. 520 = A. I. R. 1925 Mad. 706.

**CR. P. CODE (1898), S. 423—Dismissal for default.**

—When the accused was charged and convicted by the trial Court under S. 468, I. P. Code and the appellate Court convicted the accused under S. 471, I. P. Code.

*Held*, that the conviction was wrong as it was impossible to postulate that the accused was not prejudiced by having no notice that he was to be convicted of the offence under S. 471. (*Findlay, Offg. J. C.*) AKBAR HUSSAIN v. KING-EMPEROR. 89 I. C. 398 = 8 N. L. J. 87 = 26 Cr. L. J. 1358 = A. I. R. 1925 Nag. 294.

—A retrial on the altered charge is not necessary where the appellate Court alters the conviction into one of an offence which is graver than that charged and found in the Lower Court, provided that the accused is not prejudiced by such a course. (*Kincaid, J. C. and Aston, A. J. C.*) FAIZULLAH v. EMPEROR. 81 I. C. 881 = 19 S. L. R. 183 = 25 Cr. L. J. 1057 = A. I. R. 1925 Sind 105.

—*Penal Code, Ss. 323 and 325—Alteration of conviction by appellate Court—Prejudice to accused is caused.*

The Petitioners along with one K were convicted by the Trial Court under S. 325 for having broken the knee-cap of the complainant. The Appellate Court found that the injury to the knee-cap was caused by the accused K alone and it came to the conclusion that the petitioners had been guilty of the offence under S. 323 for some other injuries they had inflicted on the complainant.

*Held*, that the alteration of the conviction of the petitioners from S. 335 to S. 323 by the Appellate Court was unauthorised as they had not been given any opportunity of answering the charge of inflicting injuries other than the injury to the knee-cap. (*C. C. Ghose and Cumming, J.J.*) PATAL GHOSH v. EMPEROR. 72 I. C. 72 = 24 C. L. J. 312 = A. I. R. 1924 Cal. 532.

—*Alteration of charge.*

Alteration of conviction under Ss. 147 and 323, Penal Code, into one under S. 160 is not justifiable. (*Krishnan, J.*) SHREERAMULU, *In re.* 81 I. C. 42 = 47 Mad. 61 = 18 M. L. W. 741 = 1923 M. W. N. 814 = 25 Cr. L. J. 554 = A. I. R. 1924 Mad. 375 = 46 M. L. J. 120.

**—S. 423—Dismissal.**

—*Appeal admitted—Bail granted—Order dismissing appeal without notice of hearing to advocate is a grave irregularity.*

A Criminal appeal once admitted cannot be summarily dismissed. An opportunity must be given to appellant's pleader to be heard fully. (*Lentaigne, J.*) TA PU v. KING-EMPEROR. 81 I. C. 549 = 3 Bur. L. J. 18 = 25 Cr. L. J. 933 = A. I. R. 1924 Rang. 294.

**—S. 423—Dismissal for default.**

—A Sessions Judge should not dismiss an appeal for default under the provisions of S. 423, but should enquire into the merits of the case and see if there is any force in it. (*Stuart C. J.*) TAEN v. EMPEROR. 125 I. C. 848 = 31 Cr. L. J. 939 = 7 O. W. N. 208 = 1930 Cr. C. 460 = A. I. R. 1930 Oudh 334.

—Under S. 423 the Court is bound to peruse the record and to hear the appellant or his pleader if he appears before disposing of the appeal and even if the appellant is not present, the Court is bound to go



**CR. P. CODE (1898), S. 423—Dismissal for default.**

through the record itself and to decide the appeal upon merits. (*Jwala Prasad and Macpherson, J.J.*) KULDIP SINGH v. KING-EMPEROR. 100 I.C. 831=6 Pat. 16=

28 Cr. L. J. 351=8 P. L. T. 376=7 A. I. Cr. R. 473=A. I. R. 1927 Pat. 176.

—An appellate Court cannot dismiss the appeal owing to the absence of the appellant and his pleader. Under S. 423 the Court of appeal has to peruse the record and to form an opinion as to whether there is or is not sufficient ground for interference. 13 All. 171 (F. B.) and 21 P. R. 1895 (Cr.), Foll. (*Fawcett and Madgavkar, J.J.*) TRIMBAK BALWANT v. EMPEROR. 97 I. C. 751=50 Bom. 673=

28 Bom. L. R. 1022=27 Cr. L. J. 1167=A. I. R. 1926 Bom. 548.

—Criminal appeal cannot be dismissed for default.

After an appeal had been presented, the records were called for; after the records had arrived the appeal was taken up for hearing. On that date no one appeared in support of the appeal on behalf of the appellant and no application for adjournment was filed. The Magistrate thereupon dismissed the appeal.

Held, that it was incumbent upon the Magistrate to go through the record and to dispose of the appeal on the merits. (*C. C. Ghose and Cuming, J.J.*) BANSI MIRDHA v. BROJESHWAR DUTT. 81 I. C. 974=50 Cal. 972=27 C. W. N. 947=39 C. L. J. 278=25 Cr. L. J. 1150=A. I. R. 1924 Cal. 95.

**—S. 423—Duty of appellate Court.**

—Several accused—Appellate Court must separately consider case of each.

Where in a criminal appeal there are a number of appellants, it is the duty of the Court to bring to bear, with regard to the case of each of the accused, a judicial mind for the purpose of considering whether he was guilty or not, having regard to the charges against him and the special evidence directed to him and his particular defence if any. 2 L. W. 958 and 7 L. W. 83, Foll. 20 C. W. N. 1296, Ref. (*Srinivasa Aiyangar, J.*) CHINNA MANIKAM, *In re*. 88 I. C. 177=

26 Cr. L. J. 1089=A. I. R. 1925 Mad. 712=48 M. L. J. 504.

**—S. 423—Enhancement of sentence.**

—Capital sentence—Not to be passed—Exceptions.

Ordinarily the Courts refrain from passing a capital sentence on a person who is convicted on an appeal against his acquittal, but where the accused was a party to an attack of a particularly ferocious nature and acted in a high-handed manner and with unusual cruelty in assaulting the opposite party consisting of the deceased and the latter have not been proved to have given any provocation, he may be sentenced to death. (*Jailal and Abdul Quadir, J.J.*) NIAMATKHAN v. EMPEROR. 127 I. C. 850=1930 Cr. C. 469=

31 P. L. R. 411=A. I. R. 1930 Lah. 409.

—Alteration of sentence of three months' rigorous imprisonment to one month and fine of Rs. 60 and in default two months is not enhancement.

The accused was convicted and sentenced to undergo three months' rigorous imprisonment. He appealed and his conviction was affirmed but the sentence was altered into one of one month's rigorous imprisonment and a fine of Rs. 60 with a further two months' rigorous imprisonment in default of payment.

Held, that the appellate Court in effect reduced the sentence, the proper test being whether the accused really considers the fine as heavier sentence than imprisonment. 23 Bom. 439, Rel. on; A. I. R. 1924 Pat. 563; 23 All. 497 and 36 All. 485, Dist. (*Waller and Cornish, J.J.*) SUBBA GOUNDAN v. EMPEROR.

**CR. P. CODE (1898), S. 423—Enhancement of sentence.**

121 I. C. 125=1930 Cr. C. 86=

31 Cr. L. J. 203=1929 M. W. N. 896=

3 M. Cr. C. 24=A. I. R. 1930 Mad. 193.

—It does not follow that if the conviction on one of the several charges in a trial is set aside while one or more others are affirmed there must necessarily be a reduction of sentence. It depends upon the particular circumstances of the case whether the retention of the sentence awarded by the trial Court constitutes an enhancement of the sentence. (*Macpherson, J.*) BECHU SINGH v. EMPEROR. 120 I.C. 764=31 Cr. L. J. 173=

10 P. L. T. 587=1930 Cr. C. 38=A. I. R. 1930 Pat. 79.

—Substitution of 30 stripes for 3 months' rigorous imprisonment is enhancement.

Substitution of a sentence of 30 stripes for a sentence of one year's rigorous imprisonment or more or a substitution of a sentence of 25 stripes for a sentence of nine months' rigorous imprisonment or more or a substitution of a sentence of 20 stripes for a sentence of six months' imprisonment or more is not ordinarily an enhancement of sentence within the meaning of S. 423 (1) (b) and in the case of a person under 16 years of age the substitution of a sentence of 15 stripes for a sentence of imprisonment for six months or more or a substitution of a sentence of 10 stripes for a sentence of imprisonment for three months or more is not ordinarily an enhancement of sentence.

But the substitution of a sentence of 30 stripes for a sentence of three months' rigorous imprisonment is an enhancement and therefore an illegal sentence under S. 423 (1) (b). 2 Weir 487; 6 B. L. R. Ap. 95; not Foll. Rat. Un. Cr. C. 131; 17 All. 67; 23 Bom. 439; 27 Cal. 175; 30 Mad. 103 (F. B.); 36 All. 485, Ref. (*Rutledge, C. J., Maung Ba and Heald, J.J.*) EMPEROR v. CHIT PON. 119 I. C. 209=7 Rang. 319=

30 Cr. L. J. 986=1929 Cr. C. 169=A. I. R. 1929 Rang. 177 (F. B.).

—Conviction under Ss. 384 and 420 of the Penal Code—Appellate Court setting aside conviction under S. 420 yet maintaining original aggregate sentence—Sentence is enhanced and so illegal. 22 Bom. 760; 30 Mad. 48; and 24 Cal. 316, Foll. (*Mirza and Patkar, J.J.*) RAMCHANDRA v. EMPEROR.

112 I. C. 586=30 Bom. L. R. 967=

29 Cr. L. J. 1082=A. I. R. 1928 Bom. 346.

—The alteration by the appellate Court of a sentence of imprisonment to one of whipping is an enhancement of sentence and is not authorized by the provisions of S. 423, sub-S. (1), Cl. (b), sub-Cl. (3). 15 W. R. (Cr.) 7 and 2 Weir 487, Rel. on; Rat. Un. Cr. C. 131, Dist. (*Mya Bu, J.*) KYAING NGA HMWE, *In re*. 114 I. C. 523=30 Cr. L. J. 328=

A. I. R. 1928 Rang. 265.

—Conviction under Ss. 379 and 341, Penal Code—Appellate Court setting aside conviction under S. 379, but maintaining the sentence—Procedure is illegal. (*Dalal, J.*) MRS. F. M. TORPEY v. EMPEROR.

101 I. C. 671=25 A. L. J. 396=

8 L. R. A. Cr. 49=7 A. I. Cr. R. 339=

28 Cr. L. J. 495=49 All. 484=A. I. R. 1927 All. 375.

—Where the accused was insolvent and unable to pay the fine imposed and the original sentence was for two months' rigorous imprisonment and Rs. 50 fine, or in default one month's rigorous imprisonment, and it was altered in appeal to one of rigorous imprisonment for six weeks and a fine of Rs. 200 or in default six weeks' further rigorous imprisonment.

Held, that it amounted to enhancement of sentence. 7 P. R. 1916 (Cr.), Appl. (*Campbell, J.*) KANSHI RAM

**CR. P. CODE (1898), S. 423—Enhancement of sentence.***v. EMPEROR.*95 I. C. 476 = 27 Cr. L. J. 812 =  
A. I. R. 1926 Lah. 543.

—The making of an order under S. 31, Court Fees Act, does not ordinarily amount to an enhancement of sentence but may be made as an incidental order to bring the judgments into conformity with the law. S. 31 of the Court Fees Act provides that all fees ordered to be repaid under the section shall be recoverable "as if they were fines," but does not thereby make them part of the sentence. 22 M. 153, Dist. (*Spencer, J.*)  
E. THIMMIAM *v.* KING-EMPEROR.

82 I. C. 141 = 47 Mad. 914 = 20 M. L. W. 293 =

35 M. L. T. 39 = 1924 M. W. N. 489 =

25 Cr. L. J. 1213 = A. I. R. 1925 Mad. 136 =

47 M. L. J. 355.

—Sentence—imprisonment in default of fine cannot be increased to exceed the aggregate punishment awarded in lower Court.

Where the accused was sentenced to rigorous imprisonment for two months and to a fine of Rs. 50 or in default one month's rigorous imprisonment, and on appeal sentence was changed to one of one month's rigorous imprisonment and fine of Rs. 200 or in default to two months' rigorous imprisonment.

*Held*, that the latter sentence amounted to an enhancement of the sentence passed by the trial Court for if the fine was not paid the accused would have to undergo three months' rigorous imprisonment and still be liable to the fine. The imprisonment in default of payment of fine of Rs. 200 was reduced to rigorous imprisonment for one month in default. 23 All. 497, Foll. (*Adami and Bucknill, J.J.*) BHOLA SINGH *v.* KING-EMPEROR.

82 I. C. 50 = 3 Pat. 638 =

5 P. L. T. 622 = 25 Cr. L. J. 1186 =

A. I. R. 1924 Pat 563.

**—S. 423—Enhancement of sentence—Procedure.**

—Notice of enhancement—Sending for record before issuing notice—Advisability.

Although it is quite legal for High Court to issue notice of enhancement at the time of admitting an appeal, when an appeal comes up for admission by the appellate Court, it would be desirable if before causing a notice to show cause against enhancement of sentence to be sent, the records of the case were sent for. (*Beasley, C. J. and Pandolai, J.*) GUNDUTHALAYAN, *In re.*

127 I. C. 290 = 53 Mad. 585 = 31 M. L. W. 542 =

1930 Cr. C. 498 = A. I. R. 1930 Mad. 446 =

58 M. L. J. 490.

**—S. 423—New case.**

The charge cannot be so altered by an appellate Court as to make it necessary for the accused to meet an absolutely different case from that with which he is charged in the Court of the committing Magistrate. (*Banerji, J.*) MULA *v.* EMPEROR.

90 I. C. 150 =

23 A. L. J. 924 = 6 L. R. A. Cr. 159 =

26 Cr. L. J. 1494 = A. I. R. 1926 All. 33.

**—S. 423—Powers of appellate Court.**

—S. 423 (1) (d) does not permit a Sessions Judge to review a wrong order by his predecessor, the only proper course for him, in such case being to refer the case to the High Court. (*Mirza and Patkar, J.J.*)  
EMPEROR *v.* LAKSHMAN RAM SHET.

121 I. C. 588 = 31 Cr. L. J. 309 =

53 Bom. 578 = 31 Bom. L. R. 593 =

1929 Cr. C. 130 = A. I. R. 1929 Bom. 309.

—Trial Court omitting to pass an order under S. 517—Appellate Court can do so under S. 520 or S. 423 (1) (d).

Under S. 520 as well as under S. 423 (1) (d) the appellate Court has the power to pass appropriate orders for the disposal of the property produced at the trial in a case

**CR. P. CODE (1898), S. 423—Powers of appellate Court.**

under S. 411, Penal Code, even though the trial Magistrate has omitted to do so. A. I. R. 1923 Mad. 324 and 3 A. L. J. 770, Foll. (*Tek Chand and Agha Haidar, J.J.*) THIRAJ *v.* EMPEROR.

111 I. C. 314 =

10 Lah. 187 = 11 A. I. Cr. R. 18 =

29 Cr. L. J. 810 = A. I. R. 1928 Lah. 567.

—High Court's powers of interference *in*.

The High Court is not entitled to interfere with the verdict of the jury in jury trials unless there has been a miscarriage of justice. (*Rankin, C. J. and C. C. Ghose, J.*) AZIMUDDY *v.* EMPEROR.

101 I. C. 661 =

31 C. W. N. 410 = 28 Cr. L. J. 485 =

8 A. I. Cr. R. 134 = A. I. R. 1927 Cal. 398.

—It is doubtful whether an appellate Court can, under S. 423 (1) (b), pass an order which would make the position of the appellants worse. (*Shadi Lal, C. J.*)  
BIR SINGH *v.* EMPEROR.

102 I. C. 511 =

28 P. L. R. 166 = 7 A. I. Cr. R. 342 =

8 A. I. Cr. R. 214 = 28 Cr. L. J. 575 =

A. I. R. 1927 Lah. 733.

—Rejecting part of prosecution story—Conviction on the rest believed—Validity.

Where in a trial for the offence of rioting the appellate Court refused to believe part of the prosecution story as to theft and house-breaking but gave sufficient reasons for believing the story of rioting.

*Held*, that the conviction for rioting was right as the Court was not precluded from exercising its powers of discretion from eliminating exaggeration from evidence otherwise found to be true. 42 Cal. 784, Expl. (*Jackson, J.*) VENKATASWAMY, *In re.*

99 I. C. 1038 = 25 M. L. W. 325 =

28 Cr. L. J. 238 = A. I. R. 1927 Mad. 410.

—There is no restriction on the powers of the Appellate Court to deal with a case of which it has complete seisin in any of the manners provided by S. 423 Cr. P. Code. 25 Cal. 711, Foll.; 21 Cal. 945, Diss. from (*Kotwal, A. J. C.*) RAM PRASAD *v.* EMPEROR.

88 I. C. 178 = 26 Cr. L. J. 1090 =

A. I. R. 1926 Nag. 53.

—Appeal from conviction under S. 376, Penal Code—Appellate Court framing a charge under S. 366 holding that S. 376 had no application and trying the case itself—Proceedings are beyond the scope of S. 423.

The trial Court had convicted the accused under S. 376 for rape. On appeal by the accused the Sessions Court held that the charge of rape had no application by reason of the fact that the girl was over twelve and that the act could not be said to have been without her consent or against her will and therefore proceeded to frame a fresh charge under S. 366 against the appellant, of kidnapping a woman that she might be forced or seduced to illicit intercourse. To this charge he called on the appellant to plead, and examined him upon it and allowed him to call one witness in defence.

*Held*, that in so trying the case himself the Sessions Judge exceeded the powers conferred on an Appellate Court by S. 423. A charge under S. 366 is triable by a Court of Sessions only under S. 193 only on commitment; therefore the Sessions Judge should, after setting aside the conviction, have ordered the accused to be committed for trial, when he would have been tried before a Court of Sessions with the aid of assessors. (*Young, J.*) Y. C. SIRCAR *v.* EMPEROR.

88 I. C. 287 = 26 Cr. L. J. 1119 = 3 Rang. 68 =

4 Bur. L. J. 29 = A. I. R. 1925 Rang. 230.

—The powers of an appellate Court to vary a sentence must be measured by those of the Court of first instance. 7 N. L. R. 109, Ref. (*Walsh and Kanhaiya Lal, J.J.*) MAHOMED YAKUB *v.* KING-EMPEROR.

76 I. C. 1032 = 45 Lah. 594 = 25 Cr. L. J. 312 =

**CR. P. CODE (1898), S. 423—Powers of appellate Court.****A. I. R. 1924 All. 130.**

—Appellate Court cannot decide legality of previous convictions. (*Carr, J.*) **OU PE v. EMPEROR.**

**82 I. C. 471 = 3 Bur. L. J. 27 =****25 Cr. L. J. 1303 = A. I. R. 1924 Rang. 295.****—S. 423—Remand.**

—*Appeal before Sessions Judge—Order on preliminary point of misjoinder—Setting aside conviction—Other points argued—Later order setting aside conviction and ordering re-trial—Validity.*

The Sessions Judge at the commencement of the hearing of the appeal heard arguments on the only question as to whether there was misjoinder of charges and holding that the trial was vitiated owing to misjoinder wrote and signed the order "I must set aside the convictions". Then at the next hearing he heard arguments on other points and then passed another order "I set aside the convictions and sentences and direct that the accused be retried". He called this second order as judgment.

*Held*, that the first order of the Sessions Judge was not a final order but was mere expression of opinion on the point of misjoinder. Hence after signing that order he did not become *functus officio*, and so he did not commit any illegality of procedure when he passed his second order remanding the case for re-trial, though the procedure adopted was rather unusual. (*Jai Lal, J.*) **SIKANDAR LAL PURI v. EMPEROR.**

**126 I. C. 69 = 31 Cr. L. J. 975 =****1929 Cr. C. 219 = A. I. R. 1929 Lah. 692.****—S. 423—Remand—Stage.**

—*Case may be remanded from the stage it becomes irregular.*

Where the Sessions Judge held that the accused had been seriously prejudiced by a mistake in drawing up of the charge and also by inadequate attention paid to the evidence on record and remanded the case under S. 423 for trial from the stage it became irregular, namely, from the drawing up of the charge.

*Held*, that inasmuch as the proceedings are to be taken up from after the drawing up of the charge and no opportunity is to be afforded to the prosecution to improve their case, the order is fair. (*Sen, J.*) **SHEOPARSAN SINGH v. EMPEROR.**

**104 I. C. 909 =****28 Cr. L. J. 893 = 9 A. I. Cr. R. 40 =****A. I. R. 1928 Pat. 50.****—S. 423—Re-trial.**

—*Another view of case possible—No ground for.*

Where the trial Magistrate after coming to the conclusion that the prosecution story is doubtful, discharges the accused, the mere circumstances that another view may be taken of the case than that which the trial Magistrate takes would not justify a re-trial. (*Addison, J.*) **MT. MUBARAK JAN v. MT. RAHAT JAN.**

**1930 Cr. C. 691 = 31 P. L. R. 729 =****A. I. R. 1930 Lah. 543.**

—The appellate Court can no doubt order a re-trial under S. 423, Cr. P. Code, but hardly where the prosecution has hopelessly broken down in every respect, so as to enable the prosecutor to substantiate some new charge against the accused, or to produce evidence which might easily have been produced at the first trial. It is rather for supplying formal defects that an appellate Court orders re-trial. **42 Mad. 885, Rel. on. (Jackson, J.) RATHNAVELU MUTALIAR v. EMPEROR.**

**122 I. C. 497 = 1930 Cr. C. 189 =****31 Cr. L. J. 422 = 1930 M. W. N. 191 =****3 M. Cr. C. 92 = A. I. R. 1930 Mad. 189.**

—*Conviction set aside—Re-trial must be ordered*

—*Re-trial when unnecessary.*

Where a conviction is set aside on the ground of a

**CR. P. CODE (1898), S. 423—Re-trial.**

material irregularity of procedure, a re-trial should ordinarily be ordered. But where the complainant's story is so grotesque that it is on the fact of it improbable, and the accused has already served out more than half the sentence, re-trial should not be ordered if the trial is vitiated by material irregularity prejudicing his case. **3 Pat. L. W. 224, Rel. on. (Subhedar, A. J. C.) GIRDHARI v. EMPEROR.**

**124 I. C. 619 = 31 Cr. L. J. 705 =****1930 Cr. C. 831 = A. I. R. 1930 Nag. 255.**

—*Appeal from order under S. 110—No re-trial can be ordered.*

An order of re-trial can be passed only in cases of appeal against a conviction. In an appeal from any other order the appellate Court can only alter or reverse such an order. A District Magistrate, therefore, while setting aside, on appeal, an order requiring a person to furnish security under S. 110, cannot remand the case for a *de novo* trial, i.e., for fresh enquiry. (*Zafar Ali, J.*) **CHANDAN v. EMPEROR.**

**115 I. C. 544 =****30 P. L. R. 416 = 30 Cr. L. J. 491 =****12 A. I. Cr. R. 273 = A. I. R. 1929 Lah. 28.**

—Where the prosecution came into Court with an incomplete case which, so far as it went confirmed the defence,

*Held*, that they were not entitled to a re-trial. (*Jwala Prasad and Ross, J.J.*) **P. K. SEN v. EMPEROR.**

**107 I. C. 529 = 9 P. L. T. 723 = 29 Cr. L. J. 258 =****A. I. R. 1928 Pat. 293.**

—*Reasons for rejecting prosecution evidence, not satisfactory—If ground for.*

The ground that the reasons given by the trying Magistrate in rejecting the prosecution evidence are open to objection is not sufficient for ordering a re-trial. (*Sulaiman, J.*) **EMPEROR v. BEULMADIN.**

**8 L. R. A. Cr. 138 = 8 A. I. Cr. R. 335 =****28 Cr. L. J. 946 = 105 I. C. 658 =****26 A. L. J. 76 = A. I. R. 1927 All. 727.**

—Where there is an appeal against an acquittal in a case tried by the jury, High Court has jurisdiction to decide the case itself instead of ordering a new trial. (1894) **A. C. 57, not Foll.; 19 Bom. 749; 6 B. H. C. R. Cr. 47 and A. I. R. 1925 Sind 116, Rel. on. (Kincaid, J. C., and Barlee, A. J. C.) EMPEROR v. SARAN.**

**21 S. L. B. 356 = 7 A. I. Cr. R. 181 =****28 Cr. L. J. 66 = 99 I. C. 98 =****A. I. R. 1927 Sind 104.**

—*Appeal from order under S. 107—Re-trial can be ordered apart from S. 423.*

In the case of an appeal under S. 406 from the order under S. 107, the appeal is not one from conviction and, therefore, apart from the provisions of S. 423, appellate Court can order re-trial. (*Walsh and Dalal, J.J.*) **BHAGWAT SINGH v. EMPEROR.**

**48 All. 501 =****24 A. L. J. 566 = 7 L. R. A. Cr. 121 =****27 Cr. L. J. 945 = 96 I. C. 497 =****A. I. R. 1926 All. 403.**

—*No reasonable probability of conviction—Re-trial—If proper.*

Re-trial should not be ordered unless there is a reasonable probability of the accused being convicted on the evidence known to be available against them. (*Spencer, J.*) **SOGIAMUTHU PADAYACHI, In re.**

**50 Mad. 274 = 27 Cr. L. J. 394 = 93 I. C. 42 =****A. I. R. 1926 Mad. 638.**

—Where there was no evidence on the record to warrant a conviction for the offence charged an order for a re-trial is not justified. **25 Cal. 711; 26 Mad. 1, Foll. (Kotwal, A. J. C.) RAM PRASAD v. EMPEROR.**

**26 Cr. L. J. 1090 = 88 I. C. 178 =****A. I. R. 1926 Nag. 53.**

—*Acquittal—Re-trial on amended charge—If desi-*

## CR. P. CODE (1898), S. 423—Re-trial.

table.

It would be undesirable to remit a case for re-trial on an amended charge after acquitting the accused on the original charge owing to the Court holding the prosecution evidence to be false because it would mean the re-entertaining of the evidence of the same witnesses by the lower Court. (*Boys, J.*) CHEDA SINGH v. EMPEROR. 82 I. C. 364 = 5 L. R. A. Cr. 133 = 25 Cr. L. J. 1292 = A. I. R. 1924 All. 766.

—Perfunctory cross-examination of prosecution witness good ground.

Where cross-examination of prosecution witnesses was perfunctory owing to Counsel's inaptitude and facts were not ascertained before the sentence for an offence under S. 302 read with S. 34 was determined. Held, that re-trial should be ordered. (*Mookerjee, Richardson, C. C. Ghose, Cumming and Page, J.J.*) EMPEROR v. BARENDRA KUMAR GHOSE. 81 I. C. 353 = 28 C. W. N. 170 = 38 C. L. J. 411 = 25 Cr. L. J. 817 = A. I. R. 1924 Cal. 257 (F.B.).

## —S. 423—Reversal of finding.

—A Court of appeal would not be justified in disturbing the finding of a Judge or of a jury on a simple issue of fact unless the verdict arrived at seems to be opposed to the entire weight of evidence. (*Mitter and S.K. Ghose, J.J.*) EMPEROR v. DINABANDHU OORIYA. 1930 Cr. C. 231 = 124 I. C. 818 = 31 Cr. L. J. 737 = A. I. R. 1930 Cal. 199.

—Appellate Court can reverse finding and sentence of death if there is no evidence to justify conclusion that there has been murder.

Where the body of the person said to have been murdered is missing and the identity of the person with the person who is reported to have been assaulted in the house of the accused is not established, the charge of murder against the accused must fall. It is impossible for a Court in a matter of life and death to leap a gap in the prosecution evidence and to arrive by a process of speculation at a conclusion which there is no evidence to justify. The Court can in such a case reverse the finding and the sentence. (*Boys and Bennett, J.J.*) AZAM ALI v. EMPEROR. 121 I. C. 248 = 31 Cr. L. J. 230 = 10 L. R. A. Cr. 108 = 1929 Cr. C. 294 = 12 A. I. Cr. R. 118 = A. I. R. 1929 All. 710.

—Acquittal under S. 302, Penal Code—High Court can in appeal convict under S. 193, Penal Code.

The appellate Court, under S. 423 at least, has the power of the original Court which tried the case under S. 237, provided no prejudice was given to the defence. Therefore, the appellate Court in an appeal from acquittal cannot only find the accused guilty of the offence with which he was charged and for which he was tried but of which he was acquitted, but also can convict an accused of some other offence. Where the accused was charged under S. 302, Penal Code, and was acquitted and Government appealed,

Held, that the appellate Court could convict him for an offence under S. 193, Penal Code, even though the opinions of the assessors were not recorded in regard to the charge under S. 193. A. I. R. 1924 Bom. 246 held no longer good law. A. I. R. 1925 P. C. 130, Foll.; 19 Bom. 51, not Foll.; A. I. R. 1925 Sind 105, Appr. (*Fawcett and Mirza, J.J.*) EMPEROR v. ISMAIL KHADIR SAB. 52 Bom. 385 = 30 Bom. L. R. 330 = 10 A. I. Cr. R. 118 = 108 I. C. 501 = 29 Cr. L. J. 403 = A. I. R. 1928 Bom. 130.

—Appellate Court setting aside a verdict should order a re-trial except under special circumstances when

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it should order acquittal.

It is open to the appellate Court to acquit the accused if it sets aside a verdict on the ground of misdirection, but as a matter of practice the proper course in such cases as these is to direct a re-trial. It is only in special circumstances, as where the accused have been harassed by repeated trials or where the evidence is so clearly insufficient or incredible that no jury could reasonably convict, that an appellate Court would be justified in acquitting. (*Daniels, J.*) DHIRAJI v. AKASI. 24 A. L. J. 506 = 7 L. R. A. Cr. 123 = 27 Cr. L. J. 785 = 95 I. C. 385 = A. I. R. 1926 All. 429.

—Where a Sessions Judge by his order reversed the conviction and sentence on the ground of non-compliance with the provisions of S. 360 and left the question of re-trial to the District Magistrate, without discussing the evidence or recording any finding on the merits of the case,

Held, that the order is not one acquitting the accused and a re-trial of the accused is competent. 46 Cal. 212, Appr. (*Suhrawardy and Dival, J.J.*) EMPEROR v. MIAJAN. 53 Cal. 192 = 27 Cr. L. J. 733 = 95 I. C. 61 = A. I. R. 1926 Cal. 585.

—Where a man charged with murder has been convicted of a minor offence, the High Court can, while acting both as a Court of appeal and a Court of revision, convict the man of murder and sentence him to death, but if it is acting solely as a Court of revision, it cannot convert the acquittal of murder into conviction. A. I. R. 1924 Bom. 456, Foll.; A. I. R. 1924 Rang. 93, Expl. (*Carr and Duckworth, J.J.*) EMPEROR v. KAN THEIN. 98 I. C. 705 = 4 Rang. 140 = 5 Bur. L. J. 80 = 27 Cr. L. J. 1393 = A. I. R. 1926 Rang. 154.

## —S. 423—Revision.

—Appellate Court altering conviction into one for graver offence—Judicial Commissioner's Court can enhance sentence in revision.

Where the finding for lesser offences has been altered into a finding for a graver offence by appellate Court, it is within the power of the Judicial Commissioner's Court, sitting as a Court of revision, to pass a sentence which will be a legal one in view of the conviction for graver offence. S. 439, sub-S. (4) refers only to cases where there has been a complete acquittal. (*Findlay, O.J.C. and Halifax, A.J.C.*) LOCAL GOVERNMENT v. DAMA KUNBI. 27 Cr. L. J. 339 = 92 I. C. 851 = A. I. R. 1926 Nag. 323.

—Under the Cr. P. Code no applications for revision lie in cases in which an appeal lies, and therefore it is impossible for an appeal filed beyond limitation to be treated as an application for revision as far as criminal procedure goes. (*Kennedy, J.C. and Tyabji, A. J. C.*) GERIMUL v. SHEWARAM. 95 I. C. 316 = 20 S. L. R. 90 = 27 Cr. L. J. 780 = A. I. R. 1926 Sind 215.

—The award of costs cannot be treated as incidental or consequential to the disposal of a revision petition within the meaning of S. 423 (1) (d) for it does not necessarily follow from an order passed in revision. (*Spencer, O.C.J., Kumaraswami Sastri and Krishnan, J.J.*) VEERAPPA NAIDU v. AVUDARYAMMAL. 86 I. C. 147 = 48 Mad. 262 = 26 Cr. L. J. 707 = 21 M. L. W. 688 = A. I. R. 1925 Mad. 438 = 48 M. L. J. 106 (F. B.).

—Appeal by convict and revision by High Court—Conviction for murder in place of conviction for lesser offence is justified.

Where there is an appeal by a prisoner, and in addition the High Court takes seisin of the case under its

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revisional jurisdiction, the conviction for a lesser offence where the prisoner has been suitably charged, can be converted into one under S. 302, Penal Code and the sentence enhanced accordingly, under the combined provisions of Ss. 423 and 439. (*May Oung and Duckworth, J.J.*) **ON SHWE v. THE CROWN.** 76 I. C. 711=1 Rang. 436=25 Cr. L. J. 247= A.I.R. 1924 Rang. 93.

**—S. 423—Right to reply.**

—In a criminal appeal counsel for the appellant cannot claim as a matter of right, to reply to the arguments put forward by the opposite party, but the Court should not ordinarily refuse him the privilege of permission to do so. (*Pullan, A.J.C.*) **PRAG v. KING-EMPEROR.** 82 I. C. 33=11 O. L. J. 693= 25 Cr. L. J. 1169=1 O. W. N. 473= A. I. R. 1925 Oudh 65.

—There is no right of reply vouchsafed to an accused under S. 423 but permission to reply is a privilege which should never be refused by an appellate Court. (*Pullan, A.J.C.*) **BAHRA v. EMPEROR.** 82 I. C. 37=25 Cr. L. J. 1173= A. I. R. 1925 Oudh 50.

**—S. 423—Verdicts of Jury.**

—Although it is desirable that the record of heads of charges should indicate far more fully than mere enumeration of the numbers of the sections, in order to entitle the High Court to interfere with the verdict of the jury and set it aside, it must be affirmatively proved that there has been misdirection and misunderstanding and the verdict is erroneous owing to misdirection by Judge and misunderstanding on the part of the jury of the law as laid down by him. Cr. App. No. 248 of 1929 and 47 Cal. 796, Ref. (*Jack and Panckridge, J.J.*) **HAFEZALI HALDAR v. EMPEROR.** 1930 Cr. C. 1112=A. I. R. 1930 Cal. 712.

—The High Court's powers of interference in an appeal from the verdict of the jury are strictly limited and can only arise if the accused succeed in showing that there are misdirections in the Judge's charge to the jury. (*C. C. Ghose and Guha, J.J.*) **MOHUDDIN v. EMPEROR.** 1930 Cr. C. 745=51 O. L. J. 352= A. I. R. 1930 Cal. 437.

—*Trial by jury—Appellate Court having all materials before it can deal the case itself—It is not necessary to send it for retrial.*

There is nothing in the language of the Code to differentiate the way in which the powers of the appellate Courts are to be exercised, according as it is a jury trial or not. The language is wide enough to enable the Court to deal with the matter itself on an appeal even in a jury trial. No doubt the action which the appellate Court should take depends upon the circumstances of the particular case but when all the materials are before the appellate Court and the case has been prolonged for nearly two years and the verdict of the jury is erroneous owing to the misdirection by the presiding Judge it is in the interests of justice that the appellate Court should deal with the matter itself. 21 Cal. 955 and 25 Cal. 230, Ref.; 25 Cal. 711, Rel. on. (*Pearson and Patterson, J.J.*) **GOVERNMENT OF BENGAL v. SANTRAM MONDAL.** 127 I. C. 657=1930 Cr. C. 634= A. I. R. 1930 Cal. 370.

—Court of revision like an appellate Court cannot alter or reverse the verdict of jury, until it is of opinion that such verdict is erroneous, owing to misdirection by the Judge or to misunderstanding of the Jury regarding law as laid down by him. (*Banerji and Sen, J.J.*) **ABDUL MAJID KHAN v. EMPEROR.** 116 I. C. 297= 10 I.L.A. Cr. 83=11 A.I.Cr.R. 576= 30 Cr. L. J. 622=A. I. R. 1929 All. 864.

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—It is imperative that in every case of trial by jury and specially in murder cases, the High Court in appeal should be satisfied that the Judge's charge to the jury was adequate. (*Cuming and Lord Williams, J.J.*) **NAGENDRA NATH v. EMPEROR.** 34 C.W.N. 164= 1929 Cr. C. 390=124 I. C. 494=31 Cr. L. J. 673= A. I. R. 1929 Cal. 742.

—Facts which happened after the verdict of the jury had been given, and which are not found on the Sessions record, will not induce the High Court to alter or reduce sentence in appeal. (*C. C. Ghose and Gregory, J.J.*) **INTAZ MANDAL v. EMPEROR.** 32 C. W. N. 1172=115 I. C. 522=30 Cr. L. J. 484= 12 A.I.Cr.R. 262=A. I. R. 1929 Cal. 92.

—*Jury not properly constituted—Ground not taken in appeal—Powers of High Court.*

The jury which was empanelled to try a person was not constituted in the manner provided by law, i.e., in accordance with principles laid down in A.I.R. 1928 Cal. 83 (F.B.). This fact was not, however, made a ground in the appeal.

*Held*, that the High Court was bound to interfere and remand the case for re-trial since the Court constituted to try the case was, though not illegal, certainly irregular. (*C. C. Ghose and Gregory, J.J.*) **INTAZ MANDAL v. EMPEROR.** 32 C.W.N. 1172=115 I. C. 522= 30 Cr. L. J. 484=12 A. I. Cr. R. 262= A.I.R. 1929 Cal. 92.

—Under S. 423 (2) the High Court is not authorised to alter or reverse the verdict of a jury unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the jury of the law as laid down by him, (*Macpherson and Allanson, J.J.*) **RAMDAS RAI v. EMPEROR.** 8 Pat. 344=10 P. L. T. 409= 117 I. C. 173=30 Cr. L. J. 721=1929 Cr. C. 99= A. I. R. 1929 Pat. 313.

—*Jury trial and trial with assessors—Considerations.*

The considerations governing the appeal from the trial held with the aid of assessors differ greatly from those governing an appeal from the trial by a jury. In the latter case the appeal is restricted by the provisions of Ss. 423 (2) and 537, Cr. P. Code, whereas in the former case the whole case is before the appellate Court. (*Adami and Macpherson, J.J.*) **MT. CHAMPA PASIN v. EMPEROR.** 9 A.I.Cr.R. 545= 108 I. C. 81=29 Cr.L.J. 325=A.I.R. 1928 Pat. 326.

—Before interfering with the verdict of a jury, by which miscarriage of justice has resulted, it must be established that that such failure of justice was the result of misdirection of the Judge in his charge to the jury. (*Adami and Macpherson, J.J.*) **MT. CHAMPA PASIN v. EMPEROR.** 9 A.I.Cr.R. 545=108 I. C. 81= 29 Cr. L. J. 325=A. I. R. 1928 Pat. 326.

—*Jury accurately directed in matters of law—High Court will not interfere with verdict.*

High Court as an appellate Court will not interfere with a verdict, whether it is a verdict of acquittal or conviction, if it is a verdict which could be reasonably arrived at by honest men, and they had been guided by an accurate direction in matters of law. Where the accused are charged for robbery with murder under circumstances that the murder and robbery have been committed by the same persons and constitute one offence, the appellate Court must consider the case of murder separately and if there is any reasonable doubt, it must give the benefit of doubt to the accused. (*Walsh, A.C.J. and Pullan, J.*) **JIA LAL v. EMPEROR.** 98 I.C. 475=27 Cr.L.J. 1355=A.I.R. 1927 All. 108.

—Verdict of jury will not be set aside unless failure

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of justice has been caused. (*Rankin, C. J. and C.C. Ghose, J.*) **HAJI AYUB MANDAL v. EMPEROR.** 103 I.C. 545=54 Cal. 539=8 A.I.Cr.B. 309=28 Cr. L. J. 689=A. I. R. 1927 Cal. 680.

—*Charge to jury fair and accurate—Jury's verdict reasonable—Conviction is proper.*

Where a Judge complied with all the requisitions of the law, i.e., where he stated the law correctly and placed the case before the jury both as it stood against as well as in favour of the prisoners, and left the jury to decide upon evidence which was admissible and relevant and where the jury arrived at a verdict which was very reasonable.

*Held*, that there was no justification for interfering with the conviction based upon such verdict. (*Stuart, C.J.*) **BABBAN v. EMPEROR.** 105 I.C. 457=4 O.W.N. 901=28 Cr. L. J. 937=A. I. R. 1927 Oudh 549.

—*Provisions are imperative—No misdirection to jury—Verdict cannot be altered.*

The terms of S. 423 (2) are imperative and where there is no misdirection by the Sessions Judge it is no competent to the High Court to alter or reverse the verdict of the jury. In such a case where the High Court was of opinion that the accused should have been acquitted and that the verdict was against the weight of the evidence they directed a copy of the judgment to be sent to the local Government for necessary action. (*Allanson and Sen, J.J.*) **RAMCHARITER SINGH v. EMPEROR.** 8 P. L. T. 691=103 I.C. 548=28 Cr. L. J. 692=7 Pat. 15=8 A.I.Cr.B. 369=A. I. R. 1927 Pat. 370.

—*Contravention of law by the Judge on an unimportant matter and having a remote bearing on the question in issue does not justify reversal of verdict of jury.* (*N. R. Chatterjee and B. B. Ghose, J.J.*) **KERAMAT MANDAL v. EMPEROR.** 42 C. L. J. 528=27 Cr.L.J. 277=92 I. C. 453=A.I.R. 1926 Cal. 147.

—S. 423 (2) only applies if it becomes necessary to consider whether the verdict of the jury was erroneous owing to a misdirection by the Judge. It does not narrow down S. 418 which allows an appeal in a jury trial on a question of law. 29 Mad. 569, Dist. (*Addison, J.*) **FITZMAURICE v. EMPEROR.** 27 Cr.L.J. 793=95 I.C. 393=A.I.R. 1926 Lah. 193.

—Where the defence case was not adequately put before the jury and evidence was admitted which should have been excluded, the verdict of guilty must be set aside. (*Devadoss and Waller, J.J.*) **AMBALAM, In re.** 23 M. L. W. 90=27 Cr. L. J. 176=91 I.C. 960=A. I. R. 1926 Mad. 370.

—*No interference by High Court unless the omission by Judge to read some portion of evidence to jury has prejudiced the accused.*

An objection that in delivering his charge to the jury, the Sessions Judge did not read material portions of the evidence is not itself sufficient for the reversal of the verdict of the jury. In each case it must be a question whether the omission to read the material portion of the evidence was such as to mislead the jury and the Court of appeal will not interfere, if it has not prejudiced the accused. (*Baker, J.C.*) **RAHIM BEG v. EMPEROR.** 92 I.C. 169=7 N. L. J. 208=27 Cr. L. J. 217=A.I.R. 1925 Nag. 154.

**—S. 423—Miscellaneous.**

—*Distinction between matters to be considered under Ss. 374 and 423 pointed out.*

If the evidence in a case affords such a degree of certainty of the guilt of the accused as is mentioned in S. 3 of Evidence Act, the sentence must be based on the facts found proved by however little the proof of them

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exceeds the standard stated in that section; otherwise the accused must be acquitted. A Judge or Magistrate who says an accused person is proved guilty but should be lightly punished because the proof of his guilt is weak, contradicts and stultifies himself. The sentence of death is not an exception to this principle either at the trial or in appeal. But the law naturally makes full provision for the undoubted fact that a capital sentence differs from all others in being irrevocable after it has been carried out, and if the matters to be considered under S. 423 are left out, there is nothing left to be considered under S. 376 except the one matter whether the certainty of guilt is sufficiently in excess of the minimum certainty required by S. 3 of the Evidence Act to remove the danger of the carrying out of the sentence on an innocent person. (*Hallifax and Kin-khede, A. J. C.s.*) **DADI LODHI v. EMPEROR.** 95 I.C. 59=27 Cr. L.J. 731=A. I. R. 1926 Nag. 368.

—*Powers of Court, in England—Courts in India may invoke in principle if not repugnant to the Code.*

If a rule is recognised under the English Law which is not a mere rule of practice and procedure but as embodying a principle of natural or substantial justice, and there is nothing in the C.P. Code militating against its application in India, the powers conferred by S. 423, Cr. P. Code, would be large enough to invoke its application. (*Suhrawardy and Mukerji, J.J.*) **I. G. SINGLETON v. EMPEROR.** 86 I. C. 38=41 C. L. J. 87=29 C. W. N. 260=26 C. L. J. 662=A. I. R. 1925 Cal. 501.

—Where a commitment is made by a magistrate under orders of the Sessions Judge under S. 423, S. 215 does not apply but the High Court will interfere in revision. (*MacGregor, J.*) **KING-EMPEROR v. NGA THET SHE.** 77 I. C. 982=11 L. B. R. 375=1 Bur. L. J. 250=25 Cr. L. J. 518=A. I. R. 1922 L. B. 40.

**—S. 424—Applicability.**

—The Judges of Judicial Commissioner's Court, sitting as Sessions Judges for the District of Karachi, should follow as closely as possible the provisions of S. 367 and S. 424. But the omission to do so, cannot vitiate and nullify the whole proceeding before the Sessions Court. The clause "so far as may be practicable" that occurs in S. 424 would certainly bring the error within the scope of S. 537. (*Kincaid, J.C. and Tyabji, A.J.C.*) **FAKIR BUX v. EMPEROR.** 95 I. C. 753=20 S. L. R. 261=27 Cr. L. J. 833=A. I. R. 1926 Sind 244.

—The direction in the proviso of S. 250 is mandatory, the non-compliance whereof vitiates the order of the Magistrate directing compensation to be paid by the complainant. S. 424 applies to an appellate judgment in an appeal from an order for compensation. Appellate Court is bound to record a proper judgment setting forth the points of determination, the objections of the appellant, his decision thereon, and the reasons for his decision. (*Jwala Prasad, J.*) **DEO NARAIN MAHTO v. CHHATTOO RAUT.** 66 I. C. 325=3 Pat. L. T. 203=23 Cr. L. J. 261=A. I. R. 1922 Pat. 157.

**—S. 424—Contents.**

—*An appellate Court should write such a judgment which can be followed without reference to the judgment of the trial Court.*

It is the duty of an appellate Court not only to examine the evidence but also to write a judgment affording a clear indication that the appeal has been properly tried and the points urged by the appellants have been duly considered and decided. An appellate Court fails in the discharge of the duty imposed upon it by law if



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it writes a judgment which cannot be followed without a reference to the judgment of the trial Court. (*Addison, J.*) QADIR BAKHSH v. EMPEROR. 110 I. C. 499 = 10 A. I. Cr. B. 492 = 29 Cr. L. J. 705 = A. I. R. 1928 Lah. 863.

—When a judgment, without discussing the points urged in the memorandum of appeal and without giving any reason, holds that the conviction is correct, the judgment is not a legal judgment as it does not contain the point or points for determination raised in the memorandum of appeal, the decision thereon and the reasons for the decision: 8 N. L. R. 84, Foll. (*Mohiuddin, A. J. C.*) KALIKRAM v. EMPEROR. 107 I. C. 665 = 29 Cr. L. J. 270 = 9 A. I. Cr. B. 557 (Nag.).

—*Appellate judgment must contain materials to show that appeal was properly decided.*

Where the appellant's pleader fails to make out a case for the issue of notice to the Public Prosecutor and the appellate Court thinks fit to decide the case without such notice, a formal order or judgment giving reasons is necessary to dispose of the appeal. There must be sufficient material in the appellate judgment itself to show that the appeal has been properly tried. The judgment or order must bear marks of such intelligent appreciation on the part of the appellate Court, of the necessary facts and materials as would warrant the High Court to infer that the conclusions were properly arrived at by the lower appellate Court. A. I. R. 1921 Lah. 102 and 20 C. W. N. 1296, Ref. 13 N. L. R. 169, Rel. on. (*Kinkhede, A. J. C.*) MAROTI v. MT. KASABAI. 98 I. C. 716 = 27 Cr. L. J. 1404 = 7 A. I. Cr. B. 471 = A. I. R. 1927 Nag. 88.

—*Case gone into by appellate Court but points not set out—Irregularity.*

Where the only case in appeal was one of considering whether the evidence did justify the conclusion that the accused persons were responsible for a particular act and the appellate Court did not state in its judgment the points for determination and the reasons for a finding on each point specifically in the manner contemplated by Ss. 367 and 424 but in fact it had gone into the case and said, "The Magistrate's findings of fact are fully justified by the evidence."

*Held*, there was not an "absence" of a judgment and the irregularity in drawing up the judgment was curable under S. 537. (*Fauzett and Madgavkar, J.J.*) PATILBUVA RAOJIBALA v. EMPEROR. 97 I. C. 737 = 28 Bom. L.R. 1029 = 27 Cr. L.J. 1153 = A. I. R. 1926 Bom. 512.

—*Appellate Court's judgment must conform to the provisions of S. 367.*

In view of the provisions of S. 424 an appellate Court's judgment must comply with the provisions of S. 367. (*Sanderson, C. J. and Chotzner, J.*) GAHARALI v. EMPEROR. 81 I. C. 437 = 25 Cr. L. J. 901 = A. I. R. 1925 Cal. 266.

—Where there were injuries on both sides and the evidence showed that there was a free fight between the parties.

*Held*, the Sessions Judge was bound to examine the evidence carefully so as to show that he was fully convinced upon the consideration of the *pros* and *cons* of the case and the criticisms advanced on behalf of the defence that the account given by the prosecution was true and that the accused were the aggressors. (*Jwala Prasad and Coutts, J.J.*) JIWAN RAUT v. KING-EMPEROR. 72 I. C. 519 = 4 P. L. T. 502 = 1 Pat. L. R. (Cr.) 55 = 24 Cr. L. J. 407 = A. I. R. 1924 Pat. 380.

**—S. 424—Procedure.**

—*Chotzner, J.*—When a complaint has been made under S. 476, the person affected by the complaint may

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take an appeal to the Court to which the Court making the complaint is subordinate and that appeal must be dealt with as an ordinary appeal under the Cr. P. Code as is provided for in S. 424 of the Code...

*Duval, J.*—The appeal must be treated as a miscellaneous appeal and regulated by O. 41, C. P. Code and not by Ss. 422-424 Cr. P. Code. (*Chotzner and Duval, J.J.*) HAMID ALI v. MADHUSUDAN DAS. 100 I. C. 351 = 31 C. W. N. 281 = 54 Cal. 355 = A. I. R. 1927 Cal. 284.

**—S. 424—Revision.**

—Under S. 424 of the Cr. P. Code the rules contained in S. 367 as to the judgment of a Criminal Court of original jurisdiction apply to the judgment of any appellate Court other than a High Court. The High Court will not in revision make up for the deficiency of the appellate judgment by having recourse to that of the Court of first instance. 2 Lah. 308, Foll. (*Moti Sagar, J.*) RAHM ALI v. THE CROWN. 76 I. C. 710 = 25 Cr. L. J. 246 = A. I. R. 1923 Lah. 344.

**—S. 426—Bail.**

—Under S. 426 (1) the existence of an appeal by a convicted person is a condition precedent to jurisdiction to grant bail: A. I. R. 1923 Cal. 723, Expl. and Dist. (*Macpherson and Dhawle, J.J.*) CHARAN MAHTO v. EMPEROR. 125 I. C. 792 = 1930 Cr. C. 455 = 31 Cr. L.J. 958 = 9 Pat. 131 = 11 P. L. T. 261 = A. I. R. 1930 Pat. 274.

**—S. 426—"Convicted."**

—*Person called upon to furnish security is not deemed to be "convicted."*

A proceeding under Chap. 8, is an "inquiry" which under the definition of the term excludes a trial. No doubt S. 117 applies to such inquiry the procedure prescribed for conducting trials, and the terms and expressions which occur in a trial come to be loosely applied in an inquiry also for the sake of convenience. But actually the person in respect of whom the inquiry is held is not an accused but a quasi accused, and he is not "deemed" to be an accused, nor when an order under S. 118 is passed against him "deemed" to be convicted within the meaning of S. 426; A. I. R. 1924 Cal. 392 and A. I. R. 1926 All. 403, Foll. (*Macpherson and Dhawle, J.J.*) CHARAN MAHTO v. EMPEROR. 125 I. C. 792 = 9 Pat. 131 = 11 P. L. T. 261 = 1930 Cr. C. 455 = 31 Cr. L. J. 958 = A. I. R. 1930 Pat. 274.

**—S. 426—Suspension.**

—The result of a suspension of sentence is only that if the appeal finally fails, the convicted person only serves the original period of his sentence less the period of suspension. So such an order should only be passed when very special cause is shown. (*Findlay, Offg. J. C.*) SHAIKH KARIM v. EMPEROR. 27 Cr. L. J. 319 = 92 I. C. 703 = A. I. R. 1926 Nag. 279.

**—S. 428—Applicability.**

—*Appeal against order for compensation—Appellate Court may record additional evidence under S. 428.*

Though S. 250 (3) gives the complainant a right to appeal against an order for compensation in certain cases the section does not indicate a forum, which has to be found out by reference to Chap. 31. The appeal would therefore lie under S. 250 (3) coupled with the relevant section in Chap. 31, viz. S. 407 and all the provisions in that chapter including the power to take additional evidence given by S. 428 apply. A. I. R. 1928 Mad. 391 and 33 Mad. 90 Dist. (*Beasley, C. J. and Panditai, J.*) V. SEENIAH NAIDU v. ABDUL WAHAB SAHIB. 123 I. C. 809 = 1930 Cr. C. 507 =

**CR. P. CODE (1898), S. 428—Examination of accused.**

31 M. L. W. 524=31 Cr. L. J. 602=  
1930 M. W. N. 534=3 M. Cr. C. 160=  
A. I. R. 1930 Mad. 483=58 M. L. J. 414.

**—S. 428—Examination of accused.**

—S. 342 does not apply to evidence taken under S. 428.

S. 342 does not apply to evidence taken under S. 428. In itself S. 342 applies only to case of original trial. There may be cases where the accused can properly be questioned by the Magistrate in regard to additional evidence taken by him under the directions of the appellate Court but if he does not do so there is no omission of anything required by law. A.I.R. 1925 Pat. 414, Foll. (*Fawcett and Mirza, J.J.*) NARAYAN KESHAV v. EMPEROR. 52 Bom. 699=

30 Bom. L. R. 651=29 Cr. L. J. 972=

11 A. I. Cr. R. 247=112 I. C. 60=

A. I. R. 1928 Bom. 200.

—S. 342 does not apply to S. 428 (1)—Per Bucknill, J.—*Fresh opportunity to accused to make statement may be essential in some cases.*

In S. 428 of the Code there is no provision that the accused should be examined after the prosecution evidence is taken and as the examination of witnesses after remand may be made even in the absence of the accused the provisions of S. 342 do not apply to it.

Per Bucknill, J.—The Code itself does not contemplate or provide for the examination of the accused after fresh evidence is taken for the prosecution on remand. However, no hard and fast rule can be laid down with regard to when the provisions of S. 342 are and are not properly complied with; in conceivable cases where fresh evidence on a remand has been taken the applicant ought to be given an opportunity of making a statement, i.e., in effect of being examined by the Magistrate; but provided the accused has in fact had a reasonable and substantial opportunity of exercising the privilege accorded to him by the provisions of S. 342, that is of either orally or in writing saying what he wishes to say in explanation of what has been alleged against him, a technical failure or omission in the procedure ought not to be regarded as rendering a trial wholly nugatory. Should such omission or failure be shown to have prejudiced the accused the matter assumes a different aspect and should be remedied, but not otherwise. (*Mullick and Bucknill, J.J.*) SAIYID MOHIUDDIN v. EMPEROR. 86 I. C. 459=

4 Pat. 488=6 P. L. T. 154=3 Pat. L. R. Cr. 110=

26 Cr. L. J. 811=1925 P. H. C. C. 112=

A. I. R. 1925 Pat. 414.

**—S. 428—Examination of co-accused.**

—A criminal appeal is a continuation of the criminal case and, therefore, the evidence of a co-accused as a witness, although he has not appealed, ought not to be recorded. (*Broadway, J.*) DULLA v. EMPEROR. 7 Lah. 148=27 Cr. L. J. 463=27 P. L. R. 327=

93 I. C. 255=A. I. R. 1926 Lah. 309.

**—S. 428—Grounds.**

—*Prosecution under Bombay Abkari Act—Conviction on a report of an Excise Analyst—Report inadmissible—Appellate Court can order examination of the Excise Analyst as a witness.*

In a trial of an offence under S. 43 (1) (a) of the Bombay Abkari Act, 1878, the report of the Excise Analyst that one bottle which had been sent to him contained cocaine and that some other things contained no cocaine, was tendered in evidence, and upon this evidence the accused was convicted. On appeal the Sessions Judge held that the report of the Excise Analyst was inadmissible in evidence and, therefore, pro-

**CR. P. CODE (1898), S. 428—Murder case.**

posed to have the Excise Analyst examined under S. 428, Cr. P. Code.

Held, that this was a case where the provisions of S. 428, Cr. P. Code, could properly be availed of in order to have legal evidence as to the contents of the bottle. (*Fawcett and Mirza, J.J.*) BANSILAL GANGARAM v. EMPEROR. 112 I. C. 110=30 Bom. L. R. 646=

52 Bom. 686=29 Cr. L. J. 990=

11 A. I. Cr. R. 243=A. I. R. 1928 Bom. 241.

—There is nothing in the provisions of S. 428 to preclude an appellate Court from endeavouring by taking additional evidence to ascertain the value of statement made by a defence witness, or to limit the application of S. 428 to reception of merely formal evidence. 42 Mad. 885, Ref. (*Curgenven, J.*) SUBRAMANIA AYYAR v. EMPEROR. 1928 M. W. N. 777=

28 M. L. W. 785=1 M. Cr. C. 282=

113 I. C. 325=30 Cr. L. J. 133=

12 A. I. Cr. R. 62=A. I. R. 1928 Mad. 1174=

55 M. L. J. 676.

—*Prosecution can be allowed to give further evidence if justice requires.*

Intention of the Legislature was to empower an appellate Court to see that justice is done between the prosecutor and the person prosecuted, and if the appellate Court finds that certain evidence is necessary in order to enable it to give a correct finding, it would be justified in taking action under this section and allow prosecution to give further evidence. But it must record its reasons for taking such action. (*Broadway, J.*) DULLA v. EMPEROR. 7 Lah. 148=

27 Cr. L. J. 463=27 P. L. R. 327=93 I. C. 255=

A. I. R. 1926 Lah. 309.

**—S. 428—High Court.**

—High Court has power under S. 307 read with S. 428 to call further evidence. (*Rankin, C.J. and Buckland, J.*) DEBENDRA NARAYAN CHAKRAVARTY v. EMPEROR. 119 I. C. 378=33 C. W. N. 632=

56 Cal. 566=50 C. L. J. 1=30 Cr. L. J. 1031=

A. I. R. 1929 Cal. 244.

**—S. 428—Interpretation.**

—*Wording of S. 428 is not restricted to nature of evidence.*

In S. 428 the word "necessary" does not import that it is impossible to pronounce judgment without the additional evidence. S. 375 says that "additional evidence may be taken upon any point bearing upon the guilt or innocence of the convicted person," whereas all that S. 428 (1) says is "in dealing with any appeal the appellate Court if it thinks additional evidence to be necessary, etc." There is no restriction in the wording of the section either as to the nature of the evidence or that it is to be taken for the prosecution only or that the provisions of the section are only to be invoked when formal proof for the prosecution is necessary. (*Oggers and Wallace, J.J.*) NARAYANA MENON, *In re*. 77 I. C. 481=25 Cr. L. J. 401=

A. I. R. 1925 Mad. 106.

**—S. 428—Murder case.**

—*Trial by jury—Medical evidence not given viva voce before jury—Trial invalid—High Court refused to examine or order examination of doctor.*

In cases of murder or of a man-slaughter it is unreasonable to expect the jury to convict if a proper exposition and explanation of the medical evidence is not given *viva voce* by a doctor who can deal with the matter and satisfy the jury. The jury are quite entitled to be fully satisfied. Until one has gleaned all the facts that one can get from the medical reports, one is not really in a position to say what part of other evidence can be relied upon. Where the medical evidence

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was not given, the High Court refused to examine or order examination of the doctor under S. 428. (*Rankin, C. J. and Buckland, J.*) DEBENDRA NARAYAN v. EMPEROR. 33 C. W. N. 632=56 Cal. 566=50 C. L. J. 1=30 Cr. L. J. 1031=119 I. C. 378=A. I. R. 1929 Cal. 244.

**—S. 428—Recording of reasons.**

Where the omission of the appellate Court to record reasons for taking additional evidence under S. 428 does not cause a failure of justice the proceedings are not vitiated. (*Beasley, C. J. and Pandalai, J.*) V. SEENIAH NAIDU v. ABDUL WAHAB SAHIB. 123 I. C. 809=1930 Cr. C. 507=31 M. L. W. 524=31 Cr. L. J. 602=A. I. R. 1930 Mad. 483=58 M. L. J. 414.

**—S. 428—Remand.**

The trying Magistrate committed an illegality in not observing the provisions of S. 256, Cr. P. Code, and the Sessions Judge remanded the case directing the Magistrate to allow the accused to cross-examine prosecution witnesses and to record further evidence and to certify it to the Sessions Court.

*Held*, that the Sessions Court's order was not justified under S. 428. (*Mirza and Patkar, J.J.*) EMPEROR v. LAKSHMAN RAMSHET. 53 Bom. 578=31 Bom. L. R. 593=1929 Cr. C. 130=A. I. R. 1929 Bom. 309.

**—S. 428—Remand—Scope of.**

Order of remand for taking additional evidence must include the setting aside of conviction by the lower Court.

Where the appellant had been convicted and in appeal his contention that there had not been due compliance with S. 342, Cr. P. Code, was upheld, and the appellate Court directed the lower Court to examine all the accused under S. 342, Code of Criminal Procedure and call upon them to adduce any defence evidence if any, and re-submit the record to the appellate Court.

*Held*, that the Judge should have set aside the convictions and sentences and remanded the case to the first Court for that Court to deal with the case on its merits as if it were before that Court for the first time. The Judge's procedure was clearly erroneous. (*Walmsley and Mukerji, J.J.*) MAHOMED ABDUL SAMAD v. EMPEROR. 84 I. C. 457=40 C. L. J. 319=26 Cr. L. J. 313=A. I. R. 1925 Cal. 172.

**—S. 428—Revision.**

Order allowing additional evidence will not be interfered with in revision except in case of error of law affecting merits of the case.

The Court of Revision will not interfere with an order of the appellate Court allowing additional evidence even where it might itself in the exercise of its discretion as the Appellate Court, have declined to admit additional evidence. To justify interference in revision the Court must be satisfied that the Appellate Court committed an error of law which has prejudiced the accused on the merits. (*Macpherson, J.*) AKHTAR HUSSAIN v. EMPEROR. 88 I. C. 595=3 Pat. L. R. Cr. 101=6 P. L. T. 431=26 Cr. L. J. 1171=A. I. R. 1925 Pat. 526.

**—S. 428—Scope and object.**

The scope of S. 428 is *prima facie* not limited by any consideration save that the Appellate Court should be of opinion that additional evidence is necessary and should record its reasons. The object of the section is just as much the prevention of the escape of a guilty person through some carelessness or ignorant procedure of the Court, Sub-Inspector or the Magistrate as the vindication of the innocence of a person wrongfully accused where the same carelessness or ignorance has omitted to

**CR. P. CODE (1898), S. 432—Scope.**

bring on the record circumstances essential to the elucidation of truth. It is impossible on the plain words of the enactment to differentiate between these two cases. It would not be a sound exercise of discretion to do so in the circumstances of India, where justice when it fails does so by erroneous acquittal at least as much as by erroneous conviction. In India the onus is placed on the Court not merely to listen to the evidence, but to inquire to the utmost into the truth of the matter, and so to secure justice. Accordingly if any restriction is to be placed upon the power conferred on the Appellate Court by S. 428, it certainly cannot be that negligence or inadvertence on the part of the prosecution is to be allowed to effect a miscarriage of justice: on the contrary, the enactment is, like the other provisions referred to, directed to the attainment of justice even at a late stage in the proceedings, by the introduction of further materials which the Court judges to be essential to a just decision of the case. (*Macpherson, J.*) AKHTAR HUSSAIN v. EMPEROR. 88 I. C. 595=3 Pat. L. R. Cr. 101=6 P. L. T. 431=26 Cr. L. J. 1171=A. I. R. 1925 Pat. 526.

**—S. 429.**

Per *Wild, A.J.C.*—Where a case is referred to a third Judge on difference, he should not differ from the other two unless there is a mistake of law, or some fact which tells in favour of the accused has escaped notice or in short unless there are strong grounds for so doing. 46 I. C. 593, Rel. on. (*Wild, A.J.C.* on difference between *Percival, J. C. and Rupchand, A. J. C.*) MOHAMED YUSUF v. EMPEROR. 1930 Cr. C. 865=126 I. C. 449=31 Cr. L. J. 1026=A. I. R. 1930 Sind 225.

A third Judge to whom reference is made, cannot make a reference to a Full Bench. (*Suhrawardy, Cuning and Buckland, J.J.*) ISHAN CHANDRA SAMANTA v. HRIDDOY KRISHNA BOSE. 86 I. C. 979=41 C. L. J. 357=29 C. W. N. 475=26 Cr. L. J. 915=A. I. R. 1925 Cal. 1040 (F. B.).

**—S. 432—Applicability.**

District Magistrate has no power to make a reference under S. 432.

A District Magistrate has no power under S. 432 to refer a case for opinion to the High Court as it only applies to Presidency Magistrates. (*Percival, J.C. and Aston, A.J.C.*) EMPEROR v. RAHMIDINO. 22 S.L.R. 201=9 A. I. Cr. B. 154=105 I. C. 802=28 Cr. L. J. 978=A. I. R. 1928 Sind 69.

**—S. 432—Authority on point.**

It is not open to a Presidency Magistrate under S. 432 to refer a point of law which is covered by an authority binding on him. (*Patkar and Wild, J.J.*) EMPEROR v. ISMAIL HIRJI. 31 Bom. L. R. 1349=1930 Cr. C. 113=54 Bom. 146=31 Cr. L. J. 633=A. I. R. 1930 Bom. 49.

**—S. 432—Powers of superior Magistrate.**

Superior Magistrates can interfere only under Chap. 32 or by withdrawal.

Where a Magistrate has once become properly seised of a case by transfer or otherwise he is seised of the whole matter and a superior Magistrate cannot take action except under Chap. 32 or by withdrawal of the case to his own Court. 30 Cal. 449 and 4 C. W. N. 242, Ref. (*Suhrawardy and Mukerji, J.J.*) SIDH NATH v. EMPEROR. 49 C. L. J. 378=33 C. W. N. 454=57 Cal. 17=1929 Cr. C. 91=A. I. R. 1929 Cal. 457.

**—S. 432—Scope.**

Reference by Presidency Magistrate under S. 432 is confined to question of law necessary to dispose of case before him. (*Rankin, C. J., C. C. Ghose, Buckland, B. B. Ghose and Mukerji, J.J.*) GIRISH

**CR. P. CODE (1898), S. 432—Scope.**

**CHANDRA v. EMPEROR.** 50 C. L. J. 408 =  
34 C. W. N. 13 = 1929 Cr. C. 468 =  
A. I. B. 1929 Cal. 756 (F.B.).

**—S. 434—Form of reference.**

—The question referred to the Full Bench was whether 44 M. 913 was correctly decided.

*Held*, this is not a desirable form of reference to a Full Bench because the facts of one case are seldom precisely the same as those of another and it is much better that the point on which the opinion of the Full Bench is desired should be formulated. (*Schwabe, C.J., Phillips, Devadoss, Venkatasubba Rao and Wallace, J.J.*) **GOPAL NAIDU v. EMPEROR.** 73 I. C. 343 = 46 Mad. 605 = 24 Cr. L. J. 599 = 17 M.L.W. 592 = 32 M.L.T. 352 = 1923 M.W.N. 425 = A. I. B. 1923 Mad. 523 = 44 M.L.J. 655 (F. B.)

**—S. 435.**

**Acquittal.**

**Applicability.**

**Grounds for interference.**

**Inferior court.**

**Order of discharge.**

**Powers of District Magistrate.**

**Reference.**

**Revision.**

**Sanction to prosecute.**

**Scope.**

**Miscellaneous.**

**—S. 435—Acquittal.**

—*Order dismissing complaint for default amounts to acquittal and cannot be set aside under S. 435.*

An order dismissing the complaint for default in prosecution must be taken to have been passed under S. 247 of the Cr. P. Code. Though the section is not mentioned in the order, such an order is tantamount to an order of acquittal and cannot be set aside by the District Magistrate under S. 435. (*Wasir Hasan, A.J.C.*) **BINDRA v. MT. BHAGWANTA.** 77 I. C. 295 = 25 Cr. L. J. 359 = A.I.R. 1925 Oudh 44.

**—S. 435—Applicability.**

—The construction of sub-S. (4) clearly is that where either the Sessions Judge or District Magistrate has had an application in revision in the same matter, before them, moved by either party, the other local District Court would have no jurisdiction to hear a further application in the same matter. 26 Mad. 477 and 110 P.R. 1912 (Cr.) Ref. (*Young J.*) **MOHAMMAD HUSAIN v. MT. NANHI.** 1930 A. L. J. 521 = 1930 Cr. C. 369 = 52 All. 257 = 126 I. C. 253 = 31 Cr. L. J. 995 = A. I. B. 1930 All. 257.

**—S. 435—Grounds for interference.**

—*High Court's powers very wide.*

The powers of High Court under Ss. 435 and 439 are wide and it can proceed in the matter even *suo motu* and interfere if it considers just and proper. It can call for and examine the record of any proceedings and interfere even when a certain order, though legal, is improper. (*Munje, A.J.C.*) **MT. SARJI v. MT. BHIMI.** 121 I. C. 651 = 1930 Cr. C. 149 = 26 N.L.R. 50 = 12 N. L. J. 180 = 31 Cr. L. J. 284 = A.I.R. 1930 Nag. 61.

—High Court is precluded from interfering if finding has some basis in some evidence. (*Dalal, J.*) **SHANKAR SINGH v. EMPEROR.** 117 I. C. 346 = 1929 A.L. J. 775 = 10 L.B.A. Cr. 105 = 30 Cr. L. J. 756 = 12 A.I. Cr. R. 107 = 1929 Cr. C. 176 = A.I.R. 1929 All. 587.

—*Possession proceedings—Order without taking evidence—Revision lies.*

In a case regarding possession of the property in dispute the counter-petitioner was absent at the final

**CR. P. CODE (1898), S. 435—Inferior Court.**

hearing of the case. The trying Magistrate passed order in favour of the petitioner without recording any evidence at all upon the question of possession.

*Held*, that the Magistrate had no jurisdiction to found an order upon the mere absence of a party.

*Held further*, that the irregularity is material enough for the counter-petitioner to be entitled to have it set right. 6 C. W. N. 925 and 12 C. W. N. 771, Rel. on. (*Curgenven, J.*) **CHINNAPAREDDIGARI SIDDHA REDDI v. MALA DASARI ADIGADU.** 120 I.C. 895 = 31 M. L. W. 104 = 1929 M.W.N. 708 = 2 M. Cr. C. 321 = 1929 Cr. C. 615 = 31 Cr. L. J. 190 = A.I.R. 1929. Mad. 847.

—*Order refusing to grant a copy under S. 165 (5) can be set aside.*

The order directing an application for copies under S. 165 (5) to be filed is tantamount to refusing to grant the copies. Such an order cannot be treated as an extra judicial order, and being actually in disregard of the specific provisions of the law is illegal and can be set aside under S. 435. (*Sulaiman, Ag.C.J.*) **CHURAMANI CHATURVEDI v. EMPEROR.** 26 A. L. J. 703 = 9 A.I. Cr. R. 536 = 9 L.B.A. Cr. 84 = 110 I. C. 215 = 29 Cr. L. J. 663 = A.I.R. 1928 All. 402.

—Section 435 does permit interference on the ground not merely of the illegality but also on the ground of the impropriety of a finding. (*Ashworth, J.*) **ASHRAFI LAL v. EMPEROR.** 8 L.B.A. Cr. 132 = 8 A.I. Cr. R. 290 = 25 A.L.J. 975 = 28 Cr. L. J. 967 = 105 I.C. 679 = A. I. B. 1927 All. 647.

—*Charge framed where none necessary—Interference is proper.*

If a charge is framed where none should have been framed the proceeding of the Magistrate becomes irregular and the High Court has power to interfere under S. 435 as well as under S. 561-A to prevent abuse of the process of any court or as necessary to secure the ends of justice. (*Mukerji, J.*) **GOKUL PRASAD v. DEBI PRASAD.** 86 I. C. 284 = 23 A.L.J. 21 = 6 L. R. A. Cr. 60 = 26 Cr. L. J. 748 = A.I.R. 1925 All. 311.

—*High Court can interfere with pending proceedings.*

The High Court has undoubted power to quash proceedings in Subordinate Courts while they are still pending; it is its bounden duty to interfere when it is brought to its notice that a person has been subjected or is about to be subjected to the harassment of an illegal prosecution. (*Newbould, C.C., Ghose and Cuming, J.J.*) **NRIPENDRA BHUSAN RAY v. GOBINDA BANDHU MAZUMDAR.** 82 I. C. 266 = 39 C. L. J. 236 = 25 Cr. L. J. 1258 = A.I.R. 1924 Cal. 1018 (F. B.).

—*High Court can act on any information.*

It would be open to High Court on information contained in a newspaper, a placard on a wall, or an anonymous post-card, to take action, if it considered that sufficient grounds were established to justify sending for record under S. 435. (*Stuart, J.*) **NARAIN PRASAD NIGAM v. EMPEROR.** 71 I. C. 243 = 20 A. L. J. 909 = 45 All. 128 = 24 Cr. L. J. 115 = A. I. B. 1923 All. 85.

**—S. 435—Inferior Court.**

—*Order under S. 478—Interference.*

The Code permits no appeal against an order under S. 478. The powers of the District Magistrate under S. 435 and the following sections are confined to interference with criminal Courts subordinate to himself. When, therefore, a Magistrate does not pass an order as a Criminal Court but as a Revenue Court the District Magistrate has no jurisdiction to revise his order.

**CR. P. CODE (1898), S. 435—Inferior Court.**

(*Stuart, C. J.*) LACHMAN PRASAD JOSHI *v.* EMPEROR.  
5 Luck. 435=6 O. W. N. 953=  
1930 Cr. C. 154=124 I. C. 364=31 Cr. L. J. 679=  
A. I. R. 1930 Oudh 58.

—District Magistrate exercising jurisdiction under Election Rules does not act as Criminal Court and no revision lies from his order.

The provisions of S. 435 do not apply to District Magistrates but to Criminal Courts inferior to the High Court. When exercising jurisdiction under the election rules of the District Board the District Magistrate does not act as a Criminal Court but acts as an authority to whom the returning officer is subordinate. The High Court, therefore, cannot interfere in revision with an order of the District Magistrate under S. 195 (5) even though he denies jurisdiction under the provisions of that section. 9 Bom. L. R. 1347, Rel. on. (*Dalal, J.*) MADUSUDAN LAL *v.* EMPEROR. 120 I. C. 128=30 Cr. L. J. 1159=11 L. R. A. Cr. 27=13 A. I. Cr. B. 137=1930 A. L. J. 216=1929 Cr. C. 659=A. I. R. 1929 All. 931.

—Magistrate acting under S. 221, Madras Local Boards Act—District Magistrate can interfere.  
A Magistrate acting under S. 221, Madras Local Boards Act, acts in the capacity of a Magistrate and his orders are subject to the provisions of Ss. 435 and 439, Cr. P. Code. The District Magistrate can call for the records of the case and may proceed in accordance with the provisions of Ss. 435 and 439 if the facts of the case warrant such action. (*Devadoss, J.*) RANGESA RAO *v.* SWAMINATHA AYYAR. 27 M. L. W. 320=108 I. C. 414=29 Cr. L. J. 389=10 A. I. Cr. B. 53=1 M. Cr. C. 12=A. I. R. 1928 Mad. 495.

—Under S. 86 of the Bombay District Municipal Act, a Magistrate hearing an appeal is merely an appellate authority having jurisdiction given by the Act to deal with the question of a civil liability. He is, therefore, not an inferior Criminal Court within S. 435, and the High Court has no power to revise his order. 9 Bom. L. R. 1347, Foll. (*Kincaid, J. C. and Barlee, A. J. C.*) KARACHI MUNICIPALITY *v.* JAFFERJI TAYABJI. 97 I. C. 647=27 Cr. L. J. 1127=21 S. L. R. 51=A. I. R. 1927 Sind 23.

—The Goondas Act has not created any Court but has only provided a certain procedure for dealing with Goondas. The Secretary to the Local Government exercising the powers conferred on him by the Goondas Act is not therefore a Criminal Court within the meaning of S. 435. (*Greaves and Panton, J.J.*) BHIMRAJ BANIA *v.* EMPEROR. 83 I. C. 500=51 Cal. 460=26 Cr. L. J. 20=A. I. R. 1924 Cal. 698.

—S. 435—Order of discharge.

—District Magistrate can set aside an order of discharge passed by a Magistrate of First Class and order further inquiry. 38 P. R. 1885, Cr.; 10 P. R. 1894 Cr., Foll. (*Zafar Ali, J.*) INDAR SINGH *v.* EMPEROR. 115 I. C. 539=30 Cr. L. J. 490=30 P. L. R. 448=12 A. I. Cr. R. 291.

—High Court has power to interfere with an order of discharge at the instance of private prosecutor.

High Court has full power to revise an order of discharge at the instance of a private prosecutor. But the Court, in considering whether to interfere or not, is bound to have regard to the fact that its interference may not work injustice to accused upon the ground of prosecution and want of finality, and, in the event of its coming to a conclusion that the proceedings were taken with a view to furthering either of these objects to the exclusion of other matters proper for it to consider, the High Court would refuse such an application. 2 Mad.

**CR. P. CODE (1898), S. 435—Revision.**

38; 2 All. 448; 11 C. L. J. 113 and 36 Cal. 994, Rel. on. (*Otter, J.*) MAUNG HTIN GYAW *v.* MAUNG PO SEIN. 4 Rang. 471=99 I. C. 1019=28 Cr. L. J. 219=7 A. I. Cr. R. 373=A. I. R. 1927 Rang. 74.

—S. 435—Powers of District Magistrate.

—District Magistrate cannot order retrial.

A District Magistrate has no jurisdiction to order a retrial of a case. He can order, if he so wishes, on proper grounds, under S. 436, a further inquiry into the complaint, but it is reserved to the High Court in S. 439 to use any of the powers conferred on a Court of appeal which would include the right of ordering a retrial. (*Young, J.*) MOHAMMAD HUSAIN *v.* MT. NANHI. 1930 A. L. J. 521=1930 Cr. C. 369=52 All. 257=126 I. C. 253=31 Cr. L. J. 995=A. I. R. 1930 All. 257.

—District Magistrate cannot question the propriety of order by Court of Session.

Under S. 435 the District Magistrate can refer the proceedings of any inferior Court but he is not entitled to question the propriety of an order passed by a Court of Session. His proper course when he considers that action is necessary, is to move the Government to file an application in revision. 28 All. 91, Foll. (*Daniels, J.*) EMPEROR *v.* DAULAT SINGH. 92 I. C. 743=24 A. L. J. 224=7 L. R. A. Cr. 33=7 L. R. A. Cr. 161=27 Cr. L. J. 327.

—Under S. 435, a District Magistrate may reject the application for revision or may take action under S. 438. He cannot set aside the order. (*Wazir Hasan, A. J. C.*) HIRALAL *v.* EMPEROR. 11 O. L. J. 59=25 Cr. L. J. 440=77 I. C. 728=A. I. R. 1924 Oudh 331.

—S. 435—Reference.

—Under the explanation to S. 435, the District Magistrate is inferior to the Sessions Judge. The latter has jurisdiction to call for the record of a case decided by the former and make a reference to the High Court. (*Sulaiman, J.*) DARBARI LAL *v.* EMPEROR. 89 I. C. 146=23 A. L. J. 894=6 L. R. A. Cr. 135=26 Cr. L. J. 1282=A. I. R. 1925 All. 591.

—The High Court will not ordinarily accept a reference direct from the District Magistrate. (*Boys, J.*) EMPEROR *v.* BALDEO PRASAD. 82 I. C. 285=22 A. L. J. 772=46 All. 851=5 L. R. A. Cr. 121=25 Cr. L. J. 1277=A. I. R. 1924 All. 770.

—S. 435—Reference when proper.

—Sessions Judge cannot take proceedings under S. 435, Cr. P. Code, when only two witnesses have been examined, in the case and there is no proof of any irregularity in the proceedings before the Magistrate. (*Pullan, J.*) SHEO SARAN *v.* JITENDRA NATH. 1 L. C. 271=28 Cr. L. J. 814=104 I. C. 254=A. I. R. 1927 Oudh 571.

—S. 435—Revision.

—By the removal now of sub-S. 3, S. 435, proceedings under Chap. 12 become liable to revision in the same manner as other proceedings. 8 C. W. N. 642, Foll.; 36 Mad. 275; 33 M. L. J. 78 and 1 L. W. 939, Ref. (*Curgenven, J.*) CHINNAPAREDDIGARU *v.* DESARI ADIGADU. 31 M. L. W. 104=1929 M. W. N. 708=2 M. Cr. C. 321=120 I. C. 895=1929 Cr. C. 615=31 Cr. L. J. 190=A. I. R. 1929 Mad. 847.

—Patna High Court Rules—Revision—Limitation for.

It is the practice of the Patna High Court not to entertain, save under the most exceptional circumstances an application in revision, after the expiry of 60 days, from the date of the decision or order impugned; and a further period of 60 days does not become available to

**CR. P. CODE (1898), S. 435—Revision.**

the applicant from the date when the Sessions Judge refuses to make reference under S. 438 as the period of 60 days is intended to cover the proceedings of normal length before the Sessions Judge. (*Macpherson and Kulwant Sahay, J.J.*) **KELU PATRA v. ISWAR PARIDA.** 119 I. C. 401=8 Pat. 468=

30 Cr. L. J. 1053=11 P. L. T. 18=  
1929 Cr. C. 201=A. I. R. 1929 Pat. 404.

—The High Court has power to revise proceedings of a Magistrate under S. 176, either under S. 435 or S. 439, apart from its inherent powers under S. 561 A: A.I.R. 1921 Bom. 3 (F.B.) and 3 Cal. 742, Dist. (*Mirza and Patkar, J.J.*) **LAXMINARAYAN TIMMANNA, In re.**

112 I. C. 567=30 Bom. L. R. 1050=  
29 Cr. L. J. 1063=11 A. I. Cr. R. 324=

A. I. R. 1928 Bom. 390.

—There is no right conferred by the statute on any of the aggrieved parties to make a further application for revision against the order passed by the Sessions Court in revision of the order passed by the Magistrate on appeal, against a notice of demand, under S. 110, Bombay City Municipalities Act. (*Patkar and Murphy, J.J.*) **AHMEDABAD MUNICIPALITY v. VADILAL.**

112 I. C. 585=30 Bom. L. R. 1084=  
29 Cr. L. J. 1081=A. I. R. 1928 Bom. 376.

—Order under S. 144, Cr. P. Code.

Order of the Magistrates acting under S. 144 is not the order of a Court. No revision therefore lies against such order under S. 435, in spite of omission of Cl. 3 from the Code of 1898. A. I. R. 1923 Mad. 473, Foll.

Magistrates are not always Courts. S. 6 is not inconsistent with the idea that Magistrates may sometimes act in executive and administrative capacity and not as Court. 39 Cal. 953 (P. C.), Dist. A. I. R. 1924 Pat. 703, Not Appr. (*Ramesh, J.*) **VEERAPPAN SERVAI v. PERIANNAN SERVAI.** 113 I. C. 279=

28 M. L. W. 506=1928 M. W. N. 779=  
52 Mad. 69=1 M. Cr. C. 304=30 Cr. L. J. 119=

12 A. I. Cr. R. 17=A. I. R. 1928 Mad. 1108=  
55 M. L. J. 621.

—*Calcutta Municipal Act, S. 531.*

The Municipal Magistrate appointed under S. 531 is a Court of inferior Criminal jurisdiction within the meaning of S. 6, Cr. P. Code, and orders for demolition passed by such a Magistrate are subject to revision by the High Court under Ss. 435 and 439, Cr. P. Code. Further, an order for demolition, is a judicial order and whether made in the exercise of the Magistrate's civil or criminal jurisdiction is open to revision by the High Court. 43 Mad. 146 (P. C.), Foll. (*Sanderson, C. J. and Panton, J.*) **RAMGOPAL GOENKA v. CORPORATION OF CALCUTTA.** 90 I. C. 317=52 Cal. 962=

26 Cr. L. J. 1533=29 C. W. N. 898=  
A. I. R. 1925 Cal. 1251.

**—S. 435—Revision—Grounds.**

—Revision on the assumption that the Sub-Magistrate is a better Judge of fact than the Sub-Divisional Magistrate cannot be granted. (*Jackson, J.*) **KOLANDAI CHETTY v. PERUMAL KAVUNDAN.**

108 I. C. 80=29 Cr. L. J. 325=1 M. Cr. C. 125=  
A. I. R. 1928 Mad. 369.

—The High Court will not interfere in revision on a mere question of motive for the offence which is at best guess-work. (*Jackson, J.*) **RAMASWAMI v. KING-EMPEROR.** 100 I. C. 991=28 Cr. L. J. 383=

26 M. L. W. 33=A. I. R. 1927 Mad. 613.

—*Prosecution for cheating—Lower Court finding fraud but acquitting accused on ground that fraud was inchoate—Revision allowed.*

Where, in a prosecution for cheating, the lower Court found that the accused had acted fraudulently but held

**CR. P. CODE (1898), S. 435—Scope.**

that the fraud was inchoate and inconsequential, and acquitted the accused,

*Held*, that on the finding of fraud, a conviction ought to have followed and that the case should be remitted. (*Mukerji, J.*) **RAMESHWAR v. GOBIND PRASAD.** 87 I. C. 426=23 A. L. J. 433=

26 Cr. L. J. 970=6 L. R. A. Cr. 198=  
A. I. R. 1925 All. 473.

**—S. 435—Revision—Possession proceedings.**

—*If a declaratory order is passed under S. 145 (6) the order can be revised, but if the Magistrate on the facts refuses to proceed under S. 145, such order cannot be revised.*

If the Magistrate after issuing a preliminary order and holding an enquiry under S. 145 comes to a decision that a declaratory order is necessary and passes such an order under Cl. (6) of the section, such order is capable of revision under S. 435. But, if the Magistrate holds a preliminary enquiry and comes to the conclusion that the facts stated in the application are not true, and that, therefore, there is no probability of a breach of the peace, and refuses to proceed under S. 145, such order is not an order under S. 145, Cl. (6), and is not, therefore, an order liable to revision on the merits. (*Kennedy, J. C. and De Souza, A. J. C.*) **MOOLYAMAL TOPANDAS v. ALI MAHOMED JADON.** 89 I. C. 309=

18 S. L. R. 278=26 Cr. L. J. 1333=  
A. I. R. 1926 Sind 85.

**—S. 435—Revision—Practice.**

—*Revision competent before Dt. Magistrate—Filing of, in High Court—Entertainability.*

Where the accused was convicted by a Magistrate, First Class, under S. 506, Penal Code, and ordered to execute bond for keeping the peace under S. 106, Cr. P. Code, and he applied for revision to the High Court under S. 439, Cr. P. Code,

*Held*, that such applications can be entertained by the District Magistrate or Sessions Judge under S. 435, Cr. P. Code, and unless the District Magistrate or Sessions Judge is first moved in the matter, application for revision was not entertained by the High Court. Criminal Revision No. 237 of 1927 decided by *Kotval, A. J. C.*, Foll. (*Ghulam Mohiuddin, A. J. C.*) **CHINAL v. EMPEROR.** 109 I. C. 810=10 A. I. Cr. R. 333=

29 Cr. L. J. 618=A. I. R. 1929 Nag. 13.

—The practice of the High Court is not to restrict the powers of Session Judges any further, than they are restricted by the Cr. P. Code. 9 All. 52, Ref. (*Pullan, J.*) **PEAREY LAL v. SAGAR MAL.** 97 I. C. 650=

49 All. 230=7 L. R. A. Cr. 176=25 A. L. J. 42=  
27 Cr. L. J. 1130=A. I. R. 1927 All. 38.

**—S. 435—Revision—Proclamation.**

—*Order under S. 88 is a proceeding.*

An order under S. 88 is a proceeding within the meaning of S. 435 and is subject to the revisional jurisdiction of the High Court. (*Shadi Lal, C. J.*) **SANTA SINGH v. EMPEROR.** 76 I. C. 18=25 Cr. L. J. 82=

A. I. R. 1924 Lah. 617.

**—S. 435—Sanction to prosecute.**

—A Session Judge can take up at the instance of a private person any revision of a Magistrate's order under S. 476. (*Pullan, J.*) **PEAREY LAL v. SAGAR MAL.**

97 I. C. 650=7 L. R. A. Cr. 176=  
25 A. L. J. 42=27 Cr. L. J. 1130=49 All. 230=  
A. I. R. 1927 All. 38.

**—S. 435—Scope.**

—S. 438 must be read with S. 435. (*Kincaid, J. C. and Barlee, A. J. C.*) **EMPEROR v. KHUDA BUX.**

21 S.L.R. 48=27 Cr. L. J. 1253=98 I. C. 101=  
A. I. R. 1927 Sind 45.



**CR. P. CODE (1898), S. 435—Scope.**

—The section does not deal merely with “finding, sentence or order”, but with proceedings generally and the power of the High Court extends to calling for and examining the record of any proceeding for the purpose of satisfying itself as to the regularity of such proceeding. (*Venkatasubba Rao, J.*) **RAMANATHAN CHETTIAR v. S. SUBRAMANIA AIYAR.**

81 I. C. 785 = 47 Mad. 722 = 20 M. L. W. 234 =

35 M. L. T. 77 = 1924 M. W. N. 556 =

25 Cr. L. J. 1009 = A. I. R. 1925 Mad. 39 =

47 M. L. J. 373.

—Orders passed under the Upper Burma Ruby Regulations of 1887, S. 6 are within the scope of the Cr. P. Code as regards appeal and revision though no provision is made in the Regulation for an appeal or revision. (*Duckworth, J.*) **MAUNG PO LON v. KING-EMPEROR.**

84 I. C. 433 = 2 Rang. 321 =

3 Bur. L. J. 168 = 26 Cr. L. J. 289 =

A. I. R. 1925 Rang. 12.

—The only Acts which are excepted from the revisional jurisdiction of the High Court are the Press Act, the Extradition Act and the Reformatory Schools Act, and this only in regards to certain orders passed by lower Courts. (*Duckworth, J.*) **MAUNG PO LON v. EMPEROR.**

84 I. C. 433 = 26 Cr. L. J. 289 =

3 Bur. L. J. 168 = 2 Rang. 321 =

A. I. R. 1925 Rang. 12.

**—S. 435—Miscellaneous.**

—*Meaning of legality and propriety explained.*

The words legality and propriety in S. 435 would both include questions of law as to whether a finding, sentence or order is legal or proper having regard to the evidence. The word, correctness, does not mean that the High Court may inquire whether the finding was acceptable to it on a balance of the evidence recorded in the trial Court. The correctness of the finding, sentence or order also implies a legal defence such as the finding being based on an entire want of evidence or being incorrect in the sense that witness may have said for instance, that no theft was committed and the Court may have recorded a finding that theft was committed. (*Dalal, J.*) **SHANKER SINGH v. EMPEROR.**

117 I. C. 346 = 1929 A. L. J. 775 =

10 L. R. A. Cr. 105 = 30 Cr. L. J. 756 =

12 A. I. Cr. R. 107 = 1929 Cr. C. 176 =

A. I. R. 1929 All. 587.

—*Powers of High Court.*

The High Court on reference or revision can pass a substantive period of imprisonment even though the accused has served the sentence of imprisonment actually passed on him by the lower Court 1 Lah. 435, Dist. (*Marten and Madgavkar, JJ.*) **EMPEROR v. SHANKAR NARAYAN.**

28 Bom. L. R. 300 =

27 Cr. L. J. 557 = 93 I. C. 1053 =

A. I. R. 1926 Bom. 256.

—*Withdrawal of cases suspends jurisdiction.*

When an order is made by the District Magistrate under S. 435, calling for the record and proceedings pending before a Magistrate with a view to withdrawing the case and transferring it to another Magistrate the jurisdiction of the former Magistrate is suspended, and he is not therefore entitled to record a composition of the offence and acquit the accused under S. 345, though the case may not have been actually transferred to the other Magistrate. (*Marten and Pratt, JJ.*) **MARUTI VITHU, In re.**

27 Bom. L. R. 350 = 26 Cr. L. J. 996 = 87 I. C. 596 =

A. I. R. 1925 Bom. 247

**—S. 436.**

**Acquittal.**

**Contents of order.**

**Grounds for interference.**

**CR. P. CODE (1898), S. 436—Grounds for interference.**

**Notice.**

**Order of discharge.**

**Proceedings on further inquiry.**

**Scope.**

**Miscellaneous.**

**—S. 436—Acquittal.**

—*Revision against acquittal—Interference by High Court—Conditions.*

The jurisdiction of the High Court to revise an order of acquittal and direct a re-trial should be exercised only in exceptional cases and with caution. It should only be done in cases where the alleged offence is of a serious character and the Judge comes to the opinion that there has been a miscarriage of justice, where for instance the lower Court has misquoted the evidence; or where having the evidence before it, which *prima facie* is reasonable and credible, the Judge of the Court gives no ground for rejecting it and does not satisfactorily review it. Where the finding of the appellate Court was arrived at in a very summary fashion without reference to all the relevant law on the subject, the High Court in revision declined to accept it as a finding of fact. (*Dalal, J.C.*) **BACHCHA SINGH v. BACHCHA KURMI.**

95 I. C. 934 = 12 O. L. J. 63 =

2 O. W. N. 50 = 28 O. C. 384 = 27 Cr. L. J. 854 =

A. I. R. 1925 Oudh 321.

**—S. 436—Contents of order.**

—The section does not lay down, as in analogous circumstances it is laid down elsewhere in the Code, that there shall be a detailed order. (*Harrison, J.*) **SHAMIRA v. EMPEROR.**

115 I. C. 540 =

30 P. L. E. 449 = 30 Cr. L. J. 490 =

12 A. I. Cr. R. 248 = A. I. R. 1929 Lah. 28.

—When the order directing further enquiry does not give detailed reasons and a revision has been admitted, it must be possible to establish, at any rate by the order read with the record, that the requirements laid down in 10 P. R. 1911 (F. B.) do exist, i.e., the order must be manifestly perverse or foolish. (*Harrison, J.*) **SHAMIRA v. EMPEROR.**

115 I. C. 540 = 30 Cr. L. J. 490 = 30 P. L. E. 449 =

12 A. I. Cr. R. 248 = A. I. R. 1929 Lah. 28.

—*Order of discharge set aside—Court must give reasons.*

It is the bounden duty of the revisional authority to record its reasons for setting aside the order of discharge, and to show how the order of discharge was improper. Such revisional jurisdiction cannot be said to have been properly exercised without having and assigning solid and sufficient reasons for doing so. The object of this rule is that the High Court in the absence of such reasons cannot exercise supervision over the Magistrates, or Judges' proceedings, and also because it is fair to the person whose liberty is going to be affected by such order, that he should have notice of the grounds on which the further enquiry is going to be made. 32 Cal. 1090; 8 C. W. N. 456; 13 C. W. N. 76 and 15 Cal. 608, Foll. (*Kinkhade, Offg. A. J. C.*) **DAYAJI v. EMPEROR.**

27 Cr. L. J. 728 = 95 I. C. 56 =

A. I. R. 1926 Nag. 374.

**—S. 436—Grounds for interference.**

—*Application under S. 107, Cr. P. Code—Dismissal—Application by complainant to District Magistrate under Ss. 435, 436—District Magistrate directing further enquiry—Legality.*

Where a complaint under S. 107, Cr. P. Code, was dismissed with the remark that there was no apprehension of breach of the peace and the complainant having applied to the District Magistrate under Ss. 435 and 436 he ordered further enquiry. *Held*, that the order of the District Magistrate was without jurisdiction. (*Addison,*

**CR. P. CODE (1898), S. 436—Grounds for interference.**

J.) KIRPA RAM v. DURGA DAS.

31 Punj. L. R. 350=127 I. C. 716.

—Even misappreciation of the evidence by the trying Magistrate will not in law justify the District Magistrate in setting aside the order of discharge which can only be done if there is either irregularity or illegality in the proceedings. 31 Mad. 133; 18 A. L. J. 1135 and A. I. R. 1926 Nag. 117, Rel. on. (*Subbedar, A. J. C.*) BAGESHWAR v. EMPEROR.

122 I. C. 434=31 Cr. L. J. 417=

1930 Cr. C. 316=A. I. R. 1930 Nag. 108.

—Further inquiry—When can be ordered by Superior Court.

Though the revising Court has jurisdiction to order further enquiry on the same materials, a superior Court should hesitate before exercising its power under S. 437 to order further enquiry, unless there are palpable errors in the decision of the lower Court. 15 Cal. 608 (F.B.) and A. I. R. 1924 Cal. 229, Rel. on. (*Suhrawardy and Jack, J.J.*) SULAV CHANDRA DAS v. EMPEROR.

123 I. C. 246=50 C. L. J. 284=1929 Cr. C. 467=

31 Cr. L. J. 475=A. I. R. 1929 Cal. 755.

—Power under, should be used sparingly and with caution—Evidence capable of presenting two different views—Discharge not perverse—No suggestion of further evidence forthcoming—Further enquiry should not be ordered.

The Sessions Judge and Magistrates should in a case where a man has been discharged use the powers given to them with great caution and circumspection, specially in cases where the question involved are mere matters of fact. If the circumstances and the evidence are such that two different courts might take two different views of the evidence and the order of discharge is one which cannot be said to be either perverse or *prima facie* incorrect and there is no suggestion that any further evidence is forthcoming, no further enquiry should be directed under S. 437. 9 All. 52 and 18 A. L. J. 1135, Foll. (*Iqbal Ahmad, J.*) ALAM v. EMPEROR.

102 I. C. 777=

49 All. 879=25 A. L. J. 703=8 A. I. Cr. R. 1=

8 L. R. A. Cr. 89=28 Cr. L. J. 601=

A. I. R. 1927 All. 804.

—Where the nature of the case is such that Courts are liable to take different views of the evidence and of the probabilities, the case is not one which calls for any further enquiry. 8 A. L. J. 45 and 9 All. 52 (F.B.), Foll. (*Dalal, J.*) JAGANNATH v. EMPEROR.

100 I. C. 822=7 A. I. Cr. R. 400=

8 L. R. A. Cr. 61=28 Cr. L. J. 342=

A. I. R. 1927 All. 754.

—That the reasons given by the trial Magistrate for disbelieving witnesses are not cogent, is not sufficient ground for ordering a re-trial. 10 P. R. 1911 (Cr.) Foll. (*Campbell, J.*) MAMI v. EMPEROR. 94 I. C. 133=

27 P. L. R. 397=27 Cr. L. J. 565.

—Cross-examination and arguments *inter partes* are out of place in an enquiry into the truth of the complaint. Such departure from the strict letter of the law constitutes a mere irregularity and the High Court should not in the exercise of its discretion direct a further enquiry. 14 Cal. 141, Dist. (*Foster, J.*) RAM SARAN SINGH v. MOHAMMAD JANKHAN.

89 I. C. 706=7 P. L. T. 36=26 Cr. L. J. 1394=

A. I. R. 1926 Pat. 34.

—Where on the evidence, a revising authority comes to a different conclusion from the Court that hears the evidence, a further enquiry under S. 436 (new) should not be ordered. (*Mukerji, J.*) ZABAR SINGH v. RAM SARUP.

85 I. C. 726=

**CR. P. CODE (1898), S. 436—Notice.**

6 L. R. A. Cr. 47=26 Cr. L. J. 582=

A. I. R. 1925 All. 477.

—Further enquiry can be ordered by the Sessions Judge on the same facts as have been considered by the trial Court. (9 All. 52 Ref.) Where a Magistrate was very much influenced by the fact that a civil suit was pending and he regarded the complaint as a sort of forestalling the civil suit.

Held, that the Sessions Judge's order directing further enquiry was a good order. (*Mukerji, J.*) DAYANAND v. EMPEROR.

86 I. C. 224=

23 A. L. J. 20=6 L. R. A. Cr. 55=

26 Cr. L. J. 736=A. I. R. 1925 All. 298.

—Fresh evidence not possible—Further enquiry need not be directed.

Where no fresh evidence is likely to be produced on further enquiry, the superior Court should hesitate before exercising its powers under S. 437, Cr. P. Code, unless there are palpable errors in the decision of the lower Court and not merely a difference of opinion as to the weight to be given to the discrepancies in evidence. (*Newbould and Suhrawardy, J.J.*) ABDUL RASHID SHEIKH v. MOMTAZ SHEIKH.

76 I. C. 431=25 Cr. L. J. 191=38 C. L. J. 206=

A. I. R. 1924 Cal. 229.

**—S. 436—Notice.**

—Further enquiry after discharge—Accused has no right to appear—Magistrate allowing him to appear is illegality which cannot entitle him to appear at every subsequent stage.

When the order is passed, after an order under S. 203, directing further enquiry, the accused has no right under the law to appear either before the trial Court or before the revision Court. And if the Magistrate allowed the accused to appear before the trial Court to cross-examine the witnesses he acted illegally and this illegal act of the Magistrate does not create a right in the accused to appear as every stage of the proceeding. 21 C. W. N. 127; A. I. R. 1923 Cal. 198, Ref. (*Suhrawardy and Graham, J.J.*) NAWSEER PRAMANIK v. HAZRATULLA PRAMANIK.

119 I. C. 376=49 C. L. J. 422=30 Cr. L. J. 1030=

A. I. R. 1929 Cal. 508.

—Notice to accused before ordering further enquiry is not necessary.

Where after the dismissal of a case under S. 203 further enquiry is ordered, the accused need not be given notice before further enquiry is ordered against him as he has no *locus standi* and it cannot be said that it is desirable to issue a notice upon an accused person in every case where an order is passed against him. (*Suhrawardy and Graham, J.J.*) NAWSEER (ALI) PRAMANIK v. HAZRATULLA PRAMANIK.

119 I. C. 376=49 C. L. J. 422=

30 Cr. L. J. 1030=A. I. R. 1929 Cal. 508.

—In the case of a dismissal of a complaint under S. 203, notice is not necessary to the accused before ordering further enquiry under S. 436. A. I. R. 1925 All. 537, Foll. (*Fawcett and Patkar, J.J.*) DHONDU BAPU v. EMPEROR.

102 I. C. 511=

29 Bom. L. R. 713=28 Cr. L. J. 575=

8 A. I. Cr. R. 228=A. I. R. 1927 Bom. 436.

—Notice to accused is not necessary before ordering further enquiry as he is not "discharged" within S. 436.

The dismissal of a complaint under S. 203 or sub-S. 3 of S. 204 is before the appearance of the accused and no accused person can be said to be discharged when no process has been issued for his appearance. An accused person is said to be discharged when the case against him is thrown out under Ss. 209, 253 or 259 or when the Advocate-General enters a *nolle prosequi* under

**CR. P. CODE (1898), S. 436—Notice.**

S. 333. The expression "person who has been discharged" in S. 436 refers to a person who has been discharged" under Ss. 209, 253 or 259. A person against whom no process has been issued under S. 204 is not a discharged person and therefore no notice is necessary to him when the District Magistrate or the Sessions Court or the High Court directs further enquiry in to a complaint dismissed under S. 203 or sub-S. 3 of S. 204. A. I. R. 1925 All. 537, Foll. (*Coutts Trotter, C. J., Devadoss and Wallace, J.J.*) APPA RAO v. JANAKI-AMMAL.

99 I. C. 337=49 Mad. 918=

24 M. L. W. 613=28 Cr. L. J. 129=

A. I. R. 1927 Mad. 19=51 M. L. J. 605 (F. B.).

—Dismissal under S. 203—Further enquiry—Notice to accused is not necessary.

When an order has been passed under S. 203, Cr. P. Code, it is not necessary for the District Magistrate to give an opportunity to the accused of showing cause why orders should not be passed against him under S. 436. The proviso to S. 436 applies only to cases where the accused person has been discharged and not to cases where orders have been passed under S. 203, Criminal P. C.; A. I. R. 1925 All. 537, Foll. (*Pullan, J.*) DAYA RAM v. EMPEROR.

103 I. C. 106=

2 Luck. 573=1 L.C. 184=28 Cr. L. J. 650=

A. I. R. 1927 Oudh 264.

—Complaint dismissed under S. 203—Proviso to S. 436 does not apply.

The proviso to S. 436 cannot apply to a dismissal of a complaint under S. 203; it only applies to the case where an accused person has been discharged. Hence, when a complaint is dismissed under S. 203, it is not necessary to issue notice to the accused person before ordering further enquiry. (*Sulaiman, J.*) GAJRAJ SINGH v. EMPEROR.

88 I. C. 600=47 All. 722=

23 A. L. J. 451=6 L. B. A. Cr. 119=

26 Cr. L. J. 1176=A. I. R. 1925 All. 537.

—Want of notice to the accused, who has already been discharged vitiates the order setting aside the order of discharge and directing further enquiry. (*Zafar Ali, J.*) MAHENDER NATH v. MILKHI RAM.

77 I. C. 987=25 Cr. L. J. 523=

A. I. R. 1923 Lah. 689.

**—S. 436—Order of discharge.**

—Where there are serious discrepancies existing in the evidence of the important eye-witnesses for the prosecution it is perfectly within the trying Magistrate's competence to disbelieve these witnesses and hold that there was no *prima facie* case as against the accused and the District Magistrate has, therefore, no power under S. 436 to interfere with the order of discharge which is based on a careful appreciation of the evidence on record. 8 A. L. J. 45, Rel. (*Sudhedar, A. J. C.*) BAGESHWAR v. EMPEROR.

122 I. C. 434=

1930 Cr. C. 316=31 Cr. L. J. 417=

A. I. R. 1930 Nag. 108.

—The dictum that "further enquiry after discharge is improper unless the order of discharge was manifestly perverse or foolish" does not apply to a case in which the Magistrate is acting as a Court of enquiry and not a trial Court. 10 P. R. 1911 Cr. (F. B.), Expl. (*Pullan, J.*) AULAD HUSAIN v. EMPEROR.

1930 Cr. C. 955=7 O. W. N. 749=

A. I. R. 1930 Oudh 415.

—The District Magistrate is competent to revise an order of discharge passed on withdrawal of complaint authorized by himself and to direct further enquiry into the case. (*Jai Lal, J.*) MATA v. EMPEROR.

114 I. C. 50=30 P. L. R. 58=30 Cr. L. J. 233=

12 A. I. Cr. R. 113=A. I. R. 1929 Lah. 315.

—Where a Magistrate completes an enquiry and

**CR. P. CODE (1898), S. 436—Order of discharge.**

discharges the accused, further enquiry should not be ordered except for very strong reasons. (*Macnair, Offg. J. C.*) BHAULAL v. KALBU.

12 N. L. J. 173=121 I. C. 671=

31 Cr. L. J. 279=1929 Cr. C. 873=

A. I. R. 1929 Nag. 360.

—Further inquiry after discharge is "improper" unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence which is obviously incomplete. 10 P. R. 1911 (F. B.); A. I. R. 1921 Lah. 214; 1 Lah. 216; and A. I. R. 1923 Lah. 329, Foll.; A. I. R. 1927 All. 38, Dist. (*Broadway, J.*) MOTI LAL v. EMPEROR.

9 Lah. L. J. 508=

29 Cr. L. J. 39=106 I. C. 455=

9 A. I. Cr. R. 328=9 A. I. Cr. R. 399=

A. I. R. 1928 Lah. 97.

—Further inquiry after discharge is improper unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence which is obviously incomplete; 10 P. R. 1911 (Cr.) Foll. (*Tek Chand, J.*) ATMA SINGH v. EMPEROR.

28 P. L. R. 593=28 Cr. L. J. 860=

104 I. C. 636=9 A. I. Cr. R. 42=

A. I. R. 1928 Lah. 42.

—Further enquiry after an order of discharge should not take place unless that order is perverse or foolish or based on an incomplete record of evidence. 10 P. R. Cr. 1911 and A. I. R. 1926 Lah. 130, Foll. (*Harrison, J.*) GHULAM NABI v. EMPEROR.

28 Cr. L. J. 607=102 I. C. 783=

A. I. R. 1927 Lah. 815.

—Further inquiry should be undertaken only in exceptional cases and for good reasons shown and, speaking generally, only if the order of discharge is perverse or foolish or based upon a record of evidence obviously incomplete, and where a Sessions Judge has considered the whole of the evidence in an exhaustive order and has held, after going through the whole record, that the order of discharge was perverse and set it aside, the High Court will not interfere in revision. 10 P. R. 1911, (Cr.) (F. B.). Ref to. (*Campbell, J.*) ZAHUR AHMAD v. NEADARMAL.

9 Lah. L. J. 114=

99 I. C. 1038=28 Cr. L. J. 238=

A. I. R. 1927 Lah. 775.

—Further enquiry should not be ordered unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence which was obviously incomplete. 1 Lah. 216, Ref. (*Broadway, J.*) HARNAM SINGH v. EMPEROR.

27 Cr. L. J. 661=

94 I. C. 709=A. I. R. 1926 Lah. 130.

—Revision Court should not direct further inquiry after discharge unless it is perverse or foolish or based on incomplete record of evidence.

Speaking generally, further enquiry after discharge is improper unless the order of discharge is manifestly perverse or foolish, or is based upon the record of evidence which is obviously incomplete. It is not sufficient for a Court to merely say that the trial Judge has not gone fully into the case and to declare that a further enquiry is necessary. Before ordering a further enquiry the Court of Revision should state in what respect the trial Judge's conclusions are either foolish or perverse or otherwise unsatisfactory, and if the case is sent back on the ground that the decision of the trial Court has been arrived at upon an incomplete record this should be stated. 10 P. R. 1911, Foll. (*Fforde, J.*) SAWAN SINGH v. EMPEROR.

89 I. C. 705=26 P. L. R. 291=

26 Cr. L. J. 1393=A. I. R. 1926 Lah. 50.

—A direction for further enquiry after discharge is improper unless the order of discharge is manifestly

**CR. P. CODE (1898), S. 436—Order of discharge.**

perverse or foolish or is based upon a record of evidence which is obviously incomplete. 10 P. R. 1911 (Cr.), Foll. (*Campbell, J.*) **INDRAJ v. EMPEROR.**  
**96 I. C. 869 = 27 Cr. L. J. 1013 (Lah.).**

—Further inquiry should only be ordered in exceptional cases and for good reasons shown. Ordinarily when a man is discharged under circumstances which make the order of discharge equivalent to one of acquittal, no further proceedings should be taken against him under S. 437, and speaking generally, further inquiry after discharge is improper unless the order of discharge was manifestly perverse or foolish or was based upon a record of evidence which was obviously incomplete. 10 P. R. 1911, (Cr.), Appl. (*Campbell, J.*) **MANI v. EMPEROR.**  
**94 I. C. 133 = 27 P. L. R. 397 = 27 Cr. L. J. 565.**

—Generally speaking further enquiry after discharge is improper, unless the order of discharge is manifestly perverse or foolish or incomplete. 10 P. R. 1911 Cr. (F.B.), Foll. (*Shadi Lal, C. J.*) **SHER SINGH v. EMPEROR.**  
**95 I. C. 307 = 27 Cr. L. J. 771 = 27 P. L. R. 488.**

—Further enquiry should be ordered by District Magistrate very sparingly and only when the order of discharge is perverse.

The powers vested in a District Magistrate ordering further enquiry under S. 437 should be used sparingly and with great circumspection; it is only where the order of discharge is perverse or foolish or the Magistrate has not dealt with the evidence or has not recorded sound reasons for the discharge that the District Magistrate might exercise his powers of directing further enquiry. [2 C. P. L. R. 82; 12 N. L. R. 94; 9 All. 52 (F.B.), Rel. on.] A District Magistrate cannot set aside an order of discharge if there be no irregularity, illegality or impropriety in the proceedings. Where further enquiry is directed, it does not in all cases mean taking of additional evidence, but may be rehearing and reconsideration of the evidence already taken. 18 A.L.J. 1135, Foll.; 12 N.L.R. 94; 14 C.P. L.R. 161, Rel. (*Kinkhede, A. J. C.*) **SHEOCHARAN v. EMPEROR.**  
**90 I. C. 385 = 21 N. L. R. 88 = 26 Cr. L. J. 1537 = A. I. R. 1926 Nag. 117.**

—Discharge does not preclude fresh proceedings on same facts—But fresh enquiry is not permissible except in special cases.

When a Magistrate has passed an order discharging an accused person it is competent to the same Magistrate or to another Magistrate of co-ordinate jurisdiction to take fresh proceedings against the accused upon the same facts although the order of discharge has not been set aside by higher authority. But, generally speaking, further enquiry after discharge is improper unless the order of discharge was manifestly perverse or foolish or was based upon a record of evidence which was obviously incomplete. 10 P. R. 1911 (Cr.) F. B., Foll. (*Scott-Smith, J.*) **GOPAL DAS v. MAGHI RAM.**  
**90 I. C. 292 = 7 L. L. J. 252 = 26 P. L. R. 353 = 26 Cr. L. J. 1508 = A. I. R. 1925 Lah. 439.**

—A Revising Court has power to order further enquiry even when the Subordinate Magistrate has recorded all the evidence of the prosecution. Where the Sessions Judge after going carefully through the evidence came to the conclusion that the finding of the Magistrate was either perverse or in all probability wrong or manifestly at variance with the evidence which he has recorded and where this was his considered opinion, the High Court refused to hold that his order directing a further enquiry was illegal, improper or incorrect. (*Kendall, A. J. C.*) **KARTLEY v. JAGANNATH PRASAD.**  
**87 I. C. 111 =**

**CR. P. CODE (1898), S. 436—Scope.**

**11 O. L. J. 611 = 26 Cr. L. J. 959 =**

**A. I. R. 1925 Oudh 180.**

**—S. 436—Proceedings on further enquiry.**

—A Sessions Judge has no power to make an order directing further enquiry by a particular Magistrate subordinate to a District Magistrate. What the Sessions Judge can do is to direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make the further inquiry thus leaving the District Magistrate to exercise a discretion as to the selection of any Magistrate subordinate to him. 10 C. 207, Ref. to. (*Sundaram Chetty, J.*) **RAMASWAMI THEVAR v. SUBBAN.**  
**1930 M. W. N. 911 = 1930 Cr. C. 1199 = 32 M. L. W. 782 =**

**A. I. R. 1930 Mad. 983.**

—‘Further enquiry’ under S. 436 is not restricted to proceedings under S. 202 and need not be of formal character. The Magistrate directed may issue process to the accused persons and take evidence before coming to the conclusion whether to discharge or not to discharge the accused. 15 Cal. 608 (F.B.), Foll. (*Courtney-Terrell, C. J. and Dhawle, J.*) **HEMA SINGH v. EMPEROR.**  
**126 I. C. 146 = 9 Pat. 155 = 1929 Cr. C. 372 = 31 Cr. L. J. 961 =**

**A. I. R. 1929 Pat. 644.**

**—When can be ordered.**

Where a Magistrate dismisses a complaint under S. 203 without examining the complainant, he, not being present on any of the dates of hearing, the complainant cannot afterwards be heard to say that the matter should be sent back for further inquiry. (*C. C. Ghose and Jack, J.J.*) **RAM PRASAD v. EMPEROR.**  
**111 I. C. 126 = 48 C. L. J. 90 = 11 A. I. Cr. B. 48 = 29 Cr. L. J. 798 = A. I. R. 1928 Cal. 569.**

—Further inquiry in S. 436 means an inquiry of the same nature as was previously held under S. 202. A. I. R. 1925 Cal. 576 and A. I. R. 1928 Pat. 12, Foll. (*Jwala Prasad, J.*) **RAMACHANDRA v. MT. SATYABHAMA.**  
**108 I. C. 328 = 10 A. I. Cr. B. 25 = 9 P. L. T. 459 = 29 Cr. L. J. 372 (Pat.).**

—Order of discharge need not be foolish—Further inquiry should begin from the stage under S. 202.

Section 436 does not lay down any rule that further inquiry should only be directed when it is found that the judgment is perverse or foolish.

As a rule of prudence, it has often been held that the superior Court should not lightly discard the estimate of evidence appraised by the trial Court and should not set aside the dismissal of a complaint simply because a different view of the evidence might be taken.

The effect of an order dismissing a complaint under S. 203 is to restore the case to the stage under S. 202 and the further inquiry directed should be taken up from that point. 4 P.L.J. 456 and 5 P.L.J. 47, Ref. to. (*Jwala Prasad, J.*) **RADHA PRASAD v. EMPEROR.**  
**104 I. C. 633 = 9 P. L. T. 12 = 28 Cr. L. J. 857 = 9 A. I. Cr. B. 61 = A. I. R. 1928 Pat. 12.**

—A Magistrate has jurisdiction to order a further inquiry upon the same materials which were before the trying Magistrate. 15 Cal. 608, (F.B.), Foll. (*Dalal, J. C.*) **HAIDAR KHAN v. KING-EMPEROR.**  
**75 I. C. 978 = 25 Cr. L. J. 66 =**

**A. I. R. 1925 Oudh 36.**

**—S. 436—Scope.**

—Complaint under Ss. 323, 347 and 358, Penal Code, against police—Complaint dismissed—District Magistrate ordering further enquiry to give accused opportunity to vindicate themselves—Magistrate issuing process against accused without preliminary inquiry and committing accused to Sessions.

M made a complaint alleging that the police had

**CR. P. CODE (1898), S. 436—Scope.**

committed offences under Ss. 323, 347 and 358, Penal Code. The complaint was dismissed under S. 203, Cr. P. Code. Whereupon the Deputy Superintendent of Police filed a petition of complaint against *M* under S. 192, Cr. P. Code. *M* moved the Deputy Commissioner for reference to High Court alleging that the proceedings against them could not be taken except on complaint by the Court. The reference was made and the proceedings quashed by the High Court. The Deputy Superintendent of Police thereupon petitioned to the Deputy Commissioner alleging that the complaint of *M* was serious and that the order of the Magistrate was vague and prayed for further enquiry. Proceeding under S. 436, the Deputy Commissioner directed further enquiry into the complaint in order to give opportunity to the accused to vindicate themselves and to prove that the allegations made against them were not only open to doubt but false. Sub-Divisional Officer directed to make further enquiries, at once issued processes against the police officer under Ss. 323 and 347 and preferred charges under Ss. 323 and 347. The case was then transferred to Deputy Magistrate who recorded the evidence of some witnesses for prosecution and committed the accused to Sessions under S. 388, Penal Code.

*Held*, (i) that the Magistrate had discretion to issue the process against the accused and after hearing the evidence, to commit the accused to the Sessions and had discretion to dispense with any preliminary enquiry under S. 202 and that the procedure involved in hearing the evidence and committing the accused for trial was further enquiry under S. 436 and within the scope of the order. 32 Mad. 220 (F. B.); 4 P. L. J. 456 and 5 P. L. J. 47, Dist.; A. I. R. 1928 Pat. 12, Diss. from.

(ii) In case the above view was wrong, the conduct of the Magistrate in issuing the summons to the accused instead of conducting preliminary enquiry and committing the accused to the Sessions was an irregularity and not an illegality and the commitment cannot be quashed unless the accused are prejudicially injured thereby. 4 P. L. J. 456, Expl. (*Courtney-Terrel, C. J. and Dhawle, J.*) *HEMA SINGH v. EMPEROR*. 126 I. C. 146=

31 Cr. L. J. 961=9 Pat. 155=1929 Cr. C. 372=  
A. I. R. 1929 Pat. 644.

—Revision Court cannot direct further inquiry into an offence under S. 193, where the sanction of the Court in which that offence was committed is wanting. (*Dalal, J.*) *MEHARBAN ALI KHAN v. SITA RAM*.

118 I. C. 232=1929 A. L. J. 512=  
10 L. R. A. Cr. 90=12 A. I. Cr. R. 22=  
30 Cr. L. J. 874=1929 Cr. C. 1=  
A. I. R. 1929 All. 374.

—Under S. 436 as amended in 1923, a District Magistrate has no jurisdiction to revise the case of a person who has been called upon to give security and is discharged. 24 All. 148, held no good law; 33 Mad. 85, Appr.; A. I. R. 1924 All. 592, Ref. (*Dalal, J.*) *NEUR AHIR v. EMPEROR*

9 L. R. A. Cr. 146=  
10 A. I. Cr. R. 488=113 I. C. 79=  
51 All. 408=1929 A. L. J. 146=  
30 Cr. L. J. 63=A. I. R. 1928 All. 755.

—Where a trying Magistrate finds that in his judgment there is no sufficient ground to proceed against an accused and dismisses the complaint, the Sessions Judge to whom the case goes up for revision may, if he thinks that the Magistrate was wrong in dismissing the complaint, direct the Magistrate to make further inquiry into the complaint but he cannot compel the Magistrate to summon the accused, when in his judgment there was no sufficient ground to proceed against the accused. Such order if made would be without jurisdiction. (*King, J.*) *INAYAT HUSAIN v. EMPEROR*.

**CR. P. CODE (1898), S. 437—Acquittal.**

10 A. I. Cr. R. 99=9 L. R. A. Cr. 88=  
30 Cr. L. J. 631=116 I. C. 494=  
A. I. R. 1928 All. 684.

—A District Magistrate has no power to order further inquiry in a case where an application under S. 145 has been rejected. All that the District Magistrate has power to do in revision is to make a reference to the High Court under S. 438. (*Carr, J.*) *MAUNG SAM E. v. MAUNG MYE DU*. 30 Cr. L. J. 709=

117 I. C. 59=A. I. R. 1928 Rang. 292.

—Whenever a District Magistrate decides to exercise his revisional jurisdiction under S. 436 or S. 437 he should ordinarily confine the exercise of his power of interference to those powers which are expressly specified in those sections, and not take upon himself the duty of trying those persons and convicting them as a Magistrate exercising original jurisdiction, though it is not illegal for the Magistrate to take such a course. (*Kinkhede, Offg. A. J. C.*) *DANAJI v. EMPEROR*.

27 Cr. L. J. 728=95 I. C. 56=  
A. I. R. 1926 Nag. 374.

—Proceedings under S. 133 and Chap. 10 are not covered by S. 436 and the Sessions Judge has no power to order further enquiry in such proceedings. The only action which he can take, if one is found necessary, would be under S. 438, to make a report to the High Court. (*Dalal, J. C.*) *PRITHIPAL v. KING-EMPEROR*.

88 I. C. 995=2 O. W. N. 549=  
26 Cr. L. J. 1251=A. I. R. 1925 Oudh 736.

—An order of the District Magistrate setting aside the order of the Sub-Divisional Magistrate discharging an accused under S. 107 is illegal as S. 107 is not included in the provisions of S. 436. (*Mears, C. J.*) *ROSHAN SINGH v. EMPEROR*.

77 I. C. 819=46 All. 235=  
22 A. L. J. 129=5 L. R. A. Cr. 64=  
25 Cr. L. J. 467=A. I. R. 1924 All. 592.

—The District Magistrate under S. 430 (now S. 436) has no power to order a further inquiry in cases under Chapter VIII of the Code. 33 M. 85, Foll., 2 L. B. R. 80 superseded to that extent. (*May Oung, J.*) *MG. THAN alias NGWE THAN v. EMPEROR*.

2 Rang. 30=2 Bur. L. J. 285=  
25 Cr. L. J. 1146=81 I. C. 970=  
A. I. R. 1924 Rang. 207.

**—S. 436—Miscellaneous.**

—*Setting aside discharge—Third party can apply.*

An order of discharge of an accused person may be interfered with at the instance of a third party when such an order has the effect of operating to the detriment of such third person. He has in such cases a right to apply in revision against such an order. (*Suhrawardy and Mitter, J.J.*) *G. V. RAMAN v. EMPEROR*.

33 C. W. N. 468=56 Cal. 1023=121 I. C. 678=  
31 Cr. L. J. 315=A. I. R. 1929 Cal. 319.

—Where the accused was not present before the Magistrate who dismissed the complaint against him, he has no right to appear before the Sessions Judge, and to argue his case before the Court orders further inquiry in the case. A. I. R. 1923 Cal. 651; 15 Cal. 608 (F. B.), Ref. (*Wort, J.*) *MANRUP SINGH v. SAHDEO SAHU*. 30 Cr. L. J. 1069=119 I. C. 559=

A. I. R. 1929 Pat. 230.

—Where the defect discovered by the High Court is in the order in appeal, it has jurisdiction to interfere with the order in appeal and order a re-trial of the appeal only and not of the entire case. (*Dalal, J. C.*) *BACHCHA SINGH v. BACHCHA KURMI*.

95 I. C. 934=12 O. L. J. 63=  
2 O. W. N. 50=28 O. C. 384=

27 Cr. L. J. 854=A. I. R. 1925 Oudh 321.

**—S. 437—Acquittal.**

—A Magistrate of the first class acquitted certain

**CR. P. CODE (1898), S. 437—Acquittal.**

persons who were charged before him under Ss. 424 and 506 (2) of the Penal Code. The complainant afterwards made several applications to the Magistrate to frame a charge against the accused under S. 395 of the Penal Code and commit the accused to Sessions. The Magistrate recorded the applications but declined to entertain them. Upon this the Dt. Magistrate was moved by the complainant and acting under S. 437 of the Cr. P. Code, framed at charge against the accused and committed them to take their trial before the Sessions Court. It was contended in revision that the District Magistrate's order was illegal because the accused had been acquitted and not discharged.

*Held*, that the First Class Magistrate's order was substantially one discharging the accused in respect of an alleged offence under S. 395 of the Penal Code and that the Dt. Magistrate had jurisdiction to pass the order in question. (*Kincaid and Aston, A. J. Cs.*)  
**KHANU v. EMPEROR.** 82 I. C. 760 =  
25 Cr. L. J. 1368 = 19 S. L. R. 353 =  
A. I. R. 1925 Sind 190.

**—S. 437—Application of.**

—*Accused charged under Penal Code, Ss. 457 and 380—Discharge under S. 209, Cr. P.C.—Sessions Judge cannot pass order under S. 437 but can order inquiry under S. 436.*

S. 437 relates only to cases triable exclusively by the Court of Session. Where, therefore, the accused, charged under Penal Code, Ss. 457 and 380, have been discharged by the trying Magistrate under Cr. P. C., S. 209, the Sessions Judge, acting under S. 437 cannot pass an order against the accused directing that the order of discharge be set aside and that the trying Magistrate do commit the accused to take their trial at the Sessions. The correct procedure is to order further inquiry under Cr. P. C., S. 436. 15 M. L. J. 373, Rel. on. (*Curgenven, J.*) **SUBBA NAICKER v. EMPEROR.** 122 I. C. 788 = 1930 Cr. C. 17 =  
31 Cr. L. J. 459 = 1929 M. W. N. 709 =  
2 M. Cr. C. 291 = A. I. R. 1930 Mad. 103.

**—S. 437—Discharge after enquiry.**

—The dictum that further enquiry after discharge is improper unless the order of discharge was manifestly perverse or foolish "does not apply to a case in which a Magistrate is acting as a Court of enquiry and not a trial Court." (*Pullan, J.*) **AULAD HUSAIN v. EMPEROR.** 7 O. W. N. 749 = 1930 Cr. C. 955 =  
A. I. R. 1930 Oudh 415.

—An order of discharge passed by trial Court after a full enquiry and after recording all the evidence, produced by the complainant should not be lightly interfered with. (*Scott-Smith, J.*) **FAIZ MUHAMMAD v. CROWN.** 89 I. C. 272 = 7 L. J. 216 =  
26 P. L. R. 198 = 26 Cr. L. J. 1328 =  
A. I. R. 1925 Lah. 395.

**—S. 437—Fresh complaint.**

—Where an order of discharge under S. 209 has been confirmed by a higher authority, it is not competent for a Magistrate to entertain a fresh complaint on the same charge. A. I. R. 1922 Sind 23, Foll. (*Kincaid, J. C. and Barlee, A. J. C.*) **SHAH MAHOMED v. EMPEROR.** 99 I. C. 89 = 28 Cr. L. J. 57 = 7 A. I. Cr. R. 225 =  
21 S. L. R. 127 = A. I. R. 1928 Sind 49.

**—S. 437—Grounds for order.**

—The Sessions Judge has to consider whether it was open to the Magistrate to come to the conclusion to which he did come on the materials before him. That a different view could be taken on the evidence would not justify the Sessions Judge in ordering commitment; he must come to the conclusion that the finding of the Magistrate is not only wrong but perverse. (*Das, J.*) **RITBHANJAN RAI v. EMPEROR.** 86 I. C. 822 =

**CR. P. CODE (1898), S. 437—Proceedings under S. 476.**

6 P. L. T. 570 = 26 Cr. L. J. 886 =  
A. I. R. 1925 Pat. 599.

**—S. 437—High court's powers.**

—*Power of High Court to order commitment should rarely be used in midst of trial.*

A High Court has itself power under S. 439, read with S. 423, to order commitment in a case, and it would obviously be the proper course for the High Court itself to order such commitment if the Sessions Judge's order is held to be a proper one; however, the action under S. 437 or S. 439 for ordering a commitment should rarely be taken in the midst of a trial, and certainly only when the failure of a Court to commit is shown, on the face of proceedings, to be improper. (*Ashworth, J.*)  
**BILODAR v. EMPEROR.** 27 Cr. L. J. 417 =  
13 O. L. J. 490 = 3 O. W. N. 201 =  
93 I. C. 145 = A. I. R. 1926 Oudh 194.

**—S. 437—Notice.**

—*No opportunity of showing cause against commitment given—Order should be set aside.*

Where some of the accused were not made respondents to the revision petition to District Magistrate against order of discharge and no notice had been ordered to be served upon them and where they had no opportunity of showing cause why an order of commitment should not be made against them.

*Held*, that the order of the District Magistrate was clearly wrong, and must be set aside so far as those accused were concerned. (*Srinivasa Aiyangar, J.*)  
**M. MANICKA PADAYACHI, In re.** 90 I. C. 530 =  
48 Mad. 874 = 22 M. L. W. 755 =  
26 Cr. L. J. 1570 = A. I. R. 1925 Mad. 1061 =  
49 M. L. J. 155.

**—S. 437—Powers of Sessions Judge.**

A Sessions Judge has a wide discretion under S. 437 to go into the merits of the case and commit the accused to the Sessions though the Magistrate has discharged him after preliminary enquiry. (*Jackson, J.*)  
**VENKATASWAMI v. EMPEROR.** 1930 M. W. N. 683.

—Under S. 436 the Sessions Judge has jurisdiction to commit an accused for trial in the Sessions Court if he is of opinion that the case against the accused is triable exclusively by the Court of Session, or it is intimately connected with a charge exclusively triable by the Sessions Court, and if it forms part of the same transaction and that the accused has been improperly discharged by an inferior Court. (*C. C. Ghose and Duval, JJ.*) **BEJOY GOPAL GHOSE v. ISWAR CHANDRA KUMAR.** 53 Cal. 645 =  
27 Cr. L. J. 1139 = 97 I. C. 659 =  
A. I. R. 1926 Cal. 1090.

**—S. 437—Proceedings under S. 476.**

—*Sessions Court making complaint under S. 476 to 1st Class Magistrate—Complaint dismissed—That Sessions Court cannot hear proceedings against dismissal under S. 437.*

The Sessions Judge who files the complaint under S. 476 is disqualified from hearing the applications made to him under Ss. 435 and 437 owing to the complaint under S. 476 having been dismissed, and from making an order directing the persons against whom the complaint was initially made to be committed to the Sessions Court presided over by himself. 15 Bom. L. R. 104, Dist.

Per *Fawcett, J.*—The Judge or Magistrate who proceeds under the provisions of S. 476 is a party to the case in which he is a complainant, within the meaning of S. 556. (*Shah and Fawcett, JJ.*) **MUDKAYA ANDANAYA, In re.** 28 Bom. L. R. 1302 =  
28 Cr. L. J. 53 = 7 A. I. Cr. R. 227 =  
99 I. C. 85 = A. I. R. 1927 Bom. 35.



## CR. P. CODE (1898).

## —S. 437—Revision by High Court.

—There is nothing in the Cr. P. Code which suggests that the District Magistrate should go further in case where the accused is charged by the trial Court than find that the order of discharge was improper. But, where a District Magistrate sets aside the order of discharge passed by a Committing Magistrate and orders a case to be committed to Sessions which is exclusively triable by a Court of Sessions, the High Court will not interfere in revision unless the District Magistrate's order is, in the circumstances of the case, shown to be unjustifiable. 19 O. C. 108, Rel. on. (*Pullan, J.*)  
AULAD HUSAIN v. EMPEROR.

A. I. R. 1930 Oudh 415 = 1930 Cr. C. 955 =  
7 O. W. N. 749.

## —S. 437—Validity of order.

—An order of commitment made by a Sessions Judge under S. 437, when already he had at previous stage rejected an application for setting aside an order discharging the accused is not without jurisdiction. 26 Mad. 126 (F.B.); 28 Cal. 652 (F. B.) and 10 Cal. 1047, Ref. (*Suhrawardy and Graham, J.J.*) DEBIDAS KARMAKAR v. EMPEROR.

121 I. C. 401 =  
33 C. W. N. 974 = 1930 Cr. C. 13 =  
31 Cr. L. J. 260 = A. I. R. 1930 Cal. 61.

—Where the police chalan contains a mention of Ss. 147 and 304, I. P. C. but the Magistrate, after hearing the evidence for the prosecution, frames a charge under Ss. 147 and 325, the accused cannot be said to have been discharged within the meaning of S. 437 and the Sessions Judge is not authorized to order commitment under S. 437. (*Ashworth, J.*) BILODAR v. EMPEROR.

27 Cr. L. J. 417 = 3 O. W. N. 201 =  
13 O. L. J. 490 = 93 I. C. 145 =  
A. I. R. 1926 Oudh 194.

## —S. 438—Acquittal.

—Acquittal by Magistrate—Power of Dt. Magistrate.

A District Magistrate and the Local Government are two distinct and non-interchangeable terms, and the District Magistrate not being the person entitled to appeal against the acquittal by a Magistrate, the mere fact that he may be able in his executive capacity to move the Local Government to appeal under S. 439 (5), cannot bar his taking action under S. 438. 24 All. 346, Dist. (*Boys, J.*) EMPEROR v. BASHIR.

1930 Cr. C. 997 = A. I. R. 1930 All. 741.

—Revisional powers of High Court are sparingly used.

A reference under S. 438 recommending revision of orders of acquittal stands on no higher footing than applications of private prosecutors for such revision. So, just as in the case of revision at the instance of private persons, so also in the case of reference under S. 438, revisional powers of the High Court are to be sparingly used. Where the reference is entirely on the merits, the Sessions Judge, having been inclined to take a view of the evidence different from that of the Magistrate, the High Court should not interfere under S. 438. 42 Cal. 612; 47 Cal. 818; 41 Bom. 560; A. I. R. 1922 Mad. 502 (F. B.); A. I. R. 1926 Pat. 176, Cons.; 44 Cal. 703, Foll.; 24 All. 346; 25 All. 128; 38 Mad. 1028 and A. I. R. 1924 Lah. 451, Rel. on. (*Mukerji and Graham, J.J.*) DABIRADDI NASKAR v. SAKAT MOOLA.

49 C. L. J. 129 = 33 C. W. N. 258 =  
116 I. C. 164 = 30 Cr. L. J. 579 = 56 Cal. 924 =  
12 A. I. Cr. R. 456 = A. I. R. 1929 Cal. 169.

—Reference by Sessions Judge, and Reference by District Magistrate—Considerations.

A reference under S. 438 by the Sessions Judge, recommending that an erroneous acquittal by a Sub-

## CR. P. CODE (1898), S. 438—Enhancement of sentence.

ordinate Court be set aside, is acceptable even in ordinary cases, for an appeal against such acquittal under S. 417 by the Local Government is restricted to only exceptional cases. However, such references by the District Magistrate, who has means to communicate with and move the Local Government under S. 417, may not be acceptable. (*Wort and Macpherson, J.J.*)  
WAZIR KUMJRA v. EMPEROR.

7 Pat. 579 =  
116 I. C. 768 = 30 Cr. L. J. 673 =

13 A. I. Cr. R. 112 = A. I. R. 1929 Pat. 139.

—The High Court will not interfere in revision with an order of acquittal, passed by a Magistrate of competent jurisdiction, on a prosecution for an alleged offence under S. 225-B of the Penal Code, irregularly instituted on a report sent in by a Munsif which was treated as a complaint. (*Piggott, J.*) EMPEROR v. MADHO SINGH.

86 I. C. 801 = 23 A. L. J. 189 =  
26 Cr. L. J. 865 = 47 All. 409 =  
A. I. R. 1925 All. 318.

—Where a Magistrate acquits an accused of an offence under I. P. C., S. 447 on the ground that the immovable property in question was not in anybody's possession, the High Court will not interfere with the acquittal in revision. (*Shadi Lal, C. J.*) CROWN v. HARPHUL.

7 Lah. L. J. 42 = 26 Cr. L. J. 689 =  
26 P. L. R. 38 = 86 I. C. 65 =  
A. I. R. 1925 Lah. 336.

—It is not in accordance with the practice of Allahabad High Court to interfere on a reference by a Sessions Judge where the Government could have appealed under S. 417 of the Code of Criminal Procedure and has not done so. (*Boys, J.*) QALANDAR SINGH v. MOHAMMAD RAZA.

83 I. C. 687 =  
5 L. B. A. Cr. 120 = 26 Cr. L. J. 127 =  
A. I. R. 1924 All. 624.

## S. 438—Admission.

—If, upon the proceedings before the Judge upon which the reference is made admissions of fact should be made by either party, then those admissions of fact ought to be accepted by High Court for the purpose of the reference. (*Sanderson, C. J. and Pearson J.*)  
SHAIKH GARIB HAJI v. MUCHIRAM SHAH.

91 I. C. 805 = 27 Cr. L. J. 133 =  
30 C. W. N. 359 = A. I. R. 1925 Cal. 1020.

## —S. 438—Dismissal of complaint.

—A Court should not lightly set aside in revision an order of dismissal of complaint but should only do so when it is clear that there has been a miscarriage of justice. (*Adami, J.*) JANGAL SINGH v. RADHA KISHUN

86 I. C. 802 = 3 Pat. L. R. Cr. 33 =  
26 Cr. L. J. 866 = A. I. R. 1925 Pat. 447.

## —S. 438—Enhancement of sentence.

—The trial Magistrate sentenced the accused to six months' rigorous imprisonment under S. 457, I. P. C. without giving due consideration to the previous convictions. But the last conviction against the accused was prior to two years and a half from the date of the present offence.

Held, that the sentence need not be enhanced. A. I. R. 1929 All. 267 (2), Dist. (*Boys and Sen, J.J.*)  
EMPEROR v. PREM.

115 I. C. 868 =  
1929 A. L. J. 397 = 10 L. R. A. Cr. 76 =  
11 A. I. Cr. R. 513 = 30 Cr. L. J. 529 =  
A. I. R. 1929 All. 270.

—Prosecution negligent in bringing facts justifying enhanced sentence to Court's notice—High Court should not enhance.

In a case where material justifying enhanced sentence was within the knowledge of the prosecution before the conclusion of the trial and was not brought, by the negligence of the prosecution, to the notice of the

**CR. P. CODE (1898), S. 438—Enhancement of sentence.**

trial Court, High Court would not interfere, on reference, for enhancing the sentence. To permit the prosecution to plead their own negligence and to harass the accused with further proceedings directed towards the enhancement of the sentence would simply be to put a premium on the negligence of the prosecution. (*Boys and Sen, J.J.*) **EMPEROR v. BASHIR.** 115 I. C. 614 = 10 L. R. A. Cr. 73 = 11 A. I. Cr. R. 503 = 30 Cr. L. J. 505 = A. I. R. 1929 All. 267.

—A Kori branded his wife with hot iron tongs in three places. He was convicted and fined. The District Magistrate reported the case to the High Court for enhancement of sentence. But the parties had compromised their differences and an application was made to High Court signed by the husband and the father of the wife, a minor girl, for permission to compound the offence under S. 345 (2). Compromise was effected in mutual interest of husband and wife.

*Held*, that the case was a fit case to be compounded in view of the nearness of relationship between parties. A. I. R. 1922 Cal. 191, Rel. on. (*Subhedar, A. J. C.*) **EMPEROR v. BHAIYALAL.** 118 I. C. 681 = 30 Cr. L. J. 960 = 1929 Cr. C. 454 = A. I. R. 1929 Nag. 278.

—Sentence considered inadequate—District Magistrate or Sessions Judge should be moved by police at earliest moment.

In all cases where the sentence is considered by the prosecution to be inadequate the District Magistrate or the Sessions Judge, as the case may be, should be moved by the police at the earliest possible moment after the trial and certainly, where possible, before the accused has served his sentence although the fact that the sentence has expired before such action is taken is no reason for refusing to interfere. (*Dawson Miller, C. J. and Mullick, J.*) **EMPEROR v. PRABHU UPADHAYA.** 9 P. L. T. 831 = 29 Cr. L. J. 261 = 107 I. C. 536 = 9 A. I. Cr. R. 523 = A. I. R. 1928 Pat. 201.

**—S. 438—Evidence.**

—High Court would not go into merits unless there is material departure from legal principles.

The High Court would decline to go into the merits of a case on the revisional side unless there is something to show that there has been a material departure from the legal principles according to which the case ought to have been dealt with and it would go into facts only if something is shown which particularly indicates that it is desirable to enter into those facts. (*Boys and Sen, J.J.*) **EMPEROR v. RAM LAL.** 116 I. C. 25 = 51 All. 663 = 1929 A. L. J. 361 = 10 L. R. A. Cr. 66 = 11 A. I. Cr. R. 486 = 30 Cr. L. J. 562 = A. I. R. 1929 All. 273.

—It is not the duty of the High Court in a reference made by the Sessions Judge against an order of the Sub-Divisional Officer under S. 145, Cr. P. Code, to examine the evidence to consider whether it might have come to a different finding. (*Allanson, J.*) **MT. GOMIA v. NANHKOO SINGH,** 105 I. C. 229 = 28 Cr. L. J. 901 = 9 P. L. T. 18 = A. I. R. 1928 Pat. 88.

—The High Court will not set aside a conviction and order re-trial at the instance of the Crown on the ground that the Crown has since discovered fresh evidence which would require the infliction of a severer sentence on the accused. (*Boys, J.*) **EMPEROR v. RAM DIN.** 26 Cr. L. J. 654 = 6 L. R. A. Cr. 16 = 85 I. C. 942 = A. I. R. 1925 All. 292.

**CR. P. CODE (1898), S. 438—Powers of District Magistrate.****—S. 438—Institution of proceedings.**

—An order refusing to take action under S. 107 cannot be reversed by the Sessions Judge nor can he direct the Magistrate to draw up proceedings under the section. (*Graeves and Pantou, J.J.*) **PHANI BHUSAN ROY v. KUNGA BEHARI BISWAS.** 81 I. C. 167 = 25 Cr. L. J. 679 = A. I. R. 1925 Cal. 262.

**—S. 438—Judicial proceedings.**

—The Code of Criminal Procedure does not contemplate that a representation made by the police to the District Magistrate in the form of an official letter should be taken into consideration by the High Court as embodying the grounds for setting aside an order by a criminal Court. (*Sulaiman, J.*) **EMPEROR v. BRAMADIN.** 105 I. C. 658 = 8 L. R. A. Cr. 138 = 8 A. I. Cr. R. 335 = 28 Cr. L. J. 946 = 26 A. L. J. 76 = A. I. R. 1927 All. 727.

**—S. 438—No dishonest intention.**

—Where an offence under S. 62 of the Indian Stamp Act was found by the trying Magistrate not to have been committed intentionally the High Court setting aside the order of conviction ordered the applicants to be acquitted under S. 438, Cr. P. Code. (*Kendall, J.*) **EMPEROR v. ISHWAR DAVAL PANDEY.** 99 I. C. 598 = 8 L. R. A. Cr. 31 = 28 Cr. L. J. 166 = 25 A. L. J. 401 = 7 A. I. Cr. R. 205 = A. I. R. 1927 All. 238.

**—S. 438—Notice.**

—District Magistrate sitting in revision must give notice to opposite side.

Where the contention on behalf of the defence is that a Court altogether outside the district had jurisdiction to try the case, the District Magistrate sitting in revision, must give notice to the complainant and bring on record all the materials which both the parties may desire to adduce, before he arrives at a proper conclusion. (*Mukerji and Jack, J.J.*) **KASIMALI v. MD. TAFUZ-ZAL HOSSAIN.** 49 C. L. J. 62 = 115 I. C. 95 = 30 Cr. L. J. 401 = 12 A. I. Cr. R. 373 = A. I. R. 1929 Cal. 204.

**—S. 438—Powers of District Magistrate.**

—Proceedings under S. 144 drawn up by Magistrate—District Magistrate cannot direct proceedings under S. 145 to be drawn up—Reference.

The Sub-Divisional Magistrate on a police report drew up proceedings under S. 144. The District Magistrate set them aside holding they were wrongly drawn up and directed the Sub-Divisional Magistrate to draw up proceedings under S. 145.

*Held*, that though under S. 144 (4) he was entitled to set aside an order of the Sub-Divisional Magistrate there was no provision in law whereby he could direct the Sub-Divisional Magistrate to draw up proceedings under any other section. The proper course for District Magistrate in such case was to make a reference to the High Court under S. 438. 24 Cal. 391, Foll. (*Suhravardiy and Graham, J.J.*) **KEDARNATH SIKDAR v. BIJOY MANDAL.** 1929 Cr. C. 385 = 33 C. W. N. 723 = A. I. R. 1929 Cal. 751.

—A District Magistrate has no power to order further inquiry in a case where an application under S. 145 has been rejected. All that the District Magistrate has power to do in revision is to make a reference to the High Court under S. 438. (*Carr, J.*) **MAUNG SAN E v. MAUNG MYE DU.** 30 Cr. L. J. 709 = 117 I. C. 59 = A. I. R. 1928 Rang. 292.

—A District Magistrate is not empowered to have a reference submitted to the High Court through the Sessions Judge invoking the revisional powers of the High Court in respect of an order passed by the Sessions

**CR. P. CODE (1898), S. 438—Powers of District Magistrate.**

Judge nor can he submit such reference direct to the High Court on the refusal of the Sessions Judge to forward it. (*Walsh, A. C. J. and Banerji, J.*) *EMPEROR v. ALLAH MAHR.* 49 All. 443=

25 A. L. J. 191=8 L. R. A. Cr. 43=

28 Cr. L. J. 281=7 A. I. Cr. R. 275=

100 I. C. 361=A. I. R. 1927 All. 279.

—Remarks in Sessions Judge's judgment—District Magistrate cannot refer.

The Sessions Judge is not a Criminal Court inferior either to the District Magistrate or the Sub-divisional Magistrate, neither of whom is empowered by law to make reports to the High Court taking exception to certain remarks of the Sessions Judge in the course of his judgment. 1 S. L. R. 40 (Cr.,) Foll. (*Kincaid, J. C. and Barlee, A. J. C.*) *EMPEROR v. KHUDA BUX.* 21 S. L. R. 48=27 Cr. L. J. 1253=

98 I. C. 101=A. I. R. 1927 Sind 45.

—The District Magistrate cannot himself set aside the decision of the lower Court under S. 145, Cr. P. Code. He must refer the case to the High Court. (*Walsley and B. B. Ghose, J.J.*) *ESERUDDIN HOWALDAR v. OTARUDDIN AKON.* 88 I. C. 526=

26 Cr. L. J. 1166=A. I. R. 1925 Cal. 1234.

—District Magistrate is not superior to Sessions Court.

The Court of the Sessions Judge is not an inferior Criminal Court to that of a District Magistrate. Therefore the latter cannot make a reference for enhancing the sentence passed by the Sessions Judge. (*Abdul Raoof and Harrison, J.J.*) *EMPEROR v. WASAWI.* 81 I. C. 544=5 Lah. 11=25 Cr. L. J. 928=

A. I. R. 1924 Lah. 437.

**—S. 438—Procedure.**

—District Magistrate should not merely forward the Prosecuting Inspector's notes en bloc to the High Court.

Where a Prosecuting Inspector being dissatisfied with the trial Court's order moves the District Magistrate for referring the case to High Court, the District Magistrate should examine the notes of the Prosecuting Inspector for himself, and if there is any portion of them that contains material which he thinks to be of value he should embody that material in his own order. It is improper to accept *en bloc* the Prosecuting Inspector's criticisms and simply attach them to his letter. (*Boys and Sen, J.J.*) *EMPEROR v. RAMLAL.* 116 I. C. 25=51 All. 663=1929 A. L. J. 361=

10 L. R. A. Cr. 66=11 A. I. Cr. R. 486=

30 Cr. L. J. 562=A. I. R. 1929 All. 273.

**—S. 438—Quashing of proceedings.**

—Where the District Magistrate deals with a matter in the exercise of his revisional powers he cannot, under the law, quash the proceedings, but if he thinks the contention of the defence to be made out, the only course open to him is to make a reference to the High Court for final order. (*Mukerji and Jack J.J.*) *KASIM-ALI v. MD. TAFAZZAL HOSSAIN.* 49 C. L. J. 62=115 I. C. 95=30 Cr. L. J. 401=

12 A. I. Cr. R. 373=A. I. R. 1929 Cal. 204.

**—S. 438—Report.**

—Although it is unusual for a Judge to make a reference regarding the validity of his own order there is nothing in S. 438 to preclude him from doing so. (*King, J.*) *EMPEROR v. RADHA RAMAN.* 1930 A. L. J. 1076=1930 Cr. C. 1201=

A. I. R. 1930 All. 817.

**—S. 438—Report—Contents.**

—The trying Magistrate is not entitled to make any suggestion or representation in the explanation

**CR. P. CODE (1898), S. 438—Report—Scope.**

which he may submit to the High Court of anything which is not founded on the record before him. The Magistrate is not the prosecutor. He must hold the scales evenly. (*C. C. Ghose and Pearson, J.J.*) *MANI KRISHNA SEN GUPTA v. EMPEROR.* 127 I. C. 672=34 C. W. N. 256=1930 Cr. C. 643=

A. I. R. 1930 Cal. 379.

**—S. 438—Report—Effect of refusal.**

—A Sessions Judge, who once refused to make a reference under S. 438 to the High Court, is not debarred from making another reference in the same case considering the facts which came to his knowledge subsequently. (*Fawcett and Patkar, J.J.*) *EMPEROR v. SITARAM NARAYAN.* 104 I. C. 912=

29 Bom. L. R. 480=28 Cr. L. J. 896=

9 A. I. Cr. R. 27=A. I. R. 1927 Bom. 360.

**—S. 438—Report—Form of.**

—Reference to the Calcutta High Court under S. 438, Cr. P. Code, should always be made in the form prescribed by the General Rules and Circular Orders of the Calcutta High Court, Criminal App. Side, Ch. I, R. 139. (*Newbould and Mukerji, J.J.*) *KUTISHWAR MONDAL v. JITENDRANATH.* 87 I. C. 975=

26 Cr. L. J. 1055=30 C. W. N. 646=

A. I. R. 1926 Cal. 316.

—Reference under S. 438, Cr. P. Code, made in the form of a letter to the Registrar of the High Court, is not appropriate. Such reference should be made by a judicial order. (*Carr, J.*) *ON PE v. EMPEROR.* 82 I. C. 471=3 Bur. L. J. 27=25 Cr. L. J. 1303=

A. I. R. 1924 Rang. 295.

**—S. 438—Report—Grounds for.**

—A case should not be reported on the ground that a conviction is bad on the merits unless it is very clear that the conviction is wrong and that there can be no reasonable doubt of the matter. (*Ashworth, J.*) *SULAMAN v. EMPEROR.* 49 All. 551=

25 A. L. J. 379=8 L. R. A. Cr. 51=

100 I. C. 1055=28 Cr. L. J. 399=

7 A. I. Cr. R. 343=A. I. R. 1927 All. 475.

—Magistrate empowered under S. 30 trying a case which he is not competent to try—Sessions Judge finding it, should report.

A Magistrate empowered under S. 30 is not legally competent to try either the offence of murder or the offence of culpable homicide not amounting to murder punishable under the first part of S. 304, I. P. C., and therefore where a Sessions Judge is of opinion that a Magistrate so empowered has in fact tried a case which he is not competent to try, he should send the case to the High Court for an order that the accused be committed for trial to the Court of Session on a charge which he was not competent to try. 1 P. R. 1893 Cr. (F. B.), Foll. (*Campbell, J.*) *EMPEROR v. SHAMIRA.* 95 I. C. 766=27 Cr. L. J. 846=

A. I. R. 1926 Lah. 575.

—When the Sessions Court does not really dissent from the actual decision arrived at, a reference merely with the object of obtaining a ruling on a question of law ought not to be made. (*Piggot, J.*) *EMPEROR v. MADHO SINGH.* 86 I. C. 801=23 A. L. J. 189=

26 Cr. L. J. 865=47 All. 409=

A. I. R. 1925 All. 318.

—A reference can only be made in criminal matters to the High Court in respect of an error on a point of law. (*Sanderson, C. J. and Chotzner, J.*) *EMPEROR v. ASIMULLA MONDAL.* 85 I. C. 939=

26 Cr. L. J. 651=A. I. R. 1925 Cal. 1068.

**—S. 438—Report—Scope.**

—A reference asking to confirm a part of the order under S. 145 and quash the rest is not in proper form.

**CR. P. CODE (1898), S. 438—Report—Scope.**

(*Chotner and Duval, J.J.*) COLLECTOR OF HOWRAH v. SANTAK DAS. 99 I. C. 1010 = 44 C. L. J. 593 = 28 Cr. L. J. 210 = 7 A. I. Cr. R. 383 =

A. I. R. 1927 Cal. 261.

—A District Magistrate is not empowered to make a reference to the High Court questioning the propriety of a judgment by a Sessions Judge. 41 Bom. 47 and 23 Cal. 250, Foll. (*Shadi Lal, C. J.*) *EMPEROR v. ISHAR SINGH*. 26 P. L. R. 801 = 27 Cr. L. J. 430 =

93 I. C. 158 = A. I. R. 1927 Lah. 85.

**—S. 438—Review.**

—Section 423 (1) (d) does not permit a Sessions Judge to review a wrong order by his predecessor, the only proper course for him, in such case being to refer the case to the High Court. (*Mirza and Paikar, J.J.*) *EMPEROR v. LAKSHMAN RAMSHET ALWE*. 121 I. C. 588 = 31 Cr. L. J. 309 =

31 Bom. L. R. 593 = 53 Bom. 578 = 1929 Cr. C. 130 = A. I. R. 1929 Bom. 309.

**—S. 438—Revision.**

—Where the District Magistrate is moved against any order of a Magistrate under S. 182 and the contention is that a Court altogether outside the district has jurisdiction to try the case, the District Magistrate deals with the matter only in his revisional powers. (*Mukerji and Jack, J.J.*) *KASIM ALI (MOLLA) v. MAHAMMAD TAFAZZAL HOSSAIN*. 115 I. C. 95 =

49 C. L. J. 62 = 30 Cr. L. J. 401 =

12 A. I. Cr. R. 373 = A. I. R. 1929 Cal. 204.

—A reference under S. 438 should not ordinarily be entertained where the object is to set aside an order of acquittal passed by a lower Court. (*Abdul Raof and Harrison, J.J.*) *EMPEROR THROUGH DADDA v. ACHHAR SINGH*. 81 I. C. 547 = 5 Lah. 16 =

25 Cr. L. J. 931 = A. I. R. 1924 Lah. 451.

—Application direct to High Court is not in order —But if rule is granted it will be disposed of.

Ordinarily an application for revision by a person, whose appeal has been disposed of by a first Class Magistrate empowered to dispose of appeals from the decisions of 2nd and 3rd class Magistrates under S. 407 (2), to the High Court, without going to the Sessions Judge and asking him to make a reference to High Court is not in order. 36 Cal. 643 and 48 Cal. 534, Ref. But where the rule had already been granted and application heard, the High Court disposed of the rule on merits. (*C. C. Ghose and Chotner, J.J.*) *ABDUL MALAB v. NANDA LAL KHATEL*. 77 I. C. 990 =

50 Cal. 423 = 25 Cr. L. J. 526 =

A. I. R. 1923 Cal. 674.

**—S. 438—Revision—Grounds.**

—Case referred—Interference by High Court in revision.

There must be some substantial error of law to justify the Court, exercising its exceptional powers of revision. That the evidence before the lower Court has not been properly appreciated is no ground for interference in revision. (*Wallace, J.*) *MD. ABDUL RAHMAN, In re*. 38 M.L.T. 15 = 28 Cr. L. J. 207 =

99 I. C. 943 = A. I. R. 1927 Mad. 434.

**—S. 438—Scope.**

—Although it is unusual for a judge to make a reference regarding the legality of his own order, yet there is nothing in S. 438 to preclude him from doing so. The words "or otherwise" are wide enough to cover such a reference. (*King, J.*) *EMPEROR v. RADHA RAMAN MITTRA*. 1930 A.L.J. 1076 =

1930 Cr. C. 1201 = A. I. R. 1930 All. 817.

—Section 438 must be read with S. 435. (*Kincaid, J.C. and Barlee, A.J.C.*) *EMPEROR v. KHUDA BUX*. 98 I. C. 101 = 27 Cr. L. J. 1253 =

**CR. P. CODE (1898), S. 439—Acquittal—Interference.**

21 S.L.R. 48 = A. I. R. 1927 Sind 45.

—S. 439. See also CR. P. CODE, S. 537.

**Acquittal.****Appealable cases.****Competency of revision.****Compounding of offences.****Conviction.****Defective judgment.****Discharge.****Enhancement of sentence.****Evidence.****Exercise of discretion.****Expunging remarks.****Findings of facts.****Grounds for.****Interlocutory order.****Interpretation.****Jurisdiction.****Juvenile offenders.****Limitation.****New plea.****Notice.****Pending proceedings.****Powers of High Court.****Private complaint.****Proceedings under S. 144.****Proceedings under S. 145.****Proceedings under S. 195.****Quashing the proceedings.****Question of law.****Reduction of sentence.****Re-trial.****Revision.****Stay of proceedings.****Wrong procedure.****Miscellaneous.****—S. 439—Acquittal—Appeal.**

—Where an accused being charged under S. 302 is convicted under S. 302/109 his conviction under S. 302/109 can be regarded as an acquittal on the charge under S. 302 and an appeal from such acquittal is competent. A.I.R. 1928 P.C. 254, Rel. on. (*Broadway and Tapp, J.J.*) *EMPEROR v. SADA SINGH*. 12 Lah. L. J. 33 = 1930 Cr. C. 386 = 127 I. C. 855 =

A. I. R. 1930 Lah. 338.

—Order of a magistrate allowing a complainant to withdraw a case under S. 161, amounts to an acquittal and can be appealed against by the Local Government. It cannot therefore be interfered with in revision. (*Shadi Lal, C.J.*) *HASSU v. ISHAR SINGH*. 29 Cr. L. J. 672 = 110 I. C. 224 =

A. I. R. 1928 Lah. 843.

**—S. 439—Acquittal—Interference.**

—Misappreciation of evidence can afford no ground for setting aside an order of acquittal. (*Subbendar, A.J.C.*) *SAKHARAM v. MUJAHID-UD-DIN*. 121 I. C. 51 = 31 Cr. L. J. 194.

**—Private prosecutions.**

In private prosecutions where the Crown does not think it proper to move against the order of acquittal the High Court should not ordinarily interfere and it does so only when it is satisfied that there has been an error of law committed by the acquitting Court or where there has been a gross miscarriage of justice or in public interest. (*Suhrawardy and Graham, J.J.*) *BASIRULLA v. ASADULLA*. 33 C.W.N. 576 =

30 Cr. L. J. 1013 = 119 I. C. 130 =

1929 Cr. C. 357 = A. I. R. 1929 Cal. 639.

—Acquittal based on erroneous view of law—No revision lies. A.I.R. 1927 Nag. 170, Expl. and Foll.:

**CR. P. CODE (1898), S. 439—Acquittal—Interference.**

6 C.P.L.R. 15, (Cr.) Rel. on; 5 N.L.R. 4, Foll. (*Mohuddin, A.J.C.*) RAMACHANDRA v. CHANTHAMAL.

11 N.L.J. 242=115 I.C. 169=30 Cr. L. J. 405=12 A. I. Cr. R. 297=A. I. R. 1929 Nag. 87.

—A Court of revision does not ordinarily interfere with an order of acquittal though it be wrong. (*Shadi Lal, C.J.*) BABUMAL v. GHASI, 29 Cr. L. J. 34=106 I.C. 450=9 A.I. Cr. R. 321=A. I. R. 1928 Lah. 185.

—High Court will not interfere in revision against acquittal for which a special procedure has been provided by the Cr. P. Code; the proper course for the complainant is to approach the Government to appeal in regular form against the acquittal. (*Mullick, J.*) CHAIRMAN, PURULIA MUNICIPALITY, v. BISHUN SAO, 29 Cr. L. J. 1017=112 I. C. 345=11 A.I. Cr. R. 270=A. I. R. 1928 Pat. 193.

—The proper course for a complainant who is aggrieved by an order of acquittal by a Magistrate is to move the District Magistrate to initiate an appeal by Government under S. 417. The High Court will not interfere, by way of revision, with the order although it involves irregularities of procedure. A.I.R. 1922 Sind 22, Rel. on. (*Wild, J.C. and Aston A.J.C.*) EMPEROR v. DITO, 114 I.C. 110=30 Cr. L. J. 251=12 A. I. Cr. R. 200=A. I. R. 1928 Sind 176.

—Revision will not lie unless there is an error of law on the face of the record. An acquittal under S. 247 stands on the same footing as an acquittal ordered in any other circumstances, as for instance under S. 258 and upon an application in revision an acquittal should very rarely be set aside. High Court will not interfere in revision when there is no error of law on the face of the record, 38 Mad. 1028 and 51 M.L.J. 730; A.I.R. 1926 Mad. 1009, Foll. (*Curgewen, J.*) LAKSHMINARASINHAM v. NALLURI BAPANNA, 100 I. C. 238=7 A. I. Cr. R. 414=28 Cr. L. J. 270=1927 M.W.N. 274=38 M.L.T. 203=A. I. R. 1927 Mad. 473=52 M. L. J. 173.

—High Court will not ordinarily interfere with applications in revision against acquittal in view of the fact that the Legislature has provided a special channel for appeals against acquittal being filed. (*Findlay, J.C.*) DAMDOO v. HARBA, 101 I.C. 895=28 Cr. L. J. 511=8 A.I. Cr. R. 175=A.I.R. 1927 Nag. 210.

—Circumstances justifying irregular—Remand will be ordered only when trial has been incurably irregular.

High Court will not go into evidence as a rule in revision; it will ordinarily confine its interference to cases of exceptional circumstances, or where there is error of law, nor will it interfere with the acquittal unless the trial has been illegal or so radically and incurably irregular as in fact to have occasioned a failure of justice. A retrial should only be ordered in cases of acquittal in which the Court has been radically and incurably defective. (*Kinkhede, A.J.C.*) SHERKHAN v. ANWARKHAN, 23 N.L.R. 40=102 I. C. 219=28 Cr. L. J. 523=A.I.R. 1927 Nag. 170.

—The High Court no doubt has jurisdiction under S. 439 to entertain an application in revision of an order of acquittal when the Crown has preferred no appeal. But the Court would not move in such a case unless there was glaring defect either in the procedure or in the view of the evidence taken by the Court below. (*Wazir Hasan and Pullan, J.J.*) KAMIKHA PERSHAD v. EMPEROR, 4 O.W.N. 729=

**CR. P. CODE (1898), S. 439—Acquittal—Interference.**

104 I.C. 228=28 Cr. L. J. 788=A.I.R. 1927 Oudh 345.

—The High Court will not interfere in revision with orders of acquittal unless there are very special circumstances calling for interference. 10 P.R. 1900 and A.I.R. 1924 Lah. 451, Foll. (*Broadway, J.*) MEHR NUR MAHOMMAD v. NUR MAHOMMAD, 90 I. C. 668=7 L. L. J. 367=26 P. L. R. 644=26 Cr. L. J. 1596=A. I. R. 1925 Lah. 490.

—High Court will interfere where referring Court does not want to change acquittal into conviction but to point out erroneous view of law taken by lower Court—Accused acquitted under I. P. C., S. 147 by order under Cr. P. Code, S. 345—High Court should interfere. (*Campbell, J.*) EMPEROR v. JARMALL, 86 I. C. 62=26 Cr. L. J. 686=26 P. L. R. 35=A. I. R. 1925 Lah. 464.

—Powers of High Court.

The High Court has power to interfere with orders of acquittal but it will interfere only where exercise of the jurisdiction is urgently demanded in the interests of public justice. An order of acquittal was allowed to stand, where the dispute was essentially one of civil nature, both accused and complainant claiming ownership of the property in respect of which the crime was alleged to have been committed. (*Venkata Subba Rao, J.*) MD. MUSTAFA ROWTHER v. SHANMUGA THEVAN, 83 I. C. 349=25 Cr. L. J. 1389=A. I. R. 1925 Mad. 375.

—Acquittal can be revised, but only in exceptional cases—Grave error of procedure justifies revision but improper admission of evidence not essential to the result, does not.

The final report in the diary of an investigating officer not called as a witness for the prosecution might be used to suggest means of further elucidating a point which needs clearing up, but only for elucidating by legal evidence. But using the final report for the purpose of evidence is a legal error. Such error cannot, however, justify interference by the High Court, for setting aside an acquittal. An error of procedure of a grave character would justify interference by the High Court but not a mere error of improper admission of evidence which was not essential to a result which might have been come to independently of it. 44 Cal. 876, Foll. (*Macpherson, J.*) GANGA SINGH v. RAMBHAI SINGH, 82 I. C. 274=25 Cr. L. J. 1266=A. I. R. 1925 Pat. 165.

—Ordinarily the High Court will not interfere in revision against an order of acquittal. (*Boys, J.*) HARBANS v. EMPEROR, 83 I. C. 658=22 A. L. J. 820=5 L. E. A. Cr. 143=26 Cr. L. J. 98=A. I. R. 1924 All. 778.

—When no prejudice is caused, High Court will be very reluctant to interfere with the acquittal of persons who have undergone a trial in a court of competent jurisdiction or with the order of such a competent Court under S. 250. (*Datal, J.*) DEBI PRASAD v. EMPEROR, 5 L. R. A. Cr. 93=A. I. R. 1924 All. 674.

—Where first Class Magistrate convicted under S. 326, Indian Penal Code, and on appeal, the Sessions Judge altered the conviction to one of voluntarily causing simple hurt to the complainant and reduced the sentence to six months' rigorous imprisonment.

Held, it must be taken that the accused were acquitted under S. 326 and that under the powers given to the Court under S. 439 a finding of acquittal cannot be converted to one of conviction. (*Macleod, C. J. and Shah, J.*) KING EMPEROR v. SHIVAPUTRAYA DURDUN,

**CR. P. CODE (1898), S. 439—Acquittal—Interference.**

DAYA. 48 Bom. 510=26 Bom. L. R. 438=26 Cr. L. J. 830=86 I. C. 478=A. I. R. 1924 Bom. 456.

—Order of acquittal on compromise in a non-compoundable offence—Revision lies.

As a rule an interference is not made in revision with an order of acquittal on the application of a private party except where such interference is imperatively demanded in the interests of public justice or where the procedure adopted is so irregular or illegal as to vitiate the whole trial. Where there was a patent error or irregularity in the order passed by the trying Magistrate in that the offence of which the accused was charged and acquitted on a compromise being filed, was not compoundable.

Held, that the Magistrate could not have passed an order of acquittal without considering the case on the merits and the High Court would interfere in revision. (*Kanhaiyalal, J.C.*) DR. ZAHIR UDDIN v. NASIR UDDIN. 71 I. C. 602=24 Cr. L. J. 186=A. I. R. 1924 Oudh 171.

—Where no appeal is made, Court ordinarily does not set aside acquittal. (*Pratt, J.*) EMPEROR v. NGA AUNG GYAW. 76 I. C. 830=1 Rang. 604=2 Bur. L. J. 224=25 Cr. L. J. 270=A. I. R. 1924 Rang. 98.

—Cheating—High Court will not interfere with order of acquittal.

A sold a land to B without disclosing a prior incumbrance. The sale deed contained a clause that the property was unencumbered. Subsequently the incumbrancer sued on his mortgage and got a decree under which B had to pay the mortgage money with interest to save the property from sale. B filed a complaint against A under Penal Code, S. 417 but A was acquitted.

Held, that the question is not of any public interest and the parties had a remedy in Civil Courts and therefore no interference with the order of acquittal is necessary. (*Lumsden, J.*) GANGA SINGH v. RAMZAN. 84 I. C. 641=6 L. L. J. 50=26 Cr. L. J. 337=A. I. R. 1923 Lah. 601.

**—S. 439—Acquittal—Private party.**

—A finding of acquittal cannot be changed into one of conviction except through medium of an appeal by the local Government. A revision by the complainant for the purpose does not lie. A.I.R. 1928 P. C. 254; A.I.R. 1922 All. 487 and A.I.R. 1924 Bom. 456, Foll. (*Kinkhede, A.J.C.*) CHHATTAR SINGH v. RAMDAYAL. 116 I. C. 79=12 A. I. Cr. R. 353=30 Cr. L. J. 552 (Nag.).

—Although High Court has jurisdiction under S. 439 to set aside the order of acquittal, it has become a settled practice that it will not ordinarily interfere, in revision at the instance of a private prosecutor. 27 All. 359; A.I.R. 1922 All. 487; A. I. R. 1921 All. 76, Rel. on. (*Kinkhede, A.J.C.*) SHER KHAN v. ANWAR KHAN. 23 N. L. B. 40=102 I. C. 219=28 Cr. L. J. 523=A. I. R. 1927 Nag. 170.

—Applications by private parties to revise orders of acquittal ought to be discouraged unless interference is urgently demanded in the interest of public justice. Where the purpose of a revision application is simply to serve personal ends and not to secure administration of justice, it should not be entertained. 42 Cal. 612; 39 Mad. 505; 5 N.L.R. 4 and 19 A. L. J. 382, Rel. on. (*Wadegaonkar, A.J.C.*) DAMODAR v. JUJHAR SINGH. 26 Cr. L. J. 1348=23 N. L. R. 99=89 I. C. 388=A. I. R. 1926 Nag. 115.

—Although the High Court has power to revise orders of acquittal, it is only in rare and most excep-

**CR. P. CODE (1898), S. 439—Acquittal—Setting aside.**

tional cases that acquittals are set aside in revision on the application of private persons. Where the Magistrate took one view of the oral evidence and the Sessions Judge took the opposite view, and there was no legal point or question of jurisdiction involved,

Held, that there was no ground for interference. (*Baguley, J.*) KHEM CHAND v. LALU.

85 I. C. 255=3 Bur. L. J. 323=26 Cr. L. J. 511=A. I. R. 1925 Rang. 193.

Per *MacLeod, C. J.*—If in a case tried by a Sessions Judge sitting with assessors, the Government do not exercise their right of asking the High Court to admit an appeal from the order of acquittal, the High Court would not be justified in interfering in revision at the instance of the complainant. 9 Bom. L.R. 156, Dist.

Per *Crump, J.*—It would be only in the most exceptional cases that the High Court would be justified in interfering under S. 439 when there is no appeal by the Local Government under S. 417. (*MacLeod, C. J. and Crump, J.*) JOITA BECHER v. PARSHOTTAM SANKALCHAND. 73 I. C. 974=25 Bom. L. R. 488=24 Cr. L. J. 734=A. I. R. 1923 Bom. 455.

**—S. 439—Acquittal—Setting aside.**

—Modes of.

An improper order of acquittal can be set aside by the High Court either on a regular appeal by the Local Government when ordinarily moved by the District Magistrate or in revision ordinarily on a reference by the Sessions Judge. Where the first alternative is not available, there can be no legal bar to the adoption of the second alternative. But the power is to be exercised in exceptional cases only where there has been either denial of the right of a fair trial or a flagrant failure of justice. A.I.R. 1924 Lah. 451; 24 All. 346; 25 All. 128; A. I. R. 1922 Mad. 502 (F. B.); and 42 Cal. 612, Ref.; A.I.R. 1928 Lah. 844, Rel. on. (*Tek Chand, J.*) NATHU MAL v. ABDUL HAQ. 123 I. C. 841=31 Cr. L. J. 584=1930 Cr. C. 167=12 L. L. J. 5=A. I. R. 1930 Lah. 159.

—Interference with acquittals where injustice is caused.

High Court has jurisdiction to interfere with acquittals in revision, though this is not encouraged where serious injustice has been caused by an error of law. Where the accused were acquitted on account of wrong appreciation of a point of law with the result that an assault on an officer of Court, while on duty, had been allowed to go unpunished, the acquittal was set aside. (*Addison, J.*) EMPEROR v. DATA RAM.

10 A. I. Cr. R. 228=109 I. C. 362=29 Cr. L. J. 538=A. I. R. 1928 Lah. 844.

—Court of Sessions entertaining appeal without jurisdiction—High Court would interfere.

Where an accused having pleaded guilty was convicted on the charge under S. 19 (c) of the Arms Act, by the 1st Class Magistrate and the Sessions Court acquitted him,

Held, that as, under S. 412, Cr. P. Code, no appeal lay from the conviction, and the order of acquittal made by the Court of Session was made without jurisdiction and must be set aside, (*Mya Bu, J.*) EMPEROR v. NGA LU GALE. 5 Rang 710=106 I. C. 707=29 Cr. L. J. 115=A. I. R. 1928 Rang 49.

—Acquittal should be set aside in exceptional cases. (*Sulaiman, J.*) PANCHANAN BANERJI v. UPENDRA NATH. 49 All. 254=25 A. L. J. 100=8 L. B. Cr. 5=27 Cr. L. J. 1407=7 A. I. Cr. R. 35=98 I. C. 719=



**CR. P. CODE (1898), S. 439—Acquittal—Setting aside.**

A. I. R. 1927 All. 193.

—*Acquittal under S. 247, Cr. P. Code.*

High Court will not ordinarily interfere in revision in the case of an acquittal, since the Local Government can appeal, but this rule does not properly apply to an acquittal under S. 247, Cr. P. Code, and in any case the rule will not prevent interference by this Court when the acquittal is the result of an improper clutching at jurisdiction. (*Ashworth, A.J.C.*) RAM NIDH V. RAM SARAN. 26 O. C. 282=81 I. C. 314=25 Cr. L. J. 794=A. I. R. 1924 Oudh 64.

—**S. 439—Acquittal—Miscellaneous.**

Where from the facts proved it was difficult to say what was the offence committed by the accused,

*Held*, that the alteration of one section into another by the Sessions Judge could not be said to be a case of acquittal under the original section, within the meaning of cl. 4. (*Krishnan, J.*) DORAISWAMY AIYAR, *In re*. 86 I. C. 339=26 Cr. L. J. 755=48 Mad. 774=21 M.L.W. 174=1925 M.W.N. 118=A. I. R. 1925 Mad. 480=48 M. L. J. 190.

Circumstances of assault not truly disclosed by complainant—Acquittal proper. (*Adam and Buckmill J.J.*) ANANT SINGH V. HARI CHARAN. 85 I.C. 356=2 Pat. L.R. Cr. 250=26 Cr. L.J. 516=A. I. R. 1925 Pat. 321.

—**S. 439—Appealable cases.**

Complaint under S. 476—Since an appeal to superior Court lies, there is no revision to High Court. (*Wort, J.*) ABDUL KARIM V. EMPEROR.

10 P. L. T. 161=117 I. C. 309=30 Cr. L. J. 765=1929 Cr. C. 369=A. I. R. 1929 Pat. 640.

Complainant ordered to pay compensation exceeding Rs. 50 under S. 250, has right of appeal and so no revision lies. (*Barlee, J.C. and Astor, A.J.C.*) SHAFI MAHOMED V. KAMRUDDIN. 1929 Cr. C. 452=118 I. C. 215=30 Cr. L. J. 905=A. I. R. 1929 Sind 176.

A person aggrieved by an adverse order of a Magistrate failed to appeal against it, though an appeal lay. No revision will be allowed. (*Curguen, J.*) SUBRAMANIA AYYAR V. EMPEROR.

1928 M. W. N. 777=28 M. L. W. 785=30 Cr. L. J. 133=12 A. I. Cr. R. 62=1 M. Cr. C. 282=113 I. C. 325=A. I. R. 1928 Mad. 1174=55 M. L. J. 676.

Order of lower appellate Court, directing complaint under S. 476 on appeal from trial Court's refusal to make a complaint, is not appealable—It may be revised. A.I.R. 1926 Pat. 25, Diss. from; A.I.R. 1924 Bom. 347 and A.I.R. 1925 Lah. 322, Foll. (*Maug Ha, J.*) MA ON KHIN V. N. K. M. FIRM. 105 I.C. 457=5 Rang. 523=28 Cr. L. J. 937=A. I. R. 1927 Rang. 313.

Interference in revision with appellate orders refusing to withdraw complaint under S. 476-B is ordinarily not desirable: A. I. R. 1926 Lah. 305, Foll. (*Campbell, J.*) KALOO MAL V. EMPEROR.

96 I. C. 867=27 Cr. L. J. 1011 (Lah.).

—*Appeal cannot be treated as revision.*

Under the Cr. P. Code no applications for revision lie in cases in which an appeal lies and therefore it is impossible for an appeal filed beyond limitation to be treated as an application for revision as far as criminal procedure goes. (*Kennedy, J. C. and Tyabji, A.J.C.*) GERIMAL V. SHEWARAM. 20 S. L. R. 90=27 Cr. L. J. 780=95 I. C. 316=A. I. R. 1926 Sind 215.

Revision is excluded by competency of appeal—High Court cannot interfere *suo motu*. (*Kincaid, J. C.*

**CR. P. CODE (1898), S. 439—Competency of Revision.**and *Kennedy, A. J. C.*) NURAN V. EMPEROR.

82 I. C. 754=18 S. L. R. 262=25 Cr. L. J. 1362=A. I. R. 1925 Sind 206.

Order of acquittal—District Magistrate should first move local Government to prefer appeal. 18 P. W. R. 1915, Dist. (*Lumsden, J.*) GANGA SINGH V. RAMZAN. 84 I. C. 641=6 L. L. J. 50=26 Cr. L. J. 337=A. I. R. 1923 Lah. 601.

—**S. 439—Competency of Revision.**

Revision against order under Ss. 476, 476-A and 476-B, by civil Court does not lie.

Revision application against order passed under Ss. 476, 476-A and 476-B, Cr. P. C. by civil Court does not lie under S. 439 of the Code, as it is not a matter connected with any proceedings before any inferior criminal Court within the meaning of S. 435 of the same Code. In such matters the High Court can only interfere under S. 115, C. P. Code, or S. 107, Government of India Act, and the order can therefore only be challenged for wrong, illegal or irregular exercise of jurisdiction. 40 Cal. 477, Rel. on. (*Suhrawardy and Costello, J.J.*) PURNA CHANDRA DUITA V. SHEIKH DHALU. 34 C. W. N. 914=52 C. L. J. 87=1930 Cr. C. 1129=A. I. R. 1930 Cal. 721.

Every illegality does not call for interference by appellate or revisional court. (*Wild, J. C. and Rupchand, A.J.C.*) RAJABALI HUSSANALI V. EMPEROR. A. I. R. 1930 Sind 315=1930 Cr. C. 1147.

Order of Magistrate under Railways Act, S.113 (4).

Order of a Magistrate under S. 113 (4), Railways Act is merely an administrative or a ministerial order and the proceedings before him are not criminal proceeding in a criminal Court within the scope of the Criminal Procedure Code and is not subject to revision under S. 439. A. I. R. 1926 Sind 57; A. I. R. 1927 Sind 23, Foll. (*Percival, J. C. and Haveliwala, A. J. C.*) SECRETARY OF STATE V. GOBINDRAM JAICHANDRAI. 24 S. L. R. 389=126 I. C. 58=31 Cr. L. J. 952=1930 Cr. C. 646=A. I. R. 1930 Sind 162.

Party, who was in contempt of Court, was not heard in revision. (*Suhrawardy and Panton, J.J.*) KHAIRAT ALI V. WAHED ALI. A.I.R. 1928 Cal. 241.

The power of interference in revision is to be used only for the purpose of correcting injustice and not mere illegality. (*Halifax, A.J.C.*) NARASINGHDAS MARWARI V. EMPEROR. 9 A. I. Cr. R. 282=29 Cr. L. J. 86=106 I.C. 678=A.I.R.1928 Nag. 113.

—**Second revision.**

Fresh application for revision on the same grounds is not maintainable. A. I. R. 1922 All. 502, Dist. (*Ashworth, J.*) SRIPAT NARAIN SINGH V. GAHBAR RAI. 25 A. L. J. 1010=8 A. I. Cr. R. 337=8 L.R. A. Cr. 135=A.I.R. 1927 All. 724.

Order under S. 476 by Civil Court—No revision lies. A.I.R. 1926 All. 229, Foll. (*Daniels, J.*) KING-EMPEROR V. RAM NARAIN. 7 L.R. A. Cr. 130=27 Cr. L.J. 1021=96 I. C. 877=A. I. R. 1926 All. 577.

Execution of order directing maintenance to be charged on joint estate which was not appealed against cannot be revised. (*Fawcett and Madgavkar, J.J.*) SHIVLINGAPPA V. GURLINGAVA. 49 Bom. 906=27 Bom. L.R. 1363=27 Cr. L. J. 652=94 I.C. 604=A. I. R. 1926 Bom. 103.

Sessions Judge summarily dismissing revision application—Revision does not lie. (*Pullan, A. J. C.*) SUKHPAT LAL V. EMPEROR. 26 Cr. L. J. 1452=

**CR. P. CODE (1898), S. 439—Competency of Revision.**

89 I.C. 972 = A.I.R. 1926 Oudh 63.

**—Limitation.**

The only limitation to the exercise of the right to apply for revision is that, under sub-S. (4) to S. 435 applications for revision cannot be made both to the Sessions Judge and to the District Magistrate. Also a petitioner would in practice be required to state all his grounds for revision in a single petition. With these exceptions there is nothing in the Code to make the disposal of one criminal revision case a bar to the disposal of another arising out of the same original trial. It is only when there has been an actual adjudication upon a particular point, such as the jurisdiction of the lower Court to try the accused or the adequacy of the sentence, that the High Court will not review its own decision. Hence, where an accused's revision petition from his conviction has been dismissed, the complainant can apply for enhancing sentence.

Per *Wallace, J.*—No Court can reasonably accept the principle that once it has passed any sort of order in criminal revision, it is precluded from entertaining any further revision petition or reference in the same case, or even from proceeding *suo motu*. When a Court has refused to allow as adequate certain reasons put forward by a party for interference in revision, it cannot be said to have thereby endorsed the correctness, legality and propriety of the finding, sentence or order under revision beyond all further possibility of question. The Court would no doubt refuse to listen to a fresh revision petition put in by a party who had already put in a revision petition and obtained orders thereon, on the salutary principle that a party must put forward all his grounds of attack at once. (*Spencer and Wallace, J.J.*) ANIF SAHIB, *In re*. 85 I. C. 727 = 26 Cr. L. J. 583 = A. I. R. 1925 Mad. 993.

**—No revision as regards question of a place being a public place.**

The High Court will not interfere in revision except in very rare cases of an extreme nature. When the question involved is as to whether a place is or is not a public place, such question is a question of fact for decision on evidence in each particular case. (*Kinkhede, A. J. C.*) SABIMIYA v. EMPEROR. 81 I. C. 897 = 25 Cr. L. J. 1073 = A. I. R. 1925 Nag. 123.

—No revision lies from an order under S. 476, Cr. P. Code. 4 L. B. R. 339 and 40 C. 477, (F. B.), *Foll. (Duckworth, J.)* VALAB DAS v. MAUNG BA THAN.

85 I.C. 362 = 1 Bang. 372 = 2 Bur. L. J. 154 = 26 Cr. L. J. 523 = A. I. R. 1924 Rang. 54.

**—S. 439—Compounding of offences.**

—High Court has got power under S. 439 to grant the permission necessary for compounding offences under S. 345 (2). (*Subhedar, A. J. C.*) EMPEROR v. BHAIYALAL. 118 I. C. 681 = 30 Cr. L. J. 960 = 1929 Cr. C. 454 = A. I. R. 1929 Nag. 278.

—Magistrate wrongly refusing to compound under S. 345 (2)—High Court can interfere and allow composition. (*Ross, J.*) SINGESHWAR PRASAD v. ALI HASAN. 124 I. C. 95 = 11 P. L. T. 492 = 31 Cr. L. J. 607 = 1929 Cr. C. 272 = A. I. R. 1929 Pat. 512.

**—S. 439—Conviction—Alteration.**

—Conviction under S. 326, Penal Code, though charge framed under S. 302—Conviction cannot be altered in revision to one for murder—But punishment may be enhanced. A. I. R. 1928 P. C. 254, *Rel. on. (Fforde and Skemp, J.J.)* EMPEROR v. GAJJU. 115 I. C. 854 = 30 Cr. L. J. 552 = 1929 Cr. C. 182 = 12 A. I. Cr. R. 410 = A. I. R. 1929 Lah. 615.

—High Court in revision can re-alter it.

**CR. P. CODE (1898), S. 439—Conviction—To show cause against.**

Where the Sessions Judge altered the conviction from Ss. 205/109 to one under S. 419, I. P. C.,

*Held*, that Cl. (4) of S. 439 does not prevent the High Court from re-altering the conviction from one under S. 419 to one under Ss. 205/109, Penal Code. (*Ross and Kulwant Sahay, J.J.*) GANAPAT LAL v. KING-EMPEROR. 102 I. C. 337 = 28 Cr. L. J. 529 = 8 A. I. Cr. R. 117 = A. I. R. 1927 Pat. 199.

**—S. 439—Conviction—Meaning of.**

—Conviction may mean the verdict of the jury or the sentence of the Court. What the term as used in S. 439 (6) means in a particular case, depends on the particular facts of the case. (*Buckland, Mukerji and Graham, J.J.*) SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS, BENGAL v. JNANENDRA NATH GHOSE. 119 I. C. 301 = 56 Cal. 1145 = 49 C. L. J. 432 = 33 C. W. N. 599 = 30 Cr. L. J. 1038 = 1929 Cr. C. 395 = A. I. R. 1929 Cal. 747.

**—S. 439—Conviction—Revision.**

—Two members of the Bar Association were convicted under S. 117, Penal Code, read with S. 9, Salt Act (1882), by First Class Magistrate. The Bar Association authorized the President to file revision application to the High Court invoking its powers under S. 439 on the ground that the conviction was illegal.

*Held*, that the proceedings by way of revision before the High Court were not intended by party who could have appealed but had not appealed and therefore Cl. 5 was inapplicable. (*Wazir Hasan, C. J. and Pullan, J.*) MOHANLAL SAKSENA v. EMPEROR. 1930 Cr. C. 1161 = A. I. R. 1930 Oudh 497.

**—S. 439—Conviction—Rights of accused.**

—Accused person can show cause against conviction also. (*Agha Haidar, J.*) KALA v. EMPEROR. 116 I. C. 883 = 30 P. L. B. 437 = 30 Cr. L. J. 699 = 1929 Cr. C. 150 = 13 A. I. Cr. R. 97 = A. I. R. 1929 Lah. 584.

—Appeal against conviction dismissed—When showing cause against enhancement of sentence, accused cannot show cause against conviction on same grounds. A. I. R. 1927 Sind 39 and A. I. R. 1926 Bom. 555, *Foll. (Aston and DeSouza, A. J. C.s.)* EMPEROR v. SHIDOO. 22 S. L. B. 453 = 111 I. C. 856 = 29 Cr. L. J. 936 = A. I. R. 1929 Sind 26.

—An accused to whom an opportunity has been given of showing cause why his sentence should not be enhanced is entitled, on appearing, to show that the trial was contrary to law and thus illegal, though the question was not raised at the trial, (*Fawcett and Coyajee, J.J.*) EMPEROR v. MAHANT K. MEHTA. 49 Bom. 892 = 27 Bom. L. B. 1343 = 27 Cr. L. J. 305 = 92 I. C. 689 = A. I. R. 1926 Bom. 110.

**—S. 439—Conviction—Setting aside.**

—Cattle Trespass Act (I of 1871)—Conviction not justified under law and fine arbitrary—Conviction can be set aside. (*Pullan, J.*) EMPEROR v. MADHO. 7 O. W. N. 461 = 1930 Cr. C. 570 = 126 I. C. 497 = 31 Cr. L. J. 1015 = A. I. R. 1930 Oudh 250.

—Joint conviction of accused—Some only appealing—Conviction of all can be set aside. (*Macpherson, J.*) TULSI MAHTON v. EMPEROR. 29 Cr. L. J. 259 = 107 I. C. 529 = 9 A. I. Cr. R. 543 = A. I. R. 1928 Pat. 249.

**—S. 439—Conviction—To show cause against.**

—Plea of guilty—Conviction—Accused cannot show cause against conviction.

In a case where a person was convicted on a plea of guilty and where punishment was sought to be en-

**CR. P. CODE (1898), S. 439—Conviction—To show cause against.**

hanced,

*Held*, (per *Mukerji, J.*)—The plea of "guilty" is a plea to the charge and does not necessarily amount to a confession of all the facts alleged. The Court is not bound to, but it may convict the accused on his plea: *vide*, S. 271 (2), Cr. P. Code. The plea operates as a bar in certain cases, to the preferring of an appeal except as to the extent and legality of the sentence: *vide* S. 412, Cr. P. Code. A plea of guilty will perhaps also stand in the accused's way in the matter of a revision which he may seek for. But when called upon to show cause why his sentence should not be enhanced, the accused has the right to show cause against his conviction. S. 439 (6), Cr. P. Code, does not make any exception as regards the case of a person who has been convicted on his own plea. Uncross-examined testimony of the prosecution witnesses given in the Court of the Committing Magistrate can hardly be taken to suffice for the purpose of enhancing punishment.

Per *Graham, J.*—The only circumstance in which it would be open to an accused to go behind the plea and re-open the matter of his conviction would be where he could show that there was some mistake in recording the plea, and that he did not in fact plead "guilty". In view of S. 412 it cannot be held that an accused who has pleaded guilty is entitled under sub-S. (6), S. 439 to "show cause against his conviction." Those words are applicable only where the accused has been convicted on the evidence, and in that case and that case only he is entitled to show that the conviction is wrong either upon the facts or through some error of law.

Per *Buckland, J.*—The accused cannot go behind his plea of "guilty" as a confession of the facts charged, nor is he entitled to withdraw his plea. (*Buckland, J.* on difference between *Mukerji* and *Graham, J.J.*) Supt. and Remembrancer of Legal Affairs v. JANENDRA NATH. 49 C. L. J. 432=

33 C.W.N. 599=56 Cal. 1145=30 Cr. L. J. 1038=

119 I. C. 301=1929 Cr. C. 395=

A. I. R. 1929 Cal. 747.

—*Revision petition against conviction—Dismissal by High Court Judge—Accused debarred from showing cause against conviction.*

Where a petition for revision against his conviction by a convict has been rejected by a Judge of the High Court and a notice has subsequently been issued to the convict to show cause why his sentence should not be enhanced, the convict is barred from showing cause against his conviction as provided by S. 439 (6). That the previous order dismissing the revision was passed without issuing notice to opposite party makes no difference. A. I. R. 1928 Lah. 462; A. I. R. 1925 Mad. 993; A. I. R. 1926 Bom. 555 and A. I. R. 1927 Lah. 217, Foll. (*Addison and Coldstream, J.J.*) EMPEROR v. DHANNA LAL. 117 I. C. 669=

30 P. L. R. 409=1929 Cr. C. 429=10 Lah. 241=

30 Cr. L. J. 815=A. I. R. 1929 Lah. 797.

—Appeal by accused against his conviction dismissed by one Bench—Application for enhancement pending before another Bench—Accused has no right to show cause against his conviction. A.I.R. 1925 Bom. 268, Expl. (*Fawcett and Madgavkar, J.J.*) EMPEROR v. JORABHAI. 50 Bom. 783=28 Bom. L. R. 1051=

27 Cr. L. J. 1173=97 I. C. 805=

A. I. R. 1926 Bom. 555.

—Failure in previous revision against conviction will debar accused from showing cause against conviction. (*Spencer and Wallace, J.J.*) ANIF SAHIB, *In re*. 85 I. C. 727=26 Cr. L. J. 583=

A. I. R. 1925 Mad. 993.

**CR. P. CODE (1898), S. 439—Enhancement of sentence—Jurisdiction.**

—S. 439—Conviction under wrong section.

—*Legality of.*

Where the Dy. Magistrate overlooked the fact that Act I of 1904 had been replaced by the Poisons Act of 1919 and recorded a conviction under the Act of 1904,

*Held*, that the error was not vital and did not vitiate the conviction recorded by the Deputy Magistrate. (*Dalat, A. J. C.*) KING-EMPEROR v. SARJU PRASAD. 10 O. L. J. 208=77 I. C. 192=

25 Cr. L. J. 336=A. I. R. 1924 Oudh 32.

—S. 439—Conviction—Miscellaneous.

—Where there has been a conviction and a substantial punishment, the High Court does not usually interfere in revision. (*Held, J.*) BISHAN SINGH v. ISMAIL. 6 Bur. L. J. 81=103 I. C. 837=

8 A. I. Cr. R. 441=28 Cr. L. J. 757=

A. I. R. 1927 Rang. 240.

—S. 439—Defective judgment.

—A judgment in a criminal appeal, which is vitiated by a confusion of ideas, by a wrong view of facts and by a too cursory dismissal of the defence evidence, cannot be upheld in revision. (*Wallace, J.*) NAGI REDDY v. EMPEROR. 120 I. C. 69=

30 Cr. L. J. 1160=3 M. Cr. C. 18=

1930 Cr. C. 495=A. I. R. 1930 Mad. 443.

—S. 439—Discharge.

—Before an order of discharge or acquittal can be set aside, it must be proved that it is clearly wrong. (*Fforde, J.*) BISHAN SINGH v. ABDUL GHAFUR. 9 A. I. Cr. R. 428=29 Cr. L. J. 895=

111 I. C. 575=A. I. R. 1928 Lah. 178.

—*High Court will not interfere with order of release unless on strong grounds.*

Where the trying Magistrate, before realising an accused under S. 562 on probation of good conduct, considered all relevant circumstances and the Public Prosecutor also said that an order under S. 562 would meet the ends of justice.

*Held*, that the terms of S. 562 (1) are wide and the Court of revision will refuse to set aside an order passed under that section by a Magistrate in the exercise of his discretionary jurisdiction, unless a strong case for interference is made out. 11 Cr. L. J. 389; A. I. R. 1925 Oudh 673, Rel. on. (*Shadi Lal, C. J.*) EMPEROR v. KESHO RAM. 100 I. C. 127=

28 Cr. L. J. 255=7 A. I. Cr. R. 427=

A. I. R. 1927 Lah. 353.

—When an order of discharge was challenged on the ground that S. 539 B was not complied with, but was in reality obeyed, the High Court declined to interfere. A. I. R. 1924 Cal. 1035, Dist. (*Pradeaux, A. J. C.*) EMPEROR v. JODHRAJ. 99 I. C. 852=

28 Cr. L. J. 180=A. I. R. 1927 Nag. 397.

—Case against accused doubtful—Accused discharged—Order of discharge is not foolish and perverse. (*Abdul Raof, J.*) KHAN ZAMAN KHAN v. EMPEROR. 89 I. C. 397=26 Cr. L. J. 1357=

A. I. R. 1926 Lah. 81.

—S. 439—Enhancement of sentence—Jurisdiction.

—*Acquittal under S. 302, I. P. C. and conviction under S. 323, I. P. C.—High Court can convict under S. 325, I. P. C.*

Under S. 439 of the Cr. P. Code the High Court is precluded from converting the finding of acquittal under S. 302 into one of conviction under S. 302, I. P. C., if there is no Government appeal. A. I. R. 1922 All. 487 and 19 A. L. J. 589, Foll. But the High Court is not precluded from convicting the accused under S. 325 where they have been acquitted under S. 302 and convicted under S. 323, I. P. C. (*Walsh and Dalal, J.J.*)

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DULLI v. MANGLI. 94 I. C. 132=24 A. L. J. 414=27 Cr. L. J. 564=7 L. R. A. Cr. 153=7 L. R. A. Cr. 100=A. I. R. 1926 All. 332.

—Appeal by convict and revision by High Court—Conviction for murder in place of conviction for lesser offence is justified. (*May Oung and Duckworth, J.J.*) OU SHWE *alias* KALAN v. EMPEROR.

76 I. C. 711=1 Rang. 436=25 Cr. L. J. 247=A. I. R. 1924 Rang. 93.

**—S. 439—Enhancement of sentence—Meaning of.**

—Enhancement of punishment means that the sentence originally passed is to be vacated and a new and a proper sentence is to be passed. It cannot be that a second sentence in addition to the original one is to be passed, because for one offence the law can punish the accused but once. (*Buckland, J.* on difference between *Mukerji and Graham, J.J.*) SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS v. JNANENDRA NATH. 49 C. L. J. 432=33 C. W. N. 599=56 Cal. 1145=30 Cr. L. J. 1038=119 I. C. 301=1929 Cr. C. 395=A. I. R. 1929 Cal. 747.

—Where in a case there were three counts and the Court set aside the conviction in respect of two and declined to interfere with the sentence in respect of the third,

*Held*, that this did not amount to an enhancement of the sentence. 30 Mad. 48, Dist. (*Devadoss, J.*) KAILAPPA GOUNDAN v. EMPEROR. 111 I. C. 399=1 M. Cr. C. 144=29 Cr. L. J. 847=11 A. I. Cr. R. 75=A. I. R. 1928 Mad. 651.

**—S. 439—Enhancement of sentence—Principles of.**

—*High Court may enhance sentence even contrary to the opinion of the District authorities.*

Ordinarily the High Court should be loath to take action in the matter of enhancement of punishment when the District authorities consider the sentence as sufficient; but there are occasions when the High Court has every right to enforce its own opinion which may be a contrary opinion to that of the District authorities. (*Stuart and Ryves, J.J.*) WAZIR v. SARJU BHAR. 30 Cr. L. J. 222=A. I. R. 1928 All. 417.

—The High Court will not ordinarily enhance the sentence merely on the ground that if it were seised of the trial of the accused, it would have awarded a longer sentence of imprisonment than that awarded by the Magistrate, but it will interfere only where the sentence awarded by the trial Court is grossly inadequate. 7 P. R. 1889, Cr.; 9 A. I. Cr. R. 504; and A. I. R. 1928 Lah. 926, Ref. (*Jai Lal, J.*) EMPEROR v. DHANA LAL. 110 I. C. 796=11 A. I. Cr. R. 15=29 Cr. L. J. 764=A. I. R. 1928 Lah. 551.

—Enhancement of sentence is a very serious proceeding, and where there is a proposal to that effect it must be supported by the Government Pleader under instructions which would enable him to put before the High Court cogent reasons why there should be an enhancement of the sentence. The matter should be submitted to the trying Court where the prosecuting authorities think that the sentence ought to be deterrent. They cannot merely trust exclusively to the powers of the High Court of correcting sentences of the lower Courts where the sentences ought to be deterrent. 16 Bom. L. R. 202 and 203, Foll. (*Kinkhede, A. J. C.*) SURAJMAL v. RAMNATH. 105 I. C. 820=28 Cr. L. J. 996=9 A. I. Cr. R. 204=A. I. R. 1928 Nag. 58.

—Although a High Court has power under S. 439, Cr. P. Code to enhance the sentence awarded by the lower Court, yet it will not ordinarily exercise its exceptional revisional powers in the direction of enhancing

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sentences, unless the sentences are manifestly inadequate. The mere ground that the High Court would itself have passed a heavier sentence, or that it would have maintained a heavier sentence is not enough to enhance the sentence. 7 P. R. 1889 Cr. Foll. (*Simpson and Gokaran Nath Misra, A. J. C.*) SITARAM v. EMPEROR.

89 I. C. 452=12 O. L. J. 421=2 O. W. N. 550=26 Cr. L. J. 1364=A. I. R. 1925 Oudh 723.

—Sentence cannot be enhanced except on very serious grounds.

It is perfectly impossible for the High Court to do the duty of all the Sessions Courts subordinate to it and it is primarily the business of the Police and the prosecuting agency to see that the Sessions Court trying the case in the original does its duty. It is very difficult for the Crown successfully to press for enhancement when their representative in the Sessions Court appears to have allowed the Sessions Court to pass the sentence, it did, without any serious attempt to modify it. (*Kennedy, J. C. and Raymond, A. J. C.*) EMPEROR v. KASIM WALAD MOHAMED SAFFER. 83 I. C. 881=17 S. L. R. 268=26 Cr. L. J. 177=A. I. R. 1925 Sind 188.

—Although the High Court has power to interfere in revision with an inadequate sentence it does not ordinarily interfere merely because, it would itself have passed a heavier sentence so long as the sentence passed involves substantial punishment. (*Heald, J.*) EMPEROR v. BEJAI. 3 Bur. L. J. 155=17 S. L. R. 268=26 Cr. L. J. 177=A. I. R. 1924 Rang. 373.

**—S. 439—Enhancement of sentence—Private complaint.**

—Where a person was convicted on a plea of guilty and on a rule being issued for enhancement of sentence on the application of the complainant, the Crown did not appear to support it.

*Held*, that in such a case the rule should ordinarily be discharged unless it is clear beyond doubt that it should be made absolute. (*Buckland, J.* on difference between *Mukerji and Graham, J.J.*) ALI AKBHAR v. KASIM ALI. 1929 Cr. C. 439=50 C. L. J. 176=33 C. W. N. 605=121 I. C. 305=A. I. R. 1929 Cal. 785.

—It is a safe working rule for the High Court not to interfere, although it has power to interfere, on petitions for enhancement of sentences passed on accused persons, made on behalf of private complainants. (*C. C. Ghose, J.*) PRAMATHA NATH v. GANGA CHARAN. 33 C. W. N. 395=118 I. C. 894=30 Cr. L. J. 979=56 Cal. 964=A. I. R. 1929 Cal. 340.

—The Court will naturally be loath to act on the motion of a private complainant but in extreme cases it has indubitably power to enhance sentence of an accused where it is inadequate. (*Boys and Kendall, J.J.*) DEBI SINGH v. RAMCHARAN SINGH. 113 I. C. 768=30 Cr. L. J. 219=A. I. R. 1928 All. 419.

—It is the part of the Crown, not of individuals, to ask Courts to enhance sentences passed upon criminal offenders. (*Wasir Hasan and Pullan, J.J.*) JADUNANDAN BRAHMAN v. EMPEROR.

2 Luck. 605=4 O. W. N. 699=104 I. C. 242=28 Cr. L. J. 802=A. I. R. 1927 Oudh 321.

—Private party cannot apply—He may move Government for enhancement. 16 Bom. L. R. 202 and A. I. R. 1924 Bom. 320, Foll. (*Duckworth, J.*) NGA SAN DIKE v. NGA YE DIKE. 5 Bur. L. J. 1=27 Cr. L. J. 818=95 I. C. 594=A. I. R. 1926 Rang. 106.

—Right to apply.

A private complainant has no right to make an

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application for enhancement of sentence. In proper cases the Court itself may act of its own motion in the way of enhancing sentences and may properly make use of any information through whatever channel that information comes, to enable it to apply that revisional jurisdiction. (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*) LAKHI v. RAJU. 19 S. L. R. 64=

A. I. R. 1926 Sind 254.

—**S. 439—Enhancement of sentence—Reasons for.**—*Accused beating his wife brutally with heavy stick and inflicting injuries—Wife dying—Proper punishment.*

Accused who had dispute with his wife, because she ran away to her father's house, beat her with a stick after her return as a result of which she died two days later. He was convicted under S. 325 for causing grievous hurt to his wife and was sentenced to one year's rigorous imprisonment.

*Held*, that under the circumstances the sentence of one year's rigorous imprisonment was too short and should be enhanced to three years' rigorous imprisonment. It was a brutal thing for a man to beat a woman with a heavy stick and hurt her on vital parts of her body causing such injuries that she died in two days. (*Beaumont, C. J., and Madgavkar, J.*) EMPEROR v. KOYA PARTAB. 32 Bom. L. R. 1286= 1930 Cr. C. 1140=A. I. R. 1930 Bom. 593.

—Penal Code, S. 323—Husband hitting his wife without provocation—Wife dying—Husband convicted under S. 323 for three months—Punishment ought to be enhanced being grossly inadequate. (*Tek Chand, J.*) KHUDA BAKSH v. FEROZE DIN. 114 I. C. 442= 30 Cr. L. J. 300=1929 Cr. C. 90= A. I. R. 1929 Lah. 531.

—*Nature of offence.*

Accused attempted to murder his relation by giving him Dhatura poison, who narrowly escaped from death.

*Held*, that the sentence of five years' rigorous imprisonment should be enhanced. (*Raza and Pullan, J.J.*) EMPEROR v. GHURA. 6 O.W.N. 43=115 I. C. 846= 30 Cr. L. J. 544=12 A. I. Cr. R. 359= A. I. R. 1929 Oudh 150.

—*Abetting personation at election—Abettor an M.L.C.—If a justification for enhancing the sentence.*

*Iqbal Ahmad, J.*—The fact that the accused is an elected representative of the people of his district in the local Council is a matter that should not be taken into consideration as a justification for enhancing the sentence.

*Walsh, J.*—The fact that the accused was an M.L.C. when he committed this offence is to be regarded as an aggravation.

*Mears, C. J.*—The fact that he is a man of some education and position and member of the Legislative Council cannot be urged in his favour as an argument for the infliction of a lesser sentence; these considerations cut the other way and the case must be treated as one of public importance and an offence as one of gravity. (*Mears, C. J., Walsh and Iqbal Ahmad, J.J.*) EMPEROR v. BADAN SINGH. 118 I. C. 577= 30 Cr. L. J. 933=A. I. R. 1928 All. 150 (F.B.).

—*Sentence manifestly inadequate.*

The Court of revision is slow to interfere, where interference involves the imprisonment of a person already discharged from jail, but that circumstance alone cannot be allowed to operate as an insuperable obstacle to the enhancement of a sentence. The test is that the Court should not interfere if the sentence passed involves substantial punishment, but that it should interfere if the sentence is manifestly inadequate. It is competent

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to the High Court to impose an additional sentence of imprisonment on revision, even where the accused has served out the sentence of imprisonment inflicted upon him by the lower Court. 7 P.R. 1889 and A. I.R. 1926 Bom. 256, Rel. on. S was charged with criminal breach of trust under S. 409, Penal Code, and sentenced to simple imprisonment till the rising of the Court and a fine of Rs. 100.

*Held*, that the penalty imposed was wholly inadequate and should be enhanced. (*Shadi Lal, C. J.*) EMPEROR v. SHAZAD AHMAD. 114 I. C. 72=

30 Cr. L. J. 240=12 A. I. Cr. R. 234=

A. I. R. 1928 Lah. 961.

—*High Court will enhance sentence only when sentence is grossly inadequate.*

Where the accused is tried under Ss. 302 and 325 but convicted only under S. 325 High Court can alter the conviction to one under S. 302. High Court can also enhance the sentences without altering the convictions but this is not done usually but only when the sentences are grossly inadequate. (*Addison and Coldstream, J.J.*) DHARAM SINGH v. EMPEROR.

9 A. I. Cr. R. 567=29 Cr. L. J. 343=

108 I. C. 162=A. I. R. 1928 Lah. 507.

—The mere fact that the Judge of the High Court might when sitting as a Court of the first instance would have passed a heavier sentence is not by itself a sufficient ground for interference especially when the sentence passed by the trial Magistrate is a substantial one. 7 P. R. 1889 (Cr.) and 7 P. R. 1919 (Cr.), Foll. (*Tek Chand, J.*) KHANNA v. EMPEROR.

107 I. C. 759=29 Cr. L. J. 276=

9 A. I. Cr. R. 504 (Lah.).

—*Appellate Court—Finding that graver offence is committed than one convicted for—Justifies enhancement.*

It is open to a Judge of the Judicial Commissioner's Court, who hears an appeal against a conviction and who comes to the conclusion that a graver offence has been committed, not only to alter the conviction but to proceed on the revisional side and issue notice to the accused to show cause why the sentence should not be enhanced and, if no sufficient cause is shown, to enhance the sentence accordingly. A. I. R. 1925 Bom. 268, Foll. (*Findlay, Offg. J. C. and Halifax, A. J. C.*) LOCAL GOVERNMENT v. DOMA KUNBI.

27 Cr. L. J. 339=92 I. C. 851=

A. I. R. 1926 Nag. 323.

—**S. 439—Enhancement of sentence to show cause.**

—Where an appeal has been presented and dismissed either after hearing or summarily, it is not open to the accused in showing cause why the sentence should not be enhanced, to go again into merits. A. I. R. 1926 Bom. 555, Foll. (*Beaumont, C. J. and Madgavkar, J.*) EMPEROR v. KOYA PARTAB.

32 Bom. L. R. 1286=1930 Cr. C. 1140=

A. I. R. 1930 Bom. 593.

—It is not the practice of the Court, save in extreme cases, to call upon the accused to show cause why the sentences should not be enhanced. (*Courtney-Terrell, C. J. and Macpherson, J.*) SHAHI KHAN v. EMPEROR. 8 Pat. 181=117 I. C. 176=30 Cr. L. J. 737=

A. I. R. 1929 Pat. 161.

—*Findings of fact are not binding.*

*Iqbal Ahmad, J.*—Cl. (6), S. 439 does not disentitle the person, to whom notice had been issued, to challenge the findings of fact recorded by the Courts below. By cl. (6) it is intended to give a person to whom notice has been issued why his sentence should not be enhanced, the right of showing, by arguments *a fortiori* not only

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that the sentence should not be enhanced, but that the conviction is wrong and cannot be maintained. In showing cause against his conviction the accused is entitled to argue that the estimate of evidence made by the Courts below is erroneous, and that the conviction is against the weight of evidence upon the record. (*Mears, C. J., Walsh and Iqbal Ahmad, J.J.*) **EMPEROR v. BADAN SINGH.** 30 Cr. L. J. 933=118 I. C. 577=A. I. R. 1928 All. 150 (F.B.).

—*Sentence reduced on appeal—Even single Judge of High Court in revision can restore original sentence.*

Where the sentence passed by trial Court is reduced by the Sessions Court, on appeal even a single Judge of the High Court can restore the original sentence and even enhance it when an accused applies under S. 439. The rule about a two-judge Bench only applies where the Court issues notice, of its own motion, or on an application by some one else, to show cause why the sentence should not be enhanced, but does not apply to the case where the whole matter has been brought for revision by the accused himself. (*Walsh, J.*) **SUKHNANDAN LAL v. KING-EMPEROR.** 28 Cr. L. J. 31=7 L. R. A. Cr. 162=99 I. C. 63=A. I. R. 1926 All. 719.

—Application by prosecution for enhancement of sentence—Accused can show cause even against original conviction—High Court has power to set aside conviction. (*Kinkhede, A.J.C.*) **EMPEROR v. MAHADEO GANESH.** 86 I. C. 469=26 Cr. L. J. 821=A. I. R. 1926 Nag. 321.

—*High Court's notice suo motu for enhancement of sentence—Prisoner absent and unrepresented—Sentence cannot be enhanced.*

Where the High Court, of its own motion, has issued notice to a prisoner to show cause why his sentence should not be enhanced and where at the hearing of the notice neither the prisoner nor his counsel is present, the High Court cannot pass an order enhancing the sentence. A.I.R. 1924 Mad. 640, Foll. If such an order is passed, it is null and void and can be declared to be so. (*Wasir Hasan, A.J.C.*) **PARAS RAM v. EMPEROR.** 85 I. C. 383=26 Cr. L. J. 543=A. I. R. 1925 Oudh 476.

**—S. 439—Enhancement of sentence—Miscellaneous.**

—Appeal presented and dismissed after hearing or summarily—Accused in showing cause why his sentences should not be enhanced cannot go into merits. 28 Bom. L.R. 1051, Foll. (*Beaumont, C.J. and Madgavkar, J.*) **EMPEROR v. KOYA PARTAB.** 32 Bom. L. R. 1286=1930 Cr. C. 1140=A. I. R. 1930 Bom. 593.

—*Practice of Lahore High Court.*

According to the general practice of the Lahore High Court a convict is not sent back to jail by increasing his sentence after he has undergone the sentence and released. (*Zafar Ali, J.*) **EMPEROR v. SADAR DIN.** 112 I. C. 769=30 Cr. L. J. 2=11 A. I. Cr. R. 577=A. I. R. 1929 Lah. 194.

—Conviction under S. 324, Penal Code—Only fine imposed though imprisonment necessary—Origin of quarrel not satisfactorily established—Complainant aggressor—Accused acting in self-defence—Five months since conviction elapsed—Sentence was not enhanced to one of imprisonment. 29 P.W.R. 1913 (Cr.), Foll. 7 P. R. 1889 (Cr.), Rel. on. (*Fforde, J.*) **EMPEROR v. KARAM KHAN.** 118 I. C. 540=30 Cr. L. J. 939=A. I. R. 1929 Lah. 102.

—Penal Code, Ss. 147, 149, 302, 324 and 326—Communal riots—Attack by Mahomedans on two Hindus resulting in one's death and injury to the other

**CR. P. CODE (1898), S. 439—Evidence.**

—Assembly convicted under Ss. 147, 149 and 324, Penal Code, and not under S. 302—Revision for enhancement of sentence—View of the case taken by the lower Court though favourable to the accused, not clearly wrong—High Court will not interfere. (*Addison and Coldstream, J.J.*) **NATHA v. EMPEROR.**

9 A.I. Cr. R. 571=29 Cr. L. J. 366=9 L. W. N. 12=108 I. C. 265=A. I. R. 1928 Lah. 546.

—*Right to re-open in revision question of guilt is lost when there is a finding on it by High Court in previous proceedings.*

Where a High Court has given a finding on appeal as to the guilt of the accused person and subsequently a notice is served upon that person to show cause why his sentence should not be enhanced the right which he would have under S. 439 (6) to reopen the question of his guilt had no such finding been given vanishes because of the inherent incapacity of any Judge of a High Court to reconsider the decision given by another. This principle applies equally to a previous order on revision and a previous order on appeal. A.I.R. 1926 Bom. 555, Foll.; A. I. R. 1925 Bom. 268, Diss. from. (*Harrison, J.*) **EMPEROR v. SHER SINGH.**

8 Lah. 521=28 Cr. L. J. 266=100 I. C. 234=28 P.L.R. 559=A. I. R. 1927 Lah. 217.

—*Application for if can be heard after appeal against conviction is decided.*

Per *Fawcett, J.*—Sub-section (6) does not suffice to show that an application for enhancement cannot be heard after a judgment on an appeal has been delivered by Court.

Per *Madgavkar, J.*—No hard and fast rule as to the appropriate time for issue of notice of enhancement can be laid down by the High Court. (*Fawcett and Madgavkar, J.J.*) **EMPEROR v. JORABHAI.**

50 Bom. 783=28 Bom.L.R. 1051=27 Cr.L.J. 1173=97 I. C. 805=A. I. R. 1926 Bom. 555.

**—S. 439—Evidence.**

—Where confession of an accused has been excluded by the trial Magistrate under S. 24, it cannot be taken into consideration in revision even though such confession may be excluded wrongly. (*Percival, J. C. and Haveliwalla, A.J.C.*) **BILLU v. EMPEROR.**

126 I. C. 53=31 Cr. L. J. 947=24 S. L. R. 338=1930 Cr. C. 654=A. I. R. 1930 Sind 168.

—If evidence of alibi was clearly in the mind of Judge, mere absence of finding on that fact is not sufficient to state that his finding that prosecution case was made out was not in accordance with law. (*Wort, J.*) **LAKHAN SINGH v. EMPEROR.**

30 Cr. L. J. 1070=119 I. C. 560=A. I. R. 1929 Pat. 231.

—It is not the duty of the High Court in revision to weigh the evidence and to decide whether the conclusion drawn from it was justified. (*Barlee, J.C. and Kalumal Pahlumal, A.J.C.*) **MAHOMEDDIN v. EMPEROR.**

1929 Cr. C. 318=118 I. C. 223=30 Cr. L. J. 906=A. I. R. 1929 Sind 150.

—*Order of commitment—Revision Court if can weigh evidence.*

To test whether there is or is not evidence for a Judge to decide and to quash a commitment it is necessary to accept the evidence for the prosecution. Whether the evidence is believed or disbelieved at the trial is a matter with which High Court is not concerned. The real test deciding as to whether there is evidence which could fairly be acted upon it is whether a Judge at a trial held with the aid of jury-men could say that there was no evidence which could go before a jury. Whether an accomplice can be believed or whether the evidence of an accomplice has been corroborated is a



**CR. P. CODE (1898), S. 439—Evidence.**

matter for decision at the trial. The function of a Court of revision is not to sit in judgment over the order of a Magistrate committing a case to the Court of Session. 5 All. 161, Dist. (*Banerji, J.*) **BALCHAND v. EMPEROR.** 49 All. 181 =

24 A. L. J. 1050 = 7 L. R. A. Cr. 197 = 98 I.C. 489 = 27 Cr. L. J. 1369 = A. I. R. 1927 All. 90.

—Revision application based on misappreciation of evidence by trying Court—Application should be rejected. (*Wadegaonkar, A. J. C.*) **DAMODAR v. JUJHAR SINGH.** 23 N. L. R. 99 =

89 I. C. 388 = 26 Cr. L. J. 1348 = A. I. R. 1926 Nag. 115.

—*Sufficiency.*

The opinion of the Court of first instance in respect of sufficiency or insufficiency of evidence will not be questioned in revision. (*Wasir Hasan, A. J. C.*) **SITAL DIN v. THE KING-EMPEROR.** 77 I. C. 302 = 25 Cr. L. J. 366 =

A. I. R. 1925 Oudh 49.

—Revision was allowed on the ground of omission to examine important defence witness without sufficient cause. (*Adami and Bucknill, J.J.*) **JAMUNA SINGH v. EMPEROR.** 82 I. C. 263 =

3 Pat. 591 = 25 Cr. L. J. 1255 = A. I. R. 1925 Pat. 55.

—*Going into facts and revising convictions without application is not illegal.*

There is no provision of law which debars a Court of revision from going into the evidence if it is of opinion that it is necessary to do so in the interests of justice. The High Court in revision has power to scrutinise the evidence to find out whether the convictions of the accused who did not appeal are justified. (*Moti Sagar, J.*) **ALLAH DITTA v. EMPEROR.** 77 I. C. 723 = 25 Cr. L. J. 435 =

A. I. R. 1924 Lah. 585.

**—S. 439—Exercise of discretion.**

—It is doubtful whether the discretionary power under S. 439 (1) can be exercised in a case in which the sentence is manifestly illegal. (*Broadway and Tapp, J.J.*) **EMPEROR v. SUDA SINGH.** 127 I. C. 855 = 12 L. L. J. 83 = 1930 Cr. C. 386 =

A. I. R. 1930 Lah. 338.

—*Admission or non admission of application is in discretion of Court.*

The admission or non-admission of applications for revision is entirely discretionary and it is not necessary for the Court to prescribe any hard and fast rule, but the Court should not as matter of practice admit applications for revision unless it is satisfied that they are made within a reasonable time, and the reasonable time would appear to be the time granted by statute for admitting appeals. When an application for revision has been made after the expiry of the period allowed for an appeal it is proper that the Court should ask the applicant to give reasons for the delay and if those reasons are not sufficient to dismiss the application. 8 All. 514; 27 All. 468 and A. I. R. 1923 Oudh 272, Ref. (*Pullan, J.*) **SHAH NAIM ATA v. EMPEROR.** 126 I. C. 395 =

31 Cr. L. J. 1012 = 7 O. W. N. 663 = 1930 Cr. C. 941 = A. I. R. 1930 Oudh 401.

—Where accused were bound under Cr. P. Code, S. 562, for an offence under S. 323, and where revision was sought for a retrial,

*Held*, that the revisional powers were discretionary and not meant to be exercised on trifling occasions. (*Stuart, C. J.*) **MAHOMED ALI v. BHAGWAN DIN.** 117 I. C. 452 = 30 Cr. L. J. 799 =

A. I. R. 1929 Oudh 240.

—*Pending cases.*

**CR. P. CODE (1898), S. 439—Expunging remarks.**

It is undesirable that the discretionary powers of Court should become crystallized but it would seriously impede the administration of justice if parties were encouraged to come to the High Court from time to time before the completion of a trial and only in exceptional cases should the Court interfere in revision in pending cases. 28 Bom. 533 and 8 S. L. R. 143, Foll. (*Kincaid, J. C. and Aston, A. J. C.*) **MAHOMED v. MAHOMED IDRIS.** 88 I. C. 189 = 18 S. L. R. 274 =

26 Cr. L. J. 1101 = A. I. R. 1925 Sind 328.

—It is not usual for the High Court to interfere when the lower Court being duly invested with discretion has exercised it in a manner which is not on the face of it arbitrary. (*Kincaid and Aston, A. J. C.*) **KHANU v. EMPEROR.** 82 I. C. 760 =

19 S. L. R. 353 = 25 Cr. L. J. 1368 = A. I. R. 1925 Sind 190.

—*No revision where discretion by competent court exercised.*

Where a discretion has been exercised by a Court of competent jurisdiction which is not on the face of it arbitrary, the practice of the High Court is that as a revisional Court it will neither inquire into the reasons nor interfere. 42 Cal. 612, Foll. (*Mullick and Macpherson, J.J.*) **GULLI BHAGAT v. NARAIN SINGH.** 77 I. C. 734 = 2 Pat. 708 = 5 Pat. L. T. 404 =

25 Cr. L. J. 446 = 2 Pat. L. R. Cr. 165 = 2 Pat. L. R. Cr. 187 = A. I. R. 1924 Pat. 283.

**—S. 439—Expunging remarks.**

—*Proper procedure.*

Where the party applies to the High Court for expunging objectionable remarks in the judgment of the trial court the procedure to be adopted is to file an appeal against the judgment and not to refer a revision for the mere purpose of having the remarks expunged. 44 A. 401, Rel. on. (*Krishnan Panlalai, J.*) **ANGAMUTHU PILLAI v. EMPEROR.** 1930 M. W. N. 791.

—A person, who was not a witness in the case and against whom no witness had deposed anything, was condemned by the Magistrate in his judgment without giving him an opportunity of being heard, and the remarks were absolutely unfounded so far as the record went.

*Held*, that the remarks ought to be expunged from the record. A. I. R. 1925 Lah. 392, Rel. on. (*Addison, J.*) **MAHARAM v. EMPEROR.** 112 I. C. 686 =

29 Cr. L. J. 1102 = A. I. R. 1929 Lah. 201.

—*Adverse remarks about character of stranger to proceedings without opportunity to be heard—Objectionable passages must be expunged.*

It is an elementary duty of a Judge in a criminal case to exclude evidence which is not legally admissible. A Magistrate should not in his judgment in a criminal case make observations prejudicial to the character of a person who is neither a party nor a witness in the proceedings on materials which are not legally admissible as evidence. Even if the evidence is legally admissible, the Magistrate has no right to make such observations against a person without giving him an opportunity to be heard. It would be an abuse of judicial privilege for a Magistrate to pass strictures on third persons like this. It would be a denial of justice to allow such reflections upon the character of a person to stand and the High Court should order the expungement of the objectionable passages from the judgment. (*Forde, J.*) **BENARSI DAS v. CROWN.** 89 I. C. 270 =

6 Lah. 166 = 26 P. L. R. 315 = 26 Cr. L. J. 1326 = A. I. R. 1925 Lah. 392.

—*Remarks by appellate Court doubting correctness of Trial Court's acquittal of an accused when no appeal was made from such acquittal.*

**CR. P. CODE (1898), S. 439—Expunging remarks.**

The High Court in revision will not permit the continuance on record of the expressions of a lower Appellate Court tending to show its opinion that an accused though acquitted by Trial Court and in spite of the absence of appeal from the Trial Court's acquittal, was really guilty. The reason is that a person must be deemed to be innocent of the charge made against him once he is acquitted of the offence in regular course of law and there has not been any appeal made to a superior tribunal. Therefore it is not proper for an appellate Court when disposing of an appeal of one of two co-accused who were tried together and one of whom was discharged to employ expressions which amount to a finding that the acquittal of the accused in question was wrong. (*Eforde, J.*) **ABDUL AZIZ v. EMPEROR.**

82 I. C. 173 = 25 Cr. L. J. 1245 =  
A. I. R. 1925 Lah. 129.

**—S. 439—Finding of facts—Evidence.**

It is not open to High Court to go behind the finding of fact in revision unless it is shown that the evidence on the record left no scope for the Courts below to come to that conclusion. (*Percival, J. C. and Rupchand, A. J. C.*) **MIR ALLAHBAX KHAN v. EMPEROR.**

116 I. C. 99 = 23 S. L. R. 216 =  
30 Cr. L. J. 548 = 12 A. I. Cr. R. 365 =  
A. I. R. 1929 Sind 90.

*High Court should not interfere with findings of facts.*

The High Court should not interfere in revision with findings of facts merely because, after examining the evidence, the Court may be inclined to take a different view of evidence from that taken by the Courts below. (*Allanson, J.*) **THAKUR DAS v. EMPEROR.**

104 I. C. 450 = 28 Cr. L. J. 834 =  
A. I. R. 1928 Pat. 13.

Finding of fact based on false and inadmissible evidence will be interfered with. (*Banerji, J.*) **RAMCHAND v. EMPEROR.** 99 I. C. 123 = 8 L. R. A. Cr. 4 = 28 Cr. L. J. 91 = 7 A. I. Cr. R. 33 = A. I. R. 1927 All. 147.

**—S. 439—Findings of fact—Finality of.**

High Court will not go into questions of fact in revision. (*Faucett and Mirza, J.*) **DOGA BHAI KUSSBI, In re.** 112 I. C. 97 = 30 Bom. L. R. 631 = 11 A. I. Cr. R. 233 = 29 Cr. L. J. 977 = A. I. R. 1928 Bom. 221.

There are very occasional instances in which in a criminal revision the revising Court is justified in examining the findings of fact and varying them. (*Stuart, C. J.*) **ALI ABBAS v. KING EMPEROR.**

100 I. C. 705 = 1 Luck 301 = 29 O. C. 374 = 28 Cr. L. J. 321 = A. I. R. 1927 Oudh 132.

Finding of fact under S. 147 cannot be traversed by revisional proceedings, and as indicated by sub S. (4) the aggrieved party should seek his remedy in the Civil Court. (*Jackson, J.*) **KAZI MAHOMED KHAN, In re.** 22 M. L. W. 831 = A. I. R. 1926 Mad. 154.

The trying Magistrate is entitled to his opinion on facts and his decision is not liable to be set aside in revision even where he has not acted, according to a superior Court, with "fair mindedness and breadth of vision." (*Dalal, J. C.*) **HAFIZ KHAN, v. EMPEROR.** 85 I. C. 367 = 26 Cr. L. J. 527 = A. I. R. 1925 Oudh 558.

**—S. 439—Findings of fact—Interference.**

The High Court does not as a rule interfere in revision with findings of facts unless it can be said that these findings are based on no evidence or are obviously incorrect. (*Cuming, J.*) **HARIPADO BIDYA v. EMPEROR.** 127 I. C. 553 = 34 C. W. N. 580 = 1930 Cr. C. 1206 = A. I. R. 1930 Cal. 645.

**CR. P. CODE (1898), S. 439—Findings of fact—Interference.**

Although a finding of fact is not usually interfered with in revision, where the finding is not based on any positive evidence but upon inferences drawn from certain circumstances arising from evidence and all materials on which the finding is based are set forth in the judgments of the Courts below, it is open to the accused to ask the High Court to consider whether the conclusions arrived at by the Courts below are warranted by those materials. (*Fazl Ali and Dhawle, J.*) **HARAKRISHNA MAHATAB v. EMPEROR.**

121 I. C. 321 = 31 Cr. L. J. 249 = 1930 Cr. C. 417 = 11 P. L. T. 319 = A. I. R. 1930 Pat. 209.

*Manifest and gross miscarriage of justice.*

If the Court, sitting in revision, decides to interfere on findings of fact, it must be only because it is convinced that there has been a manifest and gross miscarriage of justice. (*Aston and DeSouza, A. J. C.*) **EMPEROR v. SHIDOO.** 111 I. C. 856 = 22 S. L. R. 453 = 29 Cr. L. J. 936 = A. I. R. 1929 Sind 26.

In criminal revisions it is not, generally speaking, within the High Court's function to go behind findings of fact to support which there is evidence on record. In regard to the grounds of law the High Court does not interfere with an error or omission or irregularity unless the same has caused failure of justice; and as regards questions of facts, though the Court's jurisdiction to interfere in respect of the correctness of findings of facts is unquestionable, it will not as a rule go into the evidence save in exceptional cases as where judgment of the facts is manifestly wrong and grossly and palpably unjust. (*Raza, J.*) **MOHAMMAD JAN v. EMPEROR.**

3 O. W. N. (Supp.) 178 = 27 Cr. L. J. 1193 = 97 I. C. 953 = A. I. R. 1926 Oudh 557.

Where both the lower Courts have concurred in a finding of fact and there is nothing illegal or erroneous in the procedure of the Magistrate the High Court is usually averse to interfere in revision, except in exceptional cases. (*Scott-Smith, J.*) **TABRI v. EMPEROR.**

6 L. L. J. 326 = 26 Cr. L. J. 393 = 84 I. C. 937 = A. I. R. 1925 Lah. 42.

The High Court will set aside the finding of a lower Court when the inference drawn by the lower Court from proved facts seems to be unwarranted. (*Kinkhede, A. J. C.*) **SABRIMIYA v. EMPEROR.**

81 I. C. 897 = 25 Cr. L. J. 1073 = A. I. R. 1925 Nag. 123.

*Findings of fact if perverse or contrary to law can be upset.*

In the ordinary course of things findings of facts are accepted by a revisional Court as binding upon it but revision would be an idle farce if the revisional Court had not the power which has been exercised 100, possibly 1000 times throughout the High Courts in India to look into the evidence for itself and see if these findings can be justified by what appears upon the record. A revisional Court does not decide the balance of credibility between two conflicting sets of witnesses or two conflicting issues of fact but it may be compelled to dissent from a finding of fact which is either perverse or has been arrived at contrary to well-established principles of law. (*Walsh, J.*) **UMED v. EMPEROR.**

77 I. C. 183 = 46 All. 64 = 21 A. L. J. 765 = 4 L. R. A. Cr. 221 = 25 Cr. L. J. 327 = A. I. R. 1924 All. 299.

*Miscarriage of justice.*

Ordinarily the High Court will not interfere with findings of facts in the exercise of its jurisdiction under Section 439, but it has jurisdiction to review even questions of facts, as the words of Section 435 of the Code

**CR. P. CODE (1898), S. 439—Findings of fact—Interference.**

clearly indicate, and will do so, where there is a clear miscarriage of justice. Where the order of the Magistrate was in defiance of all legal and almost un rebutted evidence produced by one party to establish his existing possession of the property in question the order was set aside. (*Wazir Hasan, J. C.*) **EMPEROR v. SARAJA PRASAD.** 11 O. L. J. 330 = 25 Cr. L. J. 1086 =

81 I. C. 890 = 27 O. C. 290 =

A. I. R. 1924 Oudh 366.

—*Going into facts for finding out miscarriage of justice is within the power.*

The High Court is competent to enter into a discussion of evidence and can go into facts to find out if there has been a miscarriage of justice. The controlling power of the court is a discretionary power and it must be exercised with reference to all the circumstances of each particular case, anxious attention being given to the said circumstances which vary greatly. This discretion ought not to be crystallised as it would become, in course of time, by one judge attempting to prescribe definite rules with a view to bind other judges in the exercise of the discretion which the legislature has committed to them. This discretion, like other judicial discretions, ought as far as possible, to be left untrammelled and free so as to be fairly exercised according to the exigencies of each case. 28 Bom. 533; 42 I. C. 143, Foll. (*Kulwant Sahay, J.*) **DAROGA SINGH v. KING-EMPEROR.**

83 I. C. 673 = 5 P. L. T. 538 =

1924 P. H. C. C. 177 = 26 Cr. L. J. 113 =

A. I. R. 1924 Pat. 758.

**—S. 439—Findings of fact—Miscellaneous.**

—Whether a manager in the office of a Municipality is a public servant is a question of fact and should not be raised for the first time in revision. (In this case he was assumed to be a public servant.) (*Wallace, J.*) **VENU RAMACHANDRIAH v. EMPEROR.**

51 Mad. 86 = 39 M. L. T. 615 = 26 M. L. W. 529 =

1927 M. W. N. 764 = 28 Cr. L. J. 1005 =

105 I. C. 829 = 9 A. I. R. C. B. 180 =

A. I. R. 1927 Mad. 1011 = 53 M. L. J. 723.

—Application for enhancement of sentence—Accused can challenge findings of fact only when he has not appealed—If he has appealed and lost, ordinary rule governing revision applications will apply. (*Kincaid, J. C. and Rupchand Bilaram, A.J.C.*) **EMPEROR v. LUKMAN.** 21 S. L. R. 107 = 27 Cr. L. J. 1233 =

98 I. C. 49 = A. I. R. 1927 Sind 39.

**—S. 439—Grounds for.**

—The object of this revisional legislation was to confer upon criminal Courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand, in some undeserved hardship to individuals. It will be better, even in cases of communal disturbance, if Government were to refrain from appealing to the revisional jurisdiction of this Court, unless they feel that violence has been done to some general principle which requires immediate and authoritative interference. (*Walsh and Banerji, J.J.*) **EMPEROR v. NASRULLAH.** 9 A. I. R. C. B. 305 =

9 L. R. A. Cr. 47 = 108 I. C. 567 = 29 Cr. L. J. 446 =

A. I. R. 1928 All. 287.

—To justify interference in revision the Court must be satisfied that the lower Court has erred and erred prejudicially on some question of law, or has so grossly erred in the principles which it has applied to the weighing of the evidence that interference is called

**CR. P. CODE (1898), S. 439—Grounds for.**

for. (*Boys and Iqbal Ahmad, J.J.*) **EMPEROR v. BABU RAM.** 8 L. R. A. Cr. 163 =

8 A. I. Cr. B. 557 = 26 A. L. J. 99 =

29 Cr. L. J. 92 = 106 I. C. 684 =

A. I. R. 1928 All. 1.

—Case posted at 7 a. m.—Complainant appearing a little late—Complaint dismissed—Revision lies. (*Krishnan, J.*) **OTTAVU SUBBIAH v. INUKOTTOPIAH.**

98 I. C. 607 = 27 Cr. L. J. 1391 =

A. I. R. 1927 Mad. 139.

—Omission to draw an adverse inference under S. 114, Evidence Act no ground.

A Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it; but it cannot be taken to be a principle of law that the Court must presume it, and if the Court does not make such a presumption under the circumstances of a case, it is no ground for interfering in revision. (*Pullan, J.*) **ADITYA PRASAD SINGH v. EMPEROR.** 103 I. C. 560 = 1 L. C. 195 =

28 Cr. L. J. 704 = 8 A. I. Cr. B. 414 =

A. I. R. 1927 Oudh 318.

—Accused must allege hardship on account of illegality of procedure which he makes a ground for revision. (*Hallifax, A.J.C.*) **PAI MAHOMED v. EMPEROR.** 27 Cr. L. J. 475 = 93 I. C. 699 =

A. I. R. 1926 Nag. 348.

—*Appealable case—Revision—When entertainable.*

As a general rule when the petitioner has had an opportunity of appealing and has not utilised that opportunity the High Court will not permit a criminal revision petition. But where as a result of disallowing a revision in the case of an accused who having had an opportunity of appeal has not appealed, long sentence of imprisonment would be sustained, while according to the view of the High Court the conviction can only be for a smaller offence punishable with a very short term of imprisonment it is open to the High Court to hear the case under its general powers of revision and if necessary to interfere. (*Wallace and Madhavan Nair, J.J.*) **P. ATHAMU, In re.** 86 I. C. 283 =

26 Cr. L. J. 747 = 20 M. L. W. 914 =

A. I. R. 1925 Mad. 239.

—*Disposal of case on extra-judicial grounds—Revision lies.*

Where a Court disposed of an application for prosecution of a witness for perjury on grounds of inconvenience to Court and not on the ground of the probability of his conviction on evidence,

*Held*, that the Court acted on extra-judicial grounds and a revision lies. (*Wadgaonkar, A.J.C.*) **KALU v. TIKARAM.** 89 I. C. 390 = 26 Cr. L. J. 1350 =

A. I. R. 1925 Nag. 412.

—Order of commitment under S. 437 by the District Magistrate—High Court can revise both on point of law and facts. (*Ross, J.*) **MUNSHI MANDER v. KARU MANDER.** 81 I. C. 913 = 6 P. L. T. 146 =

25 Cr. L. J. 1089 = A. I. R. 1925 Pat. 279.

—*Examination of witnesses after argument—If a ground.*

Omission by party to ask for further argument when Magistrate has examined witness after close of both party's case and after submission of the arguments is a bar to raising objection to the Magistrate's act as a ground of revision. (*Greaves and Duval, J.J.*) **ABDUL JABBAR MUNSHI v. MAFIJUDDI SARKAR.**

81 I. C. 931 = 28 C.W.N. 783 = 25 Cr. L. J. 1107 =

A. I. R. 1924 Cal. 980.

—Even where accused has not moved the High Court, the High Court is competent to act in the exercise of its criminal revisional jurisdiction.

**CR. P. CODE (1898), S. 339—Grounds for.**

Per *Madgavkar, A.J.C.*—It is the practice of the Judicial Commissioner's Court not to interfere in revision when the convicted person has failed to exercise his right of appeal. Even where revisions are allowed the Court confines its interference as a rule to points of illegality or error in procedure and not to interfere with findings of fact unless a miscarriage of justice is shown to have resulted. (*Kennedy, J. C. and Madgavkar, A. J. C.*) **HIRANAND v. EMPEROR.** 76 I. C. 230 = 25 Cr. L. J. 134 = 17 S. L. R. 245 = A. I. R. 1924 Sind 129.

**—S. 439—Interlocutory order.**

—There is ordinarily no justification for a High Court to take up in revision what are really interlocutory matters in a criminal Court. A.I.R. 1926 Oudh 280, Foll. (*Addison and Dabir Singh, J.J.*) **JAGAN PARSHAD v. EMPEROR.** 31 P.L.R. 893 = 128 I. C. 50 = 1930 Cr. C. 394 = A. I. R. 1930 Lah. 346.

—An application in revision lies over an interlocutory order passed by a criminal Court : A.I.R. 1926 Oudh 280, Expl. (*Stuart, C.J.*) **EMPEROR v. BHAGWATI PRASAD.** 123 I. C. 222 = 31 Cr. L. J. 479 = 6 O. W. N. 937 = 1929 Cr. C. 677 = A. I. R. 1929 Oudh 543.

—High Court will not interfere with an interlocutory order framing a charge, but it has power to examine proceedings when charge is framed and if necessary set it aside. 33 P.R.Cr. 1910, 39 Mad. 561 and A.I.R. 1925 All 311, Foll. (*Tek Chand, J.*) **TARUK SINGH v. EMPEROR.** 9 L. L. J. 440 = 8 A.I. Cr. R. 447 = 103 I. C. 835 = 28 Cr. L. J. 755 = A. I. R. 1927 Lah. 731.

—It would be under very rare and exceptional circumstances that the High Court would interfere on the revisional side in connexion with an interlocutory order. It is highly undesirable that the High Court should, on any or every pretext, interfere with proceedings in the subordinate Courts unless on very exceptional grounds. (25 Cal. 233, Foll.) On the contrary, however an effort should be made to allow the proceedings in these Courts to take their natural course. (*Findlay, O.J.C.*) **WAMANRAO v. EMPEROR.** 22 N. L. R. 34 = 27 Cr. L. J. 707 = 94 I. C. 899 = A. I. R. 1926 Nag. 304.

—There is ordinarily no justification for a superior Court to take up in revision matters which are interlocutory matters in a Criminal Court. Refusal by trying Magistrate to summon himself as a witness is an interlocutory matter. A.I.R. 1926 Oudh 280, Foll. (*Raza, J.*) **BADULLAH v. LACCHMI NARAIN.** 3 O. W. N. 720 = 27 Cr. L. J. 1191 = 97 I. C. 951 = A. I. R. 1926 Oudh 556.

**—S. 439—Interpretation.**

—S. 439 need not be read subject to S. 417. Section 439 need not be read subject to S. 417 and reference can be entertained when the Local Government has been moved to prefer an appeal or having been moved has declined to prefer such appeal. A.I.R. 1926 Pat. 176 and A. I. R. 1929 Pat. 139, Rel. on. (*Tek Chand, J.*) **NATHU MAL v. ABDUL HAQ** 123 I. C. 841 = 31 Cr. L. J. 584 = 1930 Cr. C. 167 = 12 L.L.J. 5 = A. I. R. 1930 Lah. 159.

—The words "unless he has already done so" are to be implied at the end of sub-section.

The words "unless he has already done so" though not occurring at the end of the sub-section, are to be presumed to be implied from the ordinary presumption as to the finality of orders in criminal revision proceedings. (*Addison and Coldstream, J.J.*) **EMPEROR v. DHARMA LAL.** 117 I. C. 699 = 30 P. L. R. 409 =

**CR. P. CODE (1898), S. 439—Jurisdiction—Concurrent**

1929 Cr. C. 429 = 10 Lah. 241 = 30 Cr. L. J. 815 = A. I. R. 1929 Lah. 797.

—“Quash” meaning of.

The word “quash” is not a banned word. “Quashing of proceedings” is a term of compendious connotation and the practical result is setting aside or reversal of the order initiating the proceedings. (*Wazir Hasan, J.*) **S. C. MITRA v. RAJA KALI CHARAN.** 106 I. C. 694 = 3 Luck 287 = 9 A. I. Cr. R. 356 = 29 Cr. L. J. 102 = 1 L. C. 653 = A. I. R. 1928 Oudh 104.

—*Acquittal means complete acquittal.*

To alter the conviction from one under S. 304 to one under S. 302 and to pass an appropriate sentence under the latter section does not amount to altering an acquittal into conviction. Where a person has first been tried under S. 302, and convicted under S. 304, this does not mean for purposes of S. 439, that he has been acquitted under the former section. Acquittal means a complete acquittal and discharge of all the allegations and facts charged, and not an acquittal on one charge and a conviction on another. 12 P.R. 1904 Cr.; 37 Mad. 119 and *Queen v. Bayard*, (1892) 2 Q.B. 187, Foll.; A.I.R. 1922 All. 487, not Foll. (*Fforde and Addison, J.J.*) **FAZL KHAN v. EMPEROR.** 101 I. C. 892 = 8 Lah. 136 = 28 Cr. L. J. 508 = 8 A. I. Cr. R. 149 = A. I. R. 1927 Lah. 369.

—The effect of the enactment of this sub-section is that the High Court, when adjudicating upon an application for enhancement of sentence, is converted into a Court of appeal against conviction. (*Shadi Lal, C. J.*) **EMPEROR v. TEJ RAM.** 92 I. C. 892 = 27 P. L. R. 112 = 27 Cr. L. J. 380 = A. I. R. 1927 Lah. 34.

—*Object of.*

Sub-section (6) is primarily intended to operate as an exception to what is otherwise laid down or implied in S. 439 itself. It is presumably to overrule 32 Bom. 162 that the provisions of sub-S. (6) were inserted in 1923. (*Fawcett and Madgavkar, J.J.*) **EMPEROR v. JORABHAI.** 97 I. C. 805 = 50 Bom. 783 = 28 Bom. L. R. 1051 = 27 Cr. L. J. 1173 = A. I. R. 1926 Bom. 555.

—The High Court can convict an accused under S. 182, I. P. C., even though acquitted by the lower appellate Court; S. 439 (4) does not come in the way, for, the meaning of that clause is that, where an accused person has been acquitted on all charges he is not to be convicted. If he has been convicted at all, S. 439 (4) does not apply to him. 37 Mad. 119, Ref. (*Simpson, A. J. C.*) **GAYA BARHAI v. EMPEROR.** 69 I. C. 81 = 9 O. L. J. 342 = 23 Cr. L. J. 641 = 26 Cr. C. 44 = A. I. R. 1923 Oudh 4.

**—S. 439—Jurisdiction—Civil Court order under S. 476.**

—*High Court cannot revise.*

The High Court cannot under S. 439 interfere with an order passed by a Civil Court under S. 476. The amendment of the Code has strengthened the view rather than weakened it. 26 All. 249 and 40 Cal. 477 (F. B.), Foll. (*Sulaiman, J.*) **BANWARILAL v. JHUNKA.** 92 I. C. 454 = 7 L. R. A. Cr. 25 = 24 A. L. J. 217 = 27 Cr. L. J. 278 = A. I. R. 1926 All. 229.

**—S. 439—Jurisdiction—Concurrent.**

—*High Court can be approached as a last resort.*

Even though High Court has concurrent jurisdiction with Dt. Magistrate or Sessions Judge in the matter of ordering further enquiry it is a right course to adopt to insist on the party exhausting all his remedies in an

**CR. P. CODE (1898), S. 439—Jurisdiction—Concurrent.**

inferior Court, before he comes up to High Court. The fact that an order for compensation passed along with an order of discharge is revisable by the High Court only, does not alter the procedure. (*Krishnan, J.*) **GOPOBONDHU v. D. VENKATESAM PANTULU.**

76 I. C. 1030 = 18 M. L. W. 651 =  
1923 M. W. N. 837 = 25 Cr. L. J. 310 =  
A. I. R. 1924 Mad. 228.

**—S. 439—Jurisdiction—Conviction.**

—Conviction by a Judge of Judicial Commissioner's Court cannot be altered by that Court in revision. (*Findlay, O. J. C. and Hallifax, A. J. C.*) **LOCAL GOVERNMENT v. DOMA KUNHI.** 27 Cr. L. J. 339 = 92 I. C. 851 = A. I. R. 1926 Nag. 323.

—Accused convicted of one offence though facts found would constitute more serious offence—High Court would not interfere unless sentence is inadequate or accused is deprived of right of appeal. 13 Bom. 502; 24 Mad. 675, Ref. (*Macpherson, J.*) **BARHMDEO RAI v. EMPEROR.** 7 P. L. T. 272 = 26 Cr. L. J. 1559 = 90 I. C. 439 = A. I. R. 1926 Pat. 36.

**—S. 439—Jurisdiction—Executive order.**

—*Orders under Police Act—Revision.*

The orders of a Magistrate passed by him as an executive officer purporting to act under the Police Act and not as a Court of law or as a Magistrate acting in judicial capacity, are not revisable. The question of the power of the Magistrate to pass such an order was one to be dealt with by his superiors on the executive side and the High Court had no jurisdiction to reverse the said orders under the provisions of the Cr. P. C. That in view of the finding that the Magistrate was not acting as a Court of law, S. 107, Government of India Act, had no application; 4 P. R. 1908. Cr.; A. I. R. 1927 All. 193; A. J. R. 1926 Bom. 551; 24 Mad. 121; 36 Mad. 72; *Ex parte Bradlaugh*, 3 Q. B. D. 549, Dist. (*Jai Lal and Currie, JJ.*) **ABDUL SHAKUR v. MAHADEV PRASAD.** 1930 Cr. C. 687 = 31 P. L. R. 725 = A. I. R. 1930 Lah. 539.

—*Order of Sub-divisional officer under Bengal Alluvial Lands Act (V of 1920).*

Order passed by Collector as such under the Alluvial Lands Act cannot be revised by Criminal Bench of the High Court under S. 439.

Per *Suhrawardy, J.*—Order passed by a Sub-Divisional Officer under the Alluvial Lands Act directing that some huts which were erected on the disputed char were to be sold and the sale proceeds credited to the treasury, is not passed in judicial capacity but as an executive officer and as such cannot be revised by the High Court. (*Suhrawardy and Graham, JJ.*) **OSMAN MUNSHI v. KADER PRAMANICK.** 57 Cal. 282 = 122 I. C. 640 = 31 Cr. L. J. 441 = 33 C. W. N. 836 = 1929 Cr. C. 480 = A. I. R. 1929 Cal. 768.

—S. 439—Jurisdiction—How obtained.

—Jurisdiction by way of appeal or revision will not be inferred, but must be expressly given by statute. (*Madgavkar, Ag. C. J. and Barlee, J.*) **USMAN HAJI MAHOMED, In re.** 54 Bom. 664 = 32 Bom. L. R. 1138 = 1930 Cr. C. 1022 = A. I. R. 1930 Bom. 486.

—S. 439—Jurisdiction—Objection to.

—Magistrate deliberately ignoring facts ousting his jurisdiction—High Court will interfere in revision. (*Jackson, J.*) **KATTUVA ROWTHER v. SUPPAN ASARI.** 25 M. L. W. 86 = 99 I. C. 596 = 28 Cr. L. J. 164 = 7 A. I. Cr. R. 280 = A. I. R. 1927 Mad. 307.

—Interlocutory order—Neither revision nor appeal

**CR. P. CODE (1898), S. 439—Jurisdiction—Procedure.**

lies. (*Stuart, C. J.*) **KASHI RAM KHOSLA v. R. L. DISKSHIT.** 1 Luck. 48 = 13 O. L. J. 662 = 30 W. N. 104 = 27 Cr. L. J. 191 = 91 I. C. 1007 = A. I. R. 1926 Oudh 280.

—*Magistrate convicting accused for lesser offence within his jurisdiction—Facts also constituting grave offence not within his jurisdiction—Legality.*

When a Magistrate convicts the accused of an offence triable by him though the facts disclosed also constitute a graver offence, not triable by him, his proceedings are not void under the provisions of S. 530. (A.I.R. 1926 Pat. 36. Foll. 4 Bom. L. R. 267; 10 C. 85; 13 B. 502; 24 M. 675, Appr.) High Court will not interfere, when no objection was taken either before the Magistrate or in the Court of appeal to the jurisdiction of the trial Court and the accused are not prejudiced. (*Macpherson, J.*) **BAL GOBIND THAKUR v. EMPEROR.** 7 P. L. T. 496 = 96 I. C. 873 = 27 Cr. J. 1017 = A. I. R. 1926 Pat. 393.

—*Order overruling objection that jurisdiction is barred by S. 403—High Court can set aside order.*

The revisional powers conferred on the High Court by S. 439 of the Cr. P. Code include the power of setting aside an order overruling an objection taken on behalf of the accused to the jurisdiction of the Magistrate to entertain the charge, on the ground that a similar complaint had been previously made against the accused and dismissed. 45 P. R. 1885 (Cr.) Diss; 1925 Lah. 266, Foll. (*Scott-Smith, J.*) **GOPAL DAS v. MAGHI RAM.** 90 I. C. 292 = 7 L. L. J. 252 = 26 P. L. R. 353 = 26 Cr. L. J. 1508 = A. I. R. 1925 Lah. 439.

—Revision lies where lower Court has assumed jurisdiction by ignoring aggravating facts. (*Venkatasubba Rao, J.*) **RANGAYYA v. SOMAPPA.** 82 I. C. 57 = 20 M. L. W. 919 = 25 Cr. L. J. 1193 = A. I. R. 1925 Mad. 367.

—S. 439—Jurisdiction—Powers of High Court.

—High Court has no jurisdiction under S. 439 (4) to convert an order of acquittal into one of conviction on an application in revision as it would not be an easy matter to interfere with an order of acquittal on revision without directly or indirectly contravening the spirit if not the letter of S. 439, sub-S. 4. High Court would be adverse to exercising the revisional jurisdiction in cases of acquittal in case such jurisdiction exists except perhaps when an interference is urgently demanded in the interest of justice. A. I. R. 1928 P. C. 254, Rel. on. (Case law considered). (*Mirza and Patkar, JJ.*) **EMPEROR v. RAMESHWAR RAMNATH.** 119 I. C. 643 = 53 Bom. 564 = 31 Bom. L. R. 529 = 1929 Cr. C. 135 = 30 Cr. L. J. 1062 = A. I. R. 1929 Bom. 306.

—S. 439—Jurisdiction—Procedure.

—*Revision filed without approaching District Magistrate or Sessions Court—Allahabad High Court—Practice.*

It has been the settled practice of the Allahabad High Court to refuse to hear an application for revision even after an *ex parte* admission of the application, when the applicant has not first applied to the District Magistrate or to the Sessions Judge for revision and it is not advisable to vary the practice though there may not be any rule of statute law on the subject. A. I. R. 1921 All. 30; A.I.R. 1927 All. 829; and A.I.R. 1921 Cal. 76, Rel. on. (*Dalal, J.*) **JADUNANDAN MISRA v. SHEOPHAL.** 119 I. C. 444 = 1929 A. L. J. 514 = 10 L. R. A. Cr. 97 = 12 A. I. Cr. R. 57 = 30 Cr. L. J. 1079 = A. I. R. 1929 All. 272.

—Revision application entertainable by District

**CR. P. CODE (1898), S. 439—Jurisdiction Procedure.**

Magistrate or Sessions Judge—Such application was not entertained by High Court unless District Magistrate or Sessions Judge has been previously moved in the matter under S. 435. Criminal Revision No. 237 of 1927 decided by Kotval, A. J. C., Foll. (*Gulam Mohi-uddin, A. J. C.*) CHINAI v. EMPEROR.

109 I. C. 810 = 10 A. I. Cr. R. 333 = 29 Cr. L. J. 618 = A. I. R. 1929 Nag. 13.

—Application to lower Court is essential before applying to High Court.

A previous application for revision to the lower Court should be considered an essential step in the procedure and failure on the part of the applicant to submit his application to the lower Court will operate as a bar to the application being entertained by the High Court. A.I.R. 1921 All. 30 and 41 All. 587, Appr.

There is no authority for the view that it is unnecessary to make an application to the lower Court for the revision of an order merely because that order is an appellate order. (*Kendall, J.*) SUKHAJ SINGH v. EMPEROR.

101 I. C. 603 = 7 A. I. Cr. R. 248 = 8 L. R. A. Cr. 36 = 28 Cr. L. J. 475 = A. I. R. 1927 All. 834.

—Allahabad High Court practice—Application to Sessions Judge is necessary.

In the matter of applications for revision on the criminal side, an application to the Sessions Judge is an essential step in the procedure. Failure on the part of the applicant to submit his application through the lower Court will operate as a bar to the application being entertained by the High Court. A.I.R. 1921 All. 30, Foll. (*Kendall, J.*) NATHE SINGH v. EMPEROR.

102 I. C. 352 = 7 A. I. Cr. R. 438 = 8 L. R. A. Cr. 67 = 28 Cr. L. J. 544 = A. I. R. 1927 All. 829.

—Lahore High Court practice.

The usual practice of the Lahore High Court is to decline to consider an application under S. 439 unless and until the petitioner satisfies the Court that the Sessions Judge or the District Magistrate has been moved in the matter unsuccessfully. Where such petition was made to the Lahore High Court, after moving unsuccessfully the District Magistrate sitting as a Court of appeal, but not the Sessions Judge, the High Court did not decline to entertain the petition. (*Broadway, J.*) MAHOMED ISHAQ v. EMPEROR.

104 I. C. 255 = 28 Cr. L. J. 815 = A. I. R. 1927 Lah. 689.

—Order wholly without jurisdiction—High Court will interfere.

Although under Cl. (4) of S. 144, Cr. P. Code, it is incumbent on the petitioners to go in the first instance before the District Magistrate before coming up in revision to the High Court and ordinarily, that is the practice in the High Court still the High Court will interfere where the order of the Sub-Divisional Magistrate is wholly without jurisdiction. A. I. R. 1922 Pat. 435 (F.B.), Foll. (*Kulwant Sahay, J.*) AKAL MAHTON v. MAHABIR MAHTON.

75 I. C. 531 = 5 P. L. T. 90 = 1 Pat. L. R. Cr. 223 = 24 Cr. L. J. 947 = A. I. R. 1924 Pat. 145.

—S. 439—Jurisdiction—Railways Act.

—High Court will not go into merits when it had no jurisdiction to revise order.

Per *Percival, J. C.*—A person travelled without a ticket but with guard's permission. He was asked to pay extra charge which he refused. Application to a Magistrate under S. 113 (4), Railways Act, was rejected. It was contended that though High Court were to hold that revision was incompetent, still it should go into the

**CR. P. CODE (1898), S. 439—Limitation.**

merits of the Magistrate's order.

*Held*, that High Court could not go into the merits of the order, when it had no jurisdiction to revise that order. 5 S. L. R. 54, Dist. (*Percival, J. C. and Haveliwala, A. J. C.*) SECRETARY OF STATE v. GOEINDRAM JAICHANDRAI.

126 I. C. 58 = 24 S. L. R. 389 = 31 Cr. L. J. 952 =

1930 Cr. C. 646 = A. I. R. 1930 Sind 162.

—S. 439—Jurisdiction—Miscellaneous.

—Appellate order of a civil Court refusing to file a complaint.

An appellate order by a civil Court confirming refusal to lodge a complaint by its subordinate Court is not open to revision by High Court under S. 439, Cr. P. Code, as the order is not of a criminal Court. (*Stuart, C. J.*) NAWAB ALI v. MADHURI SARAN.

99 I. C. 48 = 3 O. W. N. 905 = 28 Cr. L. J. 16 = 7 A. I. Cr. R. 47 = 7 A. I. Cr. R. 240 =

A. I. R. 1927 Oudh 14.

—Where the Deputy Magistrate attached the property in dispute, owing to his not understanding the meaning of a civil Court's decree relating to the same property, his order is irregular and without jurisdiction. (*Bucknill, J.*) DURGANAND OJHA v. HIRANAND OJHA.

76 I. C. 24 = 25 Cr. L. J. 88 =

A. I. R. 1924 Pat. 711.

—S. 439—Juvenile offenders.

—S. 439, sub-S. (1) gives the High Court the necessary power to pass an order under sub-S. (2), S. 8, Reformatory Schools Act, of detaining a boy accused in a Reformatory, not only on appeal but also in revision. Criminal Reference No 41 of 1924 held wrongly decided. (*Fawcett and Mirza, J.J.*) EMPEROR v. LAKSHMAN NARAN.

112 I. C. 344 = 11 A. I. Cr. R. 308 = 29 Cr. L. J. 1016 = 30 Bom. L. R. 952 =

A. I. R. 1928 Bom. 348.

—S. 439—Limitation.

—No time limit is placed on High Court's power of revision.

Art. 181 has no application to an application made to High Court in revision of an order of a Criminal Court of inferior jurisdiction. It does not appear that the Legislature ever intended that there should be a time limit placed upon the power of the High Court to interfere by way of revision in a criminal case. There is no reason also why the same principle should not be applied to Civil Revisions. These powers are exercised by High Court quite irrespective of any right on the part of the aggrieved party to move the Court. 43 Cal. 1029, Ref. (*Pullan, J.*) SHAH NIAM ATA v. EMPEROR.

126 I. C. 395 = 7 O. W. N. 663 = 1930 Cr. C. 941 = 31 Cr. L. J. 1012 =

A. I. R. 1930 Oudh 401.

—The admission or non-admission of applications for revision is entirely discretionary and it is not necessary for the Court to prescribe any hard and fast rule but the Court should not as a matter of practice admit applications for revision unless it is satisfied that they are made within a reasonable time and the reasonable time would appear to be the time granted by statute for admitting appeals. When an application for revision has been made after the expiry of the period allowed for an appeal it is proper that the Court should ask the applicant to give reasons for the delay and if those reasons are not sufficient to dismiss the application. (*Pullan, J.*) SHAH NIAM ATA v. EMPEROR.

126 I. C. 395 = 7 O. W. N. 663 = 1930 Cr. C. 941 = 31 Cr. L. J. 1012 =

A. I. R. 1930 Oudh 401.

—Offence of embezzlement—Sentence of imprisonment should generally be given—Accused convicted



**CR. P. CODE (1898), S. 439—Limitation.**

under S. 408, Penal Code, given the benefit of S. 562. Cr. P. Code—Lapse of considerable time—High Court refused to interfere in revision. A. I. R. 1925 Oudh 673; 19 P. W. R. 1910; A. I. R. 1925 Bom. 192 and A. I. R. 1926 Sind 101, Rel. on. (*Addison, J.*) **EMPEROR v. KHAIRATI LAL.** 107 I. C. 775=

10 A. I. Cr. R. 27=29 Cr. L. J. 291=  
A. I. R. 1928 Lah. 926.

**—Practice of Calcutta High Court.**

It is an established practice of the Calcutta High Court that an application against an order of the Court below in criminal cases should be made within 60 days from the date of the order. The practice is uniform, and only in special circumstances it can be departed from. 43 Cal. 1029 and 25 C. L. J. 564, Ref.

That the application could not be made in time owing to the oversight on the part of the petitioner's legal advisers is not a ground for departing from the settled practice. (*Suhrawardy and Cammade, J.J.*) **KISHEN DAYAL v. DARJEELING MUNICIPALITY.**

103 I. C. 63=54 Cal. 394=28 Cr. L. J. 639=  
8 A. I. Cr. R. 257=A. I. R. 1927 Cal. 574.

**—Revision to High Court against order under S. 107.**

Persons who come to High Court in revision against an order under S. 107 are expected to do so with the utmost promptitude and certainly within thirty days of the order against which they complain. (*Daniels, J.*) **RAM DEO SINGH v. EMPEROR.** 97 I. C. 652=

49 All. 228=25 A. I. J. 44=27 Cr. L. J. 1132=  
7 L. R. A. Cr. 174=A. I. R. 1926 All. 767.

**—Allahabad High Court practice.**

Although there is no law of limitation applicable to revision applications, it is the settled practice of the Allahabad High Court not to admit them unless they are made within a reasonable time after the order complained of. (*Daniels, J.*) **KING-EMPEROR v. RAM NARAIN.** 96 I. C. 877=7 L. R. A. Cr. 130=

27 Cr. L. J. 1021=A. I. R. 1926 All. 577.

**—S. 439—New plea.**

A contention which should properly be raised in the lower Courts, but not so raised, will not be allowed to be raised for the first time in revision. (*Keilly, J.*) **BALUSAMY AYYAR v. EMPEROR.** 112 I. C. 566=

29 Cr. L. J. 1062=2 M. Cr. C. 60=  
11 A. I. Cr. R. 362=A. I. R. 1929 Mad. 188.

Provisions of S. 360 not complied with—Objection cannot be raised for the first time in revision. (*Adami, J.*) **ARJUN KURMI v. EMPEROR.**

99 I. C. 109=8 P. L. T. 166=28 Cr. L. J. 77=  
A. I. R. 1927 Pat. 100.

Points of facts not put before trial Court cannot be raised. (*Wallace, J.*) **N. M. RAMA RAJU, In re.**

99 I. C. 33=24 M. L. W. 484=28 Cr. L. J. 2.

Plea of misjoinder can be taken for the first time in revision.

An accused can take the point of misjoinder in revision when the joint trial is bad, even though the point was not taken in the Courts below. No question of prejudice arises in such a case. (*Greaves and Chotzner, J.J.*) **DALSUK ROY AGARWALLA v. EMPEROR.**

81 I. C. 343=25 Cr. L. J. 807=  
A. I. R. 1925 Cal. 248.

Non-compliance with S. 360 cannot be raised for first time in revision. (*Mullick and Bucknill, J.J.*) **SAIYID MOHIUDDIN v. EMPEROR.** 86 I. C. 459=

4 Pat. 488=6 P. L. T. 154=3 Pat. L. R. Cr. 110=  
26 Cr. L. J. 811=1925 P. H. C. C. 112=  
A. I. R. 1925 Pat. 414.

**—S. 439—Notice.**

Case heard without notice to accused.

An order under S. 439, setting aside an order of the

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**CR. P. CODE (1898), S. 439—Pending proceedings.**

lower Court under S. 562 (1 A), Cr. P. Code and convicting the accused under Penal Code, S. 324, was passed under the impression that accused was served with a notice of hearing. It subsequently turned out that no such notice was issued. The High Court thereupon issued a notice and re-heard the case. (*C. C. Ghose and Cammade, J.J.*) **RAMESH PODA v. KADAMBINI DASI.**

31 C. W. N. 960=104 I. C. 447=  
8 A. I. Cr. R. 438=28 Cr. L. J. 831=  
A. I. R. 1927 Cal. 702.

—Appeal against convictions—Notice for enhancement is not necessary.

Where the accused have preferred an appeal and they have had an opportunity of being heard personally or by pleader, it is open to the appellate Court to change their conviction to one under a graver section, without further calling upon them or issuing to them a formal notice, when the Public Prosecutor asks to do so. (*Kincaid, J.C. and Rupchand Bilaram, A. J. C.*) **BUKSHAN v. EMPEROR.**

27 Cr. L. J. 1265=  
98 I. C. 113=A. I. R. 1927 Sind 85.

—Appeal pending—Notice for enhancing sentence should not be issued till dismissal of appeal. (*Macleod, C. J. and Crump, J.*) **MANGAL NARAN v. EMPEROR.**

87 I. C. 424=27 Bom. L. R. 355=  
49 Bom. 450=26 Cr. L. J. 968=  
A. I. R. 1925 Bom. 268.

Omission to serve notice of appeal on complainant or officer appointed under S. 422, Cr. P. Code, is no ground for interfering in revision when no injustice has been done. (*Venkatasubba Rao, J.*) **KANAKAN v. AMIR BI.**

84 I. C. 249=20 M. L. W. 327=

26 Cr. L. J. 249=A. I. R. 1924 Mad. 837.  
—Order enhancing sentence without notice to accused is void and Court can re-hear the case. (Case-law discussed.) (*Odgers and Wallace, J.J.*) **T. SOMU NAIDU, In re.**

84 I. C. 850=47 Mad. 428=

20 M. L. W. 18=34 M. L. T. 218=  
26 Cr. L. J. 370=A. I. R. 1924 Mad. 640=  
46 M. L. J. 456.

**—S. 439—Pending proceedings.**

—Exceptional cases—Test for determining.

The High Court does not interfere in a case pending in a subordinate Court unless it is of an exceptional nature. One test of its being of exceptional nature is that a bare statement of the facts of the case without any elaborate argument should be sufficient to convince the High Court that the case is a fit one for its interference at an intermediate stage. Where in a proceeding under S. 488, Cr. P. Code by a wife against her husband the trial Magistrate passed an order that certain letters from his wife produced by the husband were inadmissible under S. 122 Evidence Act, the case was forwarded to High Court for setting aside the order.

Held, that the order being purely an interlocutory order the High Court could not interfere, it being not convinced that the case was of any exceptional nature and a fit one for its interference at an intermediate stage. 25 Cal. 233, Rel. on. (*Shadi Lal, C. J.*) **DONLEA v. MRS. DONLEA.** 1930 Cr. C. 977=31 P. L. R. 809=  
A. I. R. 1930 Lah. 881.

**—Part heard trial.**

Only upon allegations of the gravest departure from procedure should the High Court take the conduct of a case, before its termination, out of the hands of the trial Court. 39 Mad. 561 and A.I.R. 1925 Mad. 39, Ref (*Curgenven, J.*) **NACHIAPPA UDAYAN v. KING-EMPEROR.**

51 Mad. 84=26 M.L.W. 487=  
1927 M. W. N. 752=39 M.L.T. 452=  
28 Cr. L. J. 979=9 A.I. Cr. R. 139=105 I.C. 803=  
A. I. R. 1927 Mad. 975=53 M.L.J. 528.

**CR. P. CODE (1898), S. 439—Pending proceedings.**

—*Charge framed and only defence remaining to be heard—High Court will not interfere.*

It is only in very exceptional instances that the High Court will interfere in revision with the action of a Subordinate Court in respect of any pending case, and especially when such a case has reached the stage where a charge has been drawn up and only the defence of the accused remains to be heard. 26 Cal. 786, Foll. 8 S.L.R. 143, Dist. (*Percival, J.C. and Aston, A.J.C.*) *MANILAL v. KAMBERALI*. 28 Cr. L. J. 644=103 I. C. 100=A. I. R. 1927 Sind 231.

—*Procedure followed very irregular and extraordinary—Revision rectified.*

Where the trial Magistrate consulted his appellate Magistrate as to the course to be followed in a particular case and the latter gave advice on the matter to the former.

*Held*, that the procedure followed was extremely irregular and extraordinary but did not justify interference by the Court so long as the proceedings had not come to a termination. (*Venkatasubba Rao, J.*) *SAMI GOUNDAN, In re*. 85 I.C. 37=20 M.L.W. 937=26 Cr. L.J. 421=A. I. R. 1925 Mad. 315.

—*High Court would interfere where bare statement of the facts of the case justifies interference.*

The circumstances which will justify the interference of the High Court in a pending case cannot be laid down with precision. But one safe practical test would be that a bare statement of the facts of the case without any elaborate argument should be sufficient to convince the High Court that it is a fit one for its interference at an intermediate stage. 25 Cal. 233 and 47 Mad. 722, Ref. to. (*Baker, J.C.*) *MADHAV BHAGWANT DESHMUKH v. EMPEROR*. 88 I. C. 181=26 Cr. L. J. 1093=A. I. R. 1925 Nag. 345.

—*High Court can interfere in proceedings for granting bail.*

Proceedings in which it is or it has been determined whether bail from the accused person should be taken or not come within the definition of "any proceeding" under S. 439 and the High Court can under that section interfere and control the propriety as well as the regularity of such proceedings. (*Kinkhede, A.J.C.*) *LOCAL GOVERNMENT v. GULAM JILANI*.

82 I. C. 755=25 Cr. L. J. 1363=A. I. R. 1925 Nag. 228.

—*High Court—When interferes.*

Although the High Court would not interfere much with the discretion of the Magistrates who are vested with ample powers to dispose of a case before it has proceeded to its due termination, it would so interfere on occasions where the circumstances clearly call for its interference. Courts should look with much suspicion on criminal actions which are brought forward by partners of a still subsisting partnership against one another, so as to make a prosecution an extremely oppressive mechanism for compelling a partner to admit or pay up a claim or enter into some compromise in a matter which is really one, more suitable for settlement in a civil suit than a case for a criminal prosecution. (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*) *UDHARAM v. EMPEROR*. 89 I. C. 247=26 Cr. L.J. 1303=A. I. R. 1925 Sind 231.

—*Interference is exceptional.*

Although it is unusual to interfere in revision with a pending case the High Court will interfere in exceptional cases. *e. g.*, where a pleader was charged under S. 409 for retaining fees the legal recovery of which was time barred. (*Batten, J.C.*) *KRISHNA RAQ v. EMPEROR*. 73 I. C. 335=6 N.L.J. 119=

**CR. P. CODE (1898), S. 439—Powers of High Court—Conversion of acquittal into conviction.**

—**S. 439—Powers of High Court—Charge.**

—High Court has extraordinary jurisdiction to set aside a charge framed by the lower Courts. 42 P. R. 1885 (Cr.), Diss. from; 33 P. R. 1910 (Cr.) Foll. (*Dalip Singh, J.*) *BALBIT SINGH v. EMPEROR*.

29 Cr. L. J. 1008=11 A. I. Cr. R. 262=112 I. C. 224=A. I. R. 1929 Lah. 67.

—**S. 439—Powers of High Court—Commitment.**

—*Court can exercise powers conferred by S. 423 (1) (c).*

It is competent for a Court under S. 439 of the Cr. P. Code to exercise the powers of an Appellate Court conferred by S. 423 (1) (c) and *a fortiori* to reverse or alter an order of commitment passed by a Sessions Judge under S. 423 (1) (b). (*Dalal, J.C.*) *RAM SAMUJH LAL v. EMPEROR*. 82 I. C. 767=11 O. L. J. 748=25 Cr. L. J. 1375=A. I. R. 1925 Oudh 233.

—**S. 439—Powers of High Court—Conversion of acquittal into conviction.**

—Accused charged under S. 302, Penal Code, but convicted under S. 304—Convicting him under S. 302 in revision is without jurisdiction. 37 Mad. 119, Dist. A. I. R. 1922 All. 487 and A. I. R. 1924 Bom. 456, Appr. (*Sir Lancelot Sanderson.*) *KISHAN SINGH v. EMPEROR*. 50 All. 722=

55 I. A. 390=26 A. L. J. 1099=30 Bom. L. R. 1572=48 C.L. J. 397=10 L. R. A. Cr. 129=12 A. I. Cr. R. 241=33 C. W. N. 1=29 P. L. R. 575=5 O. W. N. 911=28 M. L. W. 396=1928 M. W. N. 749=29 Cr. L. J. 828=111 I. C. 832=1 M. Cr. C. 244=A. I. R. 1928 P. C. 254=55 M. L. J. 786 (P. C.).

—*Acquittal cannot be converted into conviction.*

High Court has no power in revision to do what is tantamount to converting a finding of acquittal into one of conviction. Where the accused had been acquitted by the Sessions Judge of murder and also under the first part of S. 304 but was convicted under second part High Court cannot convict him of either of these offences except on an appeal by the Local Government. S. 439 prohibits the converting of a finding of acquittal into one of conviction and says nothing about the acquittal being partial or complete. A. I. R. 1922 All. 487, Appr.; 37 Mad. 119, Diss. (*Waller and Madhavan Nair, J.J.*) *SUBBA CHUKLI, In re*.

50 Mad. 259=28 Cr. L. J. 397=100 I. C. 1053=38 M. L. T. 379=26 M. L. W. 888=A. I. R. 1927 Mad. 582=52 M. L. J. 707.

—High Court cannot convert a finding of acquittal into one of conviction only when there is complete acquittal—Acquittal under a particular section but conviction under another—High Court can alter acquittal under that section into a conviction. A. I. R. 1924 Bom. 456 and A. I. R. 1922 All. 487, Not Foll.; 37 Mad. 119; A. I. R. 1924 Rang. 93 and 23 Cal. 975, Foll. (*Kincaid, J.C. and Lobo, A. J. C.*) *EMPEROR v. SADHU*.

20 S. L. R. 352=27 Cr. L. J. 1121=97 I. C. 641=A. I. R. 1927 Sind 16.

—Sub-clause (4) does not prohibit a Court from convicting in revision on a charge upon which the trial Court has in effect acquitted an accused. A. I. R. 1924 Bom. 456, Not Foll.; 12 P. R. 1904 (Cr.) and 37 Mad. 119, Foll. (*Broadway and Fforde, J.J.*) *KANSHI v. EMPEROR*. 8 L. L. J. 188=27 P. L. R. 244=27 Cr. L. J. 566=94 I. C. 134=A. I. R. 1926 Lah. 361.

—High Court cannot convert acquittal into conviction unless it is acting both as appellate and revisional Court. A. I. R. 1924 Bom. 456, Foll. A. I. R. 1924

**CR. P. CODE (1898), S. 439—Powers of High Court—Conversion of acquittal into conviction.**

Rang. 93, Expl. (*Carr and Duckworth, J.J.*) **EMPEROR v. KAN THEIN.** 4 Rang. 140 =

5 Bur. L. J. 80 = 27 Cr. L. J. 1393 = 98 I. C. 705 =  
A. I. R. 1926 Rang. 154.

**—S. 439—Powers of High Court—Costs.**

—The High Court has no power to award costs incurred before it on the hearing of a Criminal Revision against an order passed under Chapter XII (Ss. 145-148) of the Cr. P. C. A.I.R. 1922 Mad. 502 (F.B.), Foll. (*Spencer, Offg. C.J., Kumaraswami Sastri and Krishnan, J.J.*) **VEERAPPA NAIDU v. AVUDAYAMMAL.**

86 I. C. 147 = 48 Mad. 262 = 26 Cr. L. J. 707 =  
21 M. L. W. 688 = A. I. R. 1925 Mad. 438 =

48 M. L. J. 106 (F.B.).

**—S. 439—Powers of High Court—Dismissal for default.**

—A criminal revision petition dismissed in default without any decision on the merits can be reheard. (10 C. L. J. 80, Foll.) (*Abdul Qadir, J.*) **KISHEN SINGH v. GIRDHARI LAL.** 69 I. C. 638 =

A. I. R. 1924 Lah. 310.

**—S. 439—Powers of High Court—Dismissal of complaint.**

—Complaint enquired into by two Magistrates and dismissed—Sessions Judge refusing to take action in revision—High Court will interfere only if there is strong probability that further enquiry will result in conviction. 26 All. 564, Rel. on. (*Macnair, A. J. C.*) **MALTHURA PRASAD v. NARENDRA SINGH.**

122 I. C. 384 = 31 Cr. L. J. 413 = A. I. R. 1930 Nag. 150.

**—S. 439—Powers of High Court—Enquiry.**

—A further enquiry may be ordered only in cases where a Magistrate has not taken sufficient trouble or has come to a perverse decision. But a Court of revision is not entitled to order further inquiry merely for the reason of the disagreement with the conclusion of the Magistrate. (*Dalal, J.*) **KUNDAN LAL v. MANOHAR LAL.**

117 I. C. 345 = 10 L. R. A. Cr. 102 =  
30 Cr. L. J. 755 = 12 A. I. Cr. R. 94 =

1929 Cr. C. 176 = A. I. R. 1929 All. 588.

—High Court can enquire into validity of reasons for discharging jury. (*Subrao v. Graham, J.J.*) **ABDUR RAHIM v. EMPEROR.** 33 C. W. N. 425 =

56 Cal. 1032 = A. I. R. 1929 Cal. 343.

—A Revising Court has power to order further enquiry even when the Subordinate Magistrate has recorded all the evidence of the prosecution. Where the Sessions Judge after going carefully through into the evidence came to the conclusion that the finding of the Magistrate was either perverse or in all probability wrong or manifestly at variance with the evidence which he has recorded and where this was his considered opinion, the High Court refused to hold that his order directing a further enquiry was illegal, improper or incorrect. (*Kendall, A. J. C.*) **KARHLEV v. JAGAN-NATH PRASAD.**

87 I. C. 111 = 11 O. L. J. 611 =

26 Cr. L. J. 959 = A. I. R. 1925 Oudh 180.

**—S. 439—Powers of High Court—Extradition.**

—*Extradition Act, S. 7—Order of District or Chief Presidency Magistrate executing warrant under S. 7 can be revised.*

Execution by the District Magistrate (or the Chief Presidency Magistrate) in British India of a warrant under S. 7 of Extradition Act is not an executive act. The Magistrate has judicially to consider the matter and decide whether the warrant can be executed according to law and the order of the Magistrate is subject to the revisional powers of the High Court. The order can also be interfered with under S. 561-A. On proper proceedings being taken High Court can also interfere

**CR. P. CODE (1898), S. 439—Powers of High Court—Interference by.**

under S. 491. 42 Cal. 793 held too widely stated. 7 Bom. L. R. 463; 41 Cal. 400 and A. I. R. 1922 Pat. 442, Rel. on. (*Mirza and Baker, J.J.*) **BAI AISHA, In re.** 117 I. C. 321 = 31 Bom. L. R. 62 =

53 Bom. 149 = 30 Cr. L. J. 772 =

A. I. R. 1929 Bom. 81.

**—S. 439—Powers of High Court—Inherent powers.**

—Land wrongly attached under S. 88—High Court can interfere under inherent powers. (*Harrison, J.*) **BHUTTA SINGH v. EMPEROR.** 27 Cr. L. J. 1025 =

8 L. L. J. 608 = 27 P. L. R. 825 = 96 I. C. 977 =

A. I. R. 1926 Lah. 662.

—The High Court's powers of revision are in express terms limited to those conferred by certain sections mentioned in S. 439. S. 526 is not one of these. (*May Oung, J.*) **ASHU v. MG. PO KHAN.**

77 I. C. 885 = 1 Rang. 632 = 2 Bur. L. J. 236 =

25 Cr. L. J. 485 = A. I. R. 1924 Rang. 100.

**—S. 439—Powers of High Court—Interference by.**

—Where the accused is not prejudiced there will be no interference in revision, though the case ended in conviction, and *a fortiori* there will be no interference in the case of an acquittal. Where, however, the acquittal is the result of a wholly illegal procedure, the High Court can interfere in revision and direct a retrial of the case. (*Sundaram Chetty, J.*) **PICHA KUDUMBAN v. SERVAIKARA THEVAN.** 1930 M. W. N. 770.

—A court of revision is not precluded from interfering with questions of fact, in criminal cases. (*Jackson, A. J. C.*) **PRATAP SINGH v. EMPEROR.**

124 I. C. 449 = 31 Cr. L. J. 659.

—Every irregularity or illegality does not *ipso facto* vitiate a trial or call for the exercise of the powers of interference by the appellate or revisional Court unless it has resulted in a failure of justice, it is sufficiently covered by the very wide provisions of S. 537 of the Code. (*Wild, J.C. and Rupchand, A. J. C.*) **RAJABALI HASSANALI v. EMPEROR.** 1930 Cr. C. 1147 =

A. I. R. 1930 Sind 315.

—The principles upon which this Court habitually acts as a Court of revision in relation to the enhancement of sentences are that it should not interfere if the sentence passed involves substantial punishment, and should interfere if the sentence is manifestly inadequate. The Court is, in particular, slow to interfere where interference would involve the imprisonment of persons already discharged from jail, though this circumstance is no insuperable obstacle. Again the Court frequently declines to interfere, in order to enhance a sentence, on the mere ground that it would itself have passed a heavier sentence, contenting itself with pointing out that the sentence, is so far light that a heavier sentence would have been maintained. 7 P. R. 1889 (Cr.), Foll. (*Tek Chand, J.*) **KHUDA BAKSH v. FEROZE DIN.**

114 I. C. 442 = 30 Cr. L. J. 300 = 1929 Cr. C. 90 =

A. I. R. 1929 Lah. 531.

**—Sentence.**

High Court has power to interfere in case of an excessive sentence even when the case is before it on reference. (*Addison and Johnstone, J.J.*) **B. T. E. BARNSFIELD v. EMPEROR.** 118 I. C. 438 =

30 Cr. L. J. 918 = A. I. R. 1929 Lah. 187.

—The High Court is not precluded by sub-S. (5), S. 439, Cr. P. Code, from interfering with the conviction of an accused who had not preferred an appeal when the case is before the Court otherwise than at his instance. (*Adami and Macpherson, J.J.*) **MT. CHAMPA PASIN v. EMPEROR.** 9 A. I. Cr. R. 545 = 108 I. C. 81 =

29 Cr. L. J. 325 = A. I. R. 1928 Pat. 326.

**—Limits of.**

**CR. P. CODE (1898), S. 439—Powers of High Court—Interference by.**

And although the High Court has jurisdiction under S. 439 to exercise its powers of revision whatever the source of its knowledge, a High Court would not, as a rule, exercise those powers in a case where the Magistrate making the report has jurisdiction to dispose of the matter himself. 15 Cr. L. J. 472, Rel. on. (*Percival, J. C. and Aston, A. J. C.*) *EMPEROR v. RAHIMDINO*. 22 S. L. R. 201=9 A. I. Cr. R. 154=105 I.C. 802=28 Cr. L. J. 978=A. I. R. 1928 Sind 69.

—Technical illegality—Accused not prejudiced—High Court will not interfere. 5 P. R. 1906 (Cr.), Foll. (*Martineau, J.*) *MURLI DHAR v. EMPEROR*.

93 I. C. 1054=27 Cr. L. J. 558 (Lah.).  
—Conviction by Panchayat under I. P. C., S. 426—Mischievous—Value of property damaged not mentioned in judgment—High Court can interfere under Government of India Act, S. 107, but not under Cr. P. Code. (*Devadoss, J.*) *MUNIGADU v. EMPEROR*.

88 I. C. 521=1925 M. W. N. 600=26 Cr. L. J. 1161=A. I. R. 1925 Mad. 1144.

**—S. 439—Powers of High Court—Nature of.**

—Rule for one relief can be utilized for any other relief.

Where the Rule issued by High Court was to show cause why the appeal should not be reheard by the Sessions Judge,

*Held*, it was within the competence of High Court to make any order as it may think fit, e.g., it may order that the order of the Sessions Judge be set aside. (*Sanderson, C. J. and Panton, J.*) *BEJOY SINGH HAZARI v. MATHURIYA DEBYA*. 42 C. L. J. 124=A. I. R. 1925 Cal. 1182.

—Order under S. 523, Cr. P. C., can be examined. (*Broadway, J.*) *CHUNI LAL v. ISHAR DAS*.

73 I. C. 702=4 Lah. 38=24 Cr. L. J. 670=A. I. R. 1924 Lah. 76.

**—S. 439—Powers of High Court—Practice.**

—Court ordinarily confines itself to points raised in the revision petition.

Ordinarily a Judge disposing of a revision petition filed by a convicted person or his pleader against the propriety of his conviction cannot be said to be adjudicating on the question of enhancing the sentence. A Court exercising its revisional powers upon a revision petition ordinarily deals with the points raised in the petition and has no occasion to travel outside them and consider the whole case upon its merits, as the Court that tries the accused and the Court that hears the appeal, if any, does. It might be otherwise in a revision case taken up by the Court *suo motu*. (*Spencer and Wallace, J.J.*) *ANIF SAHIB, In re*. 85 I. C. 727=26 Cr. L. J. 583=A. I. R. 1925 Mad. 993.

**—S. 439—Powers of High Court—Principles.**

—The powers of the High Court in criminal revision are not intended for the gratification of private malice, nor are they to be used to vindicate the position of a private prosecutor where a merely technical offence has been committed, however clearly that technical offence may have been proved. (*Courtney-Terrill, C. J. and James, J.*) *NARAYAN MAHARANA v. EMPEROR*.

125 I. C. 134=9 Pat. 113=1930 Cr. C. 509=31 Cr. L. J. 789=11 P. L. T. 772=A. I. R. 1930 Pat. 241.

—Revisional powers are for correction of injustice.

Powers of revision are given to second appellate Court for the correction of injustices, and not for the correction of mere illegalities. (*Hallifax, A. J. C.*) *EMPEROR v. GOVINDA KUNBI*. 109 I. C. 214=

10 A. I. Cr. R. 173=29 Cr. L. J. 486=A. I. R. 1928 Nag. 172.

**CR. P. CODE (1898), S. 439—Proceedings under S. 144.****—S. 439—Powers of High Court—Reference.**

—*Held*, that the High Court has power to pass orders on a reference by a Judge in respect of his own order. (*King, J.*) *EMPEROR v. RADHA RAMAN*.

1930 A. L. J. 1076=1930 Cr. C. 1201=A. I. R. 1930 All. 817.

**—S. 439—Private complaint.**

—Per *Mullick, J.*—The power of interference in revision should be most sparingly exercised and only in cases where it is urgently demanded in the interests of public justice, e.g., cases in which there has been a denial of the right of fair trial and which attract the operation of S. 107 of the Government of India Act. In cognizable cases the private prosecutor has no position at all and that if the Crown decides to let an offender go, no other aggrieved party can be heard to object that he has not taken his full toll of private vengeance. The Crown and not the complainant is always the party.

Per *Macpherson, J.*—The High Court possesses the power to set aside an acquittal under S. 439 on being moved by a private person, and this power is not restricted to cases where there has been no trial, or where there has been a denial of the right of fair trial. It cannot be laid down that in every case of a prosecution for a cognizable offence the private prosecutor in India has no position at all in the litigation. Neither principle nor authority supports the view that an application under S. 439 against an acquittal is not maintainable in a private prosecution where the offence charged is cognizable. (*Mullick and Macpherson, J.J.*) *SIBAN RAI v. BHAGWANT DAS*. 92 I. C. 219=5 Pat. 25=6 P. L. T. 833=27 Cr. L. J. 235=A. I. R. 1926 Pat. 176.

—Private complainant cannot move High Court to enhance sentence.

A private party cannot apply to the High Court for enhancing a sentence passed by a Subordinate Court. A District Magistrate, a Sessions Judge, or the Government Pleader, may draw the attention of the High Court to a sentence with a view to its being enhanced; or the High Court can of its own motion send for the record and take action with a like object. If a private complainant considers a sentence unduly lenient, he may draw the attention of Government to the fact. (*Macleod, C. J. and Shah, J.*) *In re NAGJI DULA*.

81 I. C. 614=48 Bom. 358=26 Bom. L. R. 182=25 Cr. L. J. 966=A. I. R. 1924 Bom. 320.

—No appeal by Local Government from acquittal—Even third party can apply in revision. (*Kanhaiya Lal, J. C.*) *DR. ZAHIRUDDIN v. NASIRUDDIN*.

71 I. C. 602=24 Cr. L. J. 186=A. I. R. 1924 Oudh 171.

—No revision lies at the instance of private person.

An order of acquittal passed under S. 494, Cr. P. Code, should not be revised by the High Court at the instance of a private party. The private prosecutor has no position at all in criminal litigation. The Crown is the prosecutor and the custodian of the public peace, and if it decides to let an offender go, no other aggrieved party can be heard to object on the ground that he has not taken his full toll of private vengeance. (*Mullick and Macpherson, J.J.*) *GULLI BHAGAT v. NARAIN SINGH*.

77 I. C. 734=2 Pat. 708=5 Pat. L. T. 404=25 Cr. L. J. 446=2 Pat. L. R. Cr. 165=2 Pat. L. R. Cr. 187=A. I. R. 1924 Pat. 283.

**—S. 439—Proceedings under S. 144.**

—Interference by High Court.

The powers of the High Court in revision are general and their generality cannot be cut down by any decision. Where the elements essential to action under S. 144, Cr. P. C., are shown to exist upon materials legally before

**CR. P. CODE (1898), S. 439—Proceedings under S. 144.**

the court, the High Court will in exercising its powers respect the opinion of the local authorities both as to the gravity of the danger and as to the steps necessary for the maintenance of peace. But if the grounds for action as stated in the order are either unfounded in fact or insufficient in law or if it is shown that the order against the public as framed violates the conditions laid down by S. 144, then it is the duty of the High Court to interfere. (*Pandulal, J.*) **SRIRAMAMURTHI v. EMPEROR.** 1930 M. W. N. 849.

**—S. 439—Proceedings under S. 145.**

—If a declaratory order is passed under S. 145 (6) the order can be revised, but if the Magistrate on the facts refuses to proceed under S. 145, such order cannot be revised. (*Kennedy, J. C. and DeSouza, A. J. C.*) **MOOLYMAL TOPANDAS v. ALI MAHOMED JADOW.** 89 I. C. 309 = 18 S. L. R. 278 = 26 Cr. L. J. 1333 = A. I. R. 1926 Sind 85.

—Necessary party not asked to file written statement—No specific statement as to danger of breach of peace—Proceedings will be set aside in revision. (*Dalal, C. J.*) **RAM BUSHAN DAS v. RAM LAKHAN SAHU.** 85 I. C. 918 = 26 Cr. L. J. 630 = A. I. R. 1925 Oudh 484.

—Refusing to admit written statement filed by claimants in proceedings under S. 145 is revisable as the effect of it will be that the Magistrate's decision under S. 145 will not be binding on the parties whose written statement Magistrate had refused to admit. (*Jwala Prasad, J.*) **RAGHUNATH KUER v. RAJ-KISHORE KUER.** 81 I. C. 442 = 5 P. L. T. 458 = 25 Cr. L. J. 906 = A. I. R. 1924 Pat. 783.

**—S. 439—Proceedings under S. 195.**

—Application for revision lies under S. 439 even when the sanction is granted by a civil Court. 5 P. R. 1908 Cr. (F. B.). Foll.; 40 Cal. 477; 26 All. 249; 26 Mad. 139; A. I. R. 1921 Pat. 94; A. I. R. 1927 Oudh 14; 26 Bom. 785; 8 Cr. L. J. 351, Ref. (*Bhude, J.*) **HORI RAM v. EMPEROR.** 116 I. C. 711 = 11 L. L. J. 103 = 30 P. L. R. 392 = 30 Cr. L. J. 666 = 13 A. I. Cr. R. 99 = A. I. R. 1929 Lah. 676.

—In a case under S. 195, granting or revoking sanction, where the matter has already been before two Courts, the High Court can only interfere, if at all, in the exercise of its revisional jurisdiction under S. 439, and it will so interfere only in order to prevent a gross and palpable failure of justice. 41 All. 649; 36 All. 403, Foll. (*Daniels, J.*) **JOTI PRASAD v. DURGA PRASAD.** 77 I. C. 806 = 4 L. R. A. Cr. 213 = 25 Cr. L. J. 454 = A. I. R. 1924 All. 461.

**—S. 439—Quashing the proceedings.**

—The High Court has power at an interlocutory stage to quash the proceedings if a clear case is made out. Ordinarily, the High Court would not interfere at an interlocutory stage and interfere with the proceedings pending before a Magistrate, but when it appears that the accused is not guilty on the face of the proceedings, the High Court will interfere even at an interlocutory stage in order to prevent further harassment of the accused. 22 Cal. 131; 25 Cal. 233; 38 Cal. 68; 20 Bom. 543; 39 Mad. 561 and A. I. R. 1925 Mad. 39, Foll. (*Patkar and Baker, J.J.*) **In re SHRIPAT CHANDAVAR-KAR.** 52 Bom. 151 = 30 Bom. L. R. 70 = 29 Cr. L. J. 317 = 9 A. I. Cr. R. 563 = 108 I. C. 27 = A. I. R. 1928 Bom. 184.

—Power under, sparingly used.

The power of the Court to take action under S. 439 by quashing proceedings is undoubted though such power will be exercised in exceptional cases only. 33 P. R. 1910

**CR. P. CODE (1898), S. 439—Reduction of sentence.**

Cr; A. I. R. 1927 Lah. 825; and A. I. R. 1927 Lah. 731, Foll. (*Tek Chand, J.*) **AMAR NATH v. EMPEROR.** 10 L. L. J. 485 = 113 I. C. 536 = 12 A. I. Cr. R. 85 = 30 Cr. L. J. 162 = A. I. R. 1928 Lah. 945.

—Prosecution under S. 415, Penal Code—Sessions Court recommending to the High Court that proceedings be quashed—Judge of the Chief Court ordering the proceedings to continue—Subsequently accused praying, under S. 561-A, the Chief Court to quash proceedings—Previous decision of the Judge of the Chief Court does not constitute estoppel against powers of the Chief Court under S. 561 and S. 439. (*Wazir Hasan and Kaza, J.J.*) **SHEO SARAN VAISH v. JITENDRA NATH DAS.** 110 I. C. 209 = 5 O. W. N. 357 = 10 A. I. Cr. R. 445 = 29 Cr. L. J. 657 = A. I. R. 1928 Oudh 292.

**—Delay in disposal if a ground.**

Where the delay in disposal of a criminal case is not due to the complainant proceedings should not be quashed on that ground as to quash the proceedings would be to deny the complainant justice which would be as much a scandal as to allow their continuance. (*Broadway, J.*) **MOHAN v. KHAN MAHOMED.** 99 I. C. 596 = 8 L. L. J. 518 = 27 P. L. R. 705 = 28 Cr. L. J. 164 = A. I. R. 1927 Lah. 66.

**—High Court—Powers of.**

S. 439 does not say that the High Court shall exercise only those powers that are conferred on a Court of Appeal; but on the other hand it enacts that among the powers possessed by the High Court are the powers conferred on an Appellate Court. The High Court has power at any stage to quash or set aside proceedings. 22 C. 131; 26 C. 786; 39 M. 561; 38 C. 168; 20 Bom. 543 and 67 I. C. 589, Foll. (*Venkatasubba Rao, J.*) **RAMANATHAN CHETTIAR v. S. SUBRAMANIA AIYAR.** 81 I. C. 785 = 47 Mad. 722 = 2 M. L. W. 234 = 35 M. L. T. 77 = 1924 M. W. N. 556 = 25 Cr. L. J. 1009 = A. I. R. 1925 Mad. 39 = 47 M. L. J. 373.

**—S. 439—Question of law.**

—Where both the parties have tendered evidence the question of weight is not a question of law. (*Sen, J.*) **ALAYAR KHAN v. EMPEROR.** 120 I. C. 193 = 31 Cr. L. J. 1 = 1930 Cr. C. 39 = 1930 A. L. J. 254 = A. I. R. 1930 All. 23.

—It is open to the High Court to revise a finding based on a misapprehension of the law. (*Macpherson, J.*) **JAGANNATH v. EMPEROR.** 115 I. C. 895 = 30 Cr. L. J. 546 = 10 P. L. T. 483 = 12 A. I. Cr. R. 360 = A. I. R. 1929 Pat. 429.

**—Order on wrong application of law can be set aside.**

Where the appellate Court has wrongly considered that the whole of the proceedings in the trial Court were without jurisdiction on a wrong application of the provisions of law, its order can be set aside in revision. (*Daniels, J.*) **MT. MASALA v. EMPEROR.** 92 I. C. 870 = 27 Cr. L. J. 358 = 7 L. R. A. Cr. 75 = A. I. R. 1926 All. 368.

—Lower Court's order erroneous in law but otherwise proper ought not to be set aside. (*Simpson, A. J. C.*) **SRIKISHAN v. DEBI DAYAL.** 90 I. C. 915 = 2 O. W. N. 823 = 26 Cr. L. J. 1619 = A. I. R. 1925 Oudh 739.

**—S. 439—Reduction of sentence.**

—A High Court should be satisfied that the sentence awarded is so unreasonable and so excessive as to require a reduction before it can interfere in revision on the

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question of sentence. (*Rupchand and Barlee, A. J. Cs.*)  
MURIDO v. EMPEROR. 125 I. C. 46=

31 Cr. L. J. 763=1930 Cr. C. 122=  
A. I. R. 1930 Sind 58.

—The High Court which has power to confirm the order under S. 137 has also power to modify that order to such extent as may seem fit. (*Boys, J.*) MANOHAR SINGH v. EMPEROR. 116 I. C. 786=

1929 A. L. J. 385=10 L. R. A. Cr. 49=

11 A. I. Cr. R. 350=30 Cr. L. J. 670=

A. I. R. 1929 All. 220.

—Where the Courts below have given non-judicial reasons for passing a severe sentence, the High Court would reduce the sentence in revision. (*Pullan, J.*) JAWAD HUSAIN v. EMPEROR. 2 Luck. 503=

1 L. C. 159=103 I. C. 401=8 A. I. Cr. R. 321=

28 Cr. L. J. 673=A. I. R. 1927 Oudh 296.

## —S. 439—Retrial.

—Order under S. 144—Expiration of period—Retrial.

Where the High Court finds that the trying Magistrate has jurisdiction to pass an order under S. 144, it will not send back the matter to the Magistrate, notwithstanding that the order has expired, so that he may begin the proceedings again, as regards the accused's showing cause against the order. 13 C. W. N. 195; 20 C. W. N. 758; 20 C. W. N. 981; 23 C. W. N. 145 and A. I. R. 1928 Cal. 440, Ref. (*Rankin, C.J. and Patterson, J.*) DABIRUDDIN MOHAMMAD v. EMPEROR. 125 I. C. 273=31 Cr. L. J. 804=1930 Cr. C. 131=

A. I. R. 1930 Cal. 131.

—Where acquittal is wrong, High Court can order retrial. (*Mohiuddin, A.J.C.*) RAMCHANDRA v. CHANTH-MAL. 115 I. C. 169=11 N. L. J. 242=

30 Cr. L. J. 405=12 A. I. Cr. R. 297=

A. I. R. 1929 Nag. 87.

—Accused acquitted—No erroneous recording or omission of evidence—High Court cannot direct retrial by holding that on evidence as it is accused ought not to have been acquitted. A. I. R. 1928 P. C. 254, Rel. on; A. I. R. 1929 Pat. 139, not Foll. (*Baguley, J.*) MA NYEN v. MAUNG CHIT HPU. 120 I. C. 912=

7 Rang. 538=1929 Cr. C. 497=31 Cr. L. J. 186=

A. I. R. 1929 Rang. 321.

—An order for retrial in a case of discharge under Ss. 342, 355 and 506, Penal Code, after a lapse of about two years, amounts to travesty of justice. (*Fforde, J.*) BISHAN SINGH v. ABDUL GHAFUR. 111 I. C. 575=9 A. I. Cr. R. 428=

29 Cr. L. J. 895=A. I. R. 1928 Lah. 178.

—S. 439, Cr. P. Code, confers on High Court power to direct accused to be committed for retrial. 6 A. 40; 15 C. 608 (F. B.) and 27 Bom. 84, Foll. (*Coutts-Trotter, C. J., Waller and Ananthakrishna Aiyar, J.J.*) PUBLIC PROSECUTOR v. PONNUSWAMI NAYAK. 52 Mad. 156=28 M. L. W. 651=

30 Cr. L. J. 184=11 A. I. Cr. R. 550=

1928 M. W. N. 312=1 M. Cr. C. 231=

113 I. C. 546=A. I. R. 1928 Mad. 1267=

55 M. L. J. 674 (F.B.).

—Offence under Copyright Act (1914), S. 7—Accused acquitted by trial Court under wrong view of law—Retrial was ordered.

Where the offence alleged to have been committed by the accused was one under S. 7, Copyright Act (1914), and the trial Court took a wrong view of the law and acquitted accused,

Held, that in a case where the Court has proceeded on a wrong view of the law, and where the matter is of great importance to the complainant in his position as

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author of this book, which will be pirated by another who will secure for himself the gains that ought legitimately to go to the petitioner, a retrial should be ordered. (*Wallace, J.*) VENKATARAO v. PADMANABHA RAJU. 105 I. C. 669=26 M. L. W. 489=

1927 M. W. N. 772=39 M. L. T. 328=

28 Cr. L. J. 957=A. I. R. 1927 Mad. 981=

53 M. L. J. 529.

—Case heard by a Bench, but not finally disposed of—Chief Justice can direct another Bench to hear it. (*Phillips, Wallace and Jackson, J.J.*) MUTHU BALU CHETTIAR v. MADURA MUNICIPALITY. 105 I. C. 686=39 M. L. T. 548=

1927 M. W. N. 835=28 Cr. L. J. 974=

27 M. L. W. 239=9 A. I. Cr. R. 127=

A. I. R. 1927 Mad. 961=53 M. L. J. 633 (S.B.).

—Retrial ordered by High Court—No Court mentioned—Question left to discretion of Court having power to direct the trial.

If an order for retrial is made by the High Court and it is not stated in the order whether the retrial is to be held by the same Magistrate or by some other Magistrate, then it should not be presumed that it was the intention of the High Court to direct that the retrial should be held by the same Magistrate. Under these circumstances the matter is left entirely in the discretion of the Magistrate who has got to appoint the Court by which the case is to be tried. (*Rankin and Mukerjee, J.J.*) BALI RAM KALWAR v. SITARAM KALWAR. 97 I. C. 948=30 C. W. N. 1002=

27 Cr. L. J. 1188=A. I. R. 1926 Cal. 1173.

—Prosecution should not be helped with retrial.

It will not be right to allow the prosecution to shape its case afresh after the whole matter has been threshed out and the defects brought to light, in the course of prolonged proceedings. No retrial should be ordered in such a case. (*Newbould and Mukerjee, J.J.*) KEDAR NATH CHAKRAVARTI v. EMPEROR. 86 I. C. 705=

26 Cr. L. J. 849=29 C. W. N. 408=

41 C. L. J. 172=A. I. R. 1925 Cal. 603.

—Acquittal set aside—If High Court could direct.

When the order of acquittal by the lower Court is set aside for non-compliance with the mandatory provisions of S. 342 it is not within the province of the High Court to determine whether the accused should be retried. (*Suhrawardy and Graham, J.J.*) REMEMBRANCE OF LEGAL AFFAIRS, BENGAL v. SATISH CHANDRA ROY. 83 I. C. 495=51 Cal. 924=39 C. L. J. 411=

26 Cr. L. J. 15=A. I. R. 1924 Cal. 975.

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—The High Court does not regard the question of enhancement only from the point of view of public interest but from the circumstances of the particular case before it. A private complaint can, therefore, apply in revision to the High Court for enhancement of a sentence. 1924 Bom 320, Dist. (*King and Bennet, J.J.*) MAN SINGH v. REOTI. 1931 Cr. C. 13=

1930 A. L. J. 1324.

—The High Court in revision is not bound by S. 412 but may examine the record for the purpose of seeing whether the accused have had a fair trial and whether their plea of guilty was based on a proper conception of the facts. (*Doyle, J.*) ALI HOSSEIN v. EMPEROR. 1930 Cr. C. 1177=A. I. R. 1930 Rang. 349.

—Stay of criminal trial pending civil suit—Matter of discretion—Interference by High Court.

There is no invariable rule as regards the staying of criminal proceedings (under S. 82, Registration Act) pending the issue in a civil suit. This is a matter for the discretion of the trial Court and in criminal revision High Court cannot interfere with the order unless the



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Court has in exercise of its jurisdiction acted in a manner which is unjudicial, A. I. R. 1927 Mad. 798, Foll.; 1 P.L.T. 697, Ref. (*Wort, J.*) MIRDAY NARAIN SINGH v. EMPEROR. 119 I. C. 888 =

10 P. L. T. 889 = 30 Cr. L. J. 1101 = 1929 Cr. C. 252 = A. I. R. 1929 Pat. 500.

—Question of fact, when will be gone into.

As a rule it is not usual for the High Court to go into the facts of a case or to go behind the findings of fact arrived at by the Courts below; but in a case which depends wholly on circumstantial evidence the question whether the circumstances taken as a whole amount to conclusive proof of the guilt of the accused or not has often to be considered even by a Court of revision. (*Fazl Ali, J.*) BASUDEO MANDAR v. EMPEROR. 117 I. C. 879 = 30 Cr. L. J. 835 = A. I. R. 1929 Pat. 112.

—No interference with findings of fact.

It is only rarely and in exceptional circumstances that the Sind Judicial Commissioner's Court interferes in revision with findings of fact of the lower appellate Court and only in cases when the findings are supported by no legal evidence or are so manifestly erroneous as to have resulted in a miscarriage of justice. (*Rupchand Bilaram and Tyabji, A. J. Cs.*) BHIKACHAND v. EMPEROR. 98 I. C. 124 = 21 S. L. R. 130 =

27 Cr. L. J. 1276 = A. I. R. 1927 Sind 54.

—Findings of fact will be accepted.

It is the settled practice of the Sind J. C.'s Court that in dealing with revision applications, the Court accepts findings of the lower appellate Court as correct unless such findings are based on no legal evidence or are manifestly erroneous. (*Kincaid, J. C. and Rupchand Bilaram, A. J. Cs.*) EMPEROR v. LUKMAN. 98 I. C. 49 = 21 S. L. R. 107 =

27 Cr. L. J. 1233 = A. I. R. 1927 Sind 39.

—Criminal proceedings—Conducted as if in a civil suit.

Where a criminal case is launched on the basis of a civil dispute between the parties it would be proper for the Magistrate to consider whether or not the case was of a civil nature and if he came to the conclusion that only a civil wrong had been committed, he should have said so and dealt with the case accordingly. If, on the other hand, he was of opinion that a criminal offence had been committed, though he might refer to the evidence in a manner equally appropriate to civil proceedings he should not have lost sight of this fact that he was dealing with a criminal prosecution and ultimately he should have disposed of the case purely from the standpoint of the criminal law. Where the judgment of the magistrate is neither the one nor the other, it is liable to interference in revision. (*Buckland and Cuming, J. J.*) BHABANI PRASAD MOITRA v. HARICHARAN BHATTACHARJEE 73 I. C. 938 = 24 Cr. L. J. 714 = 38 Cr. L. J. 7.

—S. 439—Stay of proceedings.

—High Court staying proceedings—Lower Court informed by party but disposing of case—Lower Court's order is *ultra vires*. (*Kulwant Sahay, J.*) GOURI SHANKAR v. COLLECTOR OF MUZAFFERPUR. 87 I. C. 421 = 6 P. L. T. 215 = 3 Pat. L. R. Cr. 127 = 26 Cr. L. J. 965 = A. I. R. 1925 Pat. 553.

—Application for stay of criminal proceedings pending civil suit cannot be made to the High Court unless Magistrate has refused it. (*Spencer, J.*) Y. ANKAMMA v. P. ADRIBHOTLU. 73 I. C. 528 = 18 M. L. W. 236 = 24 Cr. L. J. 640 = A. I. R. 1924 Mad. 235.

—Order directing enquiry under S. 202—High Court will not interfere by staying the order. (*Lumsden J.*) WARYAM SINGH v. THE CROWN. 83 I. C. 727 =

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26 Cr. L. J. 167 = A. I. R. 1923 Lah. 663. —S. 439—Wrong procedure.

—Magistrate acting in contravention of law and admitting inadmissible and irrelevant evidence—Guilt established by legal evidence on record—New trial need not be ordered. (*Tek Chand, J.*) DEVI DAS v. EMPEROR. 122 I. C. 93 = 10 Lah. 794 =

31 Cr. L. J. 343 = 1930 Cr. C. 350 =

31 P. L. R. 742 = A. I. R. 1930 Lah. 318.

—Reference by District Magistrate to High Court for enhancement of sentence—Procedure is irregular—Proper procedure is to instruct law officer of the Crown to file application for revision. (*Agha Haidar, J.*) GULAB v. EMPEROR. 107 I. C. 285 =

29 Cr. L. J. 235 = A. I. R. 1928 Lah. 660.

—Illegal attachment.

Where land has been attached under S. 88 without a warrant, the High Court would interfere under inherent powers to set right the irregularity though not according to S. 89. (*Harrison, J.*) BUTTA SINGH v. EMPEROR. 96 I. C. 977 = 27 Cr. L. J. 1025 =

8 L. L. J. 608 = 27 P. L. R. 825 =

A. I. R. 1926 Lah. 662.

—S. 439—Miscellaneous.

—Argument *ad miseri cordium*.

An argument *ad miseri cordium* is out of place in a court of revision which is concerned with law and procedure. (*Pullan, J.*) RAM HARAK v. EMPEROR. 7 O. W. N. 751.

—High Court refused to dismiss important application on a technical ground. (*Dalal, J.*) SHIVA PRASAD v. EMPEROR. 119 I. C. 527 =

1929 A. L. J. 520 = 10 L. R. A. Cr. 84 =

12 A. I. Cr. R. 1 = 30 Cr. L. J. 1083 =

A. I. R. 1929 All. 347.

—Delay in trial.

Mere delay in the trial, during which the father of the accused, who might have given pertinent evidence, died, is no ground for not sanctioning the prosecution, unless the accused makes out that the delay was avoidable and deliberate. (*Wallace, J.*) GURUVAPPA NAICKER, *In re*. 118 I. C. 112 = 2 M. Cr. C. 164 = 1929 Cr. C. 11 =

30 Cr. L. J. 866 = A. I. R. 1929 Mad. 510.

—Orders under S. 421 and under S. 424 cannot be discriminated for S. 439, Cl. (6).

*De Souza, A. J. C.*—The order summarily dismissing the appeal virtually amounts to an order affirming the findings both of fact and of law recorded by the lower Court and there is no reason to discriminate between an order summarily dismissing the appeal under S. 421 and an order dismissing the appeal after hearing under S. 424 so far as its liability to attack in revision for purposes of S. 439, cl. (6), is concerned. (*Aston and De Souza, A. J. Cs.*) EMPEROR v. SHIDOO. 111 I. C. 856 = 22 S. L. R. 453 = 29 Cr. L. J. 936 =

A. I. R. 1929 Sind 26.

—Appeal under S. 476-B transferred to Subordinate Judge—Proceedings before him can be declared null and void under S. 115, though not under S. 439. (*Stuart, C. J. and Raza, J.*) BISMILLAH KHAN v. SHAKIR ALI. 114 I. C. 812 = 5 O. W. N. 882 = 4 Luck. 155 =

30 Cr. L. J. 382 = A. I. R. 1928 Oudh 494.

—Order to submit a charge-sheet is judicial order. (*Jwala Prasad, J.*) SHUKADEVA SAHAY v. HAMID MIRJAN. 111 I. C. 862 = 7 Pat. 561 =

10 P. L. T. 14 = 29 Cr. L. J. 942 =

11 A. I. Cr. R. 209 = A. I. R. 1928 Pat. 585.

—Appeal against conviction dismissed—Application for enhancement—Accused cannot be reheard on merits. (*Fawcett and Patkar, J. J.*) EMPEROR v. BOTU BAI GANESHU. 101 I. C. 593 = 8 A. I. Cr. R. 89 =

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29 Bom. L. R. 490=28 Cr. L. J. 465=

A. I. R. 1927 Bom. 666.

—A person renders himself liable to prosecution for false statements made in an affidavit in support of an application under S. 439 as required by S. 539 A. 20 Cal. 724 and 5 S. L. R. 102, Dist. (*Kincaid, J.C. and Barlee, A. J. C.*) EMPEROR v. KUNDAN.

99 I. C. 600=28 Cr. L. J. 168=7 A. I. Cr. R. 336=

A. I. R. 1927 Sind 128.

—District Magistrate applying for revision against Sessions Judge is undesirable but useful.

Though to allow the District Magistrate who is a subordinate of the Sessions Judge to get his superior's order modified in revision, is not advisable yet if the District Magistrate is wholly precluded from bringing cases to the notice of the High Court, many evils may ensue due to judicial idiosyncrasies going unchecked. (*Kennedy, J. C. and Raymond, A. J. C.*) EMPEROR v. KASIM WALAD MAHOMED SAFFER. 83 I. C. 881=17 S. L. R. 268=

26 Cr. L. J. 177=A. I. R. 1925 Sind 188.

—Reference by District Magistrate against the order of Sessions Judge is not allowed—Public Prosecutor should be moved. (*Campbell, J.*) EMPEROR v. FAZAL DAD. 73 I. C. 269=24 Cr. L. J. 573=

A. I. R. 1924 Lah. 420.

## —S. 440—Discretion.

—There is no established practice in the Allahabad High Court to hear counsel in all reference cases. Each case must depend on its merits. 8 A. L. J. 237, Expl. and 19 Cal. 380, Dist. (*Ashworth, J.*) SRIPAT NARAIN SINGH v. GAHBAR RAI. 25 A. L. J. 1010=

8 A. I. Cr. R. 337=8 L. R. A. Cr. 135=

A. I. R. 1927 All. 724.

## —S. 440—Hearing complainant.

—S. 440 applies to an accused and therefore still more strongly does it apply to a complainant. The High Court has power to hear the complainant to see what his case is about. If the case on investigation should tend to show that there has been any denial of natural justice, or that some gross and palpable error has been committed in the Court below, then the High Court should direct a rule to issue in order to hear what is to be said on the other side. (*Marten, C. J. and Murphy, J.*) P. D. SHAMDASANI, *in re*. 31 Bom. L. R. 1144=

1929 Cr. C. 555=A. I. R. 1929 Bom. 443.

## —S. 440—Right to be heard.

—No party has a right to be heard. (*Dalal, J. C.*) HAFIZ KHAN v. EMPEROR. 85 I. C. 367=

26 Cr. L. J. 527=A. I. R. 1925 Oudh 558.

## —S. 441—Scope of.

—S. 441 is not enacted to enable Presidency Magistrates to give fresh reasons for their decisions contradictory to those already given; but to enable them to supply reasons where in exercise of their privilege under S. 370, they have given no reasons at all. (*Jackson, J.*) SWARNAMMAL v. K. MUNISWAMY CHETTY. 122 I. C. 800=1930 Cr. C. 120=1929 M. W. N. 893=

3 M. Cr. C. 55=31 Cr. L. J. 460=

A. I. R. 1930 Mad. 225.

## —Ch. 33 (Ss. 443 to 449)—Claim for special procedure.

—Right to be tried under the provisions of Chap. 33 can be raised at the time of application for leave to appeal.

There is no provision in the Code of enabling a person to put forward a claim to be tried under Ch. 33 either before a Magistrate holding an enquiry or trial in a Presidency town or before the High Court during the trial of the case. It is unreasonable to suppose that the legislature ever intended that when there was no knowing whether there would be a conviction or an acquittal

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(and both are open to appeal under S. 449, Cr. P. Code) an enquiry might be asked for and the Court required to decide on the question as to whether if tried outside a Presidency town the case would have been triable under the provisions of Chapter 33, the only object of such an enquiry being that the result of it may be availed of for the purposes of an appeal by the accused in the case of a conviction and by the Crown in the case of an acquittal. The proper time to raise the question is when leave to appeal is applied for. (*Walmsley and Mukerji, J.J.*) T. C. S. MARTINDALE v. EMPEROR.

84 I. C. 1041=40 C. L. J. 256=52 Cal. 347=

29 C. W. N. 447=26 Cr. L. J. 401=

A. I. R. 1925 Cal. 14.

## —S. 443—Both parties Europeans.

—No special procedure when accused and complainant are both European British Subjects—Magistrate need not be a Justice of the Peace. (*Addison and Johnstone, J.J.*) B. I. E. BARNFIELD v. EMPEROR.

118 I. C. 438=30 Cr. L. J. 918=

A. I. R. 1929 Lah. 187.

## —S. 443—Claim to special procedure.

—The mere fact that an accused person is a European British subject does not *ipso facto* entitle him to a right of any special procedure and not specially restrict a Magistrate or a Court of Session in his or its power of punishment. (*Addison and Johnstone, J.J.*) B. I. E. BARNFIELD v. EMPEROR. 118 I. C. 438=

30 Cr. L. J. 918=A. I. R. 1929 Lah. 187.

## —S. 443—Failure to claim.

—Accused not claiming before committing Magistrate—Question cannot be raised after commitment to Sessions.

A claim by the accused and a finding by the Magistrate are necessary ingredients for the application of the provisions of Ch. 33. If any such claim is made prior to commitment and there is no finding by the Magistrate the question cannot be raised in the Court of Sessions. If such a claim is made and a finding favourable to the accused is recorded by the Magistrate, the Sessions Judge would be bound to act under the provisions of Ch. 33, and could not refuse to do so on the ground that those provisions did not apply. In the case of acceptance of the claim of the accused person the finding of the Magistrate would be final. When the finding of the Magistrate is adverse to the claim it is final unless the claimant appeals and in the case of an appeal the decision of the Sessions Judge shall be final. Where the accused merely stated that they were European British Subjects and claimed to be tried as such according to the provisions of the Code,

*Held*, that there was no claim to be tried under Ch. XXXIII. (*Dalal, J.C.*) F. S. HARV v. EMPEROR.

88 I. C. 833=2 O. W. N. 469=28 O. C. 230=

26 Cr. L. J. 1217=A. I. R. 1925 Oudh 469.

## —S. 443—Failure to claim benefit under Chap. XLIV.

## —Effect of.

Per *Walmsley, J.*—The omission of the accused person to avail himself of the right to claim the benefit of S. 528-A, does not conclude the matter and he is not debarred from urging that the conditions mentioned in cls. (a) or (b) of S. 443, exist.

Per *Mukerji, J.*—A claim to be tried under the provisions of Chapter XXXIII of the Code is wholly different from a claim to be tried as a European British subject or an Indian British subject or a European not being a European British subject or an American. It is the latter claim only which is dealt with in Chapter XLIV of the Code in which section 528-A and 528-B

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occur and so far as the former claim is concerned the question of status of the claimant does not always arise as is evident from the provisions of sec. 443 (1) (b) of the Code. Consequently Ss. 528-A and 528-B. can have no application to S. 449 under which the right of appeal is claimed in Ch. 33. *Emperor v. Harendra Chandra Chakravarti*, (Foll.) (*Walmsley and Mukerji*, J.J.) T. C. S. MARTINDALE v. EMPEROR. 84 I.C. 1041 = 40 C. L. J. 256 = 52 Cal. 347 = 29 C.W.N. 447 = 26 Cr. L. J. 401 = A.I.R. 1925 Cal. 14.

**—S. 443—Prosecution by a European employee.**

—In a criminal prosecution launched against a British Indian subject by a European employee on behalf of a Railway Administration the accused cannot claim to be tried under Chap. 33, Cr. P. Code. (*Carr, J.*) A. V. JOSEPH v. J. L. LAURMOND. 83 I.C. 894 = 3 Bur. L. J. 147 = 26 Cr. L. J. 190 = A. I. R. 1924 Rang. 373.

**—S. 444—Applicability.**

—Ch. 33 does not apply to complaint by public servant on orders of Government. (*Dawson Miller C. J. and Mullick, J.*) EMPEROR v. ZAHIR HAIDER BILGRANIN. 7 P.L.T. 367 = 27 Cr. L. J. 1041 = 7 A. I. Cr. R. 97 = 97 I.C. 17 = A.I.R. 1926 Pat. 566.

—Clause (1) of S. 444 lays down as a general proposition as to who is a complainant and the proviso is intended to exclude generally from the application of the definition public prosecutors, public servants, etc., who make complaints or lodge information before the police in their official capacity as such public prosecutors or public servants, etc., irrespective of whether or not they have personal knowledge of the facts or a personal interest in the case. (*Lobo, A. J. C.*) BURCHELL v. EMPEROR. 20 S. L. R. 178 = 27 Cr. L. J. 770 = 95 I. C. 306 = A. I. R. 1926 Sind 230.

**—S. 444—Powers of High Court.**

—S. 444 does not enact that the powers of the High Court in the matter of a reference are co-extensive with those in an appeal under S. 449. (*Dawson Miller, C. J. and Mullick, J.*) EMPEROR v. ZAHIR HAIDER BILGRANIN. 7 P. L. T. 367 = 27 Cr. L. J. 1041 = 97 I. C. 17 = 7 A.I.Cr.R. 97 = A. I. R. 1926 Pat. 566.

**—S. 446—Some accused Indians.**

—Case against Indian accused together with one European—Magistrate cannot assume jurisdiction over Indians by discharging the European—He must commit them to Sessions. (*Dalal, J.*) BANARSI DAS v. EMPEROR. 113 I. C. 764 = 51 All. 483 = 1929 A. L. J. 188 = 10 L. R. A. Cr. 41 = 11 A.I.Cr.R. 290 = 30 Cr. L. J. 218 = A. I. R. 1929 All. 84.

**—S. 446—Trial by Jury.**

—In the case of a person committed to a Sessions Court under S. 446 (1) of the Cr. P. C. the trial must be with the aid of jury, the proviso to sub-clause (2) of S. 446 merely giving the accused person the right to claim to be tried by assessors (*Broadway, Fforde and Campbell, J.J.*) BRAY v. KING EMPEROR. 5 Lah. 515 = 26 Cr. L. J. 540 = 85 I. C. 540 = A. I. R. 1925 Lah. 236 (F. B.).

**—S. 447—Appeal against acquittal.**

—General rule—Reversal—When justified.

It is the practice of the Sind Judicial Commissioner's Court in all appeals, especially criminal appeals, to pay great deference to the opinion of the Judge presiding over the trial Court, but it will not hesitate to convict in an acquittal appeal more than it should hesitate to acquit in an appeal from a conviction, provided that there are valid grounds for reversing the decision of the

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learned Judge of the Lower Court. 9 S.L.R. 17 and A.I. R. 1924 Bom 335, Foll. (*Kincaid, J. C. and Rupchand Bilaram, A.J.C.*) EMPEROR v. SULLEMAN KHAN.

21 S. L. R. 141 = 27 Cr. L. J. 1347 = 98 I. C. 467 = A. I. R. 1927 Sind 92.

—Prosecution solely relying on admissions—Acquittal by lower Court—No case for remand.

In a case where the prosecution produces no evidence and relies entirely on admissions by the accused and where the trial Court acquits the accused the Appellate Court should not remand the case for proper trial, such admissions not being sufficient to enable the Crown to procure a legal decision and there being no material for the High Court to supplement the deficiencies of the prosecution by remanding the case for proper trial. (*Scott Smith and Fforde, J.J.*) EMPEROR v. JASWANT RAI & CO. 5 Lah. 404 = 26 Cr. L. J. 320 = 84 I. C. 464 = A. I. R. 1925 Lah. 85.

**—S. 447—Omission to inform**

—The omission of the Magistrate to inform the accused of their rights under Ch. 33, as required by S. 447, is absolutely cured by the provisions of S. 534. (*Robinson, C. J. and Maung Gyi, J.*) U ZAGRIYA v. EMPEROR. 89 I.C. 459 = 4 Bur. L. J. 44 = 26 Cr. L. J. 1371 = 3 Rang. 220 = A. I. R. 1925 Rang. 239.

**—S. 449—Claim wrongly allowed.**

—Error of the order cannot be challenged in appeal from conviction.

There is a clear distinction between a claim to be tried as a European subject and a claim to be dealt with under the provisions of Ch. 33. But if that distinction is not properly appreciated by the enquiring Magistrate and an order is passed purporting to be under S. 443, it cannot be disputed by the Crown in opposing an appeal from the conviction which follows. In such case therefore, the appeal must be dealt with, on matters of facts and matters of law, as contemplated by S. 449 (1), Cr. P. Code. (*Suhrwardy and Mukerji, J.J.*) I. G. SINGLETON v. EMPEROR. 86 I. C. 38 = 41 C. L. J. 87 = 29 C. W. N. 260 = 26 Cr. L. J. 662 = A. I. R. 1925 Cal. 501.

**—S. 449—Jurisdiction to entertain application.**

—The question as to application for leave being made to the Judge who tried the case is a mere matter of convenience though it is desirable that such applications should be made to him. The right of appeal, if there is one, depends upon extraneous circumstances which have nothing to do with the guilt of the accused and the trying Judge is better qualified than any one else to decide whether those circumstances exist or not. (*Walmsley and Mukerji, J.J.*) T. C. S. MARTINDALE v. EMPEROR. 84 I.C. 1041 = 40 C.L.J. 256 = 52 Cal. 347 = 29 C. W. N. 447 = 26 Cr. L. J. 401 = A. I. R. 1925 Cal. 14.

**—S. 449—Leave to appeal.**

—Affidavits of the applicants as to their nationality on the applications for leave to appeal under S. 449 (1) (c) are admissible. 45 Cal. 720, Rel. on. (*Sanderson, C. J. and Panton, J.*) GALLAGHER v. EMPEROR. 54 Cal. 52 = 28 Cr. L. J. 481 = 101 I. C. 657 = A. I. R. 1927 Cal. 307.

**—Question to be decided**

If the applicant for leave is able to show that if the case had been tried outside a Presidency Town, it would have been triable under the provisions of Chapter 33 of the Code, he has an absolute right of appeal. (*Newbould and B. B. Ghose, J.J.*) A. H. TURNER v. EMPEROR. 86 I. C. 659 = 41 C. L. J. 325 = 29 C. W. N. 458 = 26 Cr. L. J. 835 = 52 Cal. 636 =

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A. I. R. 1925 Cal. 673.

—*Division bench should hear.*

It is desirable that the application for leave to appeal should be heard by a Divisional Bench rather than by a single Judge. (*Newbould and B.B. Ghose, J.J.*)

A. H. TURNER v. EMPEROR.

86 I. C. 659=41 C. L. J. 325=29 C. W. N. 458=

26 Cr. L. J. 835=52 Cal. 636=

A. I. R. 1925 Cal. 673.

**—S. 449—Limitation.**

—An application for leave to appeal under Cr. P. Code, S. 449 (1) (c) is within Art. 155 of the Limitation Act. (*Sanderson, C.J. and Panton, J.*) GALLAGHER v. EMPEROR.

54 Cal. 52=

101 I. C. 657=28 Cr. L. J. 481=

A. I. R. 1927 Cal. 307.

—An appeal to the High Court in the words of S. 449 read with S. 443 is governed by Art. 155 which is not limited only to appeals to the High Court from the Sessions Courts in the mofussil, or from other Courts to which appeals to the High Court lie direct. An application presented after 60 days from date of conviction for the determination of the status of the prisoner under S. 449, read with S. 443 is out of time. (*C. C. Ghose, and Dewal, J.J.*) THOMAS v. EMPEROR.

98 I. C. 248=53 Cal. 746=

27 Cr. L. J. 1304=A. I. R. 1926 Cal. 1203.

**—S. 449—Notice to Crown.**

—Application for leave to appeal should be made with notice to the Crown but once the leave is granted without such notice it cannot be revoked on the ground of the want of such notice.

Per *Mukerji, J.*—If it subsequently appears that the ground on which leave was asked for and granted is non-existent the appeal may be dismissed. (*Walmsley and Mukerji, J.J.*) T. C. S. MARTINDALE v. EMPEROR.

84 I. C. 1041=40 C. L. J. 256=

52 Cal. 347=29 C. W. N. 447=26 Cr. L. J. 401=

A. I. R. 1925 Cal. 14.

**—S. 449—Original side appeal.**—*Vakil—If can act for a party.*

The question whether a vakil can act for a party in a criminal appeal from the Original side of a High Court depends upon the rules of that Court and is not concluded by anything in the Cr. P. Code. (*Rankin, C. J. and Chotzner, J.*) SATYA NARAIN MOHATA v. EMPEROR.

55 Cal. 858=32 C. W. N. 319=

29 Cr. L. J. 1022=112 I. C. 350=

A. I. R. 1928 Cal. 675.

**—S. 449—Trial by jury.**—*High Court—Interference—Powers of.*

Under S. 449, in cases tried by jury, an appeal lies to the High Court on a matter of fact as well as on a matter of law, therefore in a case tried under Chapter 33 the finding of a jury on a question of fact is no longer final, according to the present Cr. P. Code, and therefore to justify an interference by High Court under S. 307, the finding of jury need not be manifestly wrong or perverse. (*Scott-Smith and Martineau, J.J.*) CROWN v. BIMAL PARSHAD.

88 I. C. 857=

6 Lah. 98=26 P.L.R. 263=26 Cr. L. J. 1241=

A. I. R. 1925 Lah. 401.

**—S. 451—Making of claim.**

—Right to trial by Jury can be claimed by accused before he enters defence, though he had withdrawn it at a prior stage. (*Newbould and Suhrawardy, J.J.*)

MAKBUL AHMED v. A. J. L. ALLEN

74 I. C. 1041=50 Cal. 689=27 C. W. N. 649=

24 Cr. L. J. 849=A. I. R. 1923 Cal. 657.

**CR. P. CODE (1898), S. 465—Demeanour of accused.****—S. 454—Effect of waiver.**

—When an accused waived his right to be tried as a European British subject, the special privileges given to him as such, one of which is his right to come up to the High Court in revision by virtue of the definition of "High Court" in S. 4, Cl. (j) of the Cr. P. Code is lost and he should be tried like any other ordinary individual not only in the matter of the trial itself but in the matter of appeal and revisions as well. The words "in any subsequent stage of the same case" include an application to get his conviction set aside in revision. The word "case" is wide enough to include the whole of the proceedings connected with the prosecution; the trial, the appeal and the revision are all stages in a case. (*Krishnan, J.*) JEREMIAH v. W. H. JOHNSON.

76 I. C. 695=

18 M. L. W. 895=33 M. L. T. 194=

1924 M. W. N. 60=25 Cr. L. J. 231=

A. I. R. 1924 Mad. 373=45 M. L. J. 800.

**—(Ch. 34)—Ss. 464 to 475—Appointment of guardian.**

—*Proceedings under S. 488—No guardian can be appointed—Case must be postponed if party insane—Cr. P. Code, alone governs the case.*

A Magistrate has no power under the Code to appoint a guardian *ad litem* for a lunatic in a proceeding under S. 488. Such proceedings may be *quasi* civil but they are also criminal and are wholly governed by the provisions of the Cr. P. Code alone. Where in such a case, the counter-petitioner pleads insanity, it is the Magistrate's duty to hold a judicial enquiry and put him if necessary under medical observation. If as a result of the enquiry, Court is satisfied that he is sane and capable of understanding the proceedings, then the matter is simple. But if he concludes that he is insane and not capable of understanding the proceedings and incapable of understanding questions put to him and giving rational answers, he must postpone further proceedings until he reverts to sanity. (*Wallace, J.*) APICHI GOUNDAN v. KUTHUJAMMAL.

86 I. C. 77=26 Cr. L. J. 701=48 Mad. 388=

21 M. L. W. 180=1925 M. W. N. 65=

A. I. R. 1925 Mad. 440=48 M. L. J. 187.

**—S. 464—Medical enquiry.**

—*Magistrate is not under duty to order a medical inquiry upon a defence of insanity.*

There is no provision of the law in India making it incumbent upon a Magistrate to order a medical enquiry upon mere defence of insanity. It is only in cases where the accused appears to be incapable, by reason of mental infirmity, of taking his trial that this issue of insanity must be tried before the trial for the offence is proceeded with. (*Fforde and Agha Haidar, J.J.*) EMPEROR v. BAHADUR.

9 Lah. 371=

29 Cr. L. J. 204=106 I. C. 796=

A. I. R. 1928 Lah. 796.

**—S. 465—Burden of proof.**

—The onus in an inquiry under S. 465 (i) is on the prosecution to show that the accused is at the time of proceedings against him of sound mind and capable of making his defence. (*Greaves and Panton, J.J.*) SHIB DAS KUNDU v. EMPEROR.

81 I. C. 827=

51 Cal. 584=25 Cr. L. J. 1051=

A. I. R. 1924 Cal. 713.

**—S. 465—Demeanour of accused.**

—Demeanour of accused raising suspicion as to sanity and capability to make defence — Court must come to definite finding on point—Absence vitiates conviction and sentence. (*Boys and Young, J.J.*) RAMNATH v. EMPEROR.

1930 Cr. C. 670=

## CR. P. CODE (1898), S. 465—Preliminary issue.

125 I. C. 767 = 31 Cr. L. J. 899 =  
A. I. R. 1930 All. 450.

## —S. 465—Preliminary issue.

—*Question of insanity must be put to the jury as a preliminary issue.*

The moment the question of insanity of the accused is raised, the Judge must put to the jury as a preliminary issue to be tried by them as to whether or not the jury are satisfied that the accused is a person of unsound mind and incapable of standing his trial and in a position to understand the proceedings which are going on in Court. Evidence must be led on that point and the Judge must come to a finding on the basis of such evidence. (*C. C. Ghose and Duval, J.J.*) RADHA NATH MONDAL v. EMPEROR.

44 C. L. J. 285 = 27 Cr. L. J. 896 =  
96 I. C. 160 = A. I. R. 1927 Cal. 289.

## —S. 465—Procedure.

—*Non-compliance with S. 465 vitiates trial.*

It is incumbent on the Sessions Judge himself to hold an enquiry on the question whether the accused was capable of making his defence when the latter came before him on commitment, to take the opinion of the assessors on that question, and to come to a decision before proceeding further with the trial. If he has any reason for supposing that the accused when brought up for trial was of unsound mind, the question whether he was of unsound mind at the time of the alleged offence is an entirely separate one to be enquired into in entirely separate manner. Neglect to follow the mandatory provisions of S. 465 must vitiate the trial. 54 P. R. 1905, (Cr.), Foll. (*Campbell and Addison, J.J.*) SANTOKH SINGH v. EMPEROR.

7 Lah. 315 =  
27 Cr. L. J. 552 = 27 P. L. R. 454 =  
93 I. C. 1048 = A. I. R. 1926 Lah. 498.

## —S. 465—Right to begin.

—*Prosecution and not defence has to begin.*

If enquiry is to be commenced under S. 465 of the Cr. P. Code, it should be regarded not so much, as the issue joined between the parties, but as a preliminary enquiry which is conducted for the satisfaction of the Court, and in that view the prosecution ought to commence and give their evidence. (*Pearson, J.*) EMPEROR v. GOPI MOHAN SAHA.

84 I. C. 340 =  
51 Cal. 827 = 26 Cr. L. J. 276 =  
A. I. R. 1925 Cal. 479.

## —S. 471—Interpretation.

—*"Detained in custody."*

"Detained in safe custody" in S. 471 does not mean having regard to the language used in S. 475, "detained in the custody of friends or relatives." What the Magistrate or Court can do under S. 471, is to detain the accused in safe custody and report the matter to the Local Government. Under S. 475 it is the Local Government and not the Magistrate who can deliver the accused to any relative or friend of his for safe custody. (*C. C. Ghose and Jack, J.J.*) SUPT. & REMEMBRANCER OF LEGAL AFFAIRS v. SRISH CHANDRA ROY.

48 C. L. J. 148 = 29 Cr. L. J. 847 =  
11 A. I. Cr. R. 162 = 56 Cal. 208 = 111 I. C. 162 =  
111 I. C. 399 = A. I. R. 1928 Cal. 653.

## —S. 471—Report to Government.

—*Not necessary after the amendment of the section.*

In view of this amendment of S. 471, Cr. P. C., there is now no longer any necessity for a Court which acquits a person on the ground of insanity to report the case for the orders of the Local Government. Clauses (2) and (3) of that section were repealed by Act IV of 1912, mainly with the object of relieving the Local Government from the necessity of dealing with the cases of such persons. 20 Bom. L. R. 629, Not Foll. (*MacLeod, C.J.*)

## CR. P. CODE (1898), S. 476—Appeal or Revision.

and *Crump, J.*) IMAM HASAN v. EMPEROR.

84 I. C. 652 = 25 Bom. L. R. 286 = 26 Cr. L. J. 348 =  
A. I. R. 1923 Bom. 261.

## —S. 471—Sending to Asylum.

—*If compulsory.*

Section 471, Cr. P. C., does not compel the Court to send the accused to Lunatic Asylum. The Court is only to see that such safeguards have been taken as would prevent the accused from committing mischief. (*Kumaraswamy Sastri, J.*) A. B. MAHAMMAD v. EMPEROR.

65 I. C. 423 = 1922 M. W. N. 10 =  
30 M. L. T. 74 = 23 Cr. L. J. 71 =  
A. I. R. 1922 Mad. 54 = 42 M. L. J. 72.

## —S. 476,

Abetment.

Appeal or Revision.

Applicability.

Civil Court.

'Court', meaning of.

Discretion.

Duty of Court.

Expert evidence.

Finding of Expediency.

Grounds for interference.

Initiation of proceedings.

'In relation to', meaning.

Judicial Proceedings.

Legality of order.

Measures of proof.

Notice or opportunity.

Offences not referred.

Order against strangers.

Pending proceedings.

Powers of Court.

Powers of Superior Court.

Preliminary Enquiry.

Probability of conviction.

Procedure.

Rights of accused.

Scope.

Stay of proceedings.

Witness.

Miscellaneous.

## —S. 476—Abetment.

No complaint by Court is necessary in respect of abettors of the offence. 32 All. 74; 15 C. W. N. 565; and A. I. R. 1928 Lah. 510, Rel. on; 12 Bom. L. R. 383, Diss. from. (*Addison and Dalip Singh, J.J.*) FAKIR SINGH v. EMPEROR.

10 Lah. 442 = 115 I. C. 529 =  
30 P. L. R. 517 = 30 Cr. L. J. 485 =  
A. I. R. 1928 Lah. 787.

## —S. 476—Appeal or Revision.

—It is discretionary with the Income-tax officer making a complaint in respect of false return to record a finding that he is of opinion that an offence referred to in S. 195 is committed. Under S. 476 B the mere fact that a complaint has been filed opens the way to an appeal. An appeal can be filed as soon as the complaint is made and the appeal would be not against the finding but against the filing of the complaint. (*Baguley, J.*) K. C. V. REDDY v. EMPEROR.

8 Rang. 25 =  
1930 Cr. C. 661 = 125 I. C. 266 =  
31 Cr. L. J. 793 = A. I. R. 1930 Rang. 201.

—An appeal against an order made by a Judge exercising the original jurisdiction of the Court to a Division Bench of the Court lies under S. 476-B. A. I. R. 1923 Mad. 136 and A. I. R. 1922 Bom. 455, Foll. (*Kankin, C.J. and Buckland, J.*) RAMJAN ALI v. MOOLJI SEEKA & CO.

33 C. W. N. 329 =  
118 I. C. 889 = 56 Cal. 932 = 30 Cr. L. J. 974 =  
1929 Cr. C. 184 = A. I. R. 1929 Cal. 521.

**CR. P. CODE (1898), S. 476—Appeal or Revision.**

—Failure to exercise proper judicial discretion in sanctioning prosecution is a good ground for interference in revision. *A. I. R. 1923 Bom. 201* and *23 All. 249*, Rel. on. (*Shde, J.*) **HARI RAM v. EMPEROR.**

116 I. C. 711 = 11 L. J. 103 = 30 P. L. R. 392 = 30 Cr. L. J. 666 = 13 A. I. Cr. R. 99 = A.I.R. 1929 Lah. 676.

—Where a Civil Court refused to make a complaint under Cr. P. Code, S. 476, but the Appellate Court directs the complaint to be filed, the order of the appellate Court is revisable only when it is brought within Civil P. C., S. 115; *26 All. 249*, Expl. (*Ashworth, J.*) **ABDUL HAQ v. SHEO RAM.**

49 All. 536 = 28 Cr. L. J. 296 = 25 A. L. J. 569 = 100 I. C. 376 = A.I.R. 1927 All. 334.

—An appellate order by a civil Court confirming refusal to lodge a complaint by its subordinate Court is not open to revision by High Court under S. 439, Cr. P. C., as the order is not of a criminal Court. It is also not revisable under S. 115 if conditions of S. 115 are not fulfilled, *17 O. C. 25* and *40 Cal. 477*, Rel. on. (*Stuart, C.J.*) **NAWAB ALI v. MADURI SARAN.**

99 I. C. 48 = 3 O. W. N. 905 = 28 Cr. L. J. 16 = 7 A. I. Cr. R. 240 = 7 A. I. Cr. R. 47 = A. I. R. 1927 Oudh 14.

—Where the order complained of is passed by a civil appellate Court no revision lies to the High Court under S. 439, A.I.R. 1926 All. 229 Foll. (*Daniels, J.*) **KING-EMPEROR v. RAM NARAIN.**

7 L.R. A. Cr. 130 = 27 Cr. L. J. 1021 = 96 I. C. 877 = A.I.R. 1926 All. 577.

—An order passed in exercise of jurisdiction under S. 476, Cr. P. C., by a civil Court cannot be revised under S. 115, C. P. C. (*Kennedy, J. C. and Tyabji, A.J.C.*) **GERIMAL v. SHEWARAM.**

95 I. C. 316 = 20 S. L. R. 90 = 27 Cr. L. J. 780 = A. I. R. 1926 Sind 215.

—No appeal lies against an order under S. 476 to the Court to which the Court passing the order is subordinate. (*Macleod, C. J. and Shah, J.*) **SOMABHAI VALABHAI v. ADITHAI PARSHOTTAM.**

48 Bom. 401 = 26 Bom. L. R. 289 = 81 I. C. 947 = 25 Cr. L. J. 1123 = A. I. R. 1924 Bom. 347.

**—S. 476—Applicability.**

—It is only in cases where there is a judicial proceeding pending that S. 476 has any applicability. Where an application is made by a person alleging that he is the husband of *X* and that *X* was about to commit a bigamous marriage with another, but on enquiry it is found that the statement of his marriage with *X* is false, proceedings cannot be taken under S. 476. (*Kennedy, J.C. and Aston, A.J.C.*) **SHAFI MAHOMED v. EMPEROR.**

87 I. C. 964 = 26 Cr. L. J. 1044 (Sind).

**—S. 476—Civil Court.**

—A civil Court exercising jurisdiction under S. 476 does not cease to be a civil Court. (*Mukerji, J.*) **KARIMULLAH v. RAMESHWAR PRASAD.**

111 I. C. 595 = 51 All. 344 = 1929 A. L. J. 55 = 10 L. R. A. Cr. 121 = 12 A. I. Cr. R. 199 = A. I. R. 1929 All. 774.

**—S. 476—"Court", meaning of.**

—*Applicability S. 24, C.P.C.*

The word "proceeding" in S. 24 covers all proceedings contemplated at the date when the C. P. Code of 1908 was passed and not a special proceeding not then in contemplation but established by a subsequent Act, namely, the Criminal Procedure (Amendment) Act (Act XVIII of 1923.) Hence the section cannot be invoked to allow a Court other than the Court, in the course of proceedings in which, perjury or forgery was committed, or a Court to which appeals ordinarily lie from that Court

**CR. P. CODE (1898), S. 476—"Court", meaning of—Successor.**

to entertain the question of preferring a criminal complaint under S. 476, Cr. P. Code. (*Ashworth, J.*) **RAMESHAR LAL v. RAJDHARI LAL.**

101 I. C. 247 = 25 A. L. J. 433 = 49 All. 460 = A. I. R. 1927 All. 469.

—*Dealing with application under S. 83, T. P. Act.* A Judge receiving and dealing with a petition under S. 83 of the T. P. Act, is a Court within the meaning of S. 476 of Cr. P. Code: *13 Mad. 316*, Dist. (*Adami and Sen, JJ.*) **CHAMARI SINGH v. PUBLIC PROSECUTOR OF GAYA.**

83 I. C. 730 = 3 Pat. L. R. Cr. 51 = 6 P. L. T. 225 = 4 Pat. 24 = 26 Cr. L. J. 170 = A. I. R. 1925 Pat. 330.

—S. 476—"Court", meaning of—Court receiving guardian's report.

—The Court receiving such report acts as a "Court" and not in its administrative capacity. *22 Cal. 1004*, Rel. on. (*Kinkhede, A. J. C.*) **TULARAM MARWADI v. EMPEROR.**

100 I. C. 1044 = 28 Cr. L. J. 388 = 7 A. I. Cr. R. 521 = A. I. R. 1927 Nag. 184.

—S. 476—"Court", meaning of—Election commissioners.

—The Election Commissioners are not a "civil Court" within the meaning of S. 476, Cr. P. Code, and they have no jurisdiction to proceed under that section. The complaint which they purport to make under S. 476 must be deemed to be one under S. 195 (1)(b) by a Court in its wider meaning excluding a "Civil, Revenue or Criminal Court." (*Sulaiman and Daniels, JJ.*) **BILAS SINGH v. EMPEROR.**

89 I. C. 630 = 47 All. 934 = 23 A. L. J. 845 = A. I. R. 1925 All. 737.

**—S. 476—"Court", meaning of—High Court.**

—A Judge of the High Court can grant a direction to prosecute under S. 476, although the matter out of which the action arose was heard by another Judge of the Court. (*Crumph, J.*) **BAI KASTURBAI v. VANMALIDAS LAKMIDAS.**

88 I. C. 709 = 49 Bom. 710 = 27 Bom. L. R. 616 = 26 Cr. L. J. 1189 = A. I. R. 1925 Bom. 436.

**—S. 476—"Court", meaning of—New Court.**

—An offence of perjury was committed before the Sessions Court at *A*, commitment to which was made by Magistrate at *B*. Subsequently another Sessions Division was constituted at *K* for the district in which *B* was included as distinct from *A*.

*Held*, that an application to the Court at *K* in respect of the offence was not proper. (*Shah and Percival, JJ.*) **MANEKLAL GARBADDAS. In re**

28 Bom. L. R. 1296 = 28 Cr. L. J. 49 = 7 A. I. Cr. R. 206 = 99 I. C. 81 = A. I. R. 1927 Bom. 47.

**—S. 476—"Court", meaning of—Original Court.**

—Proceedings under S. 476 cannot be taken by Magistrate before whom complaint is filed but thereafter is transferred to another Magistrate for disposal. (*C. C. Ghose and Duval, JJ.*) **TARAKESHWAR MUKHOPADHYAYA v. EMPEROR.**

53 Cal. 488 = 30 C. W. N. 504 = 27 Cr. L. J. 648 = 94 I. C. 600 = A. I. R. 1926 Cal. 788.

**—S. 476—"Court", meaning of—Scope.**

—The expression "Court" in S. 195 is of a wider scope than the expression "civil, revenue or criminal Court" in S. 476. (*Sulaiman, J.*) **KANHAIYA LAL v. BHAGWAN DAS.**

48 All. 60 = 23 A. L. J. 956 = 6 L. R. A. Cr. 153 = 26 Cr. L. J. 1485 = 89 I. C. 1053 = A. I. R. 1926 All. 30.

**—S. 476—"Court", meaning of—Successor.**

—A Court of law does not consist of the particular individual or individuals who may be presiding over the



**CR. P. CODE (1898), S. 476—"Court", meaning of—Successor.**

proceedings therein at any particular moment but it is a permanent institution and therefore any judicial officer who sits in the Court is just as competent to deal with the matters coming before the Court as any other incumbent of the office. Therefore, the words "such Court" in S. 476 includes the successor of the office. 10 I.C. 66; A.I.R. 1922 Lah. 479 and A.I.R. 1925 Rang. 195, Rel. on. (*Suhrawardy and Costello, J.J.*) PURNA CHANDRA DATTA v. SHEIKH DHALU.

34 C. W. N. 914=52 C. L. J. 87=1930 Cr. C. 1129=A. I. R. 1930 Cal. 721.

—The power of acting under this section being vested in a Court the successor-in-office of a Judge is competent to institute proceedings under this section, A. I. R. 1924 Lah. 101, Foll. (*Skemp, J.*) GANDA SINGH KOCHAR v. EMPEROR.

117 I.C. 906=30 Cr. L. J. 862 (Lah.).

—The proposition that a Magistrate has under S. 476 no jurisdiction to put in a complaint relating to evidence taken by his predecessor cannot be accepted. (*Wallace, J.*) GURUVAPPA NAVAKER, *In re*.

2 M. Cr. C. 164=118 I. C. 112=1929 Cr. C. 11=30 Cr. L. J. 866=A. I. R. 1929 Mad. 510.

—Ss. 195 and 476, C. P. Code, make reference to the "Court" and not to the "Judge" or even the "Presiding Officer" of the Court. It is clear that, whether the Judge or the presiding officer is the same or a different person, the Court remains the same and it is the Court that is competent to make the complaint. (*Jailal, J.*) FAQIR SINGH v. EMPEROR. 29 Cr. L. J. 1028=112 I. C. 356=11 A. I. Cr. R. 380=

A. I. R. 1928 Lah. 759.

—There is a permanent Court of the District and Sessions Judge with successive incumbents in the Office of Judge, so a Sessions Judge can take action under S. 476 even though the alleged offence under S. 193, Penal Code may have been committed before his predecessor. A.I.R. 1924 Lah. 101, Foll.; 6 P. R. 1909 (Cr.), Dist. (*Addison, J.*) BARKAT ALI v. GHULAM HUSAIN.

27 Cr. L. J. 527=93 I. C. 991=A. I. R. 1926 Lah. 394.

—An action can be taken by the successor of the Judge who tried the case, on an application to initiate proceedings for offences falling under S. 195, Cr. P. Code. (*Carr and Maung Gyi, J.J.*) SHEW PHWE v. MA ME HM OKE.

85 I. C. 244=26 Cr. L. J. 500=3 Bur. L. J. 344=3 Rang. 48=A. I. R. 1925 Rang. 195.

—"Court" includes successor.

The word 'Court' in S. 476, Cr. P. Code, includes the successor of a Judge before whom the alleged offence was committed or to whose notice the commission of it was brought in the course of a judicial proceeding, 37 Cal. 642 (F. B.) Foll.; 34 A. 393; 32 B. 184, Appr. 6 P. R. Cr. 1909, Diss. (*Scott Smith, J.*) KHAN MUHAMMAD v. THE CROWN. 71 I. C. 596=4 Lah. 58=24 Cr. L. J. 180=A. I. R. 1924 Lah. 101.

—S. 476—"Court", meaning of—Superior Court.

—Power to make complaint is not confined to Court taking cognizance but superior Court to whom it is transferred or who has withdrawn case to its file under S. 528 may make complaint. 6 C. W. N. 35 and 3 C. W. N. 33, Ref. (*Pearson and Mullick, J.J.*) AMANATALI v. EMPEROR.

33 C. W. N. 1058=1929 Cr. C. 360=

122 I. C. 627=31 Cr. L. J. 430=A. I. R. 1929 Cal. 724.

—S. 476—"Court", meaning of—Transferee Court

—If a case is transferred it is not only the Court

**CR. P. CODE (1898), S. 476—Discretion.**

which originally received the forged document can complain under S. 426. It is a continuing offence and any Court seized of the case can complain. (*Jackson, J.*) MATTAYYA v. EMPEROR. 1930 Cr. C. 192=

1930 M. W. N. 76=31 M. L. W. 384=

3 M. Cr. C. 61=31 Cr. L. J. 986=

126 I. C. 112=A. I. R. 1930 Mad. 192.

—The only Court competent to exercise the powers under S. 476 is the Court having jurisdiction over the suit in respect of which the offence has been committed whether the case comes to its file by transfer from any other Court or otherwise. (*Kennedy, J. C. and Tyabji, A. J. C.*) GIRIMAL v. SHEWARAM.

20 S. L. R. 90=27 Cr. L. J. 780=

95 I. C. 316=A. I. R. 1926 Sind. 215.

—S. 476—"Court", meaning of—Trial Court.

—S. 476 is self-contained—Ordinarily the original Court should prefer complaint.

S. 476 must be construed as self-contained and exhaustive, in respect of the matter of a Court making complaint against litigants on the ground of perjury or forgery. The legislature did not intend the power of making a complaint conferred by this section to be exercised by anyone but the Court before whom the offence has been committed or a Court to which appeals from that Court ordinarily lie. The section contemplates that ordinarily the Court to prefer the complaint shall be the original Court which heard the case and that an appellate Court should only make a complaint when the suit has been before it on appeal or when the original Court has granted or refused a complaint and its order is appealed from to the appellate Court. It was not intended by the legislature that while proceedings were going on before the original Court the appellate Court should step in and deal with the matter. The District Court, apart from its powers as an appellate Court under S. 476 (b), can only consider the desirability of itself preferring a complaint, if there is some *prima facie* ground for its so doing. Such *prima facie* ground will exist if the original Court is considering the matter and certainly will not exist if the appellate Court has no reason to believe that sanction should be granted. (*Ashworth, J.*) RAMESHAR LAL v. RAJDBHARI LAL.

49 All. 460=25 A. L. J. 433=101 I. C. 247=A. I. R. 1927 All. 469.

—S. 476—Discretion.

—Per *Costello, J.*—The High Court ought to be reluctant to interfere with the Court's discretion to hold or not to hold an enquiry before making a complaint under S. 476. (*Suhrawardy and Costello, J.J.*) PURNA CHANDRA DATTA v. SHEIKH DHALU.

34 C. W. N. 914=52 C. L. J. 87=1930 Cr. C. 1129=A. I. R. 1930 Cal. 721.

—The question whether a complaint should be made under S. 476, Cr. P. Code, is almost invariably a matter of discretion, and the High Court is under those circumstances always loath to interfere except in extraordinary cases. A.I.R. 1924 Bom. 347, Rel. on. Where the trial Court and first appellate Court conclude that certain documents are not genuine, and the District Court makes a complaint for prosecution, it has sufficient ground to make a complaint and its order would not be set aside by the High Court. (*Adams and Bucknill, J.J.*) RANJIT NARAIN SINGH v. RAMBAHADUR SINGH. 5 Pat. 262=7 P. L. T. 114=

1926 P. H. C. C. 89=27 Cr. L. J. 641=

94 I. C. 593=A. I. R. 1926 Pat. 81.

—Where the trial Court or the Court to which that Court is subordinate thinks that complaint is not desirable, High Court should not interfere since a complaint under S. 476 is almost invariably a matter of

**CR. P. CODE (1898), S. 476—Discretion.**

discretion. (*MacLeod, C. J. and Shah, J.*) SOMABHAI VALABHAI v. ADITBHAI PARSHOTTAM.

48 Bom. 401 = 26 Bom. L. R. 289 =

25 Cr. L. J. 1123 = 81 I. C. 947 =

A. I. R. 1924 Bom. 347.

**—S. 476—Duty of Court—Alternative offences.**

—Recording finding of two alternative offences mutually inconsistent is not sufficient compliance.

The provisions of S. 476 are not satisfied by simply recording a finding of two alternative offences which were mutually inconsistent. The Court must record a finding that an offence or offences have been committed and he must make a complaint in writing signed by him and setting out the particulars of each of such complaints which he intends to forward to the Magistrate. (*Walsh, J.*) PITAMBAR v. EMPEROR.

104 I. C. 904 = 8 A. I. Cr. R. 59 =

8 L. R. A. Cr. 102 = 28 Cr. L. J. 888 =

A. I. R. 1927 All. 567.

**—S. 476—Duty of Court—Application of mind.**

—It is absolutely essential to the validity of an order under S. 476 that the Court which passes the order should apply its mind to the matter upon its merits. Merely acting on the remarks of the appellate Court is not enough. (*Stuart and Kanhaya Lal, J.J.*) GHANRAM RAI v. EMPEROR.

83 I. C. 498 =

21 A. I. J. 930 = 5 L. R. A. Cr. 52 =

26 Cr. L. J. 18 = A. I. R. 1924 All. 453.

**—S. 476—Duty of Court—Determination of facts.**

—When a criminal offence is alleged to have been committed in the course of revenue or civil proceedings, the rule is that the facts upon which the criminal offence is founded, should as far as possible be finally determined in the Civil or Revenue Court. A refusal to follow the rule materially affects the criminal proceedings and amounts to a denial of the right of fair trial. (*Mullick, J.*) FAUJDAR RAI v. EMPEROR.

7 P. L. T. 199 = 26 Cr. L. J. 1565 =

90 I. C. 445 = A. I. R. 1926 Pat. 25.

**—S. 476—Duty of Court—Enquiry.**

—The Judge desiring to take action under S. 476 must himself make an enquiry.

If the Judge trying a case desires to take action under S. 476 he ought to make a proper inquiry himself, or through the police or through some Court subordinate to him, and after considering the report of such inquiry he ought to record a finding separately in the case of every person. (*Dalal, J.*) SHABBIR HASAN v. EMPEROR.

8 A. I. Cr. R. 381 =

8 L. R. A. Cr. 147 = 105 I. C. 810 = 26 A. L. J. 46 =

28 Cr. L. J. 986 = A. I. R. 1928 All. 21.

**—S. 476—Duty of Court—Evidence relied on.**

—When complaints under S. 476 are made, the officer making them must state the evidence on which he relies otherwise the Magistrate to whom the case is referred for decision has no means of ascertaining what the evidence is on which the prosecution case is based. (*Pullan, J.*) SHANKAR SAHAI v. EMPEROR. 7 O. W. N. 638 = 125 I. C. 838 = 31 Cr. L. J. 938 =

1930 Cr. C. 944 = A. I. R. 1930 Oudh 404.

**—S. 476—Duty of Court—Finding of necessity of prosecution.**

—There must be an express finding by the Court that "it is expedient in the interest of justice" that a complaint should be made "into the offence of giving false evidence under S. 476. Such an express provision for a finding to be recorded is not satisfied by inferences which may or may not be drawn from other findings of facts arrived at by the Court. A. I. R. 1928 Cal. 862, Rel. on. (*Pearson and Patterson, J.J.*) SURENDRA NATH v. KUMEDA CHARAN. 51 O. L. J. 208 =

**CR. P. CODE (1898), S. 476—Duty of Court—Naming of witnesses.**

126 I. C. 416 = A. I. R. 1930 Cal. 352.

**—S. 476—Duty of Court—Finding of offence.**

—Provision to record a finding that an offence has been committed is mandatory.

Before a complaint under S. 476 is made, it is necessary that a Court which thinks that an offence mentioned in S. 195, sub S. (1), cl. (b) or cl. (c) has been committed should record a finding to that effect, and, after recording such finding, may make a complaint. The provision to record a finding is not merely directory but it is mandatory. When the section of the Code requires a certain thing to be done, it is not open to the Court to say that it is optional for a Court to do it or not, and, therefore, failure by the Court to record a finding is not irregularity curable by S. 537. (*Devadoss, J.*) MUNISWAMI NAIDU v. EMPEROR.

1928 M. W. N. 229 = 10 A. I. Cr. R. 378 =

1 M. Cr. C. 126 = 29 Cr. L. J. 732 =

110 I. C. 588 = A. I. R. 1928 Mad. 783.

**—S. 476—Duty of Court—Making of complaint.**

—Court must itself make complaint.

Section 476 requires that the Court should record a finding that in the circumstances of the case before it an enquiry into the offences mentioned should be made and that he should make a complaint in those terms in writing signed by him. A note made by the presiding officer to his office: "Write to A.M.D. about the matter" is not in any way a recommendation or a complaint to the criminal Court to take action in the matter. (*Suhrawardy and Cammiade, J.J.*) RAJANI KANTA v. BISTOO MONT DASSI. 46 C. L. J. 40 =

104 I. C. 456 = 8 A. I. Cr. R. 433 = 28 Cr. L. J. 840 =

A. I. R. 1927 Cal. 718.

—Court making complaint must hold preliminary enquiry and must make a written complaint.

Section 476 contemplates that after making such inquiry as may be necessary, the Court should make a complaint in writing. It is for the Court acting under S. 476 to make any inquiry that is necessary and then to make a complaint against the person or persons who, he is satisfied, have committed an offence. The section does not contemplate that the Court should send the case to a Magistrate for inquiry whether the offence it suspects has been really committed, and for prosecution, if the Magistrate is so satisfied. The Court must be satisfied that there is a *prima facie* case against each person sent to the Magistrate, and then it can lay a complaint under S. 476. (*Adami and Sen, J.J.*) CHAMARI SINGH v. PUBLIC PROSECUTOR OF GAYA. 83 I. C. 730 =

6 P. L. T. 225 = 4 Pat. 24 = 3 Pat. L. R. Cr. 51 =

26 Cr. L. J. 170 = A. I. R. 1925 Pat. 330.

—Under S. 476 as amended by the Act of 1923 where a Court thinks that proceedings should be taken it is bound to make a complaint in writing signed by the presiding officer of the Court and to forward it to a Magistrate of the First Class having jurisdiction. (*MacLeod, C. J. and Shah, J.*) SOMABHAI VALABHAI v. ADITBHAI PARSHOTTAM. 48 Bom. 401 =

26 Bom. L. R. 289 = 25 Cr. L. J. 1123 =

81 I. C. 947 = A. I. R. 1924 Bom. 347.

**—S. 476—Duty of Court—Naming of witnesses.**

—Complaining court must name witnesses to be examined.

It is for the Court directing complaint to be filed to hold such enquiry that its order, when sent to the Magistrate, will amount to a complaint under S. 200 of Cr. P. Code. For that purpose, the complaining Court must decide upon and name the witnesses to be examined by the Magistrate, or the complaint is liable to be dismissed on the ground that there are no wit-

**CR. P. CODE (1898), S. 476—Duty of Court—Naming of witnesses.**

nesses. (*Wallace and Madhavan Nair, J.J.*) KALYANJEE v. RAM DEEN. 86 I. C. 449 = 48 Mad. 395 = 21 M.L.W. 664 = 26 Cr. L. J. 801 = A. I. R. 1925 Mad. 609 = 48 M.L.J. 290.

**—S. 476—Duty of Court—Particulars of offence.**

—In a complaint under S. 476 the setting out of the particulars of the offence charged against the accused is absolutely necessary. (*Newbould and Mukerji, J.J.*) KALISADHAN ADDYA v. NANI LAL HAZRA. 89 I. C. 251 = 52 Cal. 478 = 26 Cr. L. J. 1307 = A. I. R. 1925 Cal. 721.

**—S. 476—Duty of Court—Perjury**

**—Proper complaint.**

It is absolutely necessary to give the particular false statements in a complaint for the offence of giving false evidence and therefore a complaint merely quoting S. 193, Penal Code, alleging fabrication of false evidence without any allegations of having given false evidence can in no sense be deemed to be a complaint for an offence of intentionally giving false evidence. A. I. R. 1925 Rang. 195; 32 Mad. 35; 26 All. 514; 35 All. 8, Dist.; A. I. R. 1925 Mad. 609; A. I. R. 1925 Cal. 721, Rel. on. (*Mya Bu, J.*) T. SATHI REDDY v. EMPEROR. 126 I. C. 530 = 31 Cr. L. J. 1060 = 1930 Cr. C. 585 = A. I. R. 1930 Rang. 153

—Complaint not setting out precisely depositions said to be false—Complaint is not proper. (*Reilly, J.*) SATYANARAYANA v. EMPEROR. 28 M. L. W. 774 = 2 M. Cr. C. 35 = 30 Cr. L. J. 370 = 114 I. C. 834 = A. I. R. 1929 Mad. 74.

—Complaint of perjury—Passages complained of should be quoted. (*Daniels, J.*) DWARKA PRASAD v. MUKUND SARUP. 24 A. L. J. 122 = 26 Cr. L. J. 1506 = 6 L. R. A. Civ. 630 = 6 L. R. A. Cr. 213 = 90 I. C. 290 = A. I. R. 1926 All. 21.

**—Complaint—Contents of.**

A complaint of offence under S. 193, I. P. C. must state what was the false evidence given by the accused. It is not for the Magistrate to fish about in order to find out what statements the complaining Court may have considered to be false. The complaint itself must make it clear; otherwise a complaint under S. 193 cannot stand. (*Wallace and Madhavan Nair, J.J.*) KALYANJI v. RAM DEEN. 86 I. C. 449 = 48 Mad. 395 = 21 M. L. W. 664 = 26 Cr. L. J. 801 = A. I. R. 1925 Mad. 609 = 48 M. L. J. 290.

**—S. 476—Duty of Court—Probability of conviction.**

—Sanction is improper where a prosecution must fail. (*Addison, J.*) SUBE KHAN v. EMPEROR. 28 Cr. L. J. 293 = 100 I. C. 373 = A. I. R. 1927 Lah. 352.

—It is not customary to prosecute persons under S. 476 in mere matters of oath against oath, which may be a question of public policy rather than a question of law. Before complaining against a person under S. 476, the Judge must be convinced in his own mind that the trial will end in a conviction and he can hardly say that although the accused will probably ultimately be acquitted because there is no evidence that his statement is more than incredible, yet at the same time this is not a point to which he need direct his attention in framing a complaint. (*Jackson, J.*) VENKATASAMI CHETTI, *In re.* 26 M. L. W. 479 = 39 M. L. T. 414 = 28 Cr. L. J. 1007 = 105 I. C. 831 = 9 A. I. Cr. R. 183 = A. I. R. 1927 Mad. 996.

**—S. 476—Duty of Court—Right of Applicant.**

—Case in which alleged offence committed decided on oath—Court cannot refuse defendant opportunity to

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prove that case was false. (*Daniels, J.*) KING-EMPEROR v. RAM NARAIN. 7 L. R. A. Cr. 130 = 27 Cr. L. J. 1021 = 96 I. C. 877 = A. I. R. 1926 All. 577.

**—S. 476—Duty of Court—Stating Section.**

—Complaint under need not state the section of the Penal Code. (*Baker, J.C.*) ISMAIL PANJU v. KING EMPEROR. 88 I. C. 283 = 26 Cr. L. J. 1115 = A. I. R. 1925 Nag. 337.

**—S. 476—Duty of Court—Sufficiency of evidence.**

—Before a Court is justified in making an order under S. 476 of the Cr. P. Code, directing the prosecution of any person, it ought to have before it direct evidence fixing the offence upon the person whom it is sought to charge. It is not sufficient that the evidence in the earlier case may induce some sort of suspicion that the person had been guilty of an offence but there must be distinct evidence of the commission of offence by the person who is to be prosecuted. (*Finlley, J.C. and Prideaux, A. J.C.*) MT. ADKIBAI v. MT. PARBATIBAI. 115 I. C. 174 = 30 Cr. L. J. 407.

**—S. 476—Expert evidence.**

—It is not always very safe to order prosecutions to be started where there is no other testimony than that of an expert to support it. (*Kinkhede, A. J.C.*) BUDHABAI v. ALIBHAI. 86 I. C. 428 = 26 Cr. L. J. 796 = A. I. R. 1925 Nag. 358.

**—S. 476—Finding of Expediency.**

—In connexion with the conduct of a proceeding under S. 145, Cr. P. Code, the order of the Magistrate was as follows: "Considered. Cause shown and heard pleaders. There is material for prosecution of (1) B under Ss. 465, 467 and 193, Penal Code; (2) S under Ss. 467, 114 and 193, Penal Code; (3) R under Ss. 467, 114, 471, 193 and 196, Penal Code. Draw up formal complaint against them for their prosecution and trial for the above-noted offences."

*Held*, that in stating that there was "material for prosecution" of these persons the Magistrate indicated that in his opinion there may be a *prima facie* case against them. But nowhere within the four corners of this order could it be said that there was any finding recorded such as is referred to in S. 476, nor has he in any way directed his mind to the question as to whether any such order as he makes is expedient in the interest of justice as to bring the order within S. 476 (*Pearson and Jack, J.J.*) SATIS CHANDRA MALLIK v. EMPEROR. 52 C. L. J. 52 = 1930 Cr. C. 1105 = A. I. R. 1930 Cal. 705.

**—Sufficiency of.**

The words "expedient in the interest of justice" are not a formula or incantation which must of necessity appear in every order made under S. 476. Section 496 merely requires that the Courts concerned should be of opinion that the interests of justice render it expedient that an inquiry should be made into any offence referred to in S. 195 (1) (b) or (c). It is sufficient that the Court arrives at such an opinion and also that there is a reasonable prospect of the conviction of the accused there being sufficient evidence to support prosecution. Whether the evidence is believed or not or will be sufficient to justify the conviction of the accused is quite another matter. (*Tapp, J.*) NAURANG RAI v. EMPEROR. 1930 Cr. C. 395 = 127 I. C. 859 = A. I. R. 1930 Lah. 347.

**—Sufficiently compliance with.**

Although under S. 476 there should be not only a finding to the effect that it is expedient in the interests of justice that an inquiry should be made but also a complaint, still where the proceedings are embodied in a

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single document which serves the dual purpose of a finding and also of a complaint, there is no reason why it should not be held sufficiently to comply with the requirements of that section. 56 Cal. 276, Rel. on. (*Cungenven and Bhashyam Ayyangar, J.J.*) **NAMPERUMAL CHETTY v. NAINIYAPPA MUDALI**

1930 M. W. N. 991 = 32 M. L. W. 513 =  
59 M. L. J. 860.

—In sanctioning a prosecution under S. 476, the Court has not only to consider whether there is a *prima facie* case, but also whether it is expedient in the interests of justice to sanction prosecution. (*Bhide, J.*) **HARI RAM v. EMPEROR.**

116 I. C. 711 =  
11 L. L. J. 103 = 30 P. L. R. 392 =  
30 Cr. L. J. 666 = 13 A. I. Cr. R. 99 =  
A. I. R. 1929 Lah. 676.

—Order under S. 476, not containing finding as required by S. 476, nor giving reasons for such finding—Complaint giving such reasons—Order is defective and its defects cannot be made good by complaint. (*Reilly, J.*) **SATYANARAYANA v. EMPEROR.**

28 M. L. W. 774 = 2 M. Cr. C. 35 =  
30 Cr. L. J. 370 = 114 I. C. 834 =  
A. I. R. 1929 Mad. 74.

—A Magistrate should record a finding that it is expedient in the interests of justice that an enquiry should be made under S. 476. (*Rankin, C. J. and C. C. Ghose, J.*) **KERAMAT ALI v. EMPEROR.**

113 I. C. 842 = 30 Cr. L. J. 221 =  
12 A. I. Cr. R. 142 = 55 Cal. 1312 =  
A. I. R. 1928 Cal. 862.

—Complaint should not necessarily be made in every case.

Though the Courts should be anxious to put down perjury as much as possible, it is not every case of perjury that should form the subject of an inquiry. It is only when the interests of justice require that a complaint should be made, then and then only a complaint should be made. (*Devadoss, J.*) **MUNISWAMI NAIDU v. EMPEROR.**

1928 M. W. N. 229 =  
10 A. I. Cr. R. 378 = 1 M. Cr. C. 126 =  
29 Cr. L. J. 732 = 110 I. C. 588 =  
A. I. R. 1928 Mad. 783.

—Order under, passed without giving reasons is not illegal.

Although it is desirable that the Court passing an order under S. 476 should state reasons for the order, still an order without reasons is not illegal. S. 476 merely states that the Judge should record a finding. It does not state that that finding should be supported by reasons or that it should contain issue for decision. (*Kincaid, J. C. and Lobo, A. J. C.*) **LAKHMICHAND GAHDAMAL v. EMPEROR.**

21 S. L. R. 43 =  
27 Cr. L. J. 1249 = 98 I. C. 97 =  
A. I. R. 1927 Sind. 89.

—S. 476—Grounds for interference.

—Conviction in an irregular trial must be set aside.

An Assistant Collector, after deciding to act under S. 478 neglected to follow the directions contained in the second sub-section of that section, which requires that if he concludes the enquiry himself, his proceedings shall be conducted as nearly as may be in accordance with Chapter 18, Cr. P. Code. He framed no charge and although he made some sort of enquiry it was of a perfunctory character and when he came to write his committal order, he incorporated as the main grounds for committing for trial the reasons which he had given in his judgment in the civil suit in which the document with false entry was filed. The result was that there was

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nothing in any way resembling a proper record in the committing Magistrate's Court.

Held, that the trial was irregular and there having been no proper proceedings before the committing Magistrate, the case used must be discharged. 40 All. 32, Foll. (*Walsh, J.*) **EMPEROR v. BASHA NAND.**

77 I. C. 883 = 25 Cr. L. J. 483 =  
A. I. R. 1923 All. 610.

—S. 476—Initiation of proceedings.

—Under S. 476 the court may take action of its own motion. Where the pleader merely brings the matter to the notice of the court it is not necessary that he should file a fresh vakalatnama. (*Suhrawardy and Costello, J.J.*) **PURNA CHANDRA DUTTA v. SHAIKH DHALU.**

34 C. W. N. 914 = 52 C. L. J. 87 =  
1930 Cr. C. 1129 = A. I. R. 1930 Cal. 721.

—Per *Costello, J.*—It is very much to be deprecated that the idea should be prevalent that matters under S. 476 are mainly matters *inter partes*. It must be viewed at merely as a matter of public duty undertaken for the purpose of vindicating and ensuring the purity of the administration of public justice. (*Suhrawardy and Costello, J.J.*) **PURNA CHANDRA DATTA v. SHAIKH DHALU.**

34 C. W. N. 914 = 52 C. L. J. 87 =  
1930 Cr. C. 1129 = A. I. R. 1930 Cal. 721.

—Persons causing proceedings to be started may not be party to proceedings.

Court may make a complaint against a person under S. 476 for an offence under S. 211. Penal Code, if it is of opinion that the proceedings before the Court were caused to be started by that person though he was not a party to a proceeding before it. A. I. R. 1925 Rang. 321, Foll. ; 37 Cal. 250 and 7 C. L. J. 375, Ref. (*Suhrawardy and Costello, J.J.*) **AKHLA KULIA CHAUDRY v. EMPEROR.**

52 C. L. J. 149 =  
127 I. C. 65 = 1930 Cr. C. 1063 =  
31 Cr. L. J. 1145 = A. I. R. 1930 Cal. 671.

—Proceedings under S. 476 should not be undertaken on the application of private persons unless the prosecution is clearly in the interests of the State and is reasonably certain to result in conviction. The court cannot take proceedings under S. 476 against person who is not a party to a proceeding in any Court. (*Pullan, J.*) **SHANKAR SAHAI v. EMPEROR.**

7 O. W. N. 638 = 125 I. C. 838 =  
31 Cr. L. J. 938 = 1930 Cr. C. 944 =  
A. I. R. 1930 Oudh 404.

—Court alone should in such matter take action.

Although criminal procedure allows it, it is very reprehensible course for the parties in a litigation to prosecute a criminal matter of the kind contemplated by S. 476. If it is obvious to Subordinate Judge that a criminal offence had been committed, then undoubtedly it is his duty to proceed in bringing the culprit to justice (*Wort, J.*) **BHAGIRATH BHAGAL v. RAM NARAIN SAHU.**

120 I. C. 45 = 30 Cr. L. J. 1144 =  
1930 Cr. C. 277 = A. I. R. 1930 Pat. 194.

—Applicant—If need be a party.

Under S. 476, Cr. P. Code, a complaint may be made by a Court either on an application or otherwise. Hence whether the person making an application was a party in the original suit is immaterial. (*Adami and Chatterji, J.J.*) **HAREKRISHNA PARIDA v. EMPEROR.**

8 Pat 736 = 120 I. C. 629 = 11 P. L. T. 75 =  
31 Cr. L. J. 143 = A. I. R. 1929 Pat. 242.

—Court before whom offence is committed is to take initiative.

The law requires that when certain classes of offences are committed, no Court should take cognizance of such offences unless the Court, before whom or in relation to

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the proceeding before which such offences have been committed moves for this purpose and removes the legal bar to the prosecution. (*Suhrawardy and Cammade, J.J.*) *RAJANIKANTA v. BISTOO MONI.*

46 C. L. J. 40=104 I. C. 456=8 A. I. Cr. R. 433=28 Cr. L. J. 840=A. I. R. 1927 Cal. 718.

—When the person who preferred a false charge to the police has also taken the same facts by way of complaint to the Magistrate then before that person can be prosecuted, the complaint of the Magistrate is necessary. 43 Cal. 1152 and 44 Cal. 650, Rel. on; 7 Mad. 292, not Foll. (*Jackson, J.*) *MURUGAN v. GUTHA RAMI NAIDU.*

26 M. L. W. 405=39 M. L. T. 103=1927 M. W. N. 694=9 A. I. Cr. R. 7=28 Cr. L. J. 845=104 I. C. 625=A. I. R. 1927 Mad. 851=53 M. L. J. 455.

—Court generally takes action on application by parties.

If it was always to be left solely to the self-acting motion of the Courts concerned to institute a complaint much of S. 476 would be surplusage; as it is frequently only upon application made to it that a Court either under S. 476 or S. 476-A of the Cr. P. Code takes action. (*Adami and Bucknill, J.J.*) *RANJIT NARAIN SINGH v. RAMBAHADUR SINGH.*

5 Pat. 262=7 P. L. T. 114=1926 P. H. C. C. 89=27 Cr. L. J. 641=94 I. C. 593=A. I. R. 1926 Pat. 81.

—Accused escaping from custody of peon of Civil Court—Procedure is that servant should file complaint in ordinary way (*Piggott, J.*) *EMPEROR v. MADHO SING.*

86 I. C. 801=26 Cr. L. J. 865=47 All. 409=23 A. L. J. 189=A. I. R. 1925 All. 318.

—Order passed by Court on complaint made by Police is not complaint by Court. (*Bucknill and Ross, J.J.*) *SHAIKH MUHAMMAD YASSIN v. EMPEROR.*

86 I. C. 825=4 Pat. 323=6 P. L. T. 457=26 Cr. L. J. 889=A. I. R. 1925 Pat. 483.

—S. 476—"In relation to", meaning.

—Complaint against person not party to proceeding.

The Court may make a complaint against a person under S. 476 for an offence under S. 211, I. P. C. if it is of opinion that the proceeding before the Court was caused to be started by that person though he was not a party to the proceeding before it. An offence may be committed by a person in relation to a judicial proceeding though it may not be in a judicial proceeding. (*Suhrawardy and Costello, J.J.*) *AKHLA KULLA CHAUDHRY v. EMPEROR.*

31 Cr. L. J. 1145=127 I. C. 65=52 C. L. J. 149=1930 Cr. C. 1063=A. I. R. 1930 Cal. 671.

—False charge of theft made to Police—Sessions Court complaining under S. 476—Institution of false case to Police being basis of proceedings in Sessions Court, the offence is committed "in relation to" proceedings in Sessions Court within the meaning of S. 476. A. I. R. 1925 Pat. 717, Rel. on. (*Cuming and Gregory, J.J.*) *NAZIR AHMAD v. EMPEROR.*

28 Cr. L. J. 324=100 I. C. 708=7 A. I. Cr. R. 551=A. I. R. 1927 Cal. 478.

—S. 476—Judicial Proceedings.

—Who can take.

Since 1923 proceedings under S. 476, Cr. P. Code are taken only by the Court in the interests of justice when it thinks fit to do so. It is not now open to a private person to take proceedings after taking the sanction of the Court under S. 195. A private person may

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move the Court but it is for the Court to decide whether to take action and initiate the proceedings. (*Bhide, J.*) *RAM SARUP v. MUHAMMAD MEHR DIL KHAN.*

31 Cr. L. J. 1174=

31 Punj. L. R. 840=127 I. C. 152=1930 Cr. C. 917=A. I. R. 1930 Lah. 873.

—Forged document filed in Court—Court having power only to return plaint to be filed in another Court—Document is still filed in judicial proceeding. (*Ran-ken, C. J. and Buckland, J.*) *JABHAR ALI v. EMPEROR.*

49 C. L. J. 193=116 I. C. 632=30 Cr. L. J. 656=13 A. I. Cr. R. 73=A. I. R. 1929 Cal. 203.

—Enquiry into—Conduct of jury called in question—Enquiry is judicial.

Whenever the conduct of the jury is taken exception to during the progress of the trial in the Sessions Court, the presiding Judge has undoubted jurisdiction to enquire into the same and such an enquiry is a judicial enquiry. In the course of such an enquiry the Sessions Judge is entitled to call upon any persons to appear before him, to administer oath to such persons and to require them to give evidence. A. I. R. 1923 Cal. 724, Ref. (*C. C. Ghose and Cammade, J.J.*) *BHUBAN CHANDRA PRODHAN v. KING-EMPEROR.*

31 C. W. N. 828=104 I. C. 111=28 Cr. L. J. 783=8 A. I. Cr. R. 319=A. I. R. 1927 Cal. 628.

—Scope of amended section.

Under the amended section it is not essential that the proceeding in respect of which action is taken should be of a judicial character. (*Adami and Sen, J.J.*) *CHAMARI SINGH v. PUBLIC PROSECUTOR OF GAYA.*

83 I. C. 730=4 Pat. 24=6 P. L. T. 225=3 Pat. L. R. Cr. 51=26 Cr. L. J. 170=A. I. R. 1925 Pat. 330.

—An order under S. 476, Cr. P. Code, is bad in law where there is no judicial proceeding pending before the Magistrate as contemplated by S. 476. An order under S. 476, Cr. P. Code, to prosecute the complainant under S. 211, I. P. C., can only be passed when such an offence is committed in or in relation to any proceeding in any Court. (*Kulwant Sahay, J.*) *NAND KISHORE LAL v. KING-EMPEROR.*

81 I. C. 158=5 P. L. T. 300=2 Pat. L. R. Cr. 184=1924 P. H. C. C. 124=25 Cr. L. J. 670=A. I. R. 1924 Pat. 789.

—Evidence recorded under S. 202, Cr. P. C. can be the basis of sanction.

The wording of S. 476 is wide enough to cover the consideration of other than strictly legal evidence and there is nothing illegal in granting a sanction under S. 195 based solely on an investigation conducted under S. 202 whether by a police officer or by the Magistrate himself. (*Macpherson, J.*) *BANSIDAR MARWARI v. KING-EMPEROR.*

74 I. C. 1054=24 Cr. L. J. 862=A. I. R. 1924 Pat. 138.

—S. 476—Legality of order.

—There is nothing in the Code which lays down that once a Magistrate declines under S. 476 to file a complaint he is *functus officio*, or that a complaint subsequently filed by him confers no jurisdiction to deal with the person complained against. A refusal by the Magistrate under S. 476, to file a complaint against an accused person does not attract the applicability of the doctrine of *autre fois acquit* enunciated by S. 403. Nor does it amount to judgment within the meaning of Ss. 366 and 369 which may not therefore be subsequently reviewed.

Where an application under S. 476 for prosecution of a person is rejected, but on appeal the appellate

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Court purporting to act under S. 476 (b) remands the proceedings for further enquiry which results in the complaint being filed against the person, and his conviction, the procedure followed is in strict conformity with the Code, and though the order of remand may be illegal, where the illegality has not led to failure of justice, it is sufficiently covered by the wide provisions of S. 537. 25 Mad. 61 (P.C.), Dist. (*Wild, J.C. and Rupchand, A. J. C.*) **RAJABALI HASSANALI v. EM-PEROR.** 1930 Cr. C. 1147 =

A. I. R. 1930 Sind 315.

—A person who has not appealed against an order resulting in a complaint under S. 476, cannot argue before the Magistrate whether the complaint is a good complaint or made by a proper officer or so forth. (*Rankin, C. J. and Buckland, J.*) **JUBBAR ALI v. EMPEROR.** 116 I. C. 632 = 49 C. L. J. 193 =

30 Cr. L. J. 656 = 13 A. I. Cr. R. 73 =

A. I. R. 1929 Cal. 203.

—Complaint of cheating before Tahsildar having powers of a second-class Magistrate—Act of Tahsildar enquiring and ordering prosecution under S. 476 is legal. (*Stuart, J.*) **ABDUL QAIVUM v. KING-EM-PEROR.** 81 I. C. 116 = 25 Cr. L. J. 628 =

A. I. R. 1925 All. 99.

**—S. 476—Measure of proof.****—Direct evidence—Essential.**

The measure of proof to prove that a document is forged required in civil Court is very different from that required in a criminal Court. Before a Court is justified in making an order under S. 476 directing the prosecution of any person, it ought to have before it direct evidence fixing the offence upon the person whom it is sought to charge. 16 Cal. 730 and 9 N.L.R. 184, Foll. (*Findlay, J. C. and Prideaux, A. J. C.*) **MT. ADKIBAI v. MT. PARBATIBAI.** 115 I. C. 174 =

30 Cr. L. J. 407 = 12 A. I. Cr. R. 264 (Nag.).

—*Mere existence of contradiction in the evidence of a person is not sufficient to make enquiry.*

To prosecute a witness under S. 193, Penal Code, merely on the basis of contradiction in his evidence, is a very doubtful procedure. Mere existence of contradiction in the evidence of a witness is not sufficient for making an enquiry in the interest of justice. (*Rankin, C. J. and C. C. Ghose, J.*) **KARAMAT ALI v. EM-PEROR.** 113 I. C. 842 = 30 Cr. L. J. 221 =

12 A. I. Cr. R. 142 = 55 Cal. 1312 =

A. I. R. 1928 Cal. 862.

**—Suspicion—Insufficient.**

Although there is some indication pointing in the direction of an accused's guilt, yet if the indications do not amount to anything more than mere suspicion, it is not in the interest of justice to start a prosecution against the accused. (*Agha Haidar, J.*) **CHANDAN LAL v. EMPEROR.** 109 I. C. 358 =

10 A. I. Cr. R. 238 = 29 Cr. L. J. 534 (Lah.).

**—S. 476—Notice or opportunity.**

Under S. 476, it is entirely discretionary and not obligatory with a Court to issue a notice and hold a preliminary enquiry. (*Tapp, J.*) **JAGAT SINGH v. EMPEROR.** 120 I. C. 687 =

1930 Cr. C. 23 = 31 Cr. L. J. 179 =

A. I. R. 1930 Lah. 55.

—Apart from a complaint made by a Court under S. 476 (1), no complaint is in any sense invalid merely because the person accused has not had an opportunity of showing cause against the complaint being made. (*Macpherson, J.*) **JOKHI MIAN v. MAHMUD DAFARADAR.** 115 I. C. 882 = 10 P. L. T. 77 =

30 Cr. L. J. 545 = 12 A. I. Cr. R. 363 =

A. I. R. 1929 Pat. 92.

**CR. P. CODE (1898), S. 476—Order against strangers.**

—Application to take action made to successor of Judge—Notice to opposite parties should be given. (*Suhrawardy and Cammade, J.J.*) **RAJANI KANTA v. BISTOO MONI.** 104 I. C. 456 = 46 C. L. J. 40 =

8 A. I. Cr. R. 433 = 28 Cr. L. J. 840 =

A. I. R. 1927 Cal. 718.

—Prosecution under, on evidence of witnesses whose evidence is not tested—Accused is entitled to have notice. A. I. R. 1923 Mad. 228, Foll. (*Jai Lal, J.*) **AMAR NATH v. EMPEROR.** 99 I. C. 1027 =

28 Cr. L. J. 227 = A. I. R. 1927 Lah. 173.

—As a matter of strict law no notice would be necessary to a person before taking the proceedings against him under the law which now exists, but it is right that he should have notice. (*Crumph, J.*) **BAI-KASTURBAI v. VANMALIDAS LAKMIDAS.** 88 I. C. 709 = 49 Bom. 710 = 27 Bom. L. R. 616 =

26 Cr. L. J. 1189 = A. I. R. 1925 Bom. 436.

—*Notice is highly desirable before action.*

The notice is not essential under law. It is highly desirable that it is given in proceedings under S. 476. In a case where preliminary enquiries in which additional evidence was taken and another independent private enquiry by the Circle Inspector were made without notice to the accused the order must be set aside. (*Sulaiman, J.*) **IMAM ALI v. EMPEROR.** 77 I. C. 888 = 5 L. R. A. Cr. 5 =

25 Cr. L. J. 488 = A. I. R. 1924 All. 435.

**—S. 476—Offences not referred.**

—Proceedings in respect of offence under S. 409, I. P. C., cannot be started under S. 476. (*Raza, J.*) **INDARJIT SINGH v. EMPEROR.** 96 I. C. 526 =

13 O. L. J. 653 = 3 O. W. N. 618 = 1 Luck. 527 =

27 Cr. L. J. 974 = A. I. R. 1927 Oudh 210.

—*Complaint by a Court under Ss. 183 and 185, I. P. C., is ultra vires.*

—Section 476, sub S. (1), does not authorise a complaint with reference to offence described in S. 195, sub-S. (1) Cl. (a), committed in or in relation to a proceeding in a Court. The jurisdiction to make a complaint under that sub-section is limited to such cases as are provided for in sub-S. (1), Cl. (b), or Cl. (c) of S. 195 only and therefore complaint by a Court under Ss. 183 and 185 I. P. Code, is *ultra vires* and without jurisdiction. (*Wazir Hasan, J.*) **KING-EMPEROR v. RAM NATH.** 98 I. C. 63 = 2 Luck. 395 =

3 O. W. N. 757 = 27 Cr. L. J. 1247 =

7 A. I. Cr. R. 49 = A. I. R. 1927 Oudh 51.

—Prosecution can't be directed for offences under Ss. 358, 341 and 147. (*Walmesley and Suhrawardy, J.J.*) **SARBESHWAR NATH v. EMPEROR.** 39 C. L. J. 33 = A. I. R. 1924 Cal. 501.

—S. 476—Order against strangers.

—*Any person who appears to have committed an offence under S. 195 (1) (b) and not only parties to proceedings is contemplated by S. 476.*

S. 476 is not restricted to the party making the complaint or actually before the Court, but is wide enough to include any person who appears to have committed an offence mentioned in S. 195 (1) (b) which is not restricted to parties to the proceedings like Cl. (c) of that section. The Court has therefore jurisdiction to prosecute a person who causes a false complaint to be lodged. All that S. 476 requires is that the Court should be satisfied that it is expedient in the interest of justice that an enquiry should be made into an offence which appears to it to have been committed in or in relation to a judicial proceeding. It does not speak of a party to the proceeding. (*Suhrawardy and Costello, J.J.*) **FAZLAR RAHAMAN v. EMPEROR.** 1930 Cr. C. 859 =



**CR. P. CODE (1898), S. 476—Order against Strangers.**

126 I.C. 553 = 31 Cr. L. J. 1055 =

A. I. R. 1930 Cal. 515.

—Proceedings under S. 476 cannot be taken against person not party to proceedings. (*Pullan, J.*) SHANKAR SAHAI v. EMPEROR.

7 O. W. N. 638 =

125 I. C. 838 = 31 Cr. L. J. 938 =

1930 Cr. C. 944 = A. I. R. 1930 Oudh 404.

—Complaint can be made against person though he is not a party to the proceeding.

The presiding officer of a Court can make a complaint not only against persons who are parties to proceedings before him but also against persons who are not parties. Every person including the presiding officer of a Court has power to make a complaint as a rule. It is only when that general power is taken away by statute that a complaint becomes incompetent unless made by the only authority allowed to do so. There being nothing in S. 476 to the effect that the presiding officer of a Court cannot make a complaint against a person who is not a party, it follows that the general power of the presiding officer to make a complaint is not taken away by implication, because he is the only person who can make a complaint against a party in certain circumstances; A. I. R. 1925 Rang. 28; 3 Rang. 48; and A. I. R. 1928 Sind 69, Diss. from; 1 Pat. L. J. 298; A. I. R. 1922 Oudh 220 and 40 All. 24, Rel. on; A. I. R. 1922 Lah. 401, Dist. (*Addison and Coldstream, J.J.*) EMPEROR v. BALMUKAND. 9 Lah. 678 = 10 A. I. Cr. R. 474 = 29 Cr. L. J. 652 = 110 I. C. 108 = A. I. R. 1928 Lah. 510.

—Section 476 must be read with S. 195 and the Courts should not exercise the powers conferred by S. 476 with regard to offences referred in S. 195 (1) (c) unless they are committed by parties to proceedings in such Courts. (*Percival, J. C. and Aston, A. J. C.*) EMPEROR v. RAHIMDINO. 22 S. L. R. 201 =

9 A. I. Cr. R. 154 = 105 I. C. 802 =

28 Cr. L. J. 978 = A. I. R. 1928 Sind. 69.

—It is not open to a Court to make a complaint in respect of any person other than persons who were parties to the proceedings before it. (*Robinson, C. J. and Brown, J.*) C. T. GURUSWAMY v. D. K. S. EBRAHIM. 84 I. C. 439 = 2 Rang. 374 =

26 Cr. L. J. 295 = A. I. R. 1925 Rang. 28.

—Accused neither party nor witness in Court—Alleged forged document used in Court by another person—Accused not guilty under S. 476. (*Greaves and Pantou, J.J.*) BAHARUDY SIKDAR v. EMPEROR.

81 I. C. 919 = 28 C. W. N. 880 =

25 Cr. L. J. 1095 = A. I. R. 1924 Cal. 986.

**—S. 476—Pending Proceedings.**

—Appeal from main case pending—Proceeding under S. 476 should await disposal of appeal. (*Suhrawardy and Cammiade, J.J.*) RAJANI KANTA v. BISTOO MONI. 46 C. L. J. 40 = 104 I. C. 456 =

8 A. I. Cr. R. 433 = 28 Cr. L. J. 840 =

A. I. R. 1927 Cal. 718.

—Court need not wait till the proceedings in respect of which the offence is committed to pass an order under S. 476; 26 Bom. 785 Foll. (*Kincaid, J. C. and Lobo, A. J. C.*) LAKHMICHAND GANDAMAL v. EMPEROR. 21 S. L. R. 43 = 27 Cr. L. J. 1249 =

98 I. C. 97 = A. I. R. 1927 Sind 89.

—Forgery—Question pending in appeal—Proceedings under S. 476 are improper. (*Zafar Ali, J.*) HARNAM SINGH v. MT. ATRI. 7 L. L. J. 73 =

26 Cr. L. J. 1166 = 88 I. C. 526 =

A. I. R. 1925 Lah. 323.

**—S. 476—Powers of Court.**

—Court complaining of fabricating false evidence but not of forgery also—Facts alleged disclosing forgery

**CR. P. CODE (1898), S. 476—Powers of Court.**

—Complaint is not unentertainable, and trying Magistrate can frame charge of forgery. A. I. R. 1929 Mad. 21. Dist. (*Reilly, J.*) SATVANARAYANA v. EMPEROR. 28 M. L. W. 774 = 2 M. Cr. C. 35 = 30 Cr. L. J. 370 = 114 I. C. 834 = A. I. R. 1929 Mad. 74.

—Re-opening a complaint once dropped.

If it is expedient in the interest of justice that an enquiry should be made into a particular offence and if there is a *prima facie* case there is no reason why a matter once dropped should not be re-opened and a complaint can be made even if an order was previously passed dismissing for non-prosecution the application of a particular party under S. 476; A. I. R. 1925 Pat. 330, Foll. (*Adams and Chatterji, J.J.*) HAREKRISHNA v. EMPEROR. 8 Pat. 736 = 120 I. C. 629 =

11 P. L. T. 75 = 31 Cr. L. J. 143 =

A. I. R. 1929 Pat. 242.

—Costs—Jurisdiction to award.

A District Magistrate suspecting forgery in a certain case informed the Court concerned of his suspicion by a petition with the permission of the Local Government. The Court concerned held an enquiry. Being doubtful of the forgery he refused prosecution. He dismissed the application of the District Magistrate and awarded costs against him.

*Held*, Court would have jurisdiction to award costs to one party or the other where parties are the same as in the civil litigation, that neither the King-Emperor nor the District Magistrate by himself was a party in the civil litigation, and, therefore, the Court had no jurisdiction to award costs against the District Magistrate. (*Dalal, J.*) EMPEROR v. BEHARI LAL.

51 All. 338 = 12 A. I. Cr. R. 206 =

10 L. R. A. Cr. 125 = 114 I. C. 741 =

1929 A. L. J. 62 = A. I. R. 1928 All. 588.

—Penal Code, Ss. 182 and 211—Accused persons not taking action under S. 211—Court has authority to complain against the false complainant: (*Dalal, J.*) RAM DAS v. GANGA RAM. 112 I. C. 770 =

30 Cr. L. J. 2 = 9 A. I. Cr. R. 475 =

9 A. I. Cr. R. 446 = 9 L. R. A. Cr. 78 =

9 L. R. A. Cr. 71 = A. I. R. 1928 All. 333.

—Proceedings started under S. 476—Court has option to commit the accused to Sessions under S. 478. (*Lindsay, J.*) RAMESHWARLALL v. EMPEROR.

103 I. C. 204 = 25 A. L. J. 555 = 8 A. I. Cr. R. 85 =

8 L. R. A. Cr. 113 = 28 Cr. L. J. 668 = 49 All. 898 =

A. I. R. 1927 All. 571.

—Power to record a finding.

Under S. 476, as amended, a Court has only authority to make a preliminary inquiry and record a finding in the case of an offence covered by the present S. 195, sub-S. (1), Cls. (b) and (c) but not in cases covered by S. 195 (1) (a). (*Stuart, C. J. and Raza, J.*) DORE SAH v. EMPEROR. 4 O. W. N. 640 = 103 I. C. 409 =

28 Cr. L. J. 681 = 8 A. I. Cr. R. 400 =

A. I. R. 1927 Oudh 326.

—Complaint by Magistrate to his own Court is not illegal.

Petitioner gave evidence in a case tried by the Chief Presidency Magistrate. Part of his evidence was regarded as false and the Magistrate deemed it necessary to take proceedings under S. 476, Cr. P. Code. He accordingly drew up a complaint. This complaint he preferred in his own Court and then he transferred it to a Presidency Magistrate for disposal. The latter issued process, held an enquiry and committed the petitioner for trial. The petitioner was then tried and convicted. *Held: By Court (Rankin and Chakravarti, J.J., dissenting)* that the procedure was not illegal.

*Held, Per Walsley, J.*—The Magistrate committed, nothing worse than an irregularity which may be

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disregarded.

*Held, Per Rankin, J.*—The proceedings have been had throughout in defiance of the express provisions of the Code and of fundamental principles of law. A document which is not addressed to a person other than the writer is not a complaint either in the ordinary sense or in the sense in which the word is used in S. 476 of the Cr. P. Code.

*Held, Per Cuming, J.*—There is nothing in the Code that prevents a Magistrate from taking cognizance of his own complaint.

*Held, Per B. B. Ghose, J.*—The complaint and the subsequent trial was not illegal and the irregularity was curable under S. 532 (1), Cr. P. Code. (*Walmesley, Rankin, Cuming, B. B. Ghose and Chakravarti, J.J.*)  
**EMPEROR v. CALIN MACKENZIE.** 53 Cal. 350 =  
 30 C. W. N. 276 = 27 Cr. L. J. 385 =  
 43 C. L. J. 310 = 93 I. C. 33 =  
 A. I. R. 1926 Cal. 470 (F. B.)

—A Court is not justified in making a complaint of perjury regarding a statement which is literally and strictly speaking true. (*Zafar Ali, J.*) **CHIRAGH DIN v. EMPEROR.** 92 I. C. 746 = 7 L. L. J. 621 =  
 27 Cr. L. J. 330.

—*Trial begun on basis of sanction under old Code but not completed before the coming into force of amended Code can go on without fresh complaint under amended S. 476.*

When a criminal Court has taken cognizance of an offence for perjury, before the amendment of the Cr. P. Code, on a sanction order to a private individual granted before the Code was amended, but has not completed the trial before the amended Code came into force, the trial can go on without fresh complaint under the amended provisions of S. 476, Cr. P. Code. Cr. Misc. Proceedings No. 606 of 1924 and A. I. R. 1924 Mad. 615, Foll.

*Per Wallace, J.*—In order to decide as to whether a trial founded on a sanction and properly begun on a procedure which has been altered by the amended Cr. P. Code can now go on it is essential not to confuse 'cognizance' with 'jurisdiction.' Once a Court is properly seized of a case, any amendment of law, except an amendment which takes away its jurisdiction to try the offence, cannot affect the Court's authority to proceed with the trial. To hold that an amendment of the procedure of trial under the Code automatically brings to an end all trials founded on the original procedure is not a conclusion which is justified either in law or in commonsense. The consequence of an amendment of procedure is not that all matters properly begun under the old procedure collapse and have to be begun again under the new procedure, but that they shall be continued under the new procedure from the time when the new procedure came into force.

*Per Madhavan Nair, J.*—Sanction is required only to enable the Court to take cognizance of certain offences and, when once the case is launched and cognizance has been taken by the Magistrate of any offence, nothing short of an amendment which specifically takes away the jurisdiction of the Court to try the offence can affect the right of the Court to go on with the trial according to law. (*Wallace and Madhavan Nair, J.J.*)  
**APPASAMY AIYAR, In re.** 91 I. C. 388 =  
 27 Cr. L. J. 84 = 1925 M. W. N. 668 =  
 22 M. L. W. 554 = A. I. R. 1925 Mad. 1122 =  
 49 M. L. J. 276.

**—S. 476—Powers of Superior Court.**

—Complaint of perjury containing sentences from accused's depositions besides on the real matter of charge—But order on sanction petition making clear

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which statement was to be real matter of charge in trial—High Court should declare to which sentence trial should be restricted. (*Wallace, J.*) **GURUVAPPA NAICKER, In re.** 2 M. Cr. C. 164 = 118 I. C. 112 =  
 1929 Cr. C. 11 30 Cr. L. J. 866 =  
 A. I. R. 1929 Mad. 510.

**—District Magistrate—Powers of.**

There is nothing to prevent a District Magistrate on reading the judgment or order of a Court under S. 476, from taking cognizance under S. 190 (1), Cl. (c), of offences alleged to have been committed by persons who were not parties to the proceedings before, and from transferring the case for trial to some Magistrate subordinate to him, provided he has been empowered to do so by the Local Government. (*Peraval, J. C. and Aston, A. J. C.*) **EMPEROR v. RAHIMDINO.**

22 S. L. R. 201 = 9 A. I. Cr. B. 154 =  
 105 I. C. 802 = 28 Cr. L. J. 978 =  
 A. I. R. 1928 Sind 69.

**—Power to withdraw.**

District Magistrate cannot order the withdrawal of a complaint made by a Court under S. 476 in respect of an offence falling under S. 211, I. P. C. (*Ashworth, J.*) **RAM PRASAD v. EMPEROR.** 102 I. C. 351 =  
 49 All. 752 = 25 A. L. J. 639 = 8 A. I. Cr. B. 49 =  
 8 L. R. A. Cr. 97 = 28 Cr. L. J. 543 =  
 A. I. R. 1927 All. 571.

—A Sessions Judge can take up at the instance of a private person any revision of a Magistrate's order under S. 476. (*Pullan, J.*) **PEAREY LAL v. SAGAR MAL.** 49 All. 230 = 7 L. R. A. Cr. 176 =  
 97 I. C. 650 = 25 A. L. J. 42 = 27 Cr. L. J. 1130 =  
 A. I. R. 1927 All. 38.

—Appeal—Sanctioning Court cannot be asked to correct defects in complaint—Summary disposal of appeal is bad. (*Chotzner and Duval, J.J.*) **HAMID ALI v. MODHUSUDAN DAS.** 54 Cal. 355 =  
 31 C. W. N. 281 = 100 I. C. 351 = A. I. R. 1927 Cal. 284.

—*Witness leaving jurisdiction of Court for avoiding to give evidence—High Court Judge is not bound to proceed under Cr. P. Code, S. 476 or 480.*

Where a witness left not only the jurisdiction of the Court but actually went out of British India and admittedly did so in order to avoid having to give evidence, the contempt is gross and for such a contempt proceedings under O. 16, R. 17, C. P. Code, are inadequate and a Judge of the High Court is neither bound, nor ought, in such a case to proceed under S. 480 or S. 476, Cr. P. Code. (*Heald and Chari, J.J.*) **EBRAHIM MAMMOJEE v. EMPEROR.** 98 I. C. 57 =  
 4 Rang. 257 = 27 Cr. L. J. 1241 =  
 A. I. R. 1926 Rang. 188.

—Case heard by Honorary Magistrate—District Magistrate can take action. (*Mukerji, J.*) **MOTI RAM v. EMPEROR.** 85 I. C. 710 = 26 Cr. L. J. 566 =  
 6 L. R. A. Cr. 44 = A. I. R. 1925 All. 410.

**—Complaint by Revision Court is not defective.**

Section 476 gives the High Court, as a superior Court full powers to lay a complaint in any and every case in which it appears expedient in the ends of justice to do so, and there is nothing in the Code by which that power and jurisdiction is taken away, because, in cases of a complaint or for refusal to lay a complaint by some subordinate Court, an appeal from that order is allowed. A complaint made when taking up proceedings from a subordinate Court in revision, is not defective. A. I. R. 1925 Rang. 28, Dist. (*Robinson, C. J. Rutledge and Maung Gyi, J.J.*) **EMPEROR v. SYED KHAN.** 91 I. C. 36 = 27 Cr. L. J. 4 = 3 Rang. 303 =  
 A. I. R. 1925 Rang. 321 (F. B.).

**CR. P. CODE (1898), S. 476—Powers of Superior Court**

—Sanction refused by Munsif under S. 195—Sessions Judge agreeing with Munsif but examining witnesses himself and taking action under S. 476—Proceedings are valid. 34 A. 602, Foll. (*Gokul Prasad, J.*) **BIKARAMA PRASAD v. EMPEROR.**

77 I. C. 435 = 25 Cr. L. J. 387 =  
A. I. R. 1922 All. 292.

**—S. 476—Preliminary Enquiry.**

—When necessary.

In each individual case the Court has to decide whether in the interests of justice a preliminary investigation is necessary. In a case where an offence has been committed outside the Court and not in the presence of the Judge it would certainly be judicious if not incumbent upon the Court to hold a preliminary enquiry in order to find out for itself whether such an offence was really committed. But where an offence is committed in the presence of the Court or from a perusal of the record, it is of opinion that it is necessary in the interests of justice that a further enquiry into the matter should be made in the criminal Court, it may make a complaint to that effect to the nearest Magistrate without making any preliminary enquiry. But it cannot be laid down as a proposition of law that in every case it is prudent to hold a preliminary enquiry before making a complaint under S. 476. Each case must be judged on its own facts and there may be a case where the revising authority may think that an action under S. 476 was too hastily taken and that there should be further investigation in the matter. 29 Cal. 349; 10 I. C. 66; 37 Cal. 642; 37 I. C. 469, Rel. on.; A. I. R. 1930 Cal. 282, Diss. from. (*Sukrawardy and Costello, J.J.*) **PURNA CHANDRA DATTA v. SHEIKH DHALU.**

34 C. W. N. 914 = 52 C. L. J. 87 =  
1930 Cr. C. 1129 = A. I. R. 1930 Cal. 721.

—S. 476 gives the discretion to the Court to hold or not to hold a preliminary enquiry. If the Court is of opinion that no preliminary enquiry is necessary it may at once make the complaint. If, on the other hand, it thinks that it is desirable to have a preliminary enquiry, it may adopt any course for the purpose of such an enquiry. The words "preliminary enquiry" under S. 476 may be co-extensive with, if not wider than the words "enquire into the case" in S. 202, Cr. P. Code. A. I. R. 1928 All. 21, Ref.; A. I. R. 1925 Pat. 330; 43 Bom. 300 and 49 I. C. 917, Dist. (*Sukrawardy and Costello, J.J.*) **FAZLAR RAHMAN v. EMPEROR.**

126 I. C. 553 =  
1930 Cr. C. 859 = 31 Cr. L. J. 1055 =  
A. I. R. 1930 Cal. 515.

—If necessary.

It is true that under the provisions of S. 476 a preliminary enquiry is not legally necessary. But it has been laid down ever since the enactment of the present section that although a preliminary inquiry may not be legally necessary, it should in common prudence be held by every Court before it passes an order under S. 476. (*C. C. Ghose and Pearson, J.J.*) **SARAT CHANDRA v. HARI CHARAN.**

127 I. C. 265 = 51 C. L. J. 45 =  
1930 Cr. C. 362 = A. I. R. 1930 Cal. 282.

—Failure to hold—Effect.

Under S. 476, Cr. P. Code, it is not compulsory to hold a preliminary enquiry. Where in a complaint by the Income-tax Officer for an offence under S. 52 of the Income-tax Act the complainant was examined on oath before the District Magistrate, held, that the examination on oath was unnecessary and that it may be disregarded. Held also, that the omission to hold a preliminary enquiry was immaterial. (*Baguley, J.*) **K. C. V. REDDY v. EMPEROR.**

125 I. C. 266 =

**CR. P. CODE (1898), S. 476—Procedure.**

8 Rang. 25 = 1930 Cr. C. 661 = 31 Cr. L. J. 793 =  
A. I. R. 1930 Rang. 201.

—Enquiry need not be exhaustive. (*C. C. Ghose and Cammiade, J.J.*) **BHUBAN CHANDRA PRODHAN v. KING-EMPEROR.**

104 I. C. 111 =  
31 C. W. N. 828 = 8 A. I. Cr. R. 319 =  
28 Cr. L. J. 783 = A. I. R. 1927 Cal. 628.

—Persons affected cannot claim to cross-examine witnesses.

What a Court has to decide under S. 476 is (a) whether an offence of the kind contemplated appears to have been committed, (b) whether it is expedient in the interests of justice that it should be further enquired into. In order to arrive at a decision the Court may, if it thinks fit, hold such preliminary enquiry as it considers necessary. The nature, method and extent of the preliminary enquiry are, entirely at its discretion. The enquiry need not be such as to satisfy the Court that an offence actually has been committed but merely that an offence appears to have been committed. If therefore a Court holds such an enquiry, the persons against whom it is carried on, cannot claim to cross-examine the witnesses. 34 All. 267, Foll.; A. I. R. 1923 Mad. 228, Dist. (*Devadoss and Waller, J.J.*) **RAJA RAO v. EMPEROR.**

97 I. C. 669 = 50 Mad. 660 =  
24 M. L. W. 295 = 27 Cr. L. J. 1149 =  
1927 M. W. N. 63 = A. I. R. 1926 Mad. 1008 =  
51 M. L. J. 331.

—Extent of preliminary enquiry is in Court's discretion—Grant of right of appeal does not extend the scope of the enquiry. (*Mullick and Bucknill, J.J.*) **CHAMARI SINGH v. PUBLIC PROSECUTOR OF GAYA.**

92 I. C. 883 = 4 Pat. 484 = 7 P. L. T. 372 =  
27 Cr. L. J. 371 = A. I. R. 1925 Pat. 677.

—Enquiry should be made where perjury is suspected.

False affidavits and false evidence are extremely common and where it seems probable that of two sworn statements one or the other must be false, it is expedient in the interests of justice that an enquiry should be made. (*Young and Heald, J.J.*) **V. P. R. N. SWAMI-NATHAN CHETTY v. V. PERIYANAN.**

3 Bur. L. J. 149 = A. I. R. 1924 Rang. 374.

**—S. 476—Probability of conviction.**

—Under the amended Code it is no longer the duty of the Court to see that there is a reasonable probability of the prosecution ending in a conviction, though the Court acting under S. 476 should not act capriciously or without proper grounds. 31 Mad. 140 (F.B.) and 32 Mad. 49, Dist.; A. I. R. 1925 Rang. 195, Cons. (*Devadoss and Waller, J.J.*) **SESHAMMA v. VENKAMMA.**

92 I. C. 456 = 22 M. L. W. 863 =

27 Cr. L. J. 280 = A. I. R. 1926 Mad. 238.

—An order under S. 476 should not be passed unless there is a reasonable probability of conviction. (*Foster, J.*) **MANDAR v. EMPEROR.**

74 I. C. 855 =  
24 Cr. L. J. 823 = A. I. R. 1924 Pat. 436.

**—S. 476—Procedure.**

—Appeal.

Where an appeal is pending under the provisions of S. 476-B it should be disposed of under the provisions of S. 476-B and reference to O. 41, R. 11, C. P. Code in the order dismissing the appeal is irrelevant. An appeal from order passed under S. 476 is an appeal in exercise of statutory right of appeal and the provisions of S. 476-B should be complied with. The Court should issue notices to both the parties concerned in the matter, it should send for the record, examine the case and should come to an independent finding whether, under the circumstances, the petitioners would be put in jeopardy by a complaint being lodged against them.

**CR. P. CODE (1898), S. 476—Procedure.**

(*C. C. Ghose and Pearson, J.J.*) **SARAT CHANDRA v. HARI CHARAN DE.** 127 I. C. 265 = 51 C. L. J. 45 = 1930 Cr. C. 362 = A. I. R. 1930 Cal. 282.

—Munsif holding that he had no jurisdiction to direct a complaint to be made under S. 476, Cr. P. Code—Appellate Court not deciding the question of jurisdiction but itself acting under S. 476-B—Procedure is irregular. (*Rankin, C. J. and Chotzner, J.J.*) **KANAI LAL SAHA v. MAKHAN LAL SAHA.** 109 I. C. 211 = 47 C. L. J. 277 = 10 A. I. Cr. R. 167 = 55 Cal. 836 = 29 Cr. L. J. 483 = A. I. R. 1928 Cal. 237.

—*Complaint under—Appeal from is regulated by Cr. P. Code, S. 424.*

*Chotzner, J.*—When a complaint has been made under S. 476, the person affected by the complaint may take an appeal to the Court to which the Court making the complaint is subordinate and that appeal must be dealt with as an ordinary appeal under the Cr. P. Code, as is provided for in S. 424 of the Code.

*Duval, J.*—The appeal must be treated as a miscellaneous appeal and regulated by O. 41, C. P. Code and not by Ss. 422-424, Cr. P. Code. (*Chotzner and Duval, J.J.*) **HAMID ALI v. MADHUSUDAN DAS.**

100 I. C. 351 = 54 Cal. 355 = 31 C. W. N. 281 = A. I. R. 1927 Cal. 284.

—*Appeal lies to civil appellate Court and is governed by provisions of C. P. Code and not of Cr. P. Code.*

Where it is a civil Court which has made an order making or filing a complaint under S. 476 of the Cr. P. Code, the appeal against such an order must lie to and be heard by the authority or tribunal to which such civil Court is subordinate, i. e., to an appellate Court exercising civil appellate jurisdiction and therefore the procedure governing an appeal of this description is one which is to be sought for within the four corners of the C. P. Code. (*C. C. Ghose and Duval, J.J.*) **NASARUDDIN KHAN v. EMPEROR.** 99 I. C. 124 = 53 Cal. 827 = 28 Cr. L. J. 92 = A. I. R. 1927 Cal. 98.

—Failure to record order for sanction is an irregularity curable by Cr. P. Code, S. 537. (*Harrison, J.*) **INAYAT ULLAH v. EMPEROR.** 101 I. C. 186 = 28 Cr. L. J. 410 = A. I. R. 1927 Lah. 379.

—*Proceedings—If should be part of the judgment.*

Although under the old S. 476, it may be necessary that the proceeding under S. 476 should be a part of the judgment proceeding before the Court or at least so soon after the termination of the judgment proceeding, as to make the order under S. 476 a part of the judgment proceeding, it is no longer necessary in view of the changes made in the said section and the enhancement of two new Ss. 476 (A) and 476 (B). It is also necessary that all the reasons given in the judgment should be repeated in an order in which the Court comes to the conclusion that a complaint should be laid before the first class Magistrate. (*Devadoss and Waller, J.J.*) **SESHAMMA v. VENKAMMA.** 22 M. L. W. 863 = 92 I. C. 456 = 27 Cr. L. J. 280 = A. I. R. 1926 Mad. 238.

—Question as to forged nature of document is to be decided in prosecutions following complaint and not before making one. (*Adami and Bucknill, J.J.*) **RANJIT NARAIN SINGH v. RAMBAHADUR SINGH.**

5 Pat. 262 = 7 P. L. T. 114 = 1926 P. H. C. O. 89 = 27 Cr. L. J. 641 = 94 I. C. 593 = A. I. R. 1926 Pat. 81.

—*Order by Small Cause Court—Appeal lies to High Court.*

An appeal against an order of the Court of Small Causes, under S. 476 of the Cr. P. Code, direct-

**CR. P. CODE (1898), S. 476—Scope.**

ing that a complaint under Ss. 193 and 196 of the Indian Penal Code be filed against the appellants lies to the High Court on its Appellate Side. For this purpose Original Side of the High Court is not different from Appellate Side. (*Wallace and Madhavan Nair, J.J.*) **KALYANJI v. RAM DEEN.**

86 I. C. 449 = 48 Mad. 395 = 21 M. L. W. 664 = 26 Cr. L. J. 801 = A. I. R. 1925 Mad. 609 = 48 M. L. J. 290.

—*Proceedings for perjury against a witness should be started after conclusion of the case in which the witness gives evidence.*

Proceedings under S. 476, Cr. P. Code, should not be taken until the case, in which the alleged false evidence was given, have been finally disposed of. Such a hasty proceeding, as placing a witness on a trial as an accused immediately after he has given his evidence, is bad because the obvious result of such a step would be to intimidate subsequent witnesses and defeat the object of the trial. The proper time to apply under S. 476 for the prosecution of witnesses for perjury is after the final disposal of the suit in which he was examined as a witness. (*Wadegaonkar, A. J. C.*) **KALU v. TIKARAM.**

89 I. C. 390 = 26 Cr. L. J. 1350 = A. I. R. 1925 Nag. 412.

—**S. 476—Rights of accused.**

—Omission to inform accused of his right to be tried by another Magistrate vitiates the trial instituted and carried on by the Magistrate under S. 476, Cr. P. Code. (*Wazir Hasan, J. C.*) **EMPEROR v. NAIPAL.** 82 I. C. 152 = 11 O. L. J. 532 = 25 Cr. L. J. 1224 = 28 O. C. 1 = A. I. R. 1924 Oudh 448.

—**S. 476—Scope.**

—*Whether review lies. (Quære).*

It is doubtful whether a Court can review its order refusing to make a complaint under S. 476. However, in view of an appeal being allowed by S. 476-B a review would appear undesirable. (*Ashworth, J.*) **RAM PRASAD v. EMPEROR.** 49 All. 752 = 25 A. L. J. 639 = 102 I. C. 351 = 8 A. I. Cr. R. 49 = 8 L. R. A. Cr. 97 = 28 Cr. L. J. 543 = A. I. R. 1927 All. 571.

—Section 339 (1) does not cancel S. 476. It merely imposes an additional condition as essential to the institution of a prosecution for perjury by an approver, and even when that condition is satisfied the prosecution can still be initiated only on a complaint by the Sessions Court or the High Court. (*Hallifax, A. J. C.*) **LOCAL GOVERNMENT v. GAMBHIR BHUJHA.** 103 I. C. 101 = 23 N. L. R. 35 = 28 Cr. L. J. 645 = A. I. R. 1927 Nag. 189.

—The finding of a competent Court that a document is a forgery, or that a witness has committed perjury before it is a sufficient *prima facie* ground for an order under S. 195 or S. 476. (*Daniels, J.*) **DWARKA PRASAD v. MAKUND SARUP.** 24 A. L. J. 122 = 26 Cr. L. J. 1506 = 6 L. R. A. Civ. 630 = 6 L. R. A. Cr. 213 = 90 I. C. 290 = A. I. R. 1926 All. 21.

—The offence must be one which appears to have been committed in or in relation to a proceeding in the Court which passes the order under S. 476. (*Boys, J.*) **EMPEROR v. BALDEO PRASAD.** 82 I. C. 285 = 22 A. L. J. 772 = 46 All. 851 = 5 L. R. A. Cr. 121 = 25 Cr. L. J. 1277 = A. I. R. 1924 All. 770.

—*Opinion need not be formed during the progress of proceedings.*

The terms of S. 476, Cr. P. Code indicate that the desirability of prosecuting the offender must be present to the mind of the Court during the proceedings in the course of which the offence was committed, or brought

**CR. P. CODE (1898), S. 476—Scope.**

to its notice. But this does not mean that unless it is during the progress of the actual case that this opinion is formed, no prosecution can be ordered under S. 476, Cr. P. Code. 34 C. 551, Dist. (*Duckworth, J.*) VALAB DAS *v.* MAUNG BA THAN. 1 Rang 372 =

2 Bur. L. J. 154 = 26 Cr. L. J. 523 =

85 I. C. 362 = A. I. R. 1924 Rang. 54.

**—S. 476—Witness.**

*Witness committing offence of forgery—Complaint can be made.*

The legislature, in introducing the amendments of 1923, intended S. 476 to be co-extensive in its scope with clauses (b) and (c) of S. 195 (1), and there is nothing in S. 195 and S. 476 to prevent a Court from making a complaint under the ordinary law in respect of the offence under S. 471, I. P. C. which it found to have been committed before it, either by a party or a witness. (*Daniels, J.*) DWARKA PRASAD *v.* MAKUND SARUP. 24 A. L. J. 122 = 26 Cr. L. J. 1506 =

6 L. R. A. Civ. 630 = 6 L. R. A. Cr. 213 =

90 I. C. 290 = A. I. R. 1926 All. 21.

**—S. 476—Miscellaneous.**

*Persons entitled to move under.*

Since 1923 proceedings under S. 476, Cr. P. Code are taken only by the Court in the interests of justice when it thinks fit to do so. It is not now open to a private person to take proceedings after taking the sanction of the Court under S. 195. A private person may move the Court but it is for the Court to decide whether to take action and initiate the proceedings. A person moving the Court to take action under S. 476 cannot therefore be considered to be an interested person within the meaning of S. 526 (3) and also has no *locus standi* to apply for the transfer of a case, the Court being the "complainant." (*Bhide, J.*) RAM SARUP *v.* MOHAMMAD MEHR DIL KHAN. 31 P. L. R. 840 = 127 I. C. 152 = 1930 Cr. C. 917 =

31 Cr. L. J. 1174 = A. I. R. 1930 Lah. 873.

*Delay in starting proceedings under S. 476 should be discouraged.*

An order under S. 476 should be made either at the close of the proceedings or so shortly thereafter that it may reasonably be said that the order is part of the proceeding. The power conferred by S. 476 can be exercised by the Court only in the course of the judicial proceeding or at its conclusion or so shortly thereafter as to make it really the continuation of the same proceeding in the course of which the offence was committed. The delay in starting proceedings under S. 476 should not receive any encouragement, as it is highly unjust and improper. 31 Mad. 140 (F. B.) and 32 Mad. 49 (F. B.), Foll.; 43 Bom. 300, Not Foll. (*Aga Haidar, J.*) CHOTTU RAM *v.* EMPEROR. 126 I. C. 794 =

31 Cr. L. J. 1135 = 1930 Cr. C. 348 =

A. I. R. 1930 Lah. 316.

*In a prosecution under S. 476 for filing a forged document, there is a fair presumption that the document filed was the one given to pleader.* (*Jackson, J.*) MATTAYYA *v.* EMPEROR. 126 I. C. 112 =

31 Cr. L. J. 986 = 1930 Cr. C. 192 =

1930 M. W. N. 76 = 31 M. L. W. 384 =

3 M. Cr. C. 61 = A. I. R. 1930 Mad. 192.

*Appeal—Limitation.*

In case of a complaint under S. 476, limitation must be held to run from the date of the complaint, for the words of the section make it clear that it is only on the refusal to make a complaint or on a complaint being made that an appeal is possible. A. I. R. 1927 Lah. 54 and A. I. R. 1928 Bom. 64, Foll. (*Rankin, C. J.* and *Buckland, J.*) RAMJAN ALI *v.* MOOLJI SEKA & Co. 33 C. W. N. 329 = 118 I. C. 889 =

**CR. P. CODE (1898), S. 476-A—'Rejected'.**

56 Cal. 932 = 30 Cr. L. J. 974 = 1929 Cr. C. 184 = A. I. R. 1929 Cal. 521.

*Witness's false evidence in no way affecting the case—Complaint should not be lodged.* (*Cuming and Gregory, J.J.*) MONOHAR ALI *v.* EMPEROR.

28 Cr. L. J. 310 = 100 I. C. 534 =

8 A. I. Cr. R. 103 = A. I. R. 1927 Cal. 515.

*Sanction should not be granted where object to get exemption from payment of decretal amount.*

It is not expedient that sanction to prosecute should be given to a debtor to use against his creditor, where the object is not to further the ends of justice but to put pressure upon the decree holder to give up his claim under the decree. 26 All. 1; 11 C. W. N. 712; 13 C. W. N. 398; 13 Cr. L. J. 533, Foll. (*Moti Sagar, J.*) BIKRAM SINGH *v.* NIHAL CHAND.

77 I. C. 1008 = 25 Cr. L. J. 544 =

A. I. R. 1924 Lah. 680.

**—S. 476-A—Intention.**

*A superior Court cannot suo motu take action where subordinate Court has refused to complain.*

The scheme of the Ss. 476-A and 476-B is that, if the Subordinate Court has neither made a complaint under S. 476 nor rejected an application for the making of a complaint then the Superior Court may take action and make a complaint. But where the Subordinate Court has rejected the application for the making of such complaint, then the procedure, which is contemplated by the Code is by way of an appeal to the superior Court. Appeal Judge should consider whether the appeal is filed within the time specified. (*Sanderson, C. J.* and *Panton, J.*) CHUNDER KUMAR SEN *v.* MATHURIYA DEBYA. 90 I. C. 529 = 42 C. L. J. 120 =

29 C. W. N. 1035 = 52 Cal. 1009 =

26 Cr. L. J. 1569 = A. I. R. 1925 Cal. 1228.

**—S. 476-A—Invalid complaint.**

*Invalid complaint by Magistrate—Appeal to S. J.*

*S. J. can make complaint.* (*Daniels, J.*) GULAB *v.* EMPEROR. 86 I. C. 987 =

26 Cr. L. J. 923 = 6 L. R. A. Cr. 79 =

A. I. R. 1925 All. 667.

**—S. 476-A—Mistake.**

*False statements in affidavit—District Magistrate directing trying Magistrate to report—Report confined to statement in para. 8 of affidavit—District Magistrate filing complaint about statement in para. 2*

*Sessions Judge on appeal substituting statement in para. 8—District Magistrate must be taken to have meant that complaint should relate to matter in report of Magistrate—Sessions Judge must be taken to have withdrawn complaint in respect of statement in para. 2 and to have filed complaint for statement in para. 8, which was open to him to do.* (*Mukerji, J.*) NAUHU SINGH *v.* EMPEROR. 10 A. I. Cr. R. 269 =

9 L. R. A. Cr. 121 = 29 Cr. L. J. 794 =

111 I. C. 122 = A. I. R. 1928 All. 706.

**—S. 476-A—Powers of superior court.**

*There is no objection to the superior Court granting sanction under S. 476 during the pendency of an application for sanction to the subordinate Court.* (*Shah, Ag. C. J.* and *Fawcett, J.*) RAMDAS VISHNU-DAS, *In re.* 26 Bom. L. R. 713 =

25 Cr. L. J. 1287 = 82 I. C. 359 =

A. I. R. 1924 Bom. 511.

**—S. 476-A—'Rejected'.**

*The word "rejected" in S. 476-A means rejected after consideration on the merits. Where, therefore, the lower Court has merely allowed the application to be withdrawn without consideration of its merits it cannot be said that the application is for the purposes of S. 476-A rejected.* (*Wild, J. C.* and *Aston, A. J. C.*)

**CR. P. CODE (1898), S. 476-A—'Rejected'.**

**VASUDEVMAL v. EMPEROR.** 23 S. L. R. 37 =  
29 Cr. L. J. 1051 = 112 I. C. 475 =  
11 A. I. Cr. R. 360 = A. I. R. 1929 Sind 50.  
—S. 476-A—Sanction before amendment.

**Procedure.**

Where, before the amendment of the Cr. P. Code a Subordinate Court granted sanction under S. 195 of the Code but the sanction lapsed owing to the subsequent amendment of the Code,

*Held*, that the remedy of the complainant was to move the Subordinate Court to make a complaint under the amended S. 476 and not to move a superior Court under S. 476-A of the Code to make a complaint. (*Wallace and Madhavan Nair, J.J.*) L. PATTABI CHETTY v. GOPALA CHETTY. 88 I. C. 357 =

26 Cr. L. J. 1125 = A. I. R. 1925 Mad. 1181.  
—S. 476-A—Transfer of case.

**Powers of a transferee Court.**

S. 526 of the Cr. P. Code, which clothes the High Court with power to transfer any case from any file to any other file, controls S. 195 (3) and Ss. 476-A and 476-B of the Code.

The Court to which an appeal against an order refusing or granting a sanction for prosecution is transferred is invested with all the powers of the ordinary Court of Appeal or revision for hearing the particular appeal or revision against the order under S. 195 of the Code and can grant or refuse sanction or proceed under S. 476. (*Kinkhede, A. J. C.*) BUDHABAI v. ALIBHAI. 86 I. C. 428 = 26 Cr. L. J. 796 =

A. I. R. 1925 Nag. 358.

**—S. 476-B—Additional evidence.****Appellate Court—Jurisdiction of.**

A superior criminal Court acting under S. 195, Cr. P. Code, against the order by an inferior criminal Court granting sanction, has no power to take or call for further evidence. 33 Mad. 90, Foll. S. 195 has been amended and S. 476 empowers a Court, civil, revenue or criminal to forward a complaint to a 1st Class Magistrate for enquiry into an offence which it has reason to hold has been committed before it. Under S. 476-B an appellate Court has power to withdraw the complaint or to direct a complaint to be filed when the lower Court declines to prefer a complaint, but has no jurisdiction to take additional evidence in a matter coming up under the section. (*Devadoss, J.*) SAMI VANNIA NAINAR v. PERIASWAMI NAIDU. 51 Mad. 603 =

10 A. I. Cr. R. 55 = 29 Cr. L. J. 445 =  
108 I. C. 638 = 1928 M. W. N. 73 = 27 M. L. W. 265 =  
A. I. R. 1928 Mad. 391 = 55 M. L. J. 218.

**—S. 476-B—Appeal or Revision.**

Where an order is passed under S. 476-B the High Court can interfere with the same only if it falls within one of the grounds mentioned in S. 115, C. P. Code. (*Suhrwardy and Costello, J.J.*) PURNACHANDRA DUTTA v. SHEIKH DASS. 34 C. W. N. 914 =  
52 C. L. J. 87 = 1930 Cr. C. 1129 =  
A. I. R. 1930 Cal. 721.

**Action undertaken by Court suo motu—Appellability.**

*Held*, that an appeal under S. 476-B lies even if action under S. 476 has been taken by the Court suo motu and not on the complaint filed by a private person. 11 Lah. 55, Foll. (*Tek Chand, J.*) PRABHU DAYAL v. EMPEROR. 31 Punj. L. R. 153 =

12 Lah. L. J. 29 = 127 I. C. 711.  
The right of appeal given by S. 476 B, Cr. P. Code, is restricted to offences referred to in S. 195, sub-S. (1), cl. (b) or (c) and no right of appeal is given by S. 476-B in respect of any offence referred to in S. 195, sub-S. (1) cl. (a). (*Iqbal Ahmad, J.*) BRI-

**CR. P. CODE (1898), S. 476 B—Duty of Appellate Court.**

**JENDRA NATH v. EMPEROR.** 8 A. I. Cr. R. 55 =  
8 L. R. A. Cr. 101 = 102 I. C. 483 =  
28 Cr. L. J. 547 = A. I. R. 1927 All. 828.

**—S. 476-B—Appeal when lies.**

The terms of S. 476-B provide for an appeal even where a complaint is filed by a Judge not at the instance of an appellant, but suo motu. 30 Cr. L. J. 163, Not Appr. (*Curgenven and Bhashyam Aiyangar, J.J.*) M. NAMBERUMAL CHETTY v. NAINIAPPA MUDALI. 1930 M. W. N. 991 = 32 M. L. W. 513 = 59 M. L. J. 850.

**—Court taking action under S. 476 not being moved by any party—Appeal.**

Where a Court takes action under S. 476 not being moved by a party, an appeal under S. 476-B lies. The word "such" before the word "complaint" in the third line of the authorized edition of the Code refers to a complaint "under S. 476 or 476-A." The word "such" has no reference to the case of a complaint being filed at the instance of a party. A. I. R. 1929 Lah. 9 Diss. from. (*Mukerji and Niamatullah, J.J.*) EMPEROR v. RAM PRASAD. 120 I. C. 113 =

1930 A. L. J. 203 = 1929 Cr. C. 491 =  
52 All. 79 = A. I. R. 1929 All. 899.

**—No appeal lies from complaint made by appellate Court under S. 476-B.**

No appeal is allowed from a complaint made by an appellate Court under S. 476 B. An appeal can only lie if the appellate Court takes action under S. 476-A. It is open to a person interested to move the appellate Court direct and if the trial Court has not passed any order in the matter, the appellate Court may make the complaint without the intervention of the trial Court. In such a case an appeal would lie to the High Court. (*Dalal, J.*) NARAIN PRASAD v. EMPEROR.

120 I. C. 116 = 10 L. R. A. Cr. 147 =  
30 Cr. L. J. 1148 = 13 A. I. Cr. R. 1 =  
1929 Cr. C. 490 = A. I. R. 1929 All. 898.

The words: "such a complaint," in S. 476-B mean a complaint made on an application. No appeal therefore lies from a complaint made by a Magistrate at his own instance and not on somebody's application. (*Zafar Ali, J.*) MT. SATTO v. EMPEROR.

113 I. C. 537 = 30 Cr. L. J. 163 =  
12 A. I. Cr. R. 108 = A. I. R. 1929 Lah. 9.

Where Election Commissioners passed an order purporting to act as a Civil Court under S. 476, Cr. P. Code.

*Held*, that appeal lay from their order, although passed without jurisdiction. (*Sulaiman and Daniels, J.J.*) BILAS SINGH v. EMPEROR.

89 I. C. 630 = 47 All. 934 = 23 A. L. J. 845 =  
A. I. R. 1925 All. 737.

**—S. 476 B—Death of appellant.****Appeal abates.**

The language of S. 476-B does not indicate that any legal representative of the deceased appellant may file an appeal, or support it on the death of the appellant. Hence on the death of the appellant the appeal abates. But S. 404 has no application to the case. (*Mukerji, J.*) HAFIZ NEHAL v. RAMJI DAS. 87 I. C. 608 =

47 All. 359 = 26 Cr. L. J. 1008 =  
6 L. R. A. Cr. 85 = A. I. R. 1925 All. 620.

**—S. 476-B—Duty of Appellate Court.**

An appellate Court in cases of appeals under S. 476-B should re-consider the entire matter on its merits. A. I. R. 1925 All. 544, Foll. (*Pearson and Mallik, J.J.*) JAGABANDHU CHOWDHURI v. ABDUL SABHAN SARKAR. 124 I. C. 68 = 57 Cal. 500 =

33 C. W. N. 945 = 1929 Cr. C. 94 =  
31 Cr. L. J. 612 = A. I. R. 1929 Cal. 480.



**CR. P. CODE (1898), S. 476 B—Duty of Appellate Court.**

—*Appellate Court should reconsider entire matter on merits.*

The appellate Court, in case of appeals under S. 476-B should reconsider the entire matter on the merits, and while allowing reasonable weight to the opinion of the Court below, should nevertheless reconsider the question of the propriety of the order appealed against upon a complete review of the entire facts. If the appellate Court is not satisfied that a *prima facie* case has been made out the order appealed against must be set aside. (*Banerji, J.*) **RAMCHARAN DAS v. EMPEROR.**

88 I. C. 358=23 A. L. J. 515=  
26 Cr. L. J. 1126=A. I. R. 1925 All. 544.

**—S. 476-B—Finding of expediency.**

—*Omission to record finding—Party not prejudiced—Proceeding if vitiated.*

Under S. 476-B it is not necessary for an appeal to be filed that there should be a finding recorded in writing that further enquiry is expedient in the interest of justice. Under that section the mere fact that a complaint has been made opens the way to an appeal. Where it appeared that the accused could have appealed against a complaint filed by an Income-tax Officer though there was no finding, and it also appeared that the appeal would have been of no value even if it had been preferred, because the appellate Income-tax Officer was really to the person who ordered the filing of the complaint, *held*, that the proceeding was not vitiated. Effect of the use of word 'may' in S. 476 (b) considered. (*Baguley, J.*) **K. C. V. REDDY v. EMPEROR.**

125 I. C. 266=8 Rang. 25=1930 Cr. C. 661=  
31 Cr. L. J. 793=A. I. R. 1930 Rang. 201.

**—S. 476-B—Forum.**

—*Order by District Magistrate under S. 476-A—Appeal.*

An appeal, therefore, under S. 476-B lies to the Court of the Sessions Judge, from an order passed by the District Magistrate under S. 476-A and not to the High Court. (*Kinkhede, Mohiuddin and Staples, A. J. Cs.*) **PILALAL v. EMPEROR.**

116 I. C. 77=  
25 N. L. R. 1=30 Cr. L. J. 550=  
12 A. I. Cr. R. 345=A. I. R. 1929 Nag. 97 (F.B.).

**—S. 476-B—Interpretation.**

—*"Or against whom such a complaint has been made"—Meaning indicated.*

The phrase "or against whom such a complaint has been made" means that the right of appeal is given to any person against whom a complaint has actually been made. The nature of the complaint is referred to or defined by the use of the word "such" which relates back to the words "complaint under S. 476 or 476-A." (*Broadway, J. on difference between Zafar Ali and Bhide, JJ.*) **THIRAJ v. EMPEROR.**

119 I. C. 265=  
30 Cr. L. J. 1019=1929 Cr. C. 205=  
31 Punj. L. R. 464=11 Lah. 55=  
A. I. R. 1929 Lah. 641.

—*Meaning of words "and if it makes such complaint, the provisions of that section shall apply accordingly".*

The words "and if it makes such complaint, the provisions of that section shall apply accordingly" refer to the procedure laid down in S. 476 about the filing of such complaints and not to the act of making the complaint. (*Mohiuddin, A. J. C.*) **CHIVAI v. MUKUNDRAM.**

119 I. C. 703=25 N. L. R. 192=  
30 Cr. L. J. 1098=1929 Cr. C. 458=  
A. I. R. 1929 Nag. 281.

**—S. 476-B—Irrregularity.**

—*Order by Collector as appellate Court on appeal to him described as District Magistrate is not invalid.*

**CR. P. CODE (1898), S. 476-B—Reversal of order.**

(*Daniels, J.*) **HUBLAL v. EMPEROR.**  
93 I. C. 987=7 L. R. A. Cr. 118=  
27 Cr. L. J. 523=A. I. R. 1926 All. 402.

**—S. 476-B—Limitation.**

—*Limitation for appeal under, runs from date of actual filing of complaint.* A. I. R. 1927 Lah. 54, Foll. (*Fawcett and Mirza, JJ.*) **DAGA DEVJI v. EMPEROR.**  
108 I. C. 26=52 Bom. 164=30 Bom. L. R. 76=  
29 Cr. L. J. 315=9 A. I. Cr. R. 435=  
A. I. R. 1928 Bom. 64.

**—Appeal to High Court.**

An appeal preferred under S. 476-B against an order of the lower Court to the High Court is governed by Art. 155, Limitation Act. A.I.R. 1925 Cal. 1228, Appl. (*Suhrawardy and Cammiade, JJ.*) **RAJANIKANTA v. BISTO MONI.**

104 I. C. 456=46 C. L. J. 40=  
8 A. I. Cr. R. 433=28 Cr. L. J. 840=  
A.I.R. 1927 Cal. 718.

—*Appeal against order directing complaint to be made—Time begins from the date of filing the complaint and not from the date of the order.* (*Jai Lal, J.*) **FITZTHOLMES v. EMPEROR.**

98 I. C. 393=  
7 Lah. 77=27 Cr. L. J. 1321=28 P. L. R. 232=  
A. I. R. 1927 Lah. 54.

—*The limitation for an appeal under S. 476-B against an order refusing to file a complaint under S. 195 is the one provided by Art. 155 and not Art. 156.* (*Daniels, J.*) **SHEO PRASAD v. SHEO BANS RAI.**

93 I. C. 851=24 A. L. J. 368=  
7 L. R. A. Cr. 80=A. I. R. 1926 All. 211.

**—S. 476-B—Notice.**

—*According to S. 476-B, notice is to be sent to the parties concerned. In an appeal against a refusal to make a complaint the parties entitled to receive notice will be the accused persons. But if the appeal were by the person against whom a complaint has been made, the opposite party is the Crown, as in all other criminal cases, and no notice to the complainant is necessary.* A. I. R. 1927 Lah. 357, Foll. (*Zafar Ali, J.*) **LABHA MAL v. WASAWA MAL.**

106 I. C. 584=  
9 A. I. Cr. R. 395=29 P. L. R. 128=  
29 Cr. L. J. 72.

**—S. 476-B—Powers of superior Courts.**

—*Appeals under S. 476-B are subject to all the provisions applicable to criminal appeals as laid down in S. 419 and the following sections. Held, that such an appeal can be disposed of summarily by the District Magistrate under S. 421, Cr. P. Code.* (*Suhrawardy and Costello, JJ.*) **MAHOMED BOYATULLA v. EMPEROR.**

34 C. W. N. 923.

**—S. 476-B—Remand.**

—*In dealing with an appeal under S. 476-B, the appellate Court is governed not by S. 424, Cr. P. Code, but by O. 41, C. P. Code, and so it has power to remand a case if it acts in accordance with the rules of O. 41.* A. I. R. 1927 Cal. 284 (Per Duval, J.), Foll. (*Suhrawardy and Graham, JJ.*) **MAHENDRA NATH v. EMPEROR.**

124 I. C. 827=49 C. L. J. 374=  
1929 Cr. C. 54=31 Cr. L. J. 750=  
A. I. R. 1929 Cal. 428.

**—S. 476-B—Reversal of order.**

—*Appellate Court must file complaint when appeal is allowed and not the lower Court.*

In an appeal under S. 476-B, the District Judge found that there was sufficient justification for placing a party on trial for forgery and directed the lower Court to file a complaint.

*Held*, that the only person who was competent to make the complaint was the District Judge himself and the order directing the lower Court to file the complaint was without jurisdiction and must be set aside (*Chotsner*

**CR. P. CODE (1898), S. 476-B—Reversal of order.**

and Gregory, J.J.) MANIR AHMED v. JAGESH CHANDRA. 115 I. C. 36=55 Cal. 1277= A. I. R. 1929 Cal. 195.

—The High Court will not interfere in appeal under S. 476-B unless extraordinary circumstances are visible. A. I. R. 1926 Pat. 81. Foll. (*Jwala Prasad and Macpherson, J.J.*) SUDARSAN BEHARA v. EMPEROR. 98 I. C. 111=8 P. L. T. 104= 27 Cr. L. J. 1263=A. I. R. 1927 Pat. 87.

—Trial Court refusing to proceed under S. 476—Sufficient reasons must be given before reversing order. (*Newbould and Mukerjee, J.J.*) KALISADHAN ADDYA v. NANI LAL HAZRA. 89 I. C. 251=52 Cal. 478= 26 Cr. L. J. 1307=A. I. R. 1925 Cal. 721.

—Where a Court quashes the direction to prosecute it should order withdrawal of the complaint. A mere order that sanction granted by the Court of first instance should be withdrawn is not sufficient. (*Macleod, C. J. and Shah, J.*) SOMABHAI VALABHAI v. ADITBHAI PARSHOTTAM. 81 I. C. 947= 48 Bom. 401=26 Bom. L. R. 289= 25 Cr. L. J. 1123=A. I. R. 1924 Bom. 347.

**—S. 476-B—Revision.**

—“Sanction” can be altered into “a complaint” in revision.

The form of order containing words “Sanction the prosecution of accused” can be altered by High Court in revision into “make a complaint against accused.” (*Daniels, J.*) HUBLAL v. EMPEROR. 93 I. C. 987=7 L. R. A. Cr. 118= 27 Cr. L. J. 523=A. I. R. 1926 All. 402.

—Orders under S. 476-B, though under extraordinary cases could be revised, are not ordinarily speaking revisable where the lower appellate Court withdraws the complaint laid under S. 476, Cr. P. Code. (*Macleod, C. J. and Shah, J.*) SOMABHAI VALABHAI v. ADITBHAI PARSHOTTAM. 81 I. C. 947= 48 Bom. 401=26 Bom. L. R. 289= 25 Cr. L. J. 1123=A. I. R. 1924 Bom. 347.

**—S. 476-B—Right of appeal.**

—Right of appeal is given whether Court acts suo motu or on application.

S. 476-B gives a right of appeal to two different persons against two separate judicial acts of a Court, first to an applicant whose application to have a complaint lodged under S. 476 or S. 476-A, has been refused and second to the person against whom a complaint under S. 476 or S. 476-A has been lodged. The provisions give right of appeal to any person against whom a complaint has been made by Court acting under the provisions of S. 476 or 476-A and it is immaterial whether the Court acts suo motu or on an application made to it by some interested person. A. I. R. 1927 Lah. 54, Ref. (*Broadway, J. on difference between Zafar Ali and Bhide, J.J.*) THIRAJ v. EMPEROR. 119 I. C. 265= 30 Cr. L. J. 1019=1929 Cr. C. 205= 31 P. L. R. 464=11 Lah. 55= A. I. R. 1929 Lah. 641.

**—S. 476-B—Second appeal.**

—Order under S. 476-B is not appealable. A. I. R. 1928 Cal. 281, Foll. (*Mukerji and Graham, J.J.*) MOHIM CHANDRA v. EMPEROR. 116 I. C. 638= 33 C. W. N. 285=49 C. L. J. 342= 30 Cr. L. J. 658=56 Cal. 824= 13 A. I. Cr. R. 103=A. I. R. 1929 Cal. 172.

—The policy of the Code is not to allow two appeals in criminal matters and no appeal lies under the provisions of the Code against an order made by an appellate Court under S. 476-B. A. I. R. 1925 Lah. 322 Rel. on ; A. I. R. 1926 Pat. 81, Not Foll. ; A. I. R. 1924 Bom. 347 ; A. I. R. 1927 Rang. 313, Ref. (*Mohiuddin,*

**CR. P. CODE (1898), S. 476-B—Second appeal.**

A. J. C.) CHINAI v. MUKUNDRAM. 119 I. C. 703=25 N. L. R. 192= 30 Cr. L. J. 1098=1929 Cr. C. 458= A. I. R. 1929 Nag. 281.

—The view that an appeal lies under S. 476-B from an order of the appellate Court making a complaint after a Subordinate Court has refused to do so requires re-examination by Patna High Court. A. I. R. 1926 Pat. 81, requires reconsideration. (*Kulwant Sahay and Macpherson, J.J.*) RAMCHANDRA PANDHI v. EMPEROR. 117 I. C. 878=8 Pat. 428= 30 Cr. L. J. 834=1929 Cr. C. 158= A. I. R. 1929 Pat. 367.

—There is only one appeal from the decision on an application for making complaint.

The policy of the law, as laid down in S. 476-B is this that, whenever there is a decision by a Court upon an application that a complaint shall be made, whether that decision be one way or another, there is no appeal from it and no more than one appeal. It matters nothing whatever what the result of the appeal may be. If any particular person is for the first time ordered to be prosecuted by the superior Court, his remedy after that is to take his defence before a jury or Magistrate, according to the nature of the case. Two Courts, and only two are to deal with this preliminary question as to whether a person shall be prosecuted or not. A. I. R. 1924 Bom. 347 and A. I. R. 1925 Lah. 322, Foll. ; A. I. R. 1926 Pat. 81, Dist. (*Rankin, C. J. and Chotanier, J.*) AHAMADAR RAHMAN v. DWIP CHAND. 106 I. C. 711=55 Cal. 765= 32 C. W. N. 164=29 Cr. L. J. 119= A. I. R. 1928 Cal. 281.

—No appeal lies under S. 476-B to the High Court from an appellate order of the District Judge making a complaint on appeal from the refusal of the District Munsif to make a complaint on an application made to him under S. 476. The policy of the legislature seems to be to allow only one appeal against orders that may be passed under S. 476 and not to allow an appeal and a second appeal against such orders. A. I. R. 1926 Pat. 81, Diss. ; A. I. R. 1925 Lah. 322 and A. I. R. 1924 Bom. 347, Appr. (*Madhavan Nair and Reilly, J.J.*) MOIDEEN ROWTHEN v. MIYVASSA PULAVAR. 111 I. C. 114=51 Mad. 777=28 M. L. W. 134= 10 A. I. Cr. R. 480=1 M. Cr. C. 152= 29 Cr. L. J. 786=A. I. R. 1928 Mad. 506= 55 M. L. J. 444.

—Where a Court of first instance consents or refuses to prosecute, whether the appellate Court upholds or reverses its order, there is only one appeal and no second appeal lies. A. I. R. 1925 Lah. 322, Rel. on ; A. I. R. 1926 Pat. 81, Diss. (*Stuart, C. J. and Raza, J.*) BISMILLAH KHAN v. SHAKIR ALI. 114 I. C. 812= 5 O. W. N. 882=4 Luck. 155=30 Cr. L. J. 382= A. I. R. 1928 Oudh 494.

—Order of lower appellate Court, directing complaint under S. 476 on appeal from trial Court's refusal to make a complaint, is not appealable—It may be revised, A. I. R. 1926 Pat. 25, Diss. from ; A. I. R. 1924 Bom. 347 and A. I. R. 1925 Lah. 322, Foll. (*Maung Ba, J.*) MA ON KHIN v. N. K. M. FIRM. 105 I. C. 457=5 Rang. 523=28 Cr. L. J. 937= A. I. R. 1927 Rang. 313.

—First Court refusing to make complaint—Appellate Court allowing appeal and itself making a complaint—Appeal lies to High Court.

An appeal lies under S. 476-B of the Cr. P. Code to the High Court from an appellate order of the District Judge making a complaint which the first Court might himself have made but refused to make. [6 Lah. 56,

**CR. P. CODE (1898), S. 476-B—Second appeal.**

Diss. Cr. Rev. 5 of 1925 Affirmed.] Upon a proper construction of Ss. 476, 476-A and 476-B taking for the sake of illustration the three ascending Courts as Munsif, District Judge and High Court there would lie an appeal from the District Judge to the High Court (a) where the Munsif has refused on application made to him under S. 476 to make a complaint, where there has been an appeal to the District Judge and where the District Judge disagreeing with the Munsif, has made a complaint, (b) where under S. 476-A the Munsif has taken no action *suo motu* and has not been asked to take any action the District Judge has (a) on application to him made a complaint, (b) on application to him has refused to make a complaint. The same reasoning would apply to any other chain of three Courts (contemplated by S. 476) of ascending jurisdiction. (*Adami and Bucknill, J.J.*) **RANJIT NARAIN SINGH v. RAMBHADUR SINGH.** 94 I. C. 593=5 Pat. 262=7 Pat. L.T. 114=1926 P. H. C. C. 89=27 Cr. L. J. 641=A. I. R. 1926 Pat. 81.

—Party prejudicially affected has a right of appeal.

S. 476-B appears to contemplate that if an appellate Court sets aside the order of the original Court the party prejudicially affected has a right of appeal to the Court to which appeals from that appellate Court ordinarily lie. (*Mullick, J.*) **FAUJДАР RAI v. EMPEROR.** 90 I. C. 445=7 Pat. L. T. 199=26 Cr. L. J. 1565=A. I. R. 1926 Pat. 25.

—Appellate order making complaint—No appeal lies to High Court. (*Martineau and Zafar Ali, J.J.*) **MAHOMED IDRIS v. CROWN.** 88 I. C. 528=6 Lah. 56=7 L. L. J. 584=26 Cr. L. J. 1168=26 P. L. R. 199=A. I. R. 1925 Lah. 322.

**—S. 476 B—Transfer of appeal.**

—District Judge hearing appeal under S. 476-B has power to transfer appeal to competent Court and transferee Court can make necessary complaint. 39 Cal. 774, Ref.; A. I. R. 1929 Cal. 172, Dist. (*Suhrawardy and Jack, J.J.*) **LAL MAHAMMAD v. D. I. G. OF POLICE OF C. I. D.** 125 I. C. 748=57 Cal. 831=34 C. W. N. 80=31 Cr. L. J. 921=1930 Cr. C. 537=A. I. R. 1930 Cal. 361.

—A District Judge may transfer to any Subordinate Judge under his administrative control any appeals pending before him from the decrees or orders before him. But an order of a Munsif under S. 476 refusing to prosecute a person under S. 193, Penal Code, is not an order of a Munsif within the meaning of S. 40, and the District Judge to whom the appeal from that order is preferred has no jurisdiction to transfer it, to be decided by a Subordinate Judge. (*Stuart, C. J. and Raza, J.*) **BISMILLAH KHAN v. SHAKIR ALI.** 114 I. C. 812=5 O. W. N. 882=4 Luck. 155=30 Cr. L. J. 382=A. I. R. 1928 Oudh 494.

—Section 526 of the Cr. P. Code, which clothes the High Court with power to transfer any case from any file to any other file, controls S. 195 (3) and Ss. 476-A and 476-B of the Code. The Court to which an appeal against an order refusing or granting a sanction for prosecution is transferred is invested with all the powers of the ordinary Court of Appeal or revision for hearing the particular appeal or revision against the order under S. 195, of the Code and can grant or refuse sanction or proceed under S. 476. (*Kinkhede, A. J. C.*) **BUDHABAI v. ALIBHAI.** 86 I. C. 428=26 Cr. L. J. 796=A. I. R. 1925 Nag. 358.

**—S. 478—Appeal.**

—The Code permits no appeal against an order under S. 478. The powers of the District Magistrate

**CR. P. CODE (1898), S. 481—Validity of proceedings.**

under S. 435 and the following sections are confined to interference with criminal Courts subordinate to himself. When, therefore, a Magistrate does not pass an order as a criminal Court but as a revenue Court the District Magistrate has no jurisdiction to revise his order. (*Stuart, C. J.*) **LACHHMAN PRASAD JOSHI v. EMPEROR.** 5 Luck. 435=124 I. C. 364=31 Cr. L. J. 679=1930 Cr. C. 154=6 O. W. N. 953=A. I. R. 1930 Oudh 58.

**—S. 478—Civil Court.**

—Proceedings started under S. 476—Court has option to commit the accused to Sessions under S. 478.

Under S. 478 the civil Court before whom proceedings are started has the option either of sending the case to a Magistrate under S. 476 or of committing it direct to the Court of Sessions, and he is not debarred from the exercise of that option because by passing an order under S. 478 he would deprive the person accused of the offences of a right of appeal as there is no appeal against an order passed under S. 478. (*Lindsay, J.*) **RAMESHWAR LAL v. EMPEROR.** 49 All. 898=25 A. L. J. 555=8 A. I. Cr. R. 85=103 I. C. 204=8 L. R. A. Cr. 113=28 Cr. L. J. 668=A. I. R. 1927 All. 571.

**—S. 478—Revenue Court.**

—Revenue Court is not barred from proceeding under S. 478 with regard to offence committed in mutation proceedings. A. I. R. 1926 P. C. 100, Ref. (*Stuart, C. J.*) **LACHHMAN PRASAD JOSHI v. EMPEROR.** 5 Luck. 435=124 I. C. 364=31 Cr. L. J. 679=1930 Cr. C. 154=6 O. W. N. 953=A. I. R. 1930 Oudh 58.

—S. 480—Action under S. 482, Cr. P. Code.

—Where a Court chooses to act under S. 482 instead of S. 480 in respect of an offence under S. 179, I. P. C. it must give reasons for not taking cognizance under S. 480 itself. (*Wazir Hasan, J. C.*) **CHEDI LAL v. EMPEROR.** 81 I. C. 951=11 O. L. J. 358=25 Cr. L. J. 1127=A. I. R. 1924 Oudh 402.

**—S. 480—Sub-Registrar.**

—If a court.  
In the absence of a direction by the Local Government as regards the Sub-Registrar being a Civil Court within the meaning of Ss. 480 and 482, Cr. P. Code, an offence under S. 228, Penal Code, if committed before a Sub-Registrar cannot be dealt with under Ss. 480 and 482, Cr. P. Code. (*Rankin, C. J., and Patterson, J.*) **PROBHAT CHANDRA ADHIKARI v. EMPEROR.** 57 Cal. 1007=34 C. W. N. 56=125 I. C. 853=31 Cr. L. J. 942=1930 Cr. C. 542=A. I. R. 1930 Cal. 366.

—S. 480—Validity of proceedings.

—Nature and stage of proceeding and also of interruption not indicated—Conviction is not justified: (*Mauung Ba, J.*) **ARUMUGAM CHETTYAR v. EMPEROR.** 12 A. I. Cr. R. 50=30 Cr. L. J. 118=113 I. C. 278=A. I. R. 1928 Rang. 280.

**—S. 481—Statement of accused.**

—The order of the Magistrate falls short of the requirements of S. 481 if it does not contain the statement made by the offence. (*Abdul Raouf, J.*) **POHU RAM v. CROWN.** 81 I. C. 76=25 Cr. L. J. 588=A. I. R. 1923 Lah. 88.

**—S. 481—Validity of proceedings.**

—Record silent as to state and nature of the proceeding interrupted—Conviction under S. 228, Penal Code, is not proper. (*Fforde, J.*) **JATHU MAL v. EMPEROR.** 111 I. C. 464=29 P. L. R. 653=29 Cr. L. J. 880=11 A. I. Cr. R. 78=A. I. R. 1928 Lah. 357.

## CR. P. CODE (1898).

## —S. 482—Recording of reasons.

—Reasons must be given for proceeding under S. 482 instead of acting under S. 480. (*Wazir Hasan, J. C.*) CHEDI RAL v. EMPEROR. 81 I. C. 951 = 11 O. L. J. 358 = 25 Cr. L. J. 1127 = A. I. R. 1924 Oudh 402.

## —S. 487—Appeal.

—Court that heard appeal in sanction proceedings cannot hear appeal from conviction.

The mandatory provisions of S. 487, Cr. P. Code, as amended, clearly prohibit the Sessions Judge from trying any person for any offence referred to in S. 195 of that Code. The word "try" as used in S. 487 includes the "hearing of an appeal". 16 Cal. 121, Foll. (*Kinkhede, A. J. C.*) KRISHNAPPA v. EMPEROR. 81 I. C. 201 = 25 Cr. L. J. 713 = A. I. R. 1924 Nag. 51.

## —S. 487—Applicability.

—A Magistrate cannot try for offences mentioned in S. 195 (a) committed before himself. (*Banerji, J.*) PAHALWAN SINGH v. EMPEROR. 98 I. C. 416 = 27 Cr. L. J. 1344 = 7 A. I. Cr. R. 96.

## —S. 488—

## Adultery.

## Amount of maintenance.

## Application under.

## Award of maintenance.

## Cancellation of order.

## Compromise.

## Conditional order.

## Consent to live separate.

## Decree for maintenance.

## Divorce.

## Execution of order.

## Ex parte order.

## Jurisdiction.

## Maintenance to children.

## Means and inability.

## Nature and scope.

## Neglect to maintain.

## Nominal maintenance.

## Procedure.

## Proof of Marriage.

## Refusal to live with husband.

## Miscellaneous.

## —S. 488—Adultery.

—Maintenance order—Cancellation—Order of—If retrospective.

A wife who had been granted maintenance sued for recovery of arrears due and an order cancelling the maintenance on ground of adultery had been afterwards passed.

*Held*, that the cancelling order could not have retrospective effect so as to disallow the prior allowed maintenance and that a maintenance order stood good until it is cancelled. (*Zafar Ali, J.*) MT. BHAG SULTAN v. MD. AKBAR KHAN. 117 I. C. 67 = 30 Cr. L. J. 719 = 1930 Cr. C. 96 = A. I. R. 1930 Lah. 99.

—Order of maintenance allowance passed in wife's favour—Single act of adultery on her part does not entitle husband to discontinue allowance. (*Findlay, J. C.*) GOPALDEO v. RATNI. 115 I. C. 161 = 30 Cr. L. J. 403 = 1929 Cr. C. 262 = A. I. R. 1929 Nag. 238.

—Single act of adultery does not necessarily disentitle a Magistrate to award maintenance.

A single act of adultery does not necessarily amount to "living in adultery" within the meaning of Cl. (4) of S. 488 and will not justify a Magistrate in refusing maintenance, because the words "living in adultery"

## CR. P. CODE (1898), S. 488—Award of maintenance.

refer to a course of conduct and mean something more than a single lapse from virtue. 26 All. 326; 30 Mad. 832 and A. I. R. 1925 Cal. 794, Foll.; (1890) Rat. Unrep. Cr. C. 506, Dist. (*Fawcett and Mirza, JJ.*) FULCHAND MAGAN LAL, *In re*. 108 I. C. 24 = 30 Bom. L. R. 79 = 40 Bom. 56 = 52 Bom. 160 = 29 Cr. L. J. 314 = 9 A. I. Cr. R. 447 = A. I. R. 1928 Bom. 59.

—Wife not living in adultery at the time of application but previously did so live, was expelled from caste and impossible for husband to approach should not be granted maintenance. 31 Mad. 185, Appl. (*Raza, J.*) RAM AUTAR v. MT. RAGHURAJ. 97 I. C. 950 = 13 O. L. J. 802 = 3 O. W. N. 717 = 27 Cr. L. J. 1190 = 7 A. I. Cr. R. 67 = A. I. R. 1926 Oudh 604.

—"Living in adultery", meaning of—Continuous course of conduct is necessary.

Unless continuity of conduct is established, it cannot be inferred from a single act of adultery that the woman is "living in adultery". In the present case it was held that although the woman had given birth to an illegitimate child it was open to the Magistrate to find that apart from that circumstance, she was not "living in adultery". 26 All. 326; 20 Mad. 470 (F.B.); 30 Mad. 332, Foll. (*Sanderson, C. J. and Chotmner, J.*) LATINDRA NATH MOHAN BANERJEE v. GOURI BALA DEBI. 88 I. C. 608 = 29 C. W. N. 647 = 26 Cr. L. J. 1184 = A. I. R. 1925 Cal. 794.

## —S. 488—Amount of maintenance.

—Order of the Magistrate directing a monthly allowance to be paid at the rate of Rs. 150 per month under S. 488 is clearly in excess of his jurisdiction. (*Shah and Percival, JJ.*) PALMERINO v. MRS. PALMERINO. 99 I. C. 83 = 28 Bom. L. R. 1299 = 28 Cr. L. J. 51 = 7 A. I. Cr. R. 209 = A. I. R. 1927 Bom. 46.

## —S. 488—Application under.

—Previous application for maintenance dismissed for default—Subsequent application is not barred. 1 U. B. R. 64, Expl.; 4 L. B. R. 337, Rel. on; 5 All. 224, Ref. (*Darwood, J.*) MAUNG HLA MAUNG v. MA ON KIN. 105 I. C. 240 = 5 Rang. 697 = 6 Bur. L. J. 200 = 28 Cr. L. J. 912 = A. I. R. 1927 Rang. 328.

## —Nature of.

An application under S. 488, Cr. P. Code, cannot be regarded as a proceeding of a civil nature within S. 12 of Chin Hills Regulation although the failure to maintain a child is not a criminal offence. (*MacColl, A. J. C.*) MAUNG v. MANG TOM. 76 I. C. 111 = 4 U. B. R. 169 = 25 Cr. L. J. 111 = A. I. R. 1925 Rang. 140.

## —If legal evidence.

An application under S. 488 though verified can be neither a substitute for or supplement to the applicant's examination on oath in the presence of her husband nor is it legal evidence against the husband. (*Lindsay, J. C.*) KAMPTA v. MANGAL DEI. 76 I. C. 974 = 25 Cr. L. J. 302 = 23 O. C. 237.

## —S. 488—Award of maintenance.

—Magistrate cannot direct maintenance for the period prior to order of maintenance—Magistrate must direct the husband to pay future maintenance. (*Devadoss, J.*) ROSE CRACKER v. EMPEROR. 108 I. C. 906 = 10 A. I. Cr. R. 75 = 29 Cr. L. J. 458 = 1 Mad. Cr. C. 10 = A. I. R. 1928 Mad. 899.

## —Grant of increased rate of maintenance.

A Magistrate has power to increase the rate of maintenance once awarded, and to direct that the increased

**CR. P. CODE (1898), S. 488—Award of maintenance.**

rate of maintenance be paid from the date of the application asking for the increase. (*Macleod, C. J. and Shah, J.*) **HIRALAL v. BAI AMBA.** 96 I. C. 396 = 28 Bom. L. R. 669 = 27 Cr. L. J. 940 = A. I. R. 1926 Bom. 419.

—Order for maintenance prior to date of application is illegal. 5 P. R. 1870 (Cr.), Foll. (*Broadway, J.*) **ABDUL RAHIM v. MT. AMIR BEGAM.**

94 I. C. 354 = 7 Lah. 365 = 27 Cr. L. J. 610 = 27 P. L. R. 539 = A. I. R. 1926 Lah. 532.

—“*In the whole*”, meaning.

The words “in the whole” mean that only a sum of money not exceeding Rs. 100 should be ordered to be paid and no other payment either in the shape of fees or medical expenses, etc., should be ordered to be paid. The words do not mean that when a woman makes an application for herself and for children she could only be given Rs. 100 for the maintenance of herself and of her children whatever be the number. The words mean that the Magistrate can only order one sum not exceeding Rs. 100 to be paid for the wife and for each of the children unable to maintain itself. (*Devadoss, J.*) **KENT v. KENT.** 90 I. C. 669 = 49 Mad. 891 = 26 Cr. L. J. 1597 = A. I. R. 1926 Mad. 59 = 49 M. L. J. 335.

—Only monthly cash allowance can be ordered.

It is not legal under S. 488 to order the husband to give his wife twelve maunds of grain each harvest and to provide her with a separate house because under that section any other order than one for a monthly cash allowance is not allowed. (*Scott-Smith, O. C. J.*) **ATRA v. MT. MAHOA.** 82 I. C. 279 = 25 Cr. L. J. 1271 = A. I. R. 1925 Lah. 142.

—Reduction.

It is desirable, before a referring Court recommends the reduction of maintenance, to hear both the parties. (*May Ung, J.*) **BURAN SHANTA v. MA CHAN THA MAY.** 85 I. C. 375 = 26 Cr. L. J. 535 = 2 Rang. 682 = A. I. R. 1925 Rang. 197.

—S. 488 award in money only is permissible.

S. 488 only permits of the Court directing a monthly payment of money. An order directing a mixed payment in kind and in cash every year is contrary to the terms of the section. (*Macleod, C. J. and Shah, J.*) **MUKTA v. DATTA MAHADEV.** 81 I. C. 613 = 26 Bom. L. R. 186 = 25 Cr. L. J. 965 = A. I. R. 1924 Bom. 332.

—S. 488—Cancellation of order.

—Where the order of the Magistrate is conditional on neglect or refusal by the husband to maintain the wife a *bona fide* re-union must be interpreted as removing the basis on which the order of the Magistrate rests and as therefore vacating the order. (*Doyle, J.*) **U PO SHEIN v. MA SEIN MYA.** 128 I. C. 353 = 8 Rang. 460.

—Order for maintenance made in wife's favour and acted upon—Husband subsequently discovering the marriage to be void and applying for having the order set aside—Proper course is to approach the Court having matrimonial jurisdiction. (*Shah and Percival, J.J.*) **PALMERINO v. MRS. PALMERINO.**

99 I. C. 83 = 28 Bom. L. R. 1299 = 28 Cr. L. J. 51 = 7 A. I. Cr. R. 209 = A. I. R. 1927 Bom. 46.

—Order for maintenance—Wife returning to her husband—Order remains in force until husband gets it cancelled. A. I. R. 1927 Mad 376, Foll. (*Curgenven, J.*) **NARAYANASWAMI v. MANGIARKASI AMMAL.** 99 I. C. 1037 = 38 M. L. T. 13 = 28 Cr. L. J. 237 = A. I. R. 1927 Mad. 1148.

—Maintenance order in favour of wife is not cancelled even if the wife returns to her husband for some

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time although it may remain suspended. A. I. R. 1923 Cal. 456, Rel. on. 1888 A. W. N. 217, Diss. from. (*Curgenven, J.*) **KANAGAMMAL v. PANDARA NADAR.** 100 I. C. 239 = 50 Mad. 663 = 1927 M. W. N. 111 = 25 M. L. W. 148 = 28 Cr. L. J. 271 = A. I. R. 1927 Mad. 376 = 52 M. L. J. 176.

—Maintenance order against husband—Husband obtaining a decree for restitution of conjugal rights only to avoid maintenance—Maintenance order should not be cancelled. (*Phillips, J.*) **PANAKKAL v. ATHAPPA GOUNDAN.** 91 I. C. 62 = 27 Cr. L. J. 30 = 22 M. L. W. 479 = 1925 M. W. N. 645 = A. I. R. 1925 Mad. 1218 = 49 M. L. J. 269

—S. 488—Compromise.  
—Effect of.

Where, in an application under S. 488, the parties arrive at a compromise, the proper course for the Court is to dismiss the application leaving the parties to enforce the compromise in civil Courts. Such a compromise is a bar to an application under S. 489. An order of maintenance passed in accordance with a compromise cannot be enforced by a criminal Court. 42 P. R. 1888 and 39 P. R. 1905 (Cr.) Rel. on. (*Addison, J.*) **SHAM SINGH v. MT. HATKAM DEVI.** 127 I. C. 13 = 31 Cr. L. J. 1179 = 1930 Cr. C. 623 = A. I. R. 1930 Lah. 524.

—Compromise effected to pay maintenance—Section does not apply.

Once a compromise is entered into to pay maintenance there is no refusal to maintain on the part of the husband and therefore S. 488 has no longer any application. An order passed regarding such a compromise is without jurisdiction. The proper remedy is by way of civil Courts to enforce the compromise: 42 P. R. 1888, Cr.; 39 P. R. 1905 (Cr.) Foll. (*Dalip Singh, J.*) **BUDHU RAM v. KHEN DEO.** 95 I. C. 315 = 27 Cr. L. J. 779 = A. I. R. 1926 Lah. 469.

—S. 488—Conditional order.

—Where the order of the Magistrate is conditional on neglect or refusal by the husband to maintain the wife a *bona fide* re-union must be interpreted as removing the basis on which the order of the Magistrate rests and as therefore vacating the order. (*Doyle, J.*) **U PO SHEIN v. MA SEIN MYA.** 128 I. C. 353 = 8 Rang. 460.

—Order for separate maintenance with proviso that if husband lived with wife, latter would not get maintenance, is bad in law. (*Shadi Lal, C. J.*) **RAMZAN v. MT. SAHIB BIBI.** 111 I. C. 575 = 29 Cr. L. J. 895 = A. I. R. 1929 Lah. 56.

—A condition in an order of maintenance that the wife must reside at the place to which her husband belongs is illegal: 14 P. R. 1917 (Cr.), Foll. (*Addison, J.*) **MT. BASANT KAUR v. HARI SINGH.** 113 I. C. 67 = 11 A. I. Cr. R. 481 = 30 Cr. L. J. 51 (Lah.).

—Legality.

Where the husband is ordered to take the wife away and maintain her, but if he fails to do so, and turns her out he will be liable to pay a fixed sum per month to her for maintenance, the order is illegal: 14 P. R. 1917 (Cr.) Foll. (*Harrison, J.*) **NATHA SINGH v. MT. HARNAM.** 93 I. C. 1052 = 27 P. L. R. 462 = 7 Lah. 313 = 27 Cr. L. J. 556 = A. I. R. 1926 Lah. 480.

—S. 488—Consent to live separate.

—Husband and wife living separately—Wife's house washed away—Husband again offering to keep her in a separate house—Wife refusing and claiming maintenance—Maintenance should be allowed. (*Fawcett and Mirza, J.J.*) **BAI MANEK, In re.** 112 I. C. 473 = 52 Bom. 763 = 30 Bom. L. R. 958 = 29 Cr. L. J. 1049 = 11 A. I. Cr. R. 288 = A. I. R. 1928 Bom. 418.

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## —S. 488—Decree for maintenance.

—Magistrate's jurisdiction is not ousted.

A mere decree of a civil Court awarding maintenance which has become unexecuted owing to the pendency of the insolvency proceedings against the husband is not equivalent to maintaining the wife. Therefore, the Magistrate has jurisdiction under S. 488 to pass an order for maintenance in favour of the wife : A. I. R. 1926 Mad. 59, Rel. on. and A. I. R. 1924 Cal. 230, Dist. (*Patkar and Wild, J.J.*) MAHAMED ALI MITHA-BHAI, *In re*. 124 I. C. 127=31 Bom. L. R. 1866=31 Cr. L. J. 609=A. I. R. 1930 Bom. 144.

—Weight of decree varies with circumstances.

Weight to be attached to a decree must depend upon the particular circumstances of the case and no hard and fast rule can be laid down that a decree of a Civil Court is for ever binding on the Magistrate or that his discretion is never fettered. Where the husband had obtained decree for restitution of conjugal rights but was ill-treating wife :

*Held*, Magistrate could ignore decree and permit wife to live apart, while granting her maintenance under S. 488, Cr. Pro. Code. Maintenance can be granted to wife with permission to live separate from husband, notwithstanding decree for restitution of conjugal rights, if wife is ill-treated. (*Boys, J.*) RAJPATTI v. EMPEROR. 82 I. C. 174=22 A. L. J. 806=5 L. R. A. Cr. 126=25 Cr. L. J. 1246=46 All. 877=A. I. R. 1924 All. 784.

## —S. 488—Divorce.

—Mahomedan wife—Divorce—Wife is not entitled under S. 488 to claim maintenance beyond period of iddat from date of irrevocable divorce. 19 All. 50, Foll.; 8 Cal. 736, Diss. from. (*Mirza and Broomfield, J.J.*) SHEKKANMIAN JEHANGIRMIAN, *In re*.

32 Bom. L. R. 582=126 I. C. 893=31 Cr. L. J. 1110=1930 Cr. C. 610=A. I. R. 1930 Bom. 178.

—Maintenance to wife—Divorce—Husband can, by plea of divorce, avoid payment after date of alleged divorce. (*Fawcett and Mirza, J.J.*) PUNJAL CHUNILAL, *In re*. 30 Bom. L. R. 617=29 Cr. L. J. 908=111 I. C. 668=11 A. I. Cr. R. 103=A. I. R. 1928 Bom. 224.

—Contracting sagai with brother-in-law by a Kahar's wife does not dissolve marriage under Hindu Law.

The fact that the parties are Kahars and the wife contracted a sagai with her brother-in-law, is not sufficient to constitute a dissolution of marriage under Hindu Law, when no caste panchayat was ever held for the purpose of either dissolving or recognizing the dissolution, and the wife is entitled to maintenance. (*Daniels, J.*) BABU NANDAN v. MT. PUNIA.

7 L. E. A. Cr. 104=27 Cr. L. J. 550=93 I. C. 1046=A. I. R. 1926 All. 426.

## —S. 488—Execution of order.

—Court making an order for maintenance cannot refuse to enforce it.

Court refused to enforce an order for maintenance made by itself and said that the same should be got enforced by the Court within whose jurisdiction the person, against whom the order was made, then resided.

*Held*, that the Court should not thus refuse to enforce an order made by itself. (*Coutts-Trotter, C. J. and Walsh, J.*) GNANAMBAL AMMAL, *In re*.

52 Mad. 77=1 M. Cr. C. 263=1928 M. W. N. 837=28 M. L. W. 421=11 A. I. Cr. R. 298=29 Cr. L. J. 932=111 I. C. 852=A. I. R. 1928 Mad. 1171=55 M. L. J. 516.

—Execution of order directing maintenance to be charged on joint estate which was not appealed against

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cannot be revised. (*Fawcett and Madgavkar, J.J.*) SHIVALINGAPPA v. GURLINGAYA. 49 Bom. 906=27 Bom. L. R. 1363=27 Cr. L. J. 652=94 I. C. 604=A. I. R. 1926 Bom. 103.

—Magistrate is bound to consider judicially any objection to execution of maintenance order.

When execution of a maintenance order is applied for and the counter-petitioner contends that the order should not be executed and sets out certain grounds in support of his contention, the Court is bound to consider the sufficiency of the cause alleged by the counter-petitioner and refuse execution if the Court should be satisfied that the cause is sufficient and to grant execution if the Court is not so satisfied. The expression "sufficient cause" in sub-cl. (3) means that the Magistrate before whom the matter comes up should be in a position to use his judicial discretion having regard to all circumstances and that such judicial discretion should not be fettered or limited by any definite rules. (*Sreenivasa Aiyangar, J.*) TEETHARAPPA PILLAI v. MEENAKSHI AMMAL.

87 I. C. 105=26 Cr. L. J. 953=21 M. L. W. 702=A. I. R. 1925 Mad. 715=48 M. L. J. 494.

## —S. 488—Ex parte order.

—Party present in Court along with pleader—Ex parte order against him is not justified. (*Addison, J.*) SHAM SINGH v. MT. HALLAM DEVI. 127 I. C. 13=31 Cr. L. J. 1179=1930 Cr. C. 623=A. I. R. 1930 Lah. 524.

—Application under—Husband not refusing notice—Ex parte proceedings are not justified. (*Jas Lal, J.*) ALLAH DITTA v. MT. SAKINA BIBI.

10 A. I. Cr. R. 490=110 I. C. 239=29 Cr. L. J. 687=A. I. R. 1928 Lah. 853.

—Succeeding Magistrate has power to reopen the case.

Under S. 488, Cr. P. Code, an order for maintenance was passed *ex parte*. Within three months of the order applicant presented a petition to the successor of the Magistrate who passed the order to modify the order alleging that he had no notice. The petition was rejected on the ground that the Magistrate had no power to modify his predecessor's order.

*Held*, the Magistrate was clearly wrong in supposing that he had no power to re-open the case. S. 488 (6) gives him the power. (*May Oung J.*) MAUNG TON YIN v. MA THEINSHIN. 75 I. C. 304=2 Bur. L. J. 61=24 Cr. L. J. 928=A. I. R. 1923 Rang. 159.

## —S. 488—Jurisdiction.

—The words "last resided" are not restricted to permanent residence but include also a temporary residence of two months with wife at the house of parents-in-law as "gharjamai" so as to confer jurisdiction on the Court of that place. 18 Cr. L. J. 706 and A. I. R. 1927 All. 291, Foll., A. I. R. 1926 Oudh 268, Dist.; A. I. R. 1929 Bom. 410, Cons. (*Mirza and Broomfield, J.J.*) SAMA JETHA, *In re*. 54 Bom. 548=127 I. C. 179=1930 Cr. C. 780=32 Bom. L. R. 764=31 Cr. L. J. 1157=A. I. R. 1930 Bom. 348.

—Forum—Casual residence in place in absence of settled abode or permanent place of residence gives jurisdiction.

Where the husband and wife have a fixed place of abode or permanent place of residence a casual or temporary residence at any other place will not confer jurisdiction on the Court situate at that place. But where the husband and wife have no fixed place or abode or permanent place of residence, and both are going about from place to place, a casual or temporary residence at any particular time is sufficient to give that Court jurisdiction under sub-S. (8), S. 488: 36 Cal. 964; A. I. R. 1921 Bom. 211; 21 C. W. N. 872, Ref.; A. I. R.



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1926 Oudh 268, Dist. (*Patkar and Wild, J.J.*)  
 KHAIRUNNISSA, *In re*. 53 Bom. 781=  
 31 Bom. L. R. 931=122 I. C. 59=31 Cr. L. J. 331=  
 1929 Cr. C. 462=A. I. R. 1929 Bom. 410.

—Proceeding in wrong district—Magistrate otherwise competent—Final order is not vitiated. (*Mukerji and Graham, J.J.*) SITRAM KALWAR v. SUKIA.  
 49 C. L. J. 205=115 I. C. 602=  
 30 Cr. L. J. 225=12 A. I. Cr. R. 343=  
 A. I. R. 1929 Cal. 336.

—Jurisdiction—Husband resident of X district—Wife residing with her father in Y district—Last visits of husband to his wife in her parents' house when he lived there—Wife's petition for maintenance in a Court in Y district can be entertained. (*Jai Lal, J.*) ALLAH DITTA v. MT. SAKINA BIBI.  
 10 A. I. Cr. R. 490=  
 110 I. C. 239=29 Cr. L. J. 687=  
 A. I. R. 1928 Lah. 853.

—'Residence' in Cl. (8) includes also temporary residence—Stay of two months at a place is sufficient. A. I. R. 1926 Oudh 268, Dist. (*Ashworth, J.*) SHER SINGH v. MT. AMIR KUER.  
 49 All. 479=25 A. L. J. 435=8 L. R. A. Cr. 24=  
 7 A. I. Cr. R. 318=28 Cr. L. J. 494=  
 101 I. C. 670=A. I. R. 1927 All. 291.

—Place of marriage.  
 The mere fact that the marriage of the parties had taken place within the jurisdiction of a Magistrate is not sufficient to give the Magistrate jurisdiction under S. 488 (8). (*Shadi Lal, C. J.*) GHULAM HUSAIN v. MT. HOKAM BIBI. 96 I. C. 865=27 Cr. L. J. 1009=  
 A. I. R. 1926 Lah. 663.

—Mere casual residence is not sufficient.  
 Mere casual residence in a place for a temporary purpose with no intention of remaining is not "dwelling" and where a party has fixed his residence out of jurisdiction, occasional visits within the jurisdiction will not suffice to confer jurisdiction by reason of residence. 32 All. 203, Foll.

Where, therefore, a husband takes his wife to another place than where he resides and leaves her there, declaring that he would support her no longer, the Magistrate at the place where the wife is left has no jurisdiction to award the maintenance under S. 488. (*Stuart, C. J.*) MT. RAMDRI v. JHUNNI LAL.  
 95 I. C. 596=  
 1 Luck. 343=3 O. W. N. 231=27 Cr. L. J. 820=  
 13 O. L. J. 597=A. I. R. 1926 Oudh 268.

—S. 488—Maintenance to children.  
 —Maintenance—Daughters under ten years of age are entitled to separate allowance. (*Fawcett and Mirsa, J.J.*) BAI MANEK, *In re*.  
 112 I. C. 473=  
 52 Bom. 763=11 A. I. Cr. R. 288=  
 30 Bom. L. R. 958=29 Cr. L. J. 1049=  
 A. I. R. 1928 Bom. 418.

—Application for maintenance by a Mahomedan infant daughter living with her legal guardian, the mother, against her father—Father willing to maintain the child if given into his custody—Order of maintenance cannot be refused. 22 P. R. (Cr.) 1917 and 18 P. R. (Cr.) 1894, Dist.; 25 M. L. J. 355 and 8 Bur. L. T. 134, Rel. on. (*Jai Lal, J.*) MT. SARFRAZ BEGAM v. MIRAN BAKHSI.  
 112 I. C. 476=  
 9 Lah. 313=29 P. L. R. 401=29 Cr. L. J. 1052=  
 A. I. R. 1928 Lah. 543.

—Maintenance to child—Order cannot be passed without proof of neglect or refusal to maintain it. (*Shadi Lal, C. J.*) JAGANNATH v. KOSHALLIA DEI.  
 101 I. C. 191=28 Cr. L. J. 415=  
 A. I. R. 1927 Lah. 430.

—Husband ready to maintain wife and children—Court must enquire as to the wife's unwillingness to live

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with husband—Minority of children is no ground for separate maintenance. (*Campbell, J.*) SULTAN v. MAHTAB BIBI. 98 I. C. 391=27 P. L. R. 333=  
 27 Cr. L. J. 1319=A. I. R. 1926 Lah. 536.

—A father is liable for the maintenance of his legitimate or illegitimate child unable to maintain himself but not for the child of another man. (*Broadway, J.*) ABDUL RAHIM v. MT. AMIR BEGUM.  
 94 I. C. 354=7 Lah. 365=27 Cr. L. J. 610=  
 27 P. L. R. 539=A. I. R. 1926 Lah. 532.

—Paternity of child—Proof of—Corroboration.  
 In a case under S. 488, where the question at issue is, whether a certain man was the father of a certain child, it is *prima facie* improper to accept without corroboration the mere statement on oath of the mother who asserts the paternity. Her evidence in such a case cannot but be highly interested, and it would be unreasonable and improper for any Court to act merely on her own word without some independent corroboration of it.

A Municipal record of the birth of the child of what the mother herself said at the time of the birth is not an independent corroboration nor can the fact that letters, of which the contents were not known, passed between the mother and the alleged father is such a corroboration. The kind of evidence that one would look for to be given as corroboration in such a case would be evidence that at or about that time when the child was conceived, the petitioner was frequenting the society of the counter-petitioner, and had opportunities of access to her. (*Wallace, J.*) REV. VEDANTACHARI v. MARIE.  
 97 I. C. 359=24 M. L. W. 409=  
 27 Cr. L. J. 1095=A. I. R. 1926 Mad. 1130.

—Maintenance of child—What it includes.  
 S. 488 contemplates application by a wife or a child. Where the widow alleged herself to be a discarded mistress, and the application was made by her for the school fees of her son.  
*Held*, that this would require only a formal amendment of the application as one by the woman as guardian of the child and that the amendment might be made by the Court on its own motion. The payment of money to the child's mother by the alleged father could be weighed as evidence of an intimacy between the alleged father and the woman, but in no sense could it be regarded as a binding composition of the claims of the child. The object of proceedings for maintenance is to prevent vagrancy and that object is attained by the provision of lodging, food and clothing. A husband is bound to maintain his wife but he is not bound to do more than supply her with lodging, food and clothing; he is not bound to maintain her as his wife. 16 Bom. 269, Ref. to. 4 I. C. 758, Foll.

A Court ought to allow an application framed as one for educational expenses into one for maintenance only if it was satisfied that the application as framed was framed in error, that what the woman really wanted on behalf of the child was maintenance, and not where the application had been deliberately and purposely framed. (*Boys, J.*) MT. KUMTI v. EMPEROR.  
 82 I. C. 257=25 Cr. L. J. 1249=  
 5 L. R. A. Cr. 187=A. I. R. 1925 All. 73.

—Children—Offer to maintain in future is no bar to passing order.  
 With regard to the maintenance of children, it is sufficient under sub-5. (1) of S. 488 if the neglect or refusal to maintain them is proved. On such proof the Magistrate can make an order for the payment of a monthly allowance for the maintenance of each child to such person as the Magistrate from time to time

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directs. An offer to maintain the children in the future is not sufficient of itself to debar the Magistrate from making the order. The Magistrate will be entitled to consider the circumstances in which the offer was made, and whether it was right and proper that the children, if not in the custody of the father, should be handed over to him. (*MacLeod, C. J. and Coyajee, J.*) **DAVID SASSOON v. EMPEROR.** 87 I. C. 431=49 Bom. 562=27 Bom. L. R. 359=26 Cr. L. J. 975=

A. I. R. 1925 Bom. 259.

—Daughter married after maintenance order—Order should continue if she is unable to maintain herself even then. (*Krishnan, J.*) **MEENAKSHI AMMAL v. KARUPPANNA PILLAI.** 86 I. C. 220=

26 Cr. L. J. 732=48 Mad. 503=21 M. L. W. 142=1925 M. W. N. 67=A. I. R. 1925 Mad. 491=48 M. L. J. 183.

—Child's capacity to contribute to its support should be disregarded in fixing the sum payable. (*May Oung, J.*) **BARAN STANTA v. MA CHAN THA MAY.** 85 I. C. 375=26 Cr. L. J. 535=2 Rang. 682=

A. I. R. 1925 Rang. 197.

—Neglect and refusal by father justifies order—Offer at trial to maintain is of no avail. (*Krishnan, J.*) **KAMBU AMMAL v. RANGANATHAN.** 76 I. C. 30=19 M. L. W. 530=25 Cr. L. J. 94=

1924 M. W. N. 465=A. I. R. 1924 Mad. 624.

**—S. 488—Means and inability.**

—“Means”—Meaning of.

The word “means” in S. 488 does not signify only visible means, such as real property or definite employment. If a man is healthy and able-bodied he must be taken to have the means to support his wife. (*Jackson, J.*) **KANDASAMI CHETTY, In re.** 1926 M. W. N. 146=27 Cr. L. J. 350=92 I. C. 862=

A. I. R. 1926 Mad. 346=50 M. L. J. 44.

—Inability is physical or pecuniary inability.

The ability contemplated by the section applies as much to the case of a child which has got means of its own or which is entitled in law to be maintained and is being maintained as to a child which is able to earn a living by its own exertions. 39 Mad. 957, 10 L. W. 229, Foll. (*Odgers, J.*) **BHARATA AYYAR, In re.** 77 I. C. 418=19 M. L. W. 275=34 M. L. T. 167=

1924 M. W. N. 305=25 Cr. L. J. 370=A. I. R. 1924 Mad. 549=46 M. L. J. 324.

**—S. 488—Nature and scope.**

—The bare fact that civil litigation is pending between the parties is no reason for not giving effect to an order awarding maintenance under S. 488 so long as it is in force. (*Shadi Lal, C. J.*) **MT. MAHBUB SULTAN v. QUTUB DIN.** 1930 Cr. C. 201=

30 P. L. R. 740=125 I. C. 63=31 Cr. L. J. 770=A. I. R. 1930 Lah. 213.

—The proceedings under S. 488 are not strictly speaking criminal proceedings and the person against whom action is taken under that section does not fall in the category of the “accused.” Therefore, it is not incumbent on the Magistrate to examine under S. 342 the husband or the father as the case may be before an order under S. 488 can be made against him to make a monthly allowance for the maintenance of his wife or his child as the case may be. A. I. R. 1927 Cal. 250; A. I. R. 1921 Pat. 11; and A. I. R. 1926 Lah. 667, Diss. from. A. I. R. 1924 Mad. 150 (F. B.) and A. I. R. 1927 Lah. 435 (1), Appr. (*Zafar Ali and Jai Lal J.J.*) **MEHR KHAN v. BAKAT BHARI.** 112 I. C. 218=10 Lah. 406=30 P. L. R. 549=29 Cr. L. J. 1002=11 A. I. Cr. R. 312=A. I. R. 1929 Lah. 32.

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—S. 342 is not applicable to a person proceeded against under S. 488. 25 Cr. L. J. 1091; 18 Bom. 468; and 16 Mad. 234, Foll. (*Fawcett and Mirza, J.*) *In re VITALDAS BHURABHAI.* 112 I. C. 475=

11 A. I. Cr. R. 271=30 Bom. L. R. 957=52 Bom. 768=29 Cr. L. J. 1051=A. I. R. 1928 Bom. 347.

—An order of maintenance under S. 488 cannot be passed against the father of the husband. (*Jai Lal, J.*) **GHULAM MOHAMMAD v. MT. GHULAM FATIMA.** 113 I. C. 327=30 Cr. L. J. 135=

12 A. I. Cr. R. 21 (Lah.).

—Section 342 is not applicable to summons cases and therefore a case under S. 488 is not governed by the section. A. I. R. 1926 Lah. 667, Not Foll.; A. I. R. 1924 Mad. 15 (F. B.), Foll. (*Zafar Ali, J.*) **SHADI KHAN v. MT. GUL BEGUM.** 101 I. C. 606=

28 Cr. L. J. 478=A. I. R. 1927 Lah. 435.

—The provision of a summary remedy under S. 488 cannot, unless an Act expressly says so, take away a right conferred by Hindu law. (*Kumaraswami Sastri, J.*) **NATARAJAN v. MUTHIAH CHETTY.** 22 M. L. W. 650=95 I. C. 972=1926 M. W. N. 73=

A. I. R. 1926 Mad. 261.

—Order for alimony in existence—Jurisdiction under S. 488 is not ousted.

The existence of a previous order for alimony is not sufficient to oust the jurisdiction of the Magistrate; for a mere order for maintenance is not equivalent to maintaining the wife; and the order, whatever may be its force or nature, cannot take away the Magistrate's jurisdiction so long as the husband neglects or refuses to maintain the wife. *Craxton v. Craxton*, 71 J. P. 399, Dist. (*Devadoss, J.*) **KENT v. KENT.** 49 Mad. 891=26 Cr. L. J. 1597=90 I. C. 669=

A. I. R. 1926 Mad. 59=49 M. L. J. 335.

**—S. 488—Neglect to maintain.**

—Neglect or refusal to maintain is first essential to invest Court with jurisdiction under S. 488.

In order to give jurisdiction to a Magistrate to take proceedings under S. 488 the first essential is to find that the respondent has neglected or refused to maintain the person for whose maintenance an allowance is asked for. Where wife is allowed maintenance under S. 488 the mere fact that the son is of tender years and that it is in the interests of the minor son that he should be left with the mother till the father is able to get the custody of the minor son from the civil Court is not sufficient to invest the criminal Courts with jurisdiction under S. 488 as regards the son unless it can be shown that he has neglected or refused to maintain the boy. (*Tek Chand, J.*) **SITA DEVI v. HAR NARAIN.** 31 Punj. L. R. 876=1930 Cr. C. 982=

A. I. R. 1930 Lah. 886.

—A mere offer to maintain does not amount to absence of neglect to maintain. (*Devadoss, J.*) **KENT v. KENT.** 49 Mad. 891=26 Cr. L. J. 1597=90 I. C. 669=A. I. R. 1926 Mad. 59=49 M. L. J. 335.

—Neglect or refusal to maintain is the first essential. (*Kendall, A. J. C.*) **INTAZAR AHMED v. MT. SAMIDAN.** 83 I. C. 688=27 O. C. 271=

26 Cr. L. J. 128=A. I. R. 1925 Oudh 294.

—Where there is no neglect and no refusal to maintain, an order for maintenance under S. 488 is wrong in law. (*Cunliffe, J.*) **E. A. GRAHAM v. E. H. GRAHAM.** 86 I. C. 479=26 Cr. L. J. 831=4 Bur. L. J. 11=

A. I. R. 1925 Rang. 205.

—Insolvency of husband disproves wilful neglect.

The fact that the husband has been adjudicated an insolvent is conclusive, so long as the order of adjudication stands, that he is unable to pay his debts. He, being unable to pay his debts, is not guilty of wilful

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neglect within the meaning of S. 488. (*Ghose and Cuming, J.J.*) **HALFHIDE (MR.) v. HALFHIDE (MRS.)**  
 81 I. C. 912=25 Cr. L. J. 1088=50 Cal. 867=  
 A. I. R. 1924 Cal. 230.

**—S. 488—Nominal maintenance.**

—The fact that husband is a young boy of 16 is no ground for granting nominal maintenance. (*Doyle, J.*)  
**MA E. SEIN v. MG. HLA MIN.** 4 Bur. L. J. 258=  
 27 Cr. L. J. 725=95 I. C. 53=A. I. R. 1926 Rang. 88

**—S. 488—Procedure.**

—*Offer to take back.*

Where, in a proceeding against husband under S. 488, Cr. P. Code, the husband expresses his willingness to take his wife back although she had left him of her own will and was of bad character, it is incumbent on the Magistrate to ask the wife whether she was willing to return to her husband before proceeding further. (*Bhide, J.*) **BUDHWA v. KIRPI.** 125 I. C. 637=  
 31 Cr. L. J. 876=1930 Cr. C. 809=  
 A. I. R. 1930 Lah. 665.

—Application by wife for maintenance—Both husband and wife examined—Case closed for orders—Pleader for husband appearing and wishing to argue case and file documents—Court ruling him out and passing judgment against husband—Proper enquiry held not made—Case ordered to be retried. (*Subbedar, A. J. C.*) **PUNNUSWAMY v. MT. ALMELUBAI.** 120 I. C. 416=1930 Cr. C. 147=31 Cr. L. J. 110=  
 A. I. R. 1930 Nag. 59.

—When husband is willing to maintain his wife, proviso to sub-S. 3 must be complied with. (*Dalip Singh, J.*) **USMAN v. MT. JATTI.** 96 I. C. 394=  
 27 Cr. L. J. 938 (Lah.).

—Person giving evidence on his own behalf under S. 488—Omission to examine him under S. 342 does not vitiate proceedings. (*Greeves and Panton, J.J.*) **BACHAI KALWAR v. JAMUNA KALWARIN.** 81 I. C. 915=  
 25 Cr. L. J. 1091=A. I. R. 1925 Cal. 339.

**—S. 488—Proof of marriage.**

—Claim for maintenance—Law to be applied for proving marriage between Burmese woman and half caste Chinese is Chinese Customary law. (*Maung Ba, J.*) **MA U v. MG KYIN HLAT.** 4 Bur. L. J. 255=  
 94 I. C. 608=27 Cr. L. J. 656=A. I. R. 1926 Rang. 82.

—Where relationship is declared not to exist by Civil Court—Order under S. 488 should not be given effect to. 1918 M. W. N. 65, Foll. (*Ayling and Odgers, J.J.*) **VENKAYYA v. PAIDANNA.** 73 I. C. 944=  
 46 Mad. 721=18 M. L. W. 132=32 M. L. T. 345=  
 1923 M. W. N. 401=24 Cr. L. J. 720=  
 A. I. R. 1923 Mad. 707=45 M. L. J. 104.

—**S. 488—Refusal to live with husband.**

—Wife refusing to live with husband should be given chance to substantiate reasons for refusal by evidence—Court should consider grounds of refusal and pass order for maintenance in case of just grounds. (*Shadi Lal, C. J.*) **SAID BIBI v. UMAR DIN.** 31 P. L. R. 664=1930 Cr. C. 533=  
 A. I. R. 1930 Lah. 464.

—*Parties belong to low class.*

The words "just ground" in the amended Code invest the Magistrate with a large discretion in the matter of granting maintenance. Where the evidence before the Magistrate clearly shows that the husband subjected his wife to a systematic course of ill-treatment and brutal oppression for a number of years, there is just ground for the wife to refuse to live with her husband and she is entitled to maintenance. The fact that the parties belong to a low class can make no difference. (*Sen, J.*) **MT. KALIYA v. HIRA.** 120 I. C. 195=  
 1929 A. L. J. 1208=10 L. R. A. Cr. 153=

**CR. P. CODE (1898), S. 488—Refusal to live with husband.**

31 Cr. L. J. 3=13 A. I. Cr. R. 17=  
 1929 Cr. C. 593=A. I. R. 1929 All. 950.

—Mere admission by Muhammadan husband of another marriage and of refusal to divorce complainant, first wife, does not justify order of separate maintenance. (*Shadi Lal, C. J.*) **RAMZAN v. MT. SAHIB BIBI.** 111 I. C. 575=29 Cr. L. J. 895=  
 A. I. R. 1929 Lah. 56.

—If the wife declines to go to her husband and live with him in his house, she cannot demand maintenance. (*Shadi Lal, C. J.*) **TOTA v. DURGI.** 117 I. C. 903=  
 30 P. L. R. 367=30 Cr. L. J. 861.

—A wife sued under S. 488 her husband for maintenance. The husband offered to receive her to live with him but she refused to go. There was no proof of cruelty or adultery. The Magistrate sent the case for inquiry under S. 202. The statement of the complaint was never taken in the presence of the opponent. The Magistrate finally granted a maintenance allowance and a separate house to live in.

*Held*, that there were irregularities and illegalities in the order which vitiated the trial. (*Shadi Lal, C. J.*) **MAKHAN SINGH v. MT. HARNAMO.** 111 I. C. 669=  
 10 L. R. A. Rev. 77=29 Cr. L. J. 909=  
 11 A. I. Cr. R. 181 (Lah.).

—Husband having another wife is not a just ground for refusal to live with him. (*Campbell, J.*) **KIRPAL SINGH v. MT. SANTI.** 28 Cr. L. J. 236=  
 99 I. C. 1036=A. I. R. 1927 Lah. 168.

**—When justified.**

The principle, that where a wife is turned out or ill-treated so as to make it impossible for her to live with her husband, or where the breach between the husband and wife is irremediable so that it is impossible for the latter to return to the former after many years' separation without leading to fresh trouble and dispute, she is entitled to maintenance by living separate from him applies equally to the case of a Hindu or a Mahomedan whether the question arises under S. 488, Cr. P. Code, or in a suit for restitution of conjugal rights. 170 P. L. R. 1914, Ref. (*Kinkhede, A. J. C.*) **MT. KURSHED BEGUM v. ABDUL RASHID.** 100 I. C. 169=  
 A. I. R. 1927 Nag. 139.

—Ill-treatment by husband—Wife's refusal to live with him does not disentitle her to maintenance—Husband marrying second wife is no ground to refuse to live with husband. (*Broadway, J.*) **PRITAM SINGH v. MT. BASANT KAUR.** 27 Cr. L. J. 507=  
 93 I. C. 971=A. I. R. 1926 Lah. 353.

—Husband becoming Jew is no ground for Christian wife to live separate—But husband's bringing another woman to live in the house with a view to marry her is sufficient ground. (*Kennedy, J. C. and Lobo, A. J. C.*) **A. T. TALKAR v. MRS. LAXMI TALKAR.** 19 S. L. R. 128=27 Cr. L. J. 1177=97 I. C. 809=  
 A. I. R. 1926 Sind 278.

—Husband obtaining decree for restitution—Wife refusing to allow its execution is not entitled to maintenance. A. I. R. 1925 Mad. 1218, Foll. (*Kincaid, J. C. and Lobo, A. J. C.*) **ALI MAHOMED v. EMPEROR.** 20 S. L. R. 145=27 Cr. L. J. 876=  
 96 I. C. 124=A. I. R. 1926 Sind 270.

—The husband having taken another wife is no ground for refusing to live with the husband. (*Kinkhede, A. J. C.*) **SUKRULLA FAKIR v. FATMA.** 77 I. C. 805=25 Cr. L. J. 453=A. I. R. 1924 Nag. 297.

—The wife's refusal of husband's offer to give separate residence does not amount to "refusing to live with her husband." (*Kinkhede, A. J. C.*) **SUKRULLA FAKIR v. FATMA.** 77 I. C. 805=25 Cr. L. J. 453=  
 A. I. R. 1924 Nag. 297.

**CR. P. CODE (1898).****—S. 488—Miscellaneous.**

—A Civil Court has no jurisdiction to restrain a party by an injunction from pursuing her remedy, under S. 488, Cr. P. Code, in a Criminal Court. (*Panckridge, J.*) KRISHNA GOBINDA CHATTERJI v. MT. KISHORIBALA DEBI. 1930 Cr. C. 1153 = A. I. R. 1930 Cal. 753.

—Persons aggrieved by order under, should go to Civil Courts.

Persons aggrieved by the magisterial orders under S. 488 are expected to take their case to the Civil Courts. S. 488 provides a speedy remedy and safeguards a deserted wife or child from starvation; but when other issues are raised they should be settled in the Civil Courts, and not by protracted litigation in the Criminal Courts. (*Jackson, J.*) KANDASAMI CHETTY, *In re*. 1926 M. W. N. 146 = 27 Cr. L. J. 350 = 92 I. C. 862 = A. I. R. 1926 Mad. 346 = 50 M. L. J. 44.

—Proceedings under S. 488—No guardian can be appointed—Case must be postponed if party insane—Cr. P. Code, alone governs the case. (*Wallace, J.*) APPICHI GOUNDAN v. KUTHUJAMMAL. 86 I. C. 77 = 26 Cr. L. J. 701 = 48 Mad. 388 = 21 M. L. W. 180 = 1925 M. W. N. 65 = A. I. R. 1925 Mad. 440 = 48 M. L. J. 187.

—S. 489—Alteration when ordered.

—Order for maintenance—Alteration in allowance can be ordered only if circumstances of husband change. (*Fawcett and Mirza, J.J.*) PUNJALAL CHUNILAL. *In re*. 30 Bom. L. R. 617 = 29 Cr. L. J. 908 = 111 I. C. 668 = 11 A. I. Cr. R. 103 = A. I. R. 1928 Bom. 224.

**—S. 489—Decree for restitution.**

—Maintenance order passed—Subsequent decree of Civil Court granting restitution—Decree does not *ipso facto* cancel maintenance order. Case law discussed. (*Carr, J.*) MAUNG DUN v. MA SEIN. 89 I. C. 317 = 26 Cr. L. J. 1341 = 3 Rang. 150 = A. I. R. 1925 Rang. 268.

**—S. 489—Discretion.**

—The amended section does not take away the discretion of Magistrates in maintenance orders. (*Kincaid, J. C. and Lobo, A. J. C.*) ALI MAHOMED v. EMPEROR. 20 S. L. R. 145 = 27 Cr. L. J. 876 = 96 I. C. 124 = A. I. R. 1926 Sind 270.

**—S. 489—Interpretation.**

—'Alteration'.  
The reduction of the maintenance to nothing *i.e.*, cancellation of the order granting maintenance, would also come within the meaning of the word 'alteration'. (*Krishnan, J.*) MEENAKSHI AMMAL v. KARUPANNA PILLAI. 86 I. C. 220 = 26 Cr. L. J. 732 = 48 Mad. 503 = 21 M. L. W. 142 = 1925 M. W. N. 67 = A. I. R. 1925 Mad. 491 = 48 M. L. J. 183.

**—S. 489—Revision.**

—In cases where the Magistrate has passed a wrong order under S. 489, sub-C. (2) it is right and proper that it should be corrected by the High Court in revision. (*Kincaid, J. C. and Lobo, A. J. C.*) ALI MAHOMED v. EMPEROR. 20 S. L. R. 145 = 27 Cr. L. J. 876 = 96 I. C. 124 = A. I. R. 1926 Sind 270.

**—S. 491—Applicability.**

—Where the person wanted is in custody of a Native State power to issue directions under S. 491 (1) cannot be exercised. (*Dalal, J.*) SHIVA PRASAD v. EMPEROR. 119 I. C. 527 = 1929 A. L. J. 520 = 10 L. R. A. Cr. 84 = 12 A. I. Cr. R. 1 = 30 Cr. L. J. 1083 = A. I. R. 1929 All. 347.

**CR. P. CODE (1898), S. 491—Minors.****—S. 491—Effect.**

—The investment of the extraordinary powers of *habeas corpus* in a High Court does not take away from litigants the ordinary rights which they previously had under the civil law. (*Brown, J.*) SWAR LAY TEONG v. YEO BOON LAY. 4 Bur. L. J. 269 = 27 Cr. L. J. 737 = 95 I. C. 65 = A. I. R. 1926 Rang. 76.

**—S. 491—Exercise of powers.**

—The power under S. 491 (1) (b) is to be exercised in matters of urgency, where, for instance the father is suddenly deprived of the custody of his sons and there is danger to the life of the sons in the transferred custody. It is a remedy for a person deprived of his liberty. The power therefore has to be exercised with caution and not in a case where there is a dispute merely as to who should be guardian of particular minors. (*Dalal, J.*) SULTAN SINGH v. B. MAYA RAM RADHA SWAMI. 124 I. C. 728 = 31 Cr. L. J. 719 = 52 All. 491 = 1930 Cr. C. 372 = 1930 A. L. J. 615 = A. I. R. 1930 All. 260.

**—S. 491—Fresh application.**

—Each Judge of the Supreme Court of Nigeria has jurisdiction to entertain an application for a writ of *habeas corpus* in term time or in vacation, and he is bound to hear and determine such an application on its merits notwithstanding that some other Judge of the same Court has already refused a similar application. (*Lord Chancellor.*) ESHUGBAYI ELEKO v. OFFICER ADMINISTERING THE GOVERNMENT OF NIGERIA. 113 I. C. 273 = 26 A. L. J. 1169 = 28 M. L. W. 874 = 30 Cr. L. J. 113 = 12 A. I. Cr. R. 36 = A. I. R. 1928 P. C. 300 (P. C.).

**—S. 491—Legality of detention.**

—A arrested and remanded to police custody on suspicion of being connected with offence under S. 302 read with S. 120-B—Order of Magistrate not sufficiently clear—Existence of grounds for believing that A was connected with serious conspiracy—Custody in which A was detained held not to be "illegal". (*Bhide, J.*) SUNDAR SINGH v. EMPEROR. 31 P. L. R. 780 = 1930 Cr. C. 1041 = A. I. R. 1930 Lah. 945.

—Bengal Criminal Law Amendment Act, S. 491.  
Bengal Criminal Law Amendment Act is an Act which was intended to supplement the ordinary criminal law in Bengal and the question whether or not a particular person is legally detained under it has to be dealt with, if at all, under the Code of Criminal Procedure. (*Rankin, C. J. and Majumdar, J.*) GIRINDRA NATH BANERJEE v. BIRENDRA NATH PAL. 102 I. C. 647 = 31 C. W. N. 593 = 8 A. I. Cr. R. 121 = 54 Cal. 727 = A. I. R. 1927 Cal. 496.

**—S. 491—Minors.****—Consent—Weight of.**

In the case of a Hindu girl of only 13 years of age her consent or otherwise to go and stay with her husband is quite immaterial. What the Court has to consider is the welfare of the minor wife and in so doing the fact that she prefers to reside elsewhere than with her husband although had she been old enough to form a good opinion, this would have been a very important circumstance for consideration, should not be entitled to any weight at all. (*Beasley, C. J. and Anantha-krishna Ayyar, J.*) SUBBASWAMI GOUNDAN v. KAMAKSHI AMMAL. 53 Mad. 72 = 1929 Cr. C. 482 = 1929 M. W. N. 689 = 30 M. L. W. 685 = 31 Cr. L. J. 187 = 2 M. Cr. C. 254 = 120 I. C. 892 = A. I. R. 1929 Mad. 834 = 57 M. L. J. 642.

—Person keeping minor married girl with her consent in spite of another legally entitled to her custody is guilty of illegal detention. 16 Cal. 487, Rel. on. (*Beas-*

**CR. P. CODE (1898), S. 491—Minors.**

*ley, C. J. and Ananthakrishna Ayyar, J.*) SUBBASWAMI GOUNDAN v. KAMAKSHI AMMAL. 53 Mad. 72=1929 Cr. C. 482=1929 M. W. N. 689=30 M. L. W. 685=31 Cr. L. J. 187=2 M. Cr. C. 254=120 I. C. 892=A. I. R. 1929 Mad. 834=57 M. L. J. 642.

—Father, a motor-driver, applying for writ of *habeas corpus* to get custody of his son aged 7 or 8—Nobody in his house to look after such child—Court must look to child's interest—High Court should not interfere in such case—Proper course is under Guardians and Wards Act, S. 25. (*Coutts-Trotter, C. J., Madhavan Nair and Jackson, J.J.*) SHAIK MOIDIN v. KUNHADEVI. 126 I. C. 111=31 Cr. L. J. 985=2 Mad. Cr. C. 58=A. I. R. 1929 Mad. 33 (P. B.).

—*Habeas corpus*—Hindu minor in charge of his mother—Mother likely to be converted to Christianity—No writ would be issued, but proceedings can be had under Guardians and Wards Act. 14 M. I. A. 309 (P. C.); 46 P. W. R. 1916; 20 C. W. N. 608; and 57 I. C. 651, Ref. (*Ramesam, J.*) VEERASWAMI v. RATNAMMA. 1 M. Cr. C. 307=29 Cr. L. J. 1048=112 I. C. 472=11 A. I. Cr. R. 323=A. I. R. 1928 Mad. 1087.

—Minor applicant's nephew, going on a visit to his sister—No suggestion as to the sister or her husband not being proper persons—No improper detention—Order under S. 491 ought not to be made. (*Heald, C. J. and Cumliffe, J.*) P. A. PAUL v. C. HUNT. 6 Bur. L. J. 111=9 A. I. Cr. R. 28=28 Cr. L. J. 865=104 I. C. 705=A. I. R. 1927 Rang. 329.

—Powers of *habeas corpus* may be exercised for restoration of child to its natural guardian. (*Brown, J.*) SAW LAY TEONG v. YEO BOON LAY. 4 Bur. L. J. 269=95 I. C. 65=27 Cr. L. J. 737=A. I. R. 1926 Rang. 76.

—*Proceedings for habeas corpus in respect of child*—Welfare of the child is the dominant question—The opinion of an intelligent grown-up child will weigh in the estimation of the Court.

On an application by the *de jure* guardian for *habeas corpus* in respect of a child detained against its will the dominant question is what conduces to the interests and welfare of the infant and the Court must dispose of the application with reference to it. The moral, the religious and the physical welfare and the ties of affection as also the opinion of the child if it is capable of forming an intelligent opinion are to be taken into consideration. The opinion of the child is an important element and the degree of the child's mental development must to a certain extent weigh with the Court. The age of the infant is also an important factor. There is no inflexible rule in England that a boy over 14 and a girl over 16 will have the final voice and that the wishes of the infant have to be given effect to. Even if such a rule exists, it is too artificial to be applicable in India. (*Venkatasubba Rao, J.*) SARASWATHI AMMAL v. DANAKOTI AMMAL. 85 I. C. 840=1924 M. W. N. 870=20 M. L. W. 902=48 Mad. 299=26 Cr. L. J. 616=A. I. R. 1924 Mad. 873=47 M. L. J. 614.

**—S. 491—Power to issue.**

—For any of the purposes mentioned in what is now S. 491 it is not open to an applicant to say that he will make his application independently of that section altogether for the prerogative writ of *habeas corpus* on the civil side of the High Court. (*Rankin, C. J. and Majumdar, J.*) GIRINDRA NATH v. BIRENDRA NATH. 54 Cal. 727=31 C. W. N. 593=102 I. C. 647=8 A. I. Cr. R. 121=A. I. R. 1927 Cal. 496.

—Special tribunal exercising powers under the Act

**CR. P. CODE (1898), S. 491—Warrant under Goondas Act.**

creating it—High Court has no jurisdiction to issue writ of *habeas corpus*. 31 Bom. 604, Foll. (*Kincaid, J. C. and Barlee, A. J. C.*) GHANSHAMDA KHATUMAL v. MANAGER, ENCUMBERED ESTATES.

7 A. I. Cr. R. 345=28 Cr. L. J. 194=99 I. C. 930=A. I. R. 1927 Sind 123.

—As a result of the amendment introduced by Act XII of 1923 the High Court on its Criminal Appellate Side is vested with jurisdiction to deal with an application under S. 491 of the Code. (*Walmsley and Mukerjee, J.J.*) SUBODH CHANDRA ROY CHAUDHURI v. EMPEROR. 85 I. C. 913=40 C. L. J. 489=29 C. W. N. 98=52 Cal. 319=26 Cr. L. J. 625=A. I. R. 1925 Cal. 278.

**—S. 491—Procedure.**

—It is not reasonable, or normal procedure, to make applications to the High Court under S. 491, or for bail, while applications by the same petitioners for bail are still pending in the Sessions Court. (*Skemp, J.*) KASHI RAM v. EMPEROR. 114 I. C. 444=30 Cr. L. J. 301=1929 Cr. C. 81=A. I. R. 1929 Lah. 522.

**—S. 491—Revision.**

—Extradition Act, S. 7—Order of District or Chief Presidency Magistrate executing warrant under S. 7 can on proper proceedings being taken High Court can also interfere under S. 491; 42 Cal. 793. held too widely stated; 7 Bom. L. R. 463; 41 Cal. 400 and A. I. R. 1922 Pat. 442, Rel. on. (*Mirsa and Baker, J.J.*) BAI AISHA, *In re*. 117 I. C. 321=31 Bom. L. R. 62=53 Bom. 149=30 Cr. L. J. 772=A. I. R. 1929 Bom. 81.

—It is wrong that the High Court should under S. 491 re-try for itself a question which has already been determined by the same Court in its ordinary original criminal jurisdiction, or to pass an order overriding an order already made by the same High Court. (*Rankin, C. J. and C. C. Ghose, J.*) RAMESWAR KHIRORI WALLA v. EMPEROR. 56 Cal. 32=32 C. W. N. 889=A. I. R. 1928 Cal. 367=114 I. C. 132=12 A. I. Cr. R. 145=30 Cr. L. J. 254.

**—S. 491—Scope.**

—*Habeas corpus* proceedings are proceedings calling upon a person to demonstrate his authority to hold another in custody—If his authority is legitimate Court cannot interfere. (*Kennedy, J. C. and Raymond, A. J. C.*) JAMNA v. EMPEROR.

20 S. L. R. 128=27 Cr. L. J. 37=91 I. C. 69=A. I. R. 1926 Sind 126.

**—S. 491—Several remedies.**

—*Same remedies under different Acts*—Person aggrieved may resort to any remedy he chooses.

There is no rule of law that where there is a remedy provided by law, no other remedy should be resorted to because there is another remedy less expensive and less threatening. Thus the remedy under S. 491, Cr. P. Code is open to the husband who prays for an order directing to hand over his minor wife to him though he can as well have recourse to the provisions of the Guardians and Wards Act *Bryant v. Hull*, 10 Ch. D. 155, Rel. on. (*Beasley, C. J. and Ananthakrishna Ayyar, J.*) SUBBASWAMI GOUNDAN v. KAMAKSHI AMMAL.

53 Mad. 72=1929 Cr. C. 482=31 Cr. L. J. 187=1929 M. W. N. 689=30 M. L. W. 685=2 M. Cr. C. 254=120 I. C. 892=A. I. R. 1929 Mad. 834=57 M. L. J. 642.

**—S. 491—Warrant under Goondas Act.**

—Goondas Act (1 B. C. of 1923), S. 4—Warrant—Secretary to Local Government issuing warrant is not

**CR. P. CODE (1898), S. 491.—Warrant under Goondas Act.**

Court subordinate to High Court—High Court can interfere only if case falls under S. 491. A.I.R. 1924 Cal. 698, Rel. on. (*Rankin and Duval, J.J.*) BISSESWAR ROY v. EMPEROR. 53 Cal. 962=30 C. W. N. 791=28 Cr. L. J. 10=99 I.C. 42=A. I. R. 1926 Cal. 961.

**—S. 491-A.—Appeal.**

Order of single High Court Judge directing issue of writ of *habeas corpus* is appealable. (*Marleod, C. J. and Coyajee, J.*) MAHOMEDALLI v. ISMAILJI. 50 Bom. 616=28 Bom. L. R. 471=27 Cr. L. J. 721=95 I. C. 49=A. I. R. 1926 Bom. 332.

**—S. 491 A.—Power to issue.**

High Court is not deprived of its jurisdiction to issue writ of *habeas corpus* by S. 491-A. (*Macleod, C. J. and Coyajee, J.*) MAHOMEDALLI v. ISMAILJI. 50 Bom. 616=28 Bom. L. R. 471=95 I. C. 49=27 Cr. L. J. 721=A. I. R. 1926 Bom. 332.

**—S. 492.—Duty of Public Prosecutor.**

Public Prosecutor should not be too eager to grasp at conviction.

There should be on the part of Public Prosecutor no "unseemly eagerness for or grasping at, conviction". He is not to aggravate the case against the prisoner but has "to perform his duties with that calmness and impartiality which should ever characterise a Public Prosecutor". He has to "aid the Court in discovering the truth" and also in the discharge of its duty to do justice as between the Crown and the accused. 8 Bom. H.C.R. 126, F.B. at 153; 1923 Lah. 264 Appr.) (*Kinkhede, A. J. C.*) ANANT WASUDEO CHANDEKAR v. KING EMPEROR. 83 I. C. 723=7 N. L. J. 155=26 Cr. L. J. 163=A. I. R. 1924 Nag. 243.

**—S. 492.—Interpretation.**

"In the absence of the Public Prosecutor" explained.

The words "in the absence of the Public Prosecutor" are very wide and include temporary absence of Public Prosecutor at the place and in the Court where the case is proceeding. (*Percival, J. C. and Rupchand, A.J.C.*) EMPEROR v. DIPCHAND. 24 S. L. R. 377=124 I. C. 378=31 Cr. L. J. 684=1930 Cr. C. 620=A. I. R. 1930 Sind 156.

**—S. 492.—Withdrawal of case.**

Case conducted almost to its finish by one Public Prosecutor—Then transfer of case to another place and no Public Prosecutor being available appointment of Sub-Inspector of Police to be Public Prosecutor by District Magistrate under S. 492—On application by accused, District Magistrate orders the Sub-Inspector to withdraw case and the application of the Sub-Inspector to withdraw case was granted—Contention that District Magistrate alone had no power to withdraw case without consulting Public Prosecutor in charge of case from its commencement—Question raised is for executive authorities to decide and not legal. (*Percival, J. C. and Rupchand, A.J.C.*) EMPEROR v. DIPCHAND. 24 S. L. R. 377=124 I. C. 378=31 Cr. L. J. 684=1930 Cr. C. 620=A. I. R. 1930 Sind 156.

When a private complaint is filed and then the complainant is given permission to conduct the prosecution and be responsible for its conclusion, it is highly improper that after he has closed his evidence and the charge has been framed the prosecution should suddenly drop without even consulting him. (*Sulaiman, J.*) RAM GOBIND SINGH v. LALLU SINGH. 81 I. C. 618=46 All. 88=21 A. L. J. 855=

**CR. P. CODE (1898), S. 494.—Effect of withdrawal.**

5 L. R. A. Cr. 1=25 Cr. L. J. 970=A. I. R. 1924 All. 203.

**S. 493.—Alteration of charge.**

Petition to change charge need not necessarily be made by Public Prosecutor. (*Dalip Singh, J.*) DA-  
SAUNDHA SINGH v. LACHHMAN SINGH. 112 I. C. 480=29 Cr. L. J. 1056=A. I. R. 1929 Lah. 127.

**—S. 493.—Interpretation.**

The word "act" in S. 493 does not mean something other than examining or cross examining witnesses or addressing the Court. The word is not used in a technical sense in distinction from "appear and plead" in the opening words of the section. (*Reilly, J.*) VAZ v. EMPEROR. 1930 M. W. N. 769.

**—S. 493.—Prosecution under Railways Act.**

Representative of Railway appointed under S. 145 (2) of Railways Act, cannot insist to lead prosecution in presence of Public Prosecutor.

S. 145 (2) only entitles a person authorised by the Agent of a railway to conduct prosecutions on behalf of the railway administration without the permission of the Magistrate, which would, except for the provision, be required under S. 495 Cr. P. Code, *prima facie* neither S. 145 (2) of the Railways Act, nor S. 495, Cr. P. Code, affects S. 493 of the latter enactment which deals with the right of appearance and precedence of the Public Prosecutor before any Court in which any case of which he has charge, is under trial. Where the Public Prosecutor has charge of the prosecution the pleader instructed by a private person, including the agent of a railway administration, shall, it is enjoined, act under the directions of the Public Prosecutor. (*Mackpherson, J.*) B.N. RY. CO., LTD. v. SHAIKH MAKBUL. 92 I. C. 697=7 P. L. T. 343=27 Cr. L. J. 313=1926 P. H. C. C. 74=A. I. R. 1925 Pat. 755.

**—S. 494.—Consent of Court.**

The failure to obtain Court's consent would amount to a mere irregularity. (*Ross and Kulwant Sahay, J.J.*) ABDUL HAMID v. KING-EMPEROR. 6 Pat. 208=97 I. C. 364=8 P. L. T. 12=27 Cr. L. J. 1100=7 A. I. Cr. R. 164=A. I. R. 1927 Pat. 13.

**—S. 494.—Discretion.**

Allowing withdrawal is discretionary.

The language of S. 494 is very wide and gives a discretion to the Magistrate as to whether he would consent to the withdrawal of a prosecution by the Public Prosecutor—Such discretion to be exercised not arbitrarily but must be based on correct legal principles. (*Suhrawardy and Mitter, J.J.*) G. V. RAMAN v. EMPEROR. 33 C. W. N. 468=56 Cal. 1023=121 I.C. 678=31 Cr. L. J. 315=A. I. R. 1929 Cal. 319.

**—S. 494.—Effect of withdrawal.**

S. 494 of the Code stands by itself. The effect of the section is that as soon as an accused is discharged under that section he is taken away from the category of an accused person and becomes under the general principles of law a competent witness against his co-accused. (*Suhrawardy and Mitter, J.J.*) G. V. RAMAN v. EMPEROR. 33 C. W. N. 468=56 Cal. 1023=121 I. C. 678=31 Cr. L. J. 315=A. I. R. 1929 Cal. 319.

An order of discharge passed on withdrawal of the case by the Public Prosecutor does not amount to an acquittal. There is no difference in law in the case of a person discharged by a Magistrate on a consideration of the evidence tendered against him and of a person discharged at the instance of the Public Prosecutor under S. 494. (*Jai Lal, J.*) MATA v. EMPE-



**CR. P. CODE (1898), S. 494—Effect of withdrawal.**

ROR. 114 I. C. 50=30 P. L. R. 58=  
30 Cr. L. J. 233=12 A. I. Cr. R. 113=  
A. I. R. 1929 Lah. 315.

—*Co-accused discharged under S. 494 (a) instead of pardon being tendered under S. 337 is competent witness against his co-accused.*

Where in a trial for offence under S. 401 the case against an accomplice had been withdrawn on the ground that he had aided materially in bringing to light the operations of the gang and he was discharged under S. 494 (1) instead of tendering a pardon under S. 337 and then he was examined as a witness against his co-accused.

*Held*, that there was nothing illegal in the procedure adopted and that the accomplice was a competent witness in the case. Cr. App. No. 22 of 1913 (Nagpur J. C.'s Court) and 25 Bom. 422, Rel. on. (*Finalay, O. J. C.*) MAHADEO v. EMPEROR. 95 I. C. 471=

27 Cr. L. J. 807=A. I. R. 1926 Nag. 426.

**—S. 494—Fresh complaint.**

—Prosecution against an accused under S. 359, I. P. Code was withdrawn with the leave of the Court and an order under S. 494, Cr. P. Code, was passed, the accused being discharged. Subsequently a fresh complaint was made to the Magistrate.

*Held*, that the order of discharge could not prevent a fresh complaint being entertained and inquired into. (*Rankin, C. J. and Patterson, J.*) LORI CHAND SAHA v. NIRODA SUNDARI. 34 C. W. N. 196=

127 I. C. 63=1930 Cr. C. 568=  
31 Cr. L. J. 1153=A. I. R. 1930 Cal. 369.

—Fresh complaint is not debarred by reason of discharge of accused person under S. 494 (a), 28 Cal. 652 (F.B.); 29 Cal. 726; 2 P. L. J. 34 and 40 Cal. 71, Foll. (*Kuwant Sahay, J.*) RAMANAND LAL v. ALI HASSAN. 83 I. C. 689=1924 P. H. C. 226=

26 Cr. L. J. 129=A. I. R. 1924 Pat. 797.

**—S. 494—Propriety of order.**

—Order under—Propriety of—Test is whether extraneous circumstances are considered. (*Suhrawardy and Mitter, J.J.*) G. V. RAMAN v. EMPEROR.

121 I. C. 678=33 C. W. N. 468=56 Cal. 1023=  
31 Cr. L. J. 315=A. I. R. 1929 Cal. 319.

**—S. 494—Reasons for consent.**

—*If should be stated.*

Per *Percival, A. J. C.*—It is not "obligatory" on the Court to record reasons for permitting a withdrawal. That is to say the mere fact that the Magistrate has not recorded reasons for withdrawal of itself is not a sufficient ground for setting aside the granting of application for withdrawal and the acquittal of the accused.

Per *Rupchand, A. J. C.*—There is nothing in S. 494 to require the Magistrate to record his reasons at the time of allowing the withdrawal of a case. But it is desirable that where a case is permitted to be withdrawn there should be some materials on the record of the case to satisfy the High Court that *prima facie* there was some good ground for the withdrawal of the case and that it was not left to the whim of the Public Prosecutor. Where the District Magistrate has been moved by an application from the accused to have the case withdrawn either the original application of the accused or an application from the Public Prosecutor stating briefly the reasons for withdrawal should be placed on the record or in any event the Court should in its own order give an indication as to the circumstances under which it grants its sanction. In the absence of such material on the record it is difficult for Government to decide if an appeal should be preferred or for the High Court to decide if the order sanctioning withdrawal is one which should not be interfered with. (*Percival, J. C. and*

**CR. P. CODE (1898), S. 494—Reasons for consent.**

*Rupchand, A. J. C.*) EMPEROR v. DIPCHAND.  
124 I. C. 378=24 S. L. R. 377=31 Cr. L. J. 684=  
1930 Cr. C. 620=A. I. R. 1930 Sind 156.

—*Recording of.*

*Mitter, J.*—Order under S. 494 is a judicial order and the Court should record reasons in order to enable the High Court to judge whether the order of the withdrawal has been rightly made. A. I. R. 1924 Cal. 382 and 26 C. L. J. 208, Foll.; A. I. R. 1924 Pat. 283, Not Foll.

*Suhrawardy, J.*—It is a matter between the Public Prosecutor and the Magistrate and neither of them need assign any reason to record. (*Suhrawardy and Mitter, J.J.*) G. V. RAMAN v. EMPEROR. 121 I. C. 678=

33 C. W. N. 468=56 Cal. 1023=  
31 Cr. L. J. 315=A. I. R. 1929 Cal. 319.

—*Court must record reasons for supporting that discretion was rightly exercised.*

Although a reasoned judgment establishing the propriety of the order, as required by S. 367, is not necessary in the case of the order, passed under S. 494, still there must be something on record to show why the Magistrate consented to the withdrawal. The Court should record its reasons in order that the High Court may be in a position to say whether the discretion vested in the Court has been properly exercised. 22 C. W. N. 69; A. I. R. 1924 Cal. 382; A. I. R. 1921 Cal. 259; A. I. R. 1923 Nag. 260; A. I. R. 1924 Rang. 168, Foll.; A. I. R. 1924 Pat. 283; A. I. R. 1923 Lah. 163, Expl. and Dist. (*Mohiuddin, A. J. C.*) RUJULA v. EMPEROR. 118 I. C. 63=25 N. L. R. 6=

30 Cr. L. J. 872=A. I. R. 1929 Nag. 133.

—*Reasons must be satisfactory.*

Where the only reason given by the Court for allowing withdrawal from prosecution was that on a previous trial in connection with the riot in connection with which the present accused were charged six persons had already been convicted and punished, being sentenced to various terms of punishment. *Held*, that the imprisonment of the first six cannot be regarded as a vicarious atonement for the sins, if any, committed by the present accused. The order allowing withdrawal was therefore bad. 41 I. C. 998, Foll. (*Teunon and Ghose, J.J.*) JAGAT CHANDRA ROY v. KALIMUDDI SARDAR.

71 I. C. 693=26 C. W. N. 880=  
24 Cr. L. J. 229=A. I. R. 1924 Cal. 382.

—*Reasons for consenting to withdrawal need not be given.*

S. 494 does not expressly require the Court to give any reasons for consenting to the withdrawal, nor is there any provision which compels a Court to write a reasoned judgment establishing the propriety of the order. S. 494 gives the trial Court full jurisdiction to give or refuse consent and the High Court will only interfere in revision if some question of jurisdiction is involved. Cr. Rev. No. 31 of 1920 Ref.; 22 C. W. N. 69, 48 Cal. 1105, 26 C. W. N. 880, Diss. (*Mullick and Macpherson, J.J.*) GULLI BHAGAT v. NARAIN SINGH.

77 I. C. 734=2 Pat. 708=5 Pat. L. T. 404=  
25 Cr. L. J. 446=2 Pat. L. R. Cr. 165=  
2 Pat. L. R. Cr. 187=A. I. R. 1924 Pat. 283.

—*Court must record reasons when allowing withdrawal—Advocate-General alone can withdraw without giving reasons.*

The only prosecutor who may under the Code withdraw from a prosecution without the consent of the Court and without giving reasons is the Advocate-General. No other Public Prosecutor is placed in that privileged position. When a Court acting under S. 494 gives its consent to a withdrawal from the prosecution, it is acting in a judicial capacity and therefore it should

**CR. P. CODE (1898), S. 494—Reasons for consent.**

record its reasons in order that the High Court may be in a position to say whether the discretion vested in the Court has been properly exercised. Where the prosecution is so withdrawn and the Court records an order of acquittal, the proper course is to appeal through Local Government and not by way of revision. (*May Oung, J.*) **ABDUL GANI v. ABDUL KADAR.**

81 I. C. 930=1 Rang. 756=2 Bur. L. J. 287=  
25 Cr. L. J. 1106=A. I. R. 1924 Rang. 168.

—Reasons must be recorded for an order under section.

In according or withdrawing consent to an application by the Public Prosecutor for withdrawal under S. 494 (a) the Court acts in a judicial capacity and for its order, as for every order judicially made, the Court must give and record its reasons so that the High Court may be in a position to say whether the discretion vested in the Court has been properly exercised. A. I. R. 1921 Cal. 259 and 22 C. W. N. 69, Foll. Contra; 5 M. L. T. 215. (*Prideaux, A. J. C.*) **SAGANCHAND v. CHUNILAL.**

72 I. C. 361=6 N. L. J. 177=  
24 Cr. L. J. 361=A. I. R. 1923 Nag. 260.

—S. 494—Revision.

Sessions Judge refusing permission to withdraw—High Court would be reluctant to interfere. 48 Cal. 1105, Cons. (*Devadoss and Waller, J.J.*) **KALIAPPA GOUNDAN, In re.**

23 M. L. W. 101=  
27 Cr. L. J. 334=92 I. C. 750=  
A. I. R. 1926 Mad. 296.

—The section controls other sections in the Code—Case withdrawn—Sufficient reasons given—Revision was refused. (*Ghose and Cuming, J.J.*) **BEPIN BEHARI GHOSE v. HARI PADA GHOSE.**

71 I. C. 53=24 Cr. L. J. 5=A. I. R. 1924 Cal. 538.

—No revision lies at the instance of private person.

An order of acquittal passed under S. 494, Cr. P. Code, should not be revised by the High Court at the instance of a private party. The private prosecutor has no position at all in criminal litigation. The Crown is the prosecutor and the custodian of the public peace, and if it decides to let an offender go, no other aggrieved party can be heard to object on the ground that he has not taken his full toll of private vengeance. (*Mullick and Macpherson, J.J.*) **GULLI BHAGAT v. NARAIN SINGH.**

77 I. C. 734=2 Pat. 708=  
5 Pat. L. T. 404=25 Cr. L. J. 446=  
2 Pat. L. R. Cr. 165=2 Pat. L. R. Cr. 187=  
A. I. R. 1924 Pat. 283.

—S. 494—Right to withdraw.

—Warrant cases.

If the trying Magistrate considered that although the charge was not groundless, there was little likelihood of the case being pursued to a successful issue, he could consult the District Magistrate who would, if advisable, instruct the Public Prosecutor under S. 494 of the Cr. P. Code to withdraw the case. The complainant or the accused could similarly move the District Magistrate in the matter. (*Doyle, J.*) **MAUNG THU DAW v. U. PO NYAN.**

103 I. C. 105=5 Rang. 136=  
28 Cr. L. J. 649=A. I. R. 1927 Rang. 174.

—S. 494—Time for withdrawal.

—Accused convicted by first Court—Appeal by accused—Petition for withdrawal cannot be put in, in appellate stage.

It is only in cases indicated in S. 494, that is to say in cases to be tried by jury, before the return of the verdict and in other cases in the Court of first instance before the judgment is pronounced, that the public prosecutor may with the consent of the Court withdraw from the prosecution of any person. It does not contemplate the case of withdrawal by the public prosecutor after the conviction of the accused by the first

**CR. P. CODE (1898), S. 496—Improper complaint.**

Court and in the appellate stage of a case. The Public Prosecutor has no right at the appellate stage of the case to present any petition for withdrawal under S. 494, even though the petition is inspired by the District Magistrate; nor is the Sessions Judge entitled to allow the Public Prosecutor to put in such an application and to proceed to acquit the accused before he even attempted to judicially determine the accused's appeal. (*C. C. Ghose and Gregory, J.J.*) **ANANTA LAL SINHA v. JAHIRUDDIN BISWAS.**

46 C. L. J. 121=  
104 I. C. 449=28 Cr. L. J. 833=  
A. I. R. 1927 Cal. 816.

—S. 495—Engaging pleader.

—Prosecutor can choose his own pleader save where the Public Prosecutor takes up the case. (*Kennedy and Raymond, A. J. Cs.*) **R. GHADIALLY v. EMPEROR.**

81 I. C. 59=18 S. L. R. 30=  
25 Cr. L. J. 571=A. I. R. 1925 Sind 99.

—S. 495—Permission not necessary.

—Counsel engaged by complainant—Right to address Court.

Where the complainant engaged counsel after the examination of the witnesses and the Public Prosecutor desired him to address the Magistrate for the prosecution at the conclusion of the case,

*Held*, that the permission of the court under S. 495 was not necessary for that purpose. (*Reilly, J.*) **VAZ v. EMPEROR.**

1930 M. W. N. 769.

—S. 496—Applicability.

—The proviso in S. 496 that bail can be granted only to a person other than a person accused of a non-bailable offence is not applicable to the Court of Session acting under S. 498, Cr. P. Code. (*Dalal, J.*) **ACHHAIBAR MISIR v. EMPEROR.**

117 I. C. 99=  
10 L. R. A. Cr. 98=1929 A. L. J. 927=  
30 Cr. L. J. 718=12 A. I. Cr. R. 65=  
1929 Cr. C. 193=A. I. R. 1929 All. 614.

—S. 496—Bail before investigation.

—Directing bail before the Police investigation—Section allows such a power. (*Lumsden, J.*) **WARVAM SINGH v. THE CROWN.**

83 I. C. 727=  
26 Cr. L. J. 167=A. I. R. 1923 Lah. 663.

—S. 496—Facts to be considered.

—Test for granting bail.

In exercising the discretionary power to admit a person to bail Courts have to consider the seriousness of the charge, the nature of the evidence, the security of the punishment prescribed for the offence and the character, means and standing of the accused. A. I. R. 1923 Cal. 476, Foll. (*Dalip Singh, J.*) **RAM CHAND v. EMPEROR.**

120 I. C. 10=30 Cr. L. J. 1129=  
A. I. R. 1929 Lah. 284.

—The question of grant of bail is not only to be dealt with from the point of view of there being likelihood or not of the accused persons absconding. (*Findlay, O. J. C.*) **SHAIKH KARIM v. EMPEROR.**

27 Cr. L. J. 319=92 I. C. 703=  
A. I. R. 1926 Nag. 279.

—S. 496—Improper complaint.

—Grant of bail.

A complaint was filed under Penal Code, S. 124-A but no original or translation of alleged speech was attached to it. Sanction of the Local Government required under S. 196, Cr. P. Code was attached. Although in the sanction order attached to the complaint a short abstract of the words used was given, it was not mentioned by the complainant in his statement. On application by the accused for granting bail the Magistrate refused bail.

*Held*, that there was no proper complaint and the Magistrate did not direct his mind to question of presence or absence of proper complaint and the order

**CR. P. CODE (1898), S. 496—Improper complaint**

refusing bail was not passed on proper appreciation of the facts and non-bailable warrants should not have been issued. (*Dalip Singh, J.*) **RAM CHAND v. EMPEROR.** 120 I. C. 10=30 Cr. L. J. 1129=

A. I. R. 1929 Lah. 284.

**—S. 496—Re-arrest after bail.**

—A person who is re-arrested after having been discharged on executing a surety bond, is entitled to be released under S. 496, if he is not accused of a non-bailable offence. 36 Mad. 474, Doubtful. (*Wort, J.*) **NATHAN GOPE v. EMPEROR.** 1929 Cr. C. 382=

117 I. C. 628=30 Cr. L. J. 809=

10 P. L. T. 801=A. I. R. 1929 Pat. 654.

**—S. 496—Refusal of bail.**

—Refusal of bail is contrary to the spirit of the provisions of Ch. 8. The object of this Chapter is to prevent a suspect from committing offences and to allay public apprehensions, and that object is sufficiently attained by requiring him to find sureties. (*Rupchand Bilaram, A.J.C.*) **JATOI v. EMPEROR.**

20 S.L.R. 122=27 Cr. L. J. 935=

96 I. C. 391=A. I. R. 1926 Sind 288.

**—S. 496—Serious offence.**

—Offence bailable—Mere seriousness of the offence is not sufficient to refuse bail. (*Dalal, J.*) **ABDUL HABIB KHAN v. EMPEROR.**

26 A.L.J. 363=9 A. I. Cr. R. 326=

9 L.R.A. Cr. 44=108 I. C. 689=29 Cr. L. J. 450=

A. I. R. 1928 All. 211.

**—S. 496—Severity of punishment.**

—The point of severity of punishment must be looked at not from what sentences in particular instances, the Courts have awarded but from what is possibly the maximum that the Court may award. (*Dalip Singh, J.*) **RAM CHAND v. EMPEROR.** 120 I.C. 10=

30 Cr. L. J. 1129=A. I. R. 1929 Lah. 284.

**—S. 496—Surety bond.****—Form of.**

The terms of a bond or bail bond executed under S. 496 should be in accordance with form 42 of schedule. That form indicates what the contents of a bond with sureties should be. In order to be enforceable a bail bond must be in accordance with the form. Where the bond is not in accordance with the form, the person executing the same incurs no legal liability by executing it. (*Zafar Ali, J.*) **WADHAWA SINGH v. EMPEROR.** 29 Cr. L. J. 491=109 I. C. 219=

10 A. I. Cr. R. 247=A. I. R. 1928 Lah. 318.

**—S. 496—Surety's liability.**

—A police officer acting under S. 496 has the power to demand a bail from person arrested or to accept his own bond without sureties. But under no provision of law the police officer can take a third party's bond for such person's appearance. There can be no surety without a principal. Where therefore no undertaking has been given by the person arrested to appear when called upon to do so, it is not possible for any person to declare himself surety for his appearance. (*Zafar Ali, J.*) **WADHAWA SINGH v. EMPEROR.**

29 Cr. L. J. 491=109 I. C. 219=

10 A. I. Cr. R. 247=A. I. R. 1928 Lah. 318.

**—S. 497—Appeal to Privy Council.**

—Petition for special leave to appeal to Privy Council lodged—High Court can grant bail pending petition. 15 P. R. 1908, Not. Foll; 24 Mad. 161, Foll. (*Sulaiman and Banerji, J.J.*) **RAM SUROOP v. EMPEROR.** 49 All. 247=8 L.R.A. Cr. 2=

7 A. I. Cr. R. 29=27 Cr. L. J. 1377=25 A.L.J. 97=

98 I. C. 593=A. I. R. 1927 All. 97.

**—S. 497—Cancellation of bail.**

—Offence under S. 124-A, Penal Code—Accused

**CR. P. CODE (1898), S. 497—Facts to be considered.**

on bail—Charge read—Accused praying for adjournment for argument before pleading—If adjournment granted, bail need not be cancelled. (*Zafar Ali, J.*) **SATYA PAL v. EMPEROR.** 121 I.C. 425=

31 Cr. L. J. 266=31 P.L.R. 11=1930 Cr. C. 341=A.I.R. 1930 Lah. 309.

**—S. 497—Discretion.**

—Even under the present section, a magistrate has discretion to refuse release on bail in a non-bailable offence. (*Kincaid, J.C.*) **JUMO v. EMPEROR.**

95 I.C. 939=20 S.L.R. 136=

27 Cr. L. J. 859=A.I.R. 1926 Sind 257.

**—S. 497—Effect of amendment.**

—In view of the amendment of S. 496 of the Cr. P. Code, Courts will be less fettered than before. (*Mookerjee and Chatterjee, J.J.*) **NAGENDRA NATH CHAKRABARTI v. EMPEROR.** 81 I. C. 220=

25 Cr. L. J. 732=51 Cal. 402=38 C. L. J. 388=

A.I.R. 1924 Cal. 476.

**—S. 497—English principles.**

—In view of express provisions of Indian Statute, principles of granting bail laid down by English authorities should not be followed. 36 Cal. 166, Foll.; *Baronet, In re.* (1852) 1 El. and Bl. 1 and *Reg. v. Saife*, (1841) 9 Dowl. 553, Dist. (*De Souza, A.J.C.*) **GUL v. EMPEROR.** 22 S.L.R. 435=29 Cr. L. J. 470=

109 I.C. 118=A.I.R. 1928 Sind 142.

**—S. 497—Facts to be considered.**

—*Principles guiding Magistrates in granting bail indicated.*

The object of the detention of the accused being to secure his appearance to abide the sentence of law, the principal enquiry is, whether a recognizance would effect that end. In seeking an answer to this enquiry, Courts have to consider the seriousness of the charge, the nature of the evidence, the severity of the punishment prescribed for the offence, and in some instances the character, means and standing of the accused. The intention of the Legislature is that an accused person should be brought before a magistrate competent to try him with as little delay as possible, and that occasions for remand to jail custody of undertrial prisoners should be as few as possible. (*Kinkhede, A.J.C.*) **TULARAM v. KING-EMPEROR.** 97 I.C. 39=27 Cr.L.J. 1063=

7 A. I. Cr. R. 138=A.I.R. 1927 Nag. 53.

—Magistrates are bound, when weighing the probability of the prisoner appearing for trial, to consider the nature of the offence charged, the character of the evidence against the prisoner and the punishment which in the event of conviction is likely to be inflicted on the prisoner. Again, while mere vague allegations, that the prisoner, if released, will tutor witnesses, should be taken into account, the magistrate may well refuse to enlarge on bail where the prisoner is of such a character that his presence at large will intimidate witnesses or where there are reasonable grounds for believing that he will use his liberty to suborn evidence. A.I.R. 1926 Rang. 51, Appr. (*Rutledge, C. J., Maung Ba and Doyle, J.J.*) **KING-EMPEROR v. NGA SAN HTWA.**

5 Rang. 276=104 I.C. 101=28 Cr. L. J. 773=

A.I.R. 1927 Rang. 205 (F.B.).

—Where the High Court is concerned with men who have been actually convicted, the principle which will necessarily guide the High Court in granting bail will be whether there are reasonable grounds for believing that the convicts committed the offences in question. (*Findlay, Offg. J.C.*) **SHAIKH KARIM v. EMPEROR.** 27 Cr. L.J. 318=92 I.C. 703=

A.I.R. 1926 Nag. 279.

**CR. P. CODE (1898), S. 497—Facts to be considered.**

—*Rules for guidance of magistrates are laid down.*

It must be understood that while a wide discretion as to the grant of bail in cases other than those involving capital punishment has now been placed in the hands of magistrates, they are bound when weighing the probability of the prisoner appearing for trial, to consider the nature of the offence charged, the character of the evidence against the prisoner and the punishment which, in the event of conviction, is likely to be inflicted on the prisoner. Again, while mere vague allegations that the prisoner, if released, will tutor witnesses, should not be taken into account, the magistrate may well refuse to enlarge on bail where the prisoner is of such a character that his presence at large will intimidate witnesses, or where there are reasonable grounds for believing that he will use his liberty to suborn evidence. (*Doyle, J.*) **MOHAMMED EYSOOF v. EMPEROR.**

93 I.C. 65 = 3 Rang. 538 = 27 Cr. L. J. 401 = A.I.R. 1926 Rang. 51.

—**S. 497—Grounds.**

—*Considerations for granting release on bail discussed.*

Two persons were committed to Sessions on charges under Ss. 167 and 466, I.P.C. The Sessions Judge released one of them on bail but refused to release the other. This other person was about 70 years old and a Patwari. During the trial in the Magistrate's Court he was released on his personal recognizance of Rs. 50 only, and it was found that if he were not released there would be nobody to instruct his counsel in going through the documentary evidence, and that he would not be able to make a proper defence.

*Held*, that there was no reason to refuse his release on bail. (*Simpson, A.J.C.*) **ABRAM BALI v. EMPEROR.**

89 I.C. 150 = 28 O.C. 220 = 12 O.L.J. 394 = 26 Cr. L. J. 1286 = A.I.R. 1925 Oudh 489.

—**S. 497—Grounds for bail.**

—Accused convicted of non-bailable offence — Court of appeal should not release the accused on bail unless there is an error of law or mistake of fact or for any other reason mentioned in S. 497, (1). (*De Souza, A.J.C.*) **GUL v. EMPEROR.**

22 S. L. R. 435 = 109 I.C. 118 = 29 Cr. L. J. 470 = A.I.R. 1928 Sind 142.

—The mere previous respectability of a man is *per se* no sufficient reason for giving bail when he has been convicted of a criminal offence. (*Findlay, O. J. C.*) **SHAIKH v. EMPEROR.**

27 Cr. L. J. 319 = 92 I.C. 703 = A.I.R. 1926 Nag. 279.

—*Murder case.*

A person accused of murder shall not be released on bail, either by the Police or the Court before whom he is brought, if there appears reasonable grounds for believing that he has been guilty of the offence of which he is accused on the ground that the case against him does not go beyond mere suspicion. (*Held, J.*) **NGA SAN TIN v. EMPEROR.**

99 I.C. 860 = 5 Bur. L. J. 170 = 28 Cr. L. J. 188.

—**S. 497—Grounds for refusal.**

—When the allegations against a prisoner are of a vague and general character and are not better defined or substantiated, they are not a sufficient ground for refusing an application to enlarge a prisoner on bail. A.I.R. 1926 Rang. 51 and A.I.R. 1927 Rang. 205 (F.B.), Foll. (*Mirza and Broomfield, J.J.*) **D. R. GURU v. EMPEROR.**

1930 Cr. C. 1020 = 32 Bom. L. R. 1131 = A.I.R. 1930 Bom. 484.

—Magistrate should not refuse bail unless likeli-

**CR. P. CODE (1898), S. 497—Powers of High Court.**

hood of accused absconding or terrorizing prosecution witnesses or committing similar or other serious offence. (*Dalal, J.*) **ACHHAIBAR MISIR v. EMPEROR.**

117 I.C. 99 = 10 L. R. A. Cr. 98 = 1929 A. L. J. 927 = 30 Cr. L. J. 718 = 12 A. I. Cr. R. 65 = 1929 Cr. C. 193 = A. I. R. 1929 All. 614.

—**S. 497—Interpretation.**

—*Words "If there appear....or transportation for life".*

The words "if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life" not only cover offences punishable with death or in the alternative with transportation for life, such as cases of murder and of waging war under Ss. 302 and 121, I. P. C. but include offences merely punishable with transportation for life. (*Fawcett and Mirza, J.J.*) **NARANJI PREMJI v. EMPEROR.**

30 Bom. L. R. 622 = 29 Cr. L. J. 901 = 111 I.C. 661 = 11 A. I. Cr. R. 76 = A. I. R. 1928 Bom. 244.

—*"Death or transportation for life".*

The phrase "death or transportation for life" in S. 497 does not extend to offences punishable with transportation for life only; and means only those offences for which death and transportation for life are alternative sentences. A.I.R. 1926 Rang. 51, Foll. (*Kinkhede, A.J.C.*) **TULARAM v. KING-EMPEROR.**

97 I. C. 39 = 27 Cr. L. J. 1063 = 7 A. I. Cr. R. 138 = A. I. R. 1927 Nag. 53.

—*"Death or transportation" must be read disjunctively.*

The phrase "death or transportation for life" must be read disjunctively as if it ran "punishable with death or punishable with transportation for life". 3 Rang. 538 = A. I. R. 1926 Rang. 51 = 93 I. C. 65, Overruled. (*Rutledge, C.J. Maung Ba and Doyle, J.J.*) **KING-EMPEROR v. NGA SAN HTWA.**

5 Rang. 276 = 104 I. C. 101 = 28 Cr. L. J. 773 = A. I. R. 1927 Rang. 205 (F. B.).

—The phrase "death or transportation for life" in S. 497 must not be taken as extending to offences punishable with transportation for life only. A. I. R. 1925 Rang. 129, Diss. from. (*Doyle, J.*) **MOHAMMED EYSOOF v. EMPEROR.**

93 I. C. 65 = 3 Rang. 538 = 27 Cr. L. J. 401 = A. I. R. 1926 Rang. 51.

—**S. 497—Policy of law.**

—*Under-trial prisoners.*

The present policy of the law is to allow the bail in the case of under-trial prisoners rather than to refuse it. That granting bail would be prejudicing the case is no reason for refusing bail. (*Scott-Smith, J.*) **EMPEROR v. GULAM MOHAMMAD.**

92 I.C. 590 = 7 L. L. J. 331 = 26 P. L. R. 440 = 27 Cr. L. J. 302 = A. I. R. 1925 Lah. 510.

—**S. 497—Powers of High Court.**

—The High Court should not grant bail in cases where a person is charged with offences punishable with death or transportation for life except for exceptional and very special reasons. (*Doyle, J.*) **MAUNG BA MAUNG v. EMPEROR.**

1930 Cr. C. 1151 = A. I. R. 1930 Rang. 335.

—The High Court will only interfere with the discretion exercised by the Sessions Judge in refusing bail if that discretion was manifestly wrong or if, in fact, no real discretion has been exercised. Although the High Court has unfettered powers to grant bail, yet in exercising these powers the High Court ought to have regard to the limitations imposed on lower Courts in this connexion. 37 Cal. 412, Foll. (*Findlay, O. J. C.*)

CR. P. CODE (1898), S. 497—Power of High Court.

SHAIKH KARIM *v.* EMPEROR. 27 Cr. L. J. 319 = 92 I. C. 703 = A. I. R. 1926 Nag. 279.

—Under S. 497 (5) the powers of the High Court are confined to cases of persons released by the Trial Magistrate and under S. 498 the High Court can only release accused on bail and cannot order the arrest and commission to custody of persons already released on bail by the Sessions Judge. Therefore, there is no jurisdiction in the High Court to entertain an application under S. 497 (5) or S. 498 against an order granting bail passed by a Sessions Judge in a case pending before a Sub-Magistrate. (*Kinkhede, A. J. C.*) LOCAL GOVT. *v.* GULAM JILANI.

82 I. C. 755 = 25 Cr. L. J. 1363 = A. I. R. 1925 Nag. 228.

—Though a High Court is not limited within the bounds of S. 497 and has absolute discretion in the matter, yet, the legislature has placed the initial stage of dealing with crimes with Magistrates, and having, in effect, enacted that persons accused of non-bailable offences shall be detained in custody, except when there are in the opinion of the Magistrate dealing with the case, no reasonable grounds for believing that the accused has committed the offence charged against him, a High Court is bound to follow the general law as a rule and not to depart from it, except under very special circumstances, especially so in the initial stages of a case. (*Duckworth, J.*) H. M. BONVILLE *v.* EMPEROR.

85 I. C. 43 = 26 Cr. L. J. 427 = 2 Rang. 546 = A. I. R. 1925 Rang. 129.

—Powers of trial Court and High Court.

S. 497 deals with the powers of the trial Courts and the trial Court has no further power, but the High Court as Court of appeal is not so restricted and it can act according to its own discretion. This discretion, however, is not to be used arbitrarily. It must be based on some judicial principles. In this case, on the ground that if the accused were kept in custody they would not be able to conduct their defence properly, the High Court released them on bail. (*Wazir Hasan, J. C.*) RAI SAHEB BISHAMBAR NATH TANDEN *v.* EMPEROR.

81 I. C. 956 = 11 O. L. J. 527 = 25 Cr. L. J. 1132 = A. I. R. 1924 Oudh 435. —S. 497—Principle.

—The view of the law that all the persons accused of non-bailable offence should be released on bail, unless and until the Court is satisfied and there are good grounds for believing them to be guilty, is absolutely mistaken. Persons accused of non-bailable offences should not be released on bail as a rule, but they may be so released, if there are reasons for believing that the case against them is such that it is not likely to succeed, or if there are special circumstances justifying bail. Where the accused were released on bail by the committing Magistrate but the High Court set aside that order,

Held that this order would not prejudice a subsequent application to the Magistrate to admit them to bail if sufficient cause under S. 497 be found at any future date. (*Stuart, J.*) KING-EMPEROR *v.* M. BASHIRAM

83 I. C. 483 = 26 Cr. L. J. 4 = A. I. R. 1923 All. 479.

—S. 497—Re-arrest after bail.

—High Court—Powers of.

High Court has ample jurisdiction to exercise discretion and order the re-arrest of any person out on bail under its own order if it feels that the circumstances warrant or demand such a course. The principles which govern the granting of bail, are not really doubtful. The Court is not called upon to conduct a preliminary trial of the case and consider the probability of the accused's

CR. P. CODE (1898), S. 497—Test.

guilt or innocence. It would be entirely exceeding its function, if it did that in any detail, but it may incidentally have to look at the weight of the evidence against the accused, as a necessary part of what is its proper function, that is, to enquire whether the giving of the bail as opposed to the arrest of the accused might lead to a real danger of his absconding and not appearing to take his trial, or whether there is any real reason to suppose that he is likely to tamper with the witnesses, who would be called against him. Where two men of importance in their own walk of life were charged with a very serious offence and where it was more possible that they may take advantage of a release than that they may take their trial.

Held, the accused should not be allowed to be on bail especially since a very short time was to elapse before their trial. (*Coutts-Trotter, C. J. and Srinivasa Aiyangar, J.*) PUBLIC PROSECUTOR *v.* SANYASAYYA NAIDU. 90 I. C. 665 = 26 Cr. L. J. 1593 =

22 M. L. W. 156 = A. I. R. 1925 Mad. 1224. —S. 497—Revision.

—Accused persons committed for non-bailable offence to the Sessions Court for trial on *prima facie* case being made out—Trial adjourned *sine die*, closely connected case being tried by Committing Magistrate—Bail granted—No urgency—Orders from Government not obtained for remanding accused to jail though there was time to do so—High Court would not interfere in revision. 1 S. L. R. 40, Rel. on. (*Percival, J. C. and Barlee, A. J. C.*) EMPEROR *v.* WALIDINO. 117 I. C. 773 = 23 S. L. R. 340 = 30 Cr. L. J. 845 = 1929 Cr. C. 337 =

A. I. R. 1929 Sind 137. —S. 497—Scope.

—Under the provisions of S. 497, Cr. P. C., a Magistrate has no power to grant bail in cases falling under S. 409, Penal Code. A. I. R. 1926 Rang. 204, Foll. and A. I. R. 1926 Rang. 51, held absolute. (*Doyle, J.*) MAUNG BA MAUNG *v.* EMPEROR.

1930 Cr. C. 1151 = A. I. R. 1930 Rang. 335.

—Both on principle and authority, S. 498 must be interpreted as being controlled by the provisions of S. 497. 37 Cal. 412 and 42 Cal. 25, Foll. (*DeSouza, A. J. C.*) GUL *v.* EMPEROR. 109 I. C. 118 =

22 S. L. R. 435 = 29 Cr. L. J. 470 = A. I. R. 1928 Sind 142.

—The amended S. 497 does not limit the powers of Magistrates in granting bail in case of non-bailable offences except in cases punishable with transportation for life or with death. (*Ruledge, C. J., Maung Ba and Doyle, J. J.*) KING-EMPEROR *v.* NGA SAN HTWA.

104 I. C. 101 = 5 Rang. 276 = 28 Cr. L. J. 773 = A. I. R. 1927 Rang. 205 (F.B.).

—S. 497—Test.

—There is no difference between the English and the Indian practice. Bail is not to be withheld merely as a punishment and the requirements as to bail are merely to secure the attendance of the accused at the trial. The test is to be applied by reference to the following considerations amongst others: (1) The nature of the accusation. (2) The nature of the evidence in support of the accusation. (3) The severity of the punishment which conviction will entail. (4) The character of the sureties, that is to say, whether they are independent or indemnified by the accused. (5) The character and behaviour of the accused. Any allegation that the accused is tampering, or attempting to tamper, with witnesses, and thereby obstructing the course of justice, would be a very cogent ground for refusing bail. *In re Robinson* (1854) 2 W. R. 424, Dist. (*Mullick, Ag. C. J. and Wort, J.*) KRISHNA CHANDRA JAGTI *v.* EMPEROR.

102 I. C. 909 = 8 P. L. T. 537 = 28 Cr. L. J. 621 =

## CR. P. CODE (1898), S. 497—Test.

8 A. I. Cr. R. 303=6 Pat. 802=  
A. I. R. 1927 Pat. 302.

—The test to determine whether bail is to be granted or not, is applied by reference to the following considerations; the nature of the accusation, the nature of the evidence, the severity of the punishment which conviction will entail, the character, means and standing of accused. The discretionary power of the Court to admit to bail is not arbitrary but is judicial. (49 L. J. 387, 49 L. T. 421, 9 I.L.R. 71, 7 W. C. L. 19, 4 Ca. Cr. Cas. 131, Foll.). (*Mookerjee and Chatterjee, J.J.*) NAGENDRA NATH CHAKRABARTHY v. EMPEROR.

81 I. C. 220=51 Cal. 402=38 C. L. J. 388=  
25 Cr. L. J. 732=A. I. R. 1924 Cal. 476.

## —S. 498—Exercise of powers.

—Discretion under, should be used under exceptional circumstances.

Though the discretion under S. 498 is absolute, the High Court must exercise it judicially and since the legislature has chosen to entrust the initial stage of dealing with questions of bail to Magistrates and while giving Magistrates an unfettered discretion of granting of bail in all cases except two classes, *i.e.*, cases punishable with death and cases punishable with transportation for life, the High Court ought not to grant bail in such cases except for exceptional and very special reasons. A. I. R. 1925 Rang. 129 Expl. (*Rutledge, C. J. Maung Ba and Doyle, J.J.*) KING-EMPEROR v. NGA SAN HTWA. 104 I. C. 101=5 Rang. 276=28 Cr. L. J. 773=A. I. R. 1927 Rang. 205 (F.B.).

## —S. 498—Grounds for bail.

—Party faction—Release of one party if sufficient ground.

Where members of two parties were being prosecuted, and a member of the other party was released on bail but the applicant was charged under S. 304, I. P. C.

*Held*, that the reasons that the applicant was required to instruct the counsel and that the party being released will have better chance of representing there case must weigh with a Court, and if there was no danger of the applicant absconding if released on bail, he should be so released and that it was necessary for the Sessions Judge to consider all these points under S. 498. (*Dalal, J.*) FATEH SINGH v. EMPEROR. 51 All. 603=116 I.C. 748=1929 A.L.J. 585=10 L.R. A. Cr. 82=11 A. I. Cr. R. 554=30 Cr. L. J. 697=30 A. I. R. 1929 All. 320.

—Convict showing intention to appeal to Privy Council—Bail cannot be granted.

A convict sentenced to rigorous imprisonment by the High Court under S. 439 (b) applied for release on bail on the ground that he intended to apply to the Privy Council for special leave to appeal.

*Held*, that no bail under S. 498 could be granted, the case having been completely and finally disposed of. 24 Mad. 161, Expl. 15 P. R. 1908, Ref. (*Kotwal, A. J. C.*) HANMANTRAO v. EMPEROR.

21 N. L. R. 161=27 Cr. L. J. 185=  
91 I. C. 1001=A. I. R. 1926 Nag. 228.

## —S. 498—Interpretation.

—“In any case.”

The words “in any case” in S. 498 are not to be construed in their widest and unlimited sense but in the narrower sense laid down therein. 4 Bom. L. R. 55 Foll. (*Kennedy, J. C. and Madgavkar, A. J. C.*) PITIMAL v. CROWN. 81 I. C. 160=25 Cr. L. J. 672=19 S. L. R. 59=

A. I. R. 1921 Sind 8.

## —S. 498—Jurisdiction.

—Bail pending appeal to Privy Council.

## CR. P. CODE (1898), S. 498—Scope.

S. 498 does not confer jurisdiction upon Court to grant bail to the applicant pending the result of an application to be made to the Privy Council for leave to appeal. (*Sanderson, C. J. and Richardson, J.*) TULSI TELINI v. EMPEROR. 72 I. C. 362=50 Cal. 585=24 Cr. L. J. 362=

A. I. R. 1924 Cal. 64.

## —S. 498—Object and scope.

—Section 117 (3) has apparently been introduced for the purpose of preventing a breach of peace or disturbance of the public tranquillity or the commission of any offence or in the interest of public safety pending an enquiry under Ss. 108, 109 and 110. It is not therefore open to the High Court under provisions of S. 498 to reduce the security which the Magistrate orders to be furnished. (*Tapp, J.*) JAGIR SINGH v. EMPEROR. 125 I. C. 322=31 Cr. L. J. 812=

1930 Cr. C. 677=A. I. R. 1930 Lah. 529.

## —S. 498—Power of High Court.

Under S. 497 (5) the powers of the High Court are confined to cases of persons released by the Trial Magistrate and under S. 498, the High Court can only release accused on bail and cannot order the arrest and commission to custody of persons already released on bail by the Sessions Judge. Therefore, there is no jurisdiction in the High Court to entertain an application under S. 497 (5) or S. 498 against an order granting bail passed by a Sessions Judge in a case pending before a Sub-Magistrate. (*Kinkhede, A. J. C.*) LOCAL GOVERNMENT v. GULAM JILANI. 82 I. C. 755=25 Cr. L. J. 1363=

A. I. R. 1925 Nag. 228.

## —S. 498—Scope.

—The proviso in S. 496 that bail can be granted only to a person other than a person accused of a non-bailable offence is not applicable to the Court of Session acting under S. 498, Cr. P. Code. (*Dalal, J.*) ACHHAIBAR MISSIR v. EMPEROR. 117 I. C. 99=1929 A. L. J. 927=10 L. R. A. Cr. 98=30 Cr. L. J. 718=12 A. I. Cr. R. 65=1929 Cr. C. 193=A. I. R. 1929 All. 614.

—A Sessions Judge has wide powers under S. 498. (*Dalal, J.*) FATEH SINGH v. EMPEROR.

116 I. C. 748=51 All. 603=1929 A. L. J. 585=10 L. R. A. Cr. 82=11 A. I. Cr. R. 554=30 Cr. L. J. 697=A. I. R. 1929 All. 320.

—Per *Percival, J. C.*—Section 337, which is a special section dealing with approvers controls the general S. 498.

Per *Rupchand Bilaram, A. J. C.*—Cl. (3) of S. 337 should be interpreted as obligatory only on the Magistrate granting the pardon requiring him to detain the accomplice in custody and as in no way affecting the powers of the superior Courts. But the discretionary powers of superior Court to grant bail to approvers should be sparingly exercised. (*Percival, J. C. and Rupchand Bilaram, A. J. C.*) MAHOMED ABDUL MAJID v. EMPEROR. 101 I. C. 471=

28 Cr. L. J. 439=8 A. I. Cr. R. 43=A. I. R. 1927 Sind 173.

—The Code of Criminal Procedure itself does not give Chief Courts or Courts of Judicial Commissioners in the exercise of their High Court Jurisdiction, power to release on bail a prisoner with whose case it has finally dealt, merely because he desires to move the Privy Council. 18 P. W. R. 1908 (Cr.) Foll. (*Kennedy, J. C. and Madgavkar, A. J. C.*) PITIMAL v. CROWN. 81 I. C. 160=19 S. L. R. 59=25 Cr. L. J. 672=

A. I. R. 1921 Sind 8.



**CR. P. CODE (1898).****—S. 498—Suspension of sentence.**

—*Mention in the order that sentence is suspended is not illegal.*

When an appellate Court or a Court hearing a revision admits the appellant or the applicant to bail or orders that a fine should not be paid till the disposal of the case, he thereby orders the suspension of the sentence, and therefore mention in the order that the sentence is suspended does not render the order bad. (*Mukherji, J.*) BHAGWAN DAS v. EMPEROR.

84 I. C. 719 = 22 A. L. J. 1103 =  
26 Cr. L. J. 367 = A. I. R. 1925 All. 218.

**—S. 499—Forfeiture of bond.**

—Surety bond undertaking to produce accused in one Court—Accused asked to be presented in another Court and absconding on his way—Failure of surety to produce in the stipulated Court—Forfeiture is justified. (*Banerji, J.*) PARBHU DIAL v. EMPEROR.

102 I. C. 554 = 49 All. 825 = 25 A. L. J. 537 =  
8 A. I. C. R. 52 = 8 L. R. A. Cr. 98 =  
28 Cr. L. J. 586 = A. I. R. 1927 All. 831.

**—S. 499—Form of bond.**

—Time not specified in the bond—Bond to the effect that the accused shall be produced "whenever called upon to do so"—Form was held to be not illegal. (*Sanderson and Chotner, J.J.*) MANMOHAN CHAKRAVARTI v. KING EMPEROR. A. I. R. 1928 Cal. 261.

**—S. 502—Application for discharge.**

—Where a surety applies for discharge, his security bond cannot be forfeited without complying with the provisions of S. 502, Cl. (2). (*Campbell J.*) GURMUKH SINGH v. EMPEROR.

95 I. C. 768 =  
27 Cr. L. J. 848.

**—S. 502—Limits of liability.**

—Magistrate has no power after the appearance of the accused to attach bail money deposited by the surety to realise the fine imposed by the conviction. (*Neave, A. J. C.*) RAGHU NANDAN v. EMPEROR. 83 I. C. 673 =  
11 O. L. J. 296 = 26 Cr. L. J. 113 =  
A. I. R. 1924 Oudh 396.

**—(Ch. 40), Ss. 503 to 508—Discretion**

—*Provisions of O. 26, C. P. C. should ordinarily guide criminal Courts.*

The issue of a commission to examine a witness is not a very satisfactory mode of proceeding either in civil or criminal cases. On the one hand the Court has no opportunity of noting the demeanour of the witness and on the other of controlling irrelevant and unnecessary or harassing cross-examination of the witness. Chapter 40 of the Cr. P. Code no doubt confers a wide discretion on the Court to issue commissions, but such discretion should be sparingly exercised and only in case of real hardship and inconvenience having due regard to the prejudice which is likely to be thereby caused to the opponent. In ordinary cases, the provisions of O. 26, R. 1, C. P. Code, may be accepted as a safe guide by a criminal Court. (*Kennedy, J. C. and Rupchand Bilsaram, A. J. C.*) VISHNOO NAINARAM v. DIPCHAND SITALDAS.

20 S. L. R. 28 = 27 Cr. L. J. 89 =  
91 I. C. 393 = A. I. R. 1926 Sind 124.

**—S. 503—Examination in chambers.**

—*Woman should be examined in chambers and not on commission.*

In a prosecution under S. 498, Penal Code, where the identity of the woman, alleged to have been enticed, is in question and the accused insists on issuing a commission for her examination on the ground that she is married to a zamindar who observes pardah, the better course is, instead of issuing commission, the woman should be examined by the Magistrate in chambers; 4 S. L. R. 237 Rel. on; A. I. R. 1926 Sind 124, Ref.

**CR. P. CODE (1898), S. 503—Witness in State.**

(*Percival, J. C. and Barlee, A. J. C.*) MAHOMED v. BACHO. 120 I. C. 518 = 1930 Cr. C. 94 =

31 Cr. L. J. 115 = A. I. R. 1930 Sind 56.

**—S. 503—Expert.**

—*Assistant Mint Master is an expert.*

The Asst. Mint Master of the Calcutta Mint is an expert witness and there is no illegality in allowing him to be examined on commission instead of insisting on his personal attendance. (*Daniels, J. C.*) MT. GILLI v. EMPEROR.

88 I. C. 848 = 12 O. L. J. 497 =  
2 O. W. N. 377 = 26 Cr. L. J. 1232 =  
A. I. R. 1925 Oudh 616

**—S. 503—Power to issue.**

—S. 10 of the Malabar (Restoration of Order) Ordinance I of 1922 read with S. 503 of the Cr. P. Code does not authorise a special Judge acting under the Ordinance to issue a commission for the examination of witnesses. (*Ayling and Odgers, J.J.*) AYARVALI POKKER, *In re.*

74 I. C. 952 = 18 M. L. W. 899 =  
1923 M. W. N. 758 = 24 Cr. L. J. 840 =  
A. I. R. 1924 Mad. 243 = 45 M. L. J. 305.

**—S. 503—Remand for evidence on commission.**

—Case remanded for taking evidence on commission—Examination of witnesses by Magistrate himself is competent or at least is covered by S. 537. (*Jai Lal, J.*) SIKANDAR v. EMPEROR.

118 I. C. 643 =  
30 Cr. L. J. 948 = 11 L. L. J. 370 =  
A. I. R. 1929 Lah. 104

**—S. 503—Saving of expenses.**

—Issue of commission to save great expense is permissible. (*Martineau, J.*) PARMA NAND v. EMPEROR.

81 I. C. 140 = 4 Lah. L. J. 538 = 25 Cr. L. J. 652 =  
A. I. R. 1923 Lah. 73.

**—S. 503—Scope.**

—An application for commission being issued to Africa is clearly outside the authority of the S. 503. (*Fawcett and Madgavkar, J.J.*) EMPEROR v. ABDUL.

91 I. C. 690 = 49 Bom. 878 = 27 Bom. L. R. 1373 =  
27 Cr. L. J. 114 = A. I. R. 1926 Bom. 71.

**—S. 503—Witness in state.**

—*If agent to the Punjab States cannot compel attendance of witnesses from Indian States, amendment is suggested.*

If the view that the agent to the Governor-General, Punjab States, has no power to compel attendance of witnesses who are residents of an Indian State, is correct, then the statutory provisions contained in S. 503 (2) are futile and the Government should consider the question of either securing such power or of repealing the law which authorizes criminal Courts to issue commissions to such officer. (*Jai Lal, J.*) SIKANDAR v. EMPEROR.

118 I. C. 643 =  
11 L. L. J. 370 = 30 Cr. L. J. 948 =  
A. I. R. 1929 Lah. 104.

—*Summons for examination of witness in a Native State—Political Officer cannot return it unserved on the ground of want of convenience.*

A Magistrate issued a commission for examination of witnesses living in a Native State under S. 503 to the Agent to the Governor-General. He returned the commission unserved, regretting his inability to comply with the request on the ground that there was no Resident Political Officer in State, who could execute the commission.

*Held*, that the Cr. P. Code nowhere speaks of a Resident Political Officer in the territories of any Prince or Chief in India, but of a Political Officer representing the British Indian Government in such territories irrespective of the actual place of residence of the officer concerned and it is the duty of the latter either to proceed where the witness is or to summon such witness

**CR. P. CODE (1898), S. 503—Witness in State.**

before him and to take down his evidence, or to delegate his functions to any officer subordinate to him. But neither the Cr. P. Code nor any other law leaves it to the option of such officer to decline to execute the commission on the ground of inconvenience or some other similar reason. The provisions of sub-S. (3), S. 503, Cr. P. C. are mandatory in this respect (*Jai Lal, J.*) SIKANDAR v. EMPEROR. 106 I.C. 794=9 Lah. 347=29 Cr. L. J. 202=30 P. L. R. 188=A. I. R. 1928 Lah. 76.

**—S. 505—Absence of parties.**

—Examination on commission in absence of parties is most unsatisfactory. (*Broadway, J.*) SARDUL SINGH v. EMPEROR. 95 I. C. 760=27 Cr. L. J. 840=A. I. R. 1926 Lah. 567.

**—S. 506—Evidence not necessary.**

—Court refusing to take action under—Proprity.

Before it becomes incumbent on a Magistrate to take action under S. 506, Cr. P. Code, it must appear that the evidence of the witness is necessary for the ends of Justice. Where in a proceeding under S. 145, Cr. P. Code, a certain person was cited as witness by one of the parties and although processes were issued against him on three occasions he did not attend Court on account of illness and thereupon the party who summoned him applied to the Magistrate for the issue of a commission for his examination, held, that the Magistrate was entitled to dismiss the application on the ground that the evidence of the particular witness was not quite necessary. (*Pearson and Mallik, J.J.*) DINABANDHU BANIKYA v. HASAN ALI. 124 I. C. 325=31 Cr. L. J. 645=33 C. W. N. 1088

**—S. 510—Admissibility in appeal.**

—Must be tendered as evidence.

Under S. 510 any document purporting to be a report under the hand of a chemical examiner upon any matter duly submitted to him for examination and report may be used as evidence in any enquiry, trial or other proceeding. This however does not imply that without tendering it in evidence it can be made use of for the first time in appeal. It is a piece of evidence that does not require any formal proof but at the same time it must be tendered as evidence and used as such so that the accused may have a chance of questioning it. (*Sulaiman, J.*) WALI MUHAMMAD v. KING-EMPEROR. 83 I. C. 904=21 A. L. J. 869=5 L. R. A. Cr. 9=26 Cr. L. J. 200=A. I. R. 1924 All. 193.

**—S. 510—Admissibility of certificate.**

—The certificate of the Professor of Anatomy is not *per se* admissible in evidence apart from special authority like S. 510 of the Code of Cr. P. (*Marten and Crump, J.J.*) AHILA MANAJI v. EMPEROR. 84 I. C. 643=24 Bom. L. R. 803=47 Bom. 74=26 Cr. L. J. 339=A. I. R. 1923 Bom. 183.

**—S. 510—Burden of proof.**

—Failure by prosecution to adduce evidence connecting the parcels containing the blood-stained clothes which reached the Chemical Examiner, with those that were alleged to be despatched and referred to at the trial or rather to show that they were despatched is not a mere technical defect. (*Shadi Lal, C. J. and Harrison, J.*) MD DIN v. EMPEROR. 26 P. L. R. 748=26 Cr. L. J. 1420=89 I. C. 844=A. I. R. 1926 Lah. 79.

**—S. 510—Chemical Examiner's report.**

—Conviction based on—Not examined—Validity.

Where the appellate Court admitted in evidence the report of the Chemical Examiner without examining him, but the evidence to support conviction was otherwise sufficient.

**CR. P. CODE (1898), S. 512—Evidence in other case.**

Held, that the dismissal of appeal against conviction was not improper. (*Carr, J.*) TAN KYILIN v. EMPEROR. 5 Bur. L. J. 100=

27 Cr. L. J. 1281=98 I. C. 177=A. I. R. 1926 Rang. 193.

**—S. 512—Conviction in absence.**

—Convicting and sentencing an accused in his absence is wholly illegal and the conviction is liable to be set aside. (*Shadi Lal, C. J.*) ABDULLAH v. EMPEROR. 26 P. L. R. 239=105 I. C. 683=28 Cr. L. J. 971=A. I. R. 1927 Lah. 870.

**—S. 512—Essentials.**

—As a general rule it is better that the finding that the accused has absconded should be recorded as a condition precedent by the Magistrate who takes the evidence under S. 512. (*Walsh and Dalal, J.J.*) SHEORAJ SINGH v. EMPEROR. 48 All. 375=

24 A. L. J. 394=7 L. R. A. Cr. 85=27 Cr. L. J. 874=96 I. C. 122=A. I. R. 1926 All. 340.

—Finding that accused has absconded is not necessary

S. 512 requires only that before the Court records the depositions of the witnesses for the prosecution under this section, it should be proved that the accused person has absconded and that there is no immediate prospect of arresting him, but it does not require that a finding should be given to that effect. 41 All. 60, Foll. (*Martineau and Jai Lal, J.J.*) DAYA RAM v. EMPEROR. 6 Lah. 489=27 Cr. L. J. 247=26 P. L. R. 845=92 I. C. 423=A. I. R. 1926 Lah. 83.

—Depositions when can be used—Witness unable to remember details of occurrence can refresh memory.

A deposition recorded under S. 512 can only be given in evidence if the deponent is dead or is incapable of giving evidence or his attendance cannot be procured without an unreasonable amount of delay, expense or inconvenience. The mere fact that he is unable to remember the details of the occurrence does not render him incapable of giving evidence within the meaning of the section and his obvious deposition cannot be put in evidence against the accused person. The proper procedure in such a case is to read out his previous deposition of the witness under the provisions of S. 159 of the Evidence Act to refresh his memory and then to ask him whether he remembers the details of the occurrence. (*Scott-Smith, J.*) BHICA v. EMPEROR. 76 I. C. 31=25 Cr. L. J. 95=A. I. R. 1924 Lah. 605.

**—S. 512—Evidence in other case.**

—Evidence referring to absconding person given at a previous trial of different accused, cannot be used subsequently at the trial of the absconding accused.

When witnesses, who have given evidence at a previous trial against persons then on their trial, happen to have referred in the course of their evidence at the trial to a person who is absconding and is subsequently tried, their statements cannot be read at the subsequent trial of the accused who was then absconding, merely because they happen to be absent and cannot give evidence. The objection to the evidence is the fundamental objection that statements made against a person in his absence cannot be used as evidence against him in a criminal trial. Exceptions to that fundamental rule can only be created by statute and when a statute permits something to be done which a fundamental rule prohibits, that thing can only be done by strict compliance of the statute which creates the exception. (*Walsh and Dalal, J.J.*) SHEORAJ SINGH v. EMPEROR. 48 All. 375=24 A. L. J. 394=7 L. R. A. Cr. 85=

**CR. P. CODE (1898), S. 512—Inability to attend.**

27 Cr. L. J. 874=96 I. C. 122=  
A. I. R. 1926 All. 340.

**—S. 512—Inability to attend.**

—A qualified doctor's medical certificate indicating accused's inability to attend the Court should be accepted unless there is reason to believe it to be forged or not genuine. (*Moti Sagar, J.*) AHMAD DIN v. EMPEROR. 25 Cr. L. J. 638=81 I. C. 126=

A. I. R. 1925 Lah. 101.

**—S. 512—Notice to surety.**

—Notice to surety is necessary before enquiry. (*Rankin and Mukerji, J.J.*) MOSLEM MANDAL v. EMPEROR. 54 Cal. 134=

44 C. L. J. 170=27 Cr. L. J. 1293=  
98 I. C. 189=A. I. R. 1926 Cal. 1224.

**—S. 514—Arrest.****—Procedure explained.**

When the penalty of the bond is not paid, the first step which the Court would take is to recover the sum by issuing a warrant for attachment and sale of moveable property belonging to a person liable under the bond or his estate if he be dead. It is only when a penalty is not paid and cannot be recovered by attachment and sale that the person bound is liable to imprisonment under S. 514 (4). (*Baguley, J.*) MAUNG PO CHO v. MAUNG SHWE KIN.

114 I. C. 682=30 Cr. L. J. 346=  
A. I. R. 1928 Rang. 310.

**—S. 514—Bond by supurdar.****—To produce certain goods on demand—Failure—Subsequent bond—Nature of.**

When the police having seized certain goods hand it over to a Supurdar, on the latter executing a bond to produce them on demand before the Court, but on being called upon to produce them fails to do so, and being directed by the Court, executes another bond undertaking to produce them on demand, the latter bond is covered by the provisions of S. 516-A and it is not open to the petitioner to raise the objection that the bond was not executed under the section merely because the goods were not actually produced in Court. Hence the bond is one taken under the Cr. P. Code, and as such S. 514 applies to it. (*Zafar Ali and Jai Lal, J.J.*) SHANGARA SINGH v. EMPEROR.

115 I. C. 765=30 Cr. L. J. 527=  
1929 Cr. C. 215=12 A. I. Cr. R. 347=  
A. I. R. 1929 Lah. 658.

**—S. 514—Bond without jurisdiction.****—A nullity.**

Where a Magistrate without jurisdiction obtains a bail bond from an accused person for his appearance before another Court outside his jurisdiction and it transpires that the Magistrate was not competent either to admit the accused to bail or to secure a bail bond from him, the bail bond or personal recognizance of the accused is a nullity. No proceedings against the accused under S. 514 can therefore be taken in respect of such bond. (*Meers, C. J. and Sen, J.*) LAL BAHADUR v. EMPEROR.

120 I. C. 194=10 L. R. A. Cr. 149=  
31 Cr. L. J. 2=1930 A. L. J. 199=  
13 A. I. Cr. R. 2=1929 Cr. C. 642=  
A. I. R. 1929 All. 914.

**—S. 514—Breach, what is.****—Forfeiture of surety bond—Person bound need not be actually convicted.**

The contention that the provisions of S. 121 are not exhaustive cannot be supported. When the law definitely lays down what would constitute a breach of the bond given under an order passed under S. 118, the breach must be confined to those acts and cannot be

**CR. P. CODE (1898), S. 514—Forfeiture of security for behaviour.**

extended to the commission of any other acts, but at the same time it is nowhere laid down in the Code that the persons giving the bond should actually be convicted before proceedings are taken against his surety. (*Dalal, J.*) SHEO JANGAL PRASAD v. EMPEROR.

50 All. 666=9 A. I. Cr. R. 443=26 A. L. J. 443=  
30 Cr. L. J. 203=113 I. C. 740=9 L. R. A. Cr. 68=  
A. I. R. 1928 All. 232.

—Bond to appear before a specified Court does not cover failure to attend Court to which the case is transferred, unless specially provided therein. 30 C. 107, Foll. (*Lentaigne, J.*) MAUNG NGE v. EMPEROR.

84 I. C. 933=26 Cr. L. J. 389=2 Rang. 581=  
A. I. R. 1925 Rang. 153.

**—S. 514—Court not held.****—Order forfeiting amount of security is illegal.**

When the Magistrate himself does not hold his Court on the date fixed for producing the accused, the accused are under no obligation to appear, nor are the sureties under any obligation to produce them, and therefore the amount of security cannot be forfeited for their non-production. (*Tek Chand, J.*) SAMMAN SINGH v. EMPEROR. 9 L. L. J. 411=28 Cr. L. J. 1020=

106 I. C. 108=9 A. I. Cr. R. 213=29 P. L. R. 231=  
A. I. R. 1928 Lah. 20.

**—S. 514—Discharge of accused.**

—No action shall be taken under S. 514 when the Court itself, by discharging the accused persons held that their presence on the date of hearing was unnecessary. (*Dalal, J. C. and Neave, A. J. C.*) EMPEROR v. GODHAN. 84 I. C. 944=26 Cr. L. J. 400=

A. I. R. 1925 Oudh 314.

**—S. 514—Duration of liability.****—Liability continues till the final order.**

Where a bond is executed in trial Court for compliance with its order, liability of a person liable under, the bond is not discharged though the trial Court's order was in his favour if the same is reversed in appeal. 5 Rang. 492, Dist.; 5 Rang. 496, Foll. (*Baguley, J.*) MAUNG PO CHO (a) KALINGA MEERA v. MAUNG SHWE KIN. 114 I. C. 682=30 Cr. L. J. 346=

A. I. R. 1928 Rang. 310.

**—Bond by sureties can be forfeited even after the period of bond.**

When the Magistrate deciding a case of an offence attended with violence is cognizant of the fact that the person convicted is under a recognizance to keep the peace, and does not proceed at once to take steps to forfeit the recognizance, he is not precluded from doing so subsequently. There is nothing in the language which lays down any such limitation. The wording of S. 514 is indeed of the widest character. 26 All. 202, Foll.; 13 P. R. 1913 Cr., Dist. (*Kincaid, J. C. and Kennedy, A. J. C.*) JEOMAL v. EMPEROR. 20 S. L. R. 95=

27 Cr. L. J. 326=92 I. C. 742=  
A. I. R. 1926 Sind 180.

**—S. 514—Evidence and finding.**

—The Magistrate is not bound before calling upon the petitioner to show cause why the penalty of his bond should not be paid to record evidence and a finding thereon that it was proved to his satisfaction that the bond has been forfeited. 11 P. L. T. 575, Relied on. (*Macpherson, J.*) BISHAMBAR MAHTON v. EMPEROR.

128 I. C. 348=11 P. L. T. 578.

**—S. 514—Forfeiture of security for behaviour.**

—If a Criminal Court knowing that the person charged before it is under security to be of good behaviour makes no reference to any confiscation of that security in sentencing that person in the case before it, and takes no steps towards its confiscation, it is not compe-

**CR. P. CODE (1898), S. 514—Forfeiture of security for behaviour.**

tent for that court or any other court in a subsequent and separate proceedings to take such steps. (*Moti Sagar, J.*) **MUNSHI v. THE CROWN.** 75 I. C. 692=

25 Cr. L. J. 4=A. I. R. 1924 Lah. 680.

**—S. 514—Grounds for forfeiture.****—Act of law.**

Bail bond should not be forfeited for failure of the surety to produce the accused person, where the failure to produce is due to an act of law, e.g. his being arrested. 16 C. W. N. 550; 37 Mad. 156, Ref. (*Buckmill and Ross, J.J.*) **ALAUDDIN v. EMPEROR.**

86 I. C. 657=4 Pat. 259=6 P. L. T. 397=

3 Pat. L. R. Cr. 123=26 Cr. L. J. 833=

1925 P. H. C. C. 46=A. I. R. 1925 Pat. 389.

**—Conviction for hurt—Only one bond can be forfeited.**

A bond to be of good behaviour can be forfeited on a conviction of the person bound down, under S. 323 or 325, Penal Code. (6 P. R. 1915 (Cr.) and 10 P. R. (Cr.) 1915, Foll.) But where two bonds have been executed one by the accused and the other by his surety, only one of the two can be forfeited and not both. (26 P. R. (Cr.) 1894, Foll.) (*Moti Sagar, J.*) **THE CROWN v. ABDUL AZIZ.** 81 I. C. 955=4 Lah. 462=

25 Cr. L. J. 1131=A. I. R. 1924 Lah. 262.

**—S. 514—Misunderstanding of surety.****—Bail-bonds cannot be forfeited.**

Where in a proceeding started under S. 514, it appears that the accused and the sureties understood that the date which should be fixed for trial would be intimated to them that the failure to intimate the date to the sureties was due to some error on the part of some subordinate of the District Magistrate, that in any case there was abundant room for a misunderstanding and that the failure of the sureties to produce the accused was due to such misunderstanding and was not intentional or even due to negligence, the order forfeiting the amount of the bail-bond cannot be sustained. (*Macpherson, J.*) **RAJBANSI BHAGAT v. EMPEROR.**

11 Pat. L. T. 575=124 I. C. 85=31 Cr. L. J. 605=

1929 Cr. C. 444=A. I. R. 1929 Pat. 658.

—Where in a S. 107 case the accused and complainant agreed that they would not appear in Court the next hearing day and the accused accordingly absented and the surety knowing this concluded that the case would not proceed and took no steps to cause accused's presence in Court.

*Held*, that penalty should not be exacted from him. (*Campbell, J.*) **ALI MUHAMMAD v. EMPEROR.**

8 L. L. J. 402=27 Cr. L. J. 1152=27 P. L. R. 646=

97 I. C. 672=A. I. R. 1926 Lah. 636.

**—S. 514—Notice to surety.****—Necessity for the finding as to forfeiture.**

The proper course for a Magistrate proceeding to pass order under S. 514 (1) is to come to a finding based on some evidence that the bail bond executed by the surety has been duly forfeited and then only to issue a notice to show cause why the penalty should not be realized from him. 11 B. H. C. 170 and 10 C. L. R. 571, Foll. (*Fazl Ali, J.*) **ZULMI KAHN v. EMPEROR.**

11 Pat. L. T. 572=122 I. C. 532=31 Cr. L. J. 420=

1929 Cr. C. 371=A. I. R. 1929 Pat. 643.

**—S. 514—Opportunity to sureties.**

—Bail bond for appearance of accused person forfeited—Sureties alleging that they were not allowed to control movement of accused person should be given opportunity of proving their allegation, it being mitigating circumstance. (*Bhide, J.*) **MAUJ ALI v. EMPEROR.**

125 I. C. 376=31 Cr. L. J. 869=

1930 Cr. C. 708=A. I. R. 1930 Lah. 591.

**CR. P. CODE (1898), S. 514—Revision.****—S. 514—Order of forfeiture.**

—An order passed against a security for production of accused released on bail, forfeiting his security cannot be sustained if it is not in terms of the bond. (*Ross, J.*) **BHUNESHWAR MISRA v. EMPEROR.**

1930 Cr. C. 1015=A. I. R. 1930 Pat. 519.

**—S. 514—Penal condition.**

—Penal provision in a bond should not be enforced, especially when the penal provision is inserted not in pursuance of the Magistrate's order. (*Baguley, J.*) **MAUNG PO CHO v. MAUNG SHWE KIN.**

30 Cr. L. J. 346=114 I. C. 682=

A. I. R. 1928 Rang. 310.

**—S. 514—Proof.****—Bonds for appearance before Court—Principle explained.**

There is a palpable distinction between bonds which are not and those which are for appearance before a Court. Proof other than is directly before the Court in its own record is required in the former and not in the latter. Where the Court had before it the order for bail, the bail-bond and the fact that the petitioners did not produce the accused, the provisions of S. 514 (1) were substantially complied with and the High Court would not be justified in interfering in revision where there was no possible prejudice on the ground that the proceedings of the Sessions Judge under S. 514 were without jurisdiction as he had before him neither any proof that the bail-bond had been forfeited nor did he record the grounds of such proof before he called upon the petitioners to show cause why the penalty of the bond should not be paid. A. I. R. 1922 Pat. 242; 11 Bom. H. C. 170 and 10 C. L. R. 571, Ref.; A. I. R. 1929 Pat. 643, Dist. (*Macpherson, J.*) **RAJBANSI BHAGAT v. EMPEROR.**

11 Pat. L. T. 575=124 I. C. 85=

31 Cr. L. J. 605=1929 Cr. C. 444=

A. I. R. 1929 Pat. 658.

—The provisions of S. 514 indicate that two steps are to be taken: first, it must be proved to the satisfaction of the Court that the bond has been forfeited, whereupon the Court is to record the grounds of such proof; secondly, the Court, on being satisfied as aforesaid, may call upon the person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid. (*Sanderson and Chotzner, J.J.*) **MAN-MOHAN CHAKRAVARTI v. KING-EMPEROR.**

A. I. R. 1928 Cal. 261.

**—Proof of forfeiture is necessary and Court should record reasons—Effect of non-compliance.**

S. 514 lays down that it must be proved to the satisfaction of the Court that the bond has been forfeited and that the Court shall record the grounds of such proof, and it is after such grounds have been recorded that the person bound by the bond may be called on to show cause why the amount should not be paid. Where there has been a failure to carry out the express provisions of the law and the Deputy Magistrate acted without jurisdiction in failing to record proof before he issued notice to show cause, the petitioners are entitled to have proceedings set aside. (*Adami, J.*) **THAKUR KISAN NARAYAN SINGH v. EMPEROR.**

67 I. C. 830=3 Pat. L. T. 381=23 Cr. L. J. 478=

A. I. R. 1922 Pat. 242.

**—S. 514—Revision.**

—Court in revision should not interfere with the Magistrate's discretion in the matter of forfeiting a surety bond under Ss. 109 and 110, Cr. P. Code. (*Kincaid, J. C. and Kennedy, A. J. C.*) **JEOMAL v. EMPEROR.**

20 S. L. R. 95=27 Cr. L. J. 326=

92 I. C. 742=A. I. R. 1926 Sind 180.

## CR. P. CODE (1898),

## —S. 514—Validity of forfeiture.

—There can be no forfeiture of a bail bond except on its own terms. Where the bond provided that the accused "should be surrendered to the District Magistrate on the day of decision of the appeal or within three days thereafter or such other date as the District Magistrate might direct" and the forfeiture was ordered without the Magistrate having fixed a date.

*Held*, that the forfeiture was not valid. (*Macpherson, J.*) BISHAMBAR MAHTON v. EMPEROR.

128 I. C. 348 = 11 P. L. T. 578.

## —S. 514-B—Minors.

—Section 514-B specifically provides that when the person required to execute a bond is a minor, the Court or police officer may accept in lieu thereof a bond executed by a surety or sureties only. There is no such provision for a major. (*Zafar Ali, J.*) WADHAWA SINGH v. EMPEROR.

29 Cr. L. J. 491 =

109 I. C. 219 = 10 A. I. Cr. R. 247 =

A. I. R. 1928 Lah. 318.

## —S. 515—Scope.

—All orders under S. 514 are covered by S. 515.

The language of S. 515 is wide enough to cover an order refusing to forfeit a bond as well as an order forfeiting it. (*Daniels, A. J. C.*) SARJU v. THAKURAIN JAI RAJ KUMAR.

77 I. C. 733 =

25 Cr. L. J. 445 = A. I. R. 1925 Oudh 51.

## —S. 516-A—Nature of proceedings.

—Restitution proceedings are proceedings of a quasi civil nature. A non-applicant is not an accused and when he fails to attend, there is no reason why the case should not go on in his absence though he is unrepresented by an advocate. (*Baguley, J.*) MAUNG PO CHO (a) KALINGA MEERA v. MAUNG SHWE KIN.

114 I. C. 682 = 30 Cr. L. J. 346 =

A. I. R. 1928 Rang. 310.

## —S. 516-A—Supurdar

—Bond to produce goods on demand—Failure—Second bond—Nature of.

Where the police having seized certain goods hand it over to a Supurdar, on the latter executing a bond to produce them on demand before the Court, but on being called upon to produce them fails to do so, and being directed by the Court, executes another bond undertaking to produce them on demand, the latter bond is covered by the provisions of S. 516-A and it is not open to the petitioner to raise the objection that the bond was not executed under the section merely because the goods were not actually produced in Court. Hence the bond is one taken under the Cr. P. Code and as such S. 514 applies to it. (*Zafar Ali and Jai Lal, J.J.*) SHANGARA SINGH v. EMPEROR.

115 I. C. 765 = 30 Cr. L. J. 527 =

1929 Cr. C. 215 = 12 A. I. Cr. R. 347 =

A. I. R. 1929 Lah. 658.

## —S. 517—Appeal.

—Where the appellate Court holds that the Magistrate had no jurisdiction under S. 517, it cannot say that it itself had jurisdiction under S. 520, as such jurisdiction could only arise from an order legally passed under S. 517. (*Harrison, J.*) KISHEN CHAND v. NANAK CHAND.

7 L. L. J. 625 =

26 Cr. L. J. 1453 = 89 I. C. 973 =

A. I. R. 1926 Lah. 9.

## —S. 517—Breach of trust.

—Property in respect of which criminal breach of trust has been committed is as much stolen property as property the possession whereof has been transferred by theft according to the provisions of S. 410, Penal Code. Such property should be handed over by the Criminal Court back to the possession of the real owner uncondi-

## CR. P. CODE (1898), S. 517—Doubtful title.

tionally. Where there is a *bona fide* dispute as to title the procedure may be different. (*Stuart, C. J. and Raza, J.*) MD. HADI HUSAIN v. EMPEROR.

112 I. C. 103 = 3 Luck. 494 = 11 A. I. Cr. R. 226 =

5 O. W. N. 281 = 29 Cr. L. J. 983 =

A. I. R. 1928 Oudh 277.

## —S. 517—Cash.

—Cash is not strictly speaking property except if it can be identified in specie—Procedure pointed out.

Cash is not, strictly speaking, property except in so far as it is capable of being possessed and identified in specie. If it is certain that the actual coins found on the thieves or receivers of stolen property are the actual coins which have been subject of theft then it is permissible to treat such cash as stolen property. It is often safer in such cases to inflict a fine and to apply the coins found on the person of the accused towards the payment of fine, and then to apply the amount of fine if necessary to compensation. But in no conceivable way can coins which have been put into circulation and passed on to the public be treated in the same way as stolen coins actually remaining in the possession of the thieves. The principle of *caveat emptor* never applies to currency coins. (*Kennedy, J. C. and DeSouza, A. J. C.*) PURSU v. EMPEROR.

89 I. C. 259 = 18 S. L. R. 218 =

26 Cr. L. J. 1315 = A. I. R. 1926 Sind 17.

## —S. 517—Confiscation.

—Genuine note from which counterfeit note supposed to be forged—No evidence of any offence being committed in respect of genuine note—Order confiscating genuine note while convicting accused under Penal Code, S. 489-B, is wrong. (*Madgavkar and Baker, J.J.*) EMPEROR v. GOPAL RAGHUNATH.

116 I. C. 243 =

53 Bom. 344 = 31 Bom. L. R. 148 =

30 Cr. L. J. 588 = A. I. R. 1929 Bom. 128.

—The essential of S. 517 is that property or document must be proved to have been used in the commission of the offence. Where currency notes were found on the person of a man convicted for importing opium into British India in contravention of the Opium Act, but where it was held that no irresistible inference was possible that they represented payment of the imported opium.

*Held*, they should not be confiscated. (*Mears, C. J.*) GOVIND RAM, *In re*.

81 I. C. 103 =

25 Cr. L. J. 615 = A. I. R. 1924 All. 618.

—Confiscation of property with respect to which an offence seems to have been committed is illegal under Code prior to coming into force of amendments of 1923. (*Sanderson, C. J. and Chotamer, J.*) RAM KHALAWAN. AHIR v. TULSI TELINI.

84 I. C. 444 =

28 C. W. N. 1094 = 26 Cr. L. J. 300 =

A. I. R. 1924 Cal. 1040.

## —S. 517—Dispute about rights.

—Right to possession in dispute between complainant and third person—Opportunity of being heard should be given to other party before ordering restoration. (*Carr, J.*) SHWE WA v. C. I. MEHTA.

105 I. C. 452 = 5 Rang. 553 =

28 Cr. L. J. 932 = A. I. R. 1927 Rang. 322.

## —S. 517—Doubtful title.

—Where the title to seized property is doubtful, it should be returned to the person from whom it was seized, unless there are special circumstances which would render such a course unjustifiable. (*Curgenven, J.*) K. SRINIVASA MOORTHY v. NARASIMHALU NAIDU.

104 I. C. 719 = 50 Mad. 916 =

26 M. L. W. 168 = 39 M. L. T. 18 =

1927 M. W. N. 692 = 9 A. I. Cr. R. 38 =

28 Cr. L. J. 879 = A. I. R. 1927 Mad. 797 =

53 M. L. J. 309

**CR. P. CODE (1898), S. 517—Doubtful title.**

—When there is doubt as to ownership of property it should be kept in *Malskhana* subject to the decision of a competent Civil Court as to the rightful claimant. (*Sanderson, C. J. and Chotzner, J.*) *RAM KHALAWAN AHIR v. TULSI TELINI* 84 I. C. 444 = 28 C. W. N. 1094 = 26 Cr. L. J. 300 = A. I. R. 1924 Cal. 1040.

—Where certain property alleged to be stolen during dacoity is not proved to belong to complainant or to have formed part of the property taken at the dacoity, it should be delivered to the person by whom it has been produced, complainant being left to his remedy in the Civil Court. (*Broadway, J.*) *SULEMAN v. THE CROWN.* 86 I. C. 273 = 26 Cr. L. J. 737 = 6 L. L. J. 213 = A. I. R. 1924 Lah. 588.

**—S. 517—Effect of acquittal.**

—A certain elephant was seized by Police from the accused on a charge of abetment of theft of elephant, the accused, on his claiming to be the purchaser of certain shares in the animal, was acquitted.

*Held*, that the animal should have been made over to the accused on failure of the case against him and not to complainant. (*Rankin and Duval, J.J.*) *SATTAR ALI v. AFZAL MAHOMED.* 102 I. C. 482 = 54 Cal. 283 = 28 Cr. L. J. 546 = 8 A. I. Cr. R. 179 = A. I. R. 1927 Cal. 532.

**—S. 517—Interpretation.**

—Property regarding which an offence has been committed in S. 517 (1) includes moveable property regarding the possession of which a quarrel is begun or a riot is begun, whatever may be the offence that might ultimately be committed in the course of the quarrel or fight. (*Devadoss, J.*) *SHEIK DAWOOD v. VELAYUDA SAMMANOTTI.* 108 I. C. 65 = 51 Mad. 606 = 1 M. Cr. C. 89 = 9 A. I. Cr. R. 538 = 29 Cr. L. J. 322 = 27 M. L. W. 132 = A. I. R. 1928 Mad. 194 = 54 M. L. J. 312.

—S. 517—Limitation.

—Powers under—No limitation for application under S. 517, exists.

No period of limitation is prescribed for an application for restoration of property under S. 517, it can be made within a reasonable time from the date on which an accused person is acquitted of the crime with which he is charged. The words "and make any further orders that may be just," in S. 520 are obviously intended to cover cases of this nature and to enable superior Courts to pass proper orders in cases where property has been erroneously disposed of under S. 517. (*Moti Sagar, J.*) *KANSHI RAM v. THE CROWN.* 73 I. C. 937 = 4 Lah. 49 = 3 P. W. R. Cr. 1923 = 24 Cr. L. J. 713 = A. I. R. 1924 Lah. 75.

**—S. 517—Nature of proceeding.**

—Proceeding under S. 512 is neither 'inquiry' nor 'trial'—Order under S. 517 must be made only after inquiry—No order for restoration should be made in doubtful cases.

A proceeding under sub-S. (1) of S. 512 is neither an inquiry nor a trial within the meaning of S. 517. But a Magistrate is bound, in any case, to hold an enquiry of some sort before he can make order for the disposal of property which has been seized and produced before him. Where there is no adjudication on the question of the accused's guilt or innocence an order under S. 517 is bad. Even where there has been a finding against the person charged with an offence, questions of some nicety may arise which involve a consideration of civil law and it is not the function of a criminal court to decide such questions for the purpose of ordering the return of property to one or other of two contending parties. Where there can be no doubt whatsoever that the pledge is in-

**CR. P. CODE (1898), S. 517—Setting aside order.**

volved, or in other words, that the pledgee is not entitled to retain possession of the articles pledged because it had been obtained from the original owner by what is palpably and unmistakeably an offence or fraud, or because the circumstances clearly indicate impropriety, or an absence of good faith on the part of the pledge, a magistrate is justified in directing its return to the original owner. But where there is a doubt, not necessarily a strong doubt, not even a reasonably arguable one, such as may arise where the decision involves a contentious point of civil law, the normal course of restoring the property to the person from whom it was seized should be followed, and the dissatisfied party should be left to seek his remedy in a civil court. (*May Oung, J.*) *P. R. V. N. VALLIAPPA CHETTY v. S. JOSEPH.* 81 I. C. 154 = 2 Bur. L. J. 85 = 25 Cr. L. J. 666 = A. I. R. 1923 Rang. 248.

**—S. 517—Order after acquittal.**

—Where a magistrate finds the accused not guilty of the offence of cheating and acquits him, he cannot order that the property in respect of which the offence was alleged to be committed, and which is in possession of the accused should be restored to the complainant. The proper order which the magistrate should make is that the goods should remain in the possession of the person in whose custody they were found. (*Chotzner and Mukerji, J.J.*) *RAM DAN DAMANI v. HARI DAS DAMANI.* 27 Cr. L. J. 853 = 95 I. C. 933 = A. I. R. 1926 Cal. 1048.

**—S. 517—Power under.**

—S. 517 does not limit the power of the trying magistrate or judge, who has omitted to pass an order for disposal of exhibits as part of his judgment convicting the accused, so as to deprive him of all power to subsequently pass orders for disposal of the property; similarly it does not limit the powers of a Court of Appeal or revision. (*Lentaigic, J.*) *MA WET v. MG. PO TAIK.* 85 I. C. 358 = 26 Cr. L. J. 518 = 3 Bur. L. J. 302 = A. I. R. 1925 Rang. 183.

**—S. 517—Purchaser's rights.**

—Purchaser of the commodity has a right to be heard.

Where a question of *bona fides* and of title by purchase or otherwise, clearly arises the complainant should be left to his remedy in the civil court. But the jurisdiction of the criminal court is confined to an order at the conclusion of the trial for the disposal of the property, which has been stolen and which is before it in the criminal proceeding. It need not be in the possession of the court but it must be still capable of being earmarked and such an order can only be made at the conclusion of the trial and in the presence of the purchaser who has a right to be heard. (*Walsh, J.*) *NAINI MAL v. THE CROWN.* 74 I. C. 708 = 24 Cr. L. J. 804 = A. I. R. 1924 All. 189.

**—S. 517—Setting aside order.**

—A Sessions Judge has no power to pass any orders setting aside an order passed by a magistrate under S. 517, when no appeal lies against the conviction or sentence is pending before the Sessions Judge. 42 Bom. 664; A. I. R. 1924 All. 675 and 34 Cal. 347, Ref. (*Das, J.*) *MAUNG MRA TUN v. MA KRA ZOC PRU.* 11 A. I. Cr. R. 217 = 6 Rang. 259 = 29 Cr. L. J. 958 = 111 I. C. 878 = A. I. R. 1928 Rang. 240.

—An order under S. 517 can be set aside by a court of appeal, confirmation or revision. The District Magistrate is not a court of confirmation, reference or revision, the only court which could pass orders on a reference or revision being the High Court. 42 Bom.



**CR. P. CODE (1898), S. 517—Setting aside order.**

664, Foll. (*Daniels, J.*) DEBI RAM *v.* EMPEROR.  
81 I. C. 992=46 All. 623=22 A.L.J. 505=  
5 L.R.A. Cr. 91=25 Cr. L.J. 1168=  
A. I. R. 1924 All. 675.

**S. 517—Time for order.**

—Court can pass order at or after the passing of judgment.

No order can be passed under S. 517, until the case is concluded. After that, and within a reasonable time, the magistrate, who heard the case, is empowered to act. He may do so at the time of pronouncing his order or later. It cannot be laid down that an order under S. 517 can only be passed in favour of a person from whose possession the property was recovered. (*Harrison, J.*) KISHEN CHAND *v.* NANAK CHAND.  
7 Lah. L. J. 625=26 Cr. L.J. 1453=89 I. C. 973=  
A. I. R. 1926 Lah. 9.

—Order must be passed at the close of trial and not subsequently.

Accused was charged with being in possession of a stolen bullock but acquitted, but no order was passed about the restoration of the bullock. After some days, the complainant applied to the Magistrate for restoration of the bullock and his application was allowed.

*Held*, the order was illegal. An order for the disposal of the property regarding which an offence has been committed can only be made upon the conclusion of the inquiry or a trial before any criminal court, and not on the application of a person subsequently made by him to the court after the conclusion of the trial. (*Moti Sagar, J.*) ABDUL *v.* GHULAM MUHAMMAD.  
76 I. C. 20=4 Lah. 460=25 Cr. L. J. 84=  
A. I. R. 1924 Lah. 261.

—Accidental omission to pass order under S. 520—Successor can pass the same.

Where an appellate magistrate disposing of a criminal appeal fails to pass an order under S. 520 it will be open to his successor to do so, in spite of S. 369, if there is only an accidental slip or omission. Though an order under S. 517, Cr. P. Code, should be made at the time of passing judgment in the criminal case itself, an order made subsequently is not illegal or made without jurisdiction. (*Odgers, J.*) *In re* SUBBA RAIDU.  
15 M.L.W. 664=1922 M.W.N. 494=  
31 M.L.T. 367=71 I. C. 511=  
24 Cr. L.J. 159=A. I. R. 1922 Mad. 329=  
43 M. L. J. 87.

—S. 517—Validity of order.  
—Where house is not property in respect of which offence is committed no order under S. 517 can be made. Where during the pendency of the case, the key of the house was by order of the magistrate delivered to the complainant and the accused after he was acquitted, applied for an order directing the complainant to hand over the key to him, *held* (1) that the order as to key was passed by a competent court and complainant's possession was not unlawful; (2) when the accused applied for the return. Neither the house nor the key was in the custody of the court and therefore the court had no power to make the order. (*Sen, J.*) LALA BANSIDHAR *v.* BRIJ BASI LAL.  
120 I. C. 197=  
31 Cr. L.J. 6=1930 Cr.C. 51=A. I. R. 1930 All. 35.

**—S. 517—Validity of order.**

—When a person was being prosecuted for embezzlement it transpired that he had been utilising the money to pay off his creditors. The police traced one of these payments and the creditor concerned handed over the amount to the police.  
*Held*, that the Court could order the payment of the money to the complainant under S. 517. (*Sulaiman and Daniels, J.J.*) BANKEY LAL KAPOOR *v.* ALLAHABAD BANK, LTD. 23 A.L.J. 889=26 Cr.L.J. 1232=

**CR. P. CODE (1898), S. 520—Power to interfere.**

88 I. C. 848=A.I.R. 1926 All. 47.  
—S. 520—Applicability.

—S. 520 does not apply to an order not relating to property and not passed under S. 517, 518 or 519. So under S. 520 an order restoring a child to his parents cannot be passed. (*Campbell, J.*) SURAJ DIN *v.* KHALIL SHAH.  
94 I. C. 142=  
27 Cr. L. J. 574=A. I. R. 1926 Lah. 487.

**—S. 520—Interpretation.**

—An application made under S. 520 to a "Court of appeal, confirmation, reference or revision," is not in the nature of an appeal. (*Curguen, J.*) K. SRINIVASA MOORTHY *v.* NARASIMHALU NAIDU.  
104 I. C. 719=50 Mad. 916=26 M. L. W. 168=  
39 M. L. T. 18=1927 M. W. N. 692=  
9 A. I. Cr. R. 38=28 Cr. L. J. 879=  
A. I. R. 1927 Mad. 797=53 M. L. J. 309.

**—S. 520—Limitation.**

—Powers under—No limitation for application under S. 517 exists.

No period of limitation is prescribed for an application for restoration of property under S. 517; it can be made within a reasonable time from the date on which an accused person is acquitted of the crime with which he is charged. The words "and make any further orders that may be just," in S. 520 are obviously intended to cover cases of this nature and to enable superior Courts to pass proper orders in cases where property has been erroneously disposed of under S. 517. (*Moti Sagar, J.*) KANSHI RAM *v.* EMPEROR.  
73 I. C. 937=4 Lah. 49=24 Cr. L. J. 713=  
A. I. R. 1924 Lah. 75.

**—S. 520—Order under S. 517.**

—Under S. 520 as well as under S. 423 (1) (d) the appellate Court has the power to pass appropriate orders for the disposal of the property produced the trial in a case under S. 411, Penal Code, even though the trial Magistrate has omitted to do so. A. I. R. 1923 Mad. 324, and 3 A. L. J. 770, Foll. (*Tek Chand and Agha Haider, J.J.*) THIRAJ *v.* EMPEROR.  
111 I. C. 314=11 A. I. Cr. R. 18=  
29 Cr. L. J. 810=10 Lah. 187=  
A. I. R. 1928 Lah. 567.

**—S. 520—Power to interfere.**

—Additional District Magistrate.

Where an Additional District Magistrate is invested by the Local Government by virtue of the powers conferred upon it by S. 10 (2), Cr. P. Code, with the powers of a Court of revision, he is competent when disposing of a case by virtue of those powers to make any consequential order as to the disposal of the property. (1928) M. W. N. 557 (F.B.), Expl. and Dist.; (1928) M. W. N. 633, Dist. (*Curguen, J.*) NAGAPPAN KONAN *v.* RAMARAM PADAYACHI.  
126 I. C. 594=31 Cr.L. J. 1085=  
1930 Cr. C. 895=A. I. R. 1930 Mad. 769.

**—District Magistrate.**

In the case of an acquittal by the trial Court, both the Sessions Judge and District Magistrate as a Court of revision have power, under S. 520, to interfere with the order of the trial Court passed under S. 517 regarding disposal of property in respect of which the offence was committed and in the case of a conviction by a First Class Magistrate the District Magistrate has, in the absence of an appeal to the Sessions Court, power to interfere with an order passed under S. 517 by the trial Court. 6 Rang. 259=A. I. R. 1928 Rang. 240=111 I. C. 878, Overruled; A.I.R. 1923 Rang. 227; 3 Cal. 379 and 9 Mad. 448, Approved. (*Rutledge, C. J., Maung Ba and Brown, J.J.*) U. PO. HLA *v.* KO PO SHEIN.  
115 I. C. 901=7 Rang. 345=30 Cr. L. J. 540=

**CR. P. CODE (1898), S. 520—Property not of complainant.**

12 A. I. Cr. R. 350 = A. I. R. 1929 Rang. 97 (F.B.).  
—S. 520—Property not of complainant.

—Where certain property alleged to be stolen during dacoity is not proved to belong to complainant or to have formed part of the property taken at the dacoity, it should be delivered to the person by whom it has been produced, complainant being left to his remedy in the Civil Court. (*Broadway, J.*) **SULEMAN v. THE CROWN.** 86 I. C. 273 = 26 Cr. L. J. 737 =

6 Lah. L. J. 213 = A. I. R. 1924 Lah. 588.  
—S. 520—Restoration.

—High Court.

It is clearly just that when a subordinate Court has made over property to a person who is not entitled to its possession, the High Court, on appeal should remedy the error by restoring the property to the person properly entitled to its possession. 4 L. B. R. 14, Diss. from. (*Carr, J.*) **SHWE v. C. I. MEHTA.**

5 Rang. 553 = 28 Cr. L. J. 932 =  
105 I. C. 452 = A. I. R. 1927 Rang. 322.

—Appellate Court cannot direct restoration, where trial Court has not.

One Onkar filed a complaint under S. 506 against the three accused to the effect that they were demanding under threats the restoration of certain *Bahis* which were in the complainant's possession. These *Bahis* had been in the possession of Onkar for the last 10 or 11 years but the trying Magistrates found that they really belonged to two of the accused. They, however, passed no order with regard to the restoration of the *Bahis* but added that if they wanted to get them back they should seek their remedy in a proper Court. In an appeal the Appellate Court directed that the *Bahis* be returned to the accused.

*Held*, that the offence of criminal intimidation was complete but the order of restoration was bad. (*Sulaiman, J.*) **ONKAR v. EMPEROR.** 21 A. L. J. 877 = 5 L. R. A. Cr. 14 = A. I. R. 1924 All. 213.

—A Sessions Judge cannot interfere with the order passed by a Sub-Divisional Magistrate on appeal under S. 520.

The trial Court handed over the subject-matter of theft to the complainant on conviction of the accused. On appeal the Sub-Divisional Magistrate while acquitting the accused declined to interfere with the order about the restoration of the subject-matter of theft. The Sessions Judge reversed the order of the trial Court on appeal.

*Held*, he was not authorised to do so by S. 520. (*Devadoss, J.*) **SOMU PILLAI v. KRISHNA PILLAI.**

82 I. C. 175 = 20 M. L. W. 521 =  
1924 M. W. N. 806 = 25 Cr. L. J. 1247 =  
A. I. R. 1924 Mad. 899 = 47 M. L. J. 481

—S. 520—Revision.

—Where no appeal has been filed from a conviction by a subordinate Court, the District Magistrate has got jurisdiction to interfere as a Court of revision under S. 510, with an order passed by the trial Court under S. 517. (*Robinson, C. J. and May Oung, J.*) **KING EMPEROR v. NGA PO CHIT.** 74 I. C. 1050 =

1 Rang. 199 = 2 Bur. L. J. 241 =  
24 Cr. L. J. 858 = A. I. R. 1923 Rang. 227.

—S. 520—Suspension.

—The suspension of the order is not a necessary preliminary to the exercise, by the Court of appeal, of the powers conferred by the last words of S. 520. (*Carr, J.*) **SHWE WA v. C. J. MEHTA.** 105 I. C. 452 = 5 Rang. 553 = 28 Cr. L. J. 932 = A. I. R. 1927 Rang. 322.

—S. 522—Appeal and revision.

—An appellate Court has no power to pass an order

**CR. P. CODE (1898), S. 522—Limitation.**

under S. 522 if the trial Court had made no order at all. (39 Cal. 1050 and 48 I. C. 510, Appl.) But under the new Code brought into effect on the 1st September last the High Court under S. 522, sub-clause (3) has in a reference or revision, power to make an order of restoration even though no such order might have been made by the trial or appellate Court. (*Sulaiman, J.*) **LACHMAN v. EMPEROR.** 83 I. C. 910 = 46 All. 92 =

21 A. L. J. 871 = 5 L. R. A. Cr. 11 =  
26 Cr. L. J. 206 = A. I. R. 1924 All. 212.

—A Court of appeal or revision cannot compel the trial Court to pass an order under S. 522 where the latter in the exercise of its discretion, has declined to do so. (39 Cal. 1050 and 14 P. R. (Cr.) 1919. (*Danels, J.*) **AZIZ AHMED v. BUDDHU KHAN.** 73 I. C. 773 = 45 All. 553 = 21 A. L. J. 459 = 4 L. R. A. Cr. 86 = 24 Cr. L. J. 677 = A. I. R. 1924 All. 183.

—S. 522—Applicability.

—Where the accused succeeded in taking possession of the house by means of criminal trespass threatening to use force to the complainant and his men,

*Held*, that their act clearly came under S. 522. (*Jwala Prasad, J.*) **RAMESHWAR SINGH v. EMPEROR.** 91 I. C. 809 = 4 Pat. 438 = 7 P. L. T. 285 = 27 Cr. L. J. 137 = A. I. R. 1925 Pat. 689.

—S. 522—Conviction set aside.

—Where Court convicts accused and orders under S. 522 restoration of property to complainant on his application and where the conviction is subsequently set aside, the accused is entitled to get back the possession even though the equities of the case are in favour of the complainant as conviction alone can sustain an order under S. 522 : 5 P. R. 1895 Cr. (F.B.) and A. I. R. 1923 Lah. 15, Foll. (*Shadi Lal, C. J.*) **RAGHUNATH v. RAGHUNATH SAHAI.** 118 I. C. 392 =

30 Cr. L. J. 902 (Lah.).

—S. 522—Effect.

—Order under, binds only parties and their representatives.

S. 522 of the Cr. P. Code, can only be binding between the parties to the order and can have no finality in favour of one who is not a party and does not claim under a party. (*Ramesam and Venkatasubba Rao, J.J.*) **ADINARAYANA v. SURAMMA.** 86 I. C. 744 =

A. I. R. 1925 Mad. 799 = 48 M. L. J. 372.

—S. 522—Finding of force.

—In the absence of any finding that criminal force was used by an accused person, an order under S. 522 is without jurisdiction. 27 Cal. 174, 16 P. R. Cr. 1919; 26 Mad. 49 and 25 All. 341, Rel on. (*Broadway, J.*) **TEJU SINGH v. EMPEROR.** 104 I. C. 435 =

28 Cr. L. J. 819 = A. I. R. 1927 Lah. 792.

—S. 522—Ingredients of offence.

—Court can make consequential order on finding that complainant was dispossessed by force—Conviction of all accused is not necessary.

There is no reason for putting a narrow construction upon S. 522. S. 522 gives the convicting Court the power to make a consequential order which naturally follows from its findings that the complainant was dispossessed by force. A conviction is undoubtedly necessary in S. 522 but not necessarily the conviction of all the accused. 31 Cal. 691 F. B. and 23 Bom. 494, Foll. 37 All. 654, Dist. (*Madgavkar and Barlee, J.J.*) **GARBAD YADAV VANI, In re.** 1931 Cr. C. 46 =

32 Bom. L. R. 1496.

—S. 522—Limitation.

—The operation of Art. 47 is not confined to orders under Chapter XII of the Cr. P. Code. An order restoring possession under S. 522 is an order respecting the possession of property within the meaning of Art. 47.

**CR. P. CODE (1898), S. 522—Limitation.**

(*Ramesam and Venkatasubba Rao, J.J.*) PAKKI ADINARAYANA v. NAMBURU SURAMMA.

86 I. C. 744 = A. I. R. 1925 Mad. 799 = 48 M. L. J. 372.

**—S. 522—Notice.**

—*Notice is not absolutely necessary for order under S. 522.*

Though in case of an order under S. 522, a notice may be proper and is usually given particularly to third parties—It is not in law necessary absolutely and its absence does not render the order bad, 14 Cr. L. J. 172, Foll. (*Madgavkar and Barlee, J.J.*) *In re* GARBAD YADAV VANI.

1931 Cr. C. 46 = 32 Bom. L. R. 1496.

**—S. 522—Order when justified.**

—*Third person may be dispossessed if Court finds complainant was in possession and was dispossessed by force.*

A third person who was not a party may be dispossessed if the Court finds that possession was in the complainant and the latter was dispossessed by force; *a fortiori* in the case of an accused person who had an opportunity of disproving complainant's possession and proving his own such an order is in law good, 5 C. W. N. 374 Foll. (*Madgavkar and Barlee, J.J.*) GARBAD YADAV VANI, *In re*.

1931 Cr. C. 46 = 32 Bom. L. R. 1496.

**—S. 522—Restoration when justified.**

—*Accused fencing land and preventing complainant by show of force from taking possession—Restoration is justified.* (*Shadi Lal, C.J.*) ALLAH JAWAYA v. EMPEROR.

93 I. C. 895 = 27 Cr. L. J. 495.

**—S. 522—Time for order.**

—*Where appeal was filed against conviction to the 1st class Magistrate, but was dismissed and then a revision was made to the High Court against the conviction which was also dismissed, an order of restoration passed by the High Court within one month of the date of dismissal of revision is valid.* (*Findlay, J.C.*) USMAN MIYA v. AMR MIYA.

99 I. C. 863 = 28 Cr. L. J. 191 = A. I. R. 1927 Nag. 131.

—*An order under the section may be passed by the Courts of appeal, confirmation, reference or revision at any time howsoever long after the conviction by the Magistrate. Thus, where a Magistrate passes an order under S. 522 beyond the prescribed one month, though the order by the Magistrate is illegal, yet it is competent to the High Court as Court of Revision to order the restoration of possession to the person dispossessed.* (*Jwala Prasad, J.*) RAMESHWAR SINGH v. EMPEROR.

91 I. C. 809 = 4 Pat. 438 = 7 P. L. T. 285 = 27 Cr. L. J. 137 = A. I. R. 1925 Pat. 689.

**—S. 522—Trespass in absence.**

—*Order restoring possession cannot be made where trespass is made in absence of complainant.*

An order to restore possession of immovable property under S. 522 can be made only where dispossession was by the use of criminal force as defined in S. 350, I. P.C. It cannot be made in a case where the trespass was committed in the absence of the complainant. 16 P. R. Cr. 1919 Foll. (*Abdul Raof, J.*) MANGIRAM v. EMPEROR.

105 I. C. 676 = 26 P. L. R. 500 = 28 Cr. L. J. 964 = A. I. R. 1927 Lah. 830.

**—S. 522—Vague finding.**

—*Vagueness of finding as to trespass being committed on the day mentioned by complainant vitiates application for possession.* (*Boys, J.*) GOVIND RAM v. NAUBAT.

83 I. C. 719 = 5 L. R. A. Cr. 147 = 26 Cr. L. J. 159 = A. I. R. 1924 All. 762.

**CR. P. CODE (1898), S. 523—Procedure.****—S. 522—Want of criminal force.**

Where the act of trespass on immovable property was not attended by criminal force, or by criminal intimidation.

*Held*, that possession of the property trespassed upon cannot be restored under S. 522. 16 P. R. Cr. 1919, Foll. (*Campbell, J.*) SHERA v. EMPEROR.

100 I. C. 544 = 28 P. L. R. 238 = 28 Cr. L. J. 320 = A. I. R. 1927 Lah. 833.

—*A complaint was filed against the applicants under Ss. 447 and 323 and they were convicted under S. 447 and fined S. 5 each. But the Magistrate disbelieved the story of any beating, and held that only an altercation had taken place. There was, therefore no conviction under S. 323. Later on the complainant filed an application before the Court under S. 522. The Magistrate allowed this application and passed orders directing delivery of possession of the fields to the complainant.*

*Held*, that an essential ingredient of S. 522 is that the offence of which the person concerned is convicted must have been attended by criminal force, or, at the very least, by the show of criminal force and therefore S. 522 did not apply to the case, 25 A. 341, Ref. (*Kanhaiya Lal, J.*) CHUNNI LAL v. BALDEO.

75 I. C. 730 = 21 A. L. J. 593 = 4 L. R. A. Cr. 129 = 25 Cr. L. J. 42 = A. I. R. 1924 All. 84.

**—S. 523—Applicability.**

—*Complaint against a Municipal Councillor—No sanction—Proceedings void—Section in applicable.*

A complaint was made to the District Magistrate against one B to the effect that he being a member of the Municipal Board acquired a share in a contract with the Board. Thereupon, the District Magistrate immediately took cognizance and started an enquiry under Ss. 190 and 202, Cr. P. Code. The account-books of B were taken possession of after a search of the house and examined under the order of the District Magistrate to discover whether the complaint as to his contract with the Municipality contrary to law was correct or not. No sanction of the Local Government was obtained.

*Held*, that the District Magistrate had no jurisdiction whatsoever to take cognizance as he had done. When the law has provided safeguards, there must be some reason for providing them and a Magistrate cannot be permitted to behave as if no safeguards had been provided by law.

*Held* further, that the provisions of S. 523, Cr. P. Code, had no application whatsoever to the case. (*Dalal, J.*) BHAIRON PRASAD v. EMPEROR.

113 I. C. 78 = 9 L. R. A. Cr. 140 = 10 A. I. Cr. R. 450 = 30 Cr. L. J. 62 = 1929 A. L. J. 57 = 51 All. 377 = A. I. R. 1928 All. 756.

—*Period of limitation of six months applies only to the person other than the original possessor.* (*Kennedy, J.C.*) YARU v. EMPEROR.

87 I. C. 968 = 19 S. L. R. 133 = 26 Cr. L. J. 1048 = A. I. R. 1925 Sind. 316.

**—S. 523—Ownership.**

—*There is always a presumption that a person actually in possession of the property is, unless the contrary is shown, the owner thereof.* (*Kennedy, J.C.*) YARU v. EMPEROR.

87 I. C. 968 = 19 S. L. R. 133 = 26 Cr. L. J. 1048 = A. I. R. 1925 Sind. 316.

**—S. 523—Procedure.**

—*Magistrate to whom report is made can dispose of matter—Orders of First Class Magistrate are necessary only when S. 524 applies.*

**CR. P. CODE (1898), S. 523—Procedure.**

Under S. 523 it is the business of the Magistrate himself to whom the report is made to dispose of the matter in the first instance, and it is only when S. 524 applies that the orders of the Sub-Divisional Magistrate or specially empowered First Class Magistrate intervene. (*Kennedy, J.C.*) YARU v. EMPEROR.

87 I. C. 968=19 S. L. R. 133=26 Cr. L. J. 1048=  
A. I. R. 1925 Sind 316.

**—S. 523—Validity of order.**

An order passed by a Magistrate on the police papers alone and not on any enquiry made by him is not necessarily wrong. 9 B. 131, Ref. (*Broadway, J.*) CHUNI LAL v. ISHAR DAS. 73 I. C. 702=4 Lah. 38=  
24 Cr. L. J. 670=A. I. R. 1924 Lah. 76.

**—S. 526.**

**Affidavit by accused.**

**Applicability.**

**Apprehension.**

**Bias.**

**Costs.**

**De novo trial.**

**Duty of Counsel.**

**Duty of Court.**

**Fair trial.**

**Grounds.**

**Interpretation.**

**Powers of High Court.**

**Procedure.**

**Rights of accused.**

**Who can apply.**

**Miscellaneous.**

**—S. 526—Affidavit by accused.**

*—Practice—Allahabad High Court.*

According to the practice approved by the Allahabad High Court, an accused person can legally tender his own affidavit in support of an application for transfer, whether the affidavit is tendered and the application made in a subordinate Court or in the High Court, and he can be prosecuted in regard to any false statement made in the affidavit. (*Boys, J.*) BADDU KHAN v. EMPEROR. 29 Cr. L. J. 336=9 A. I. Cr. R. 91=  
108 I. C. 124=9 L. R. A. Cr. 3=  
A. I. R. 1928 All. 182.

*—Application for transfer of a criminal case—False statements made therein can be basis of a prosecution under Penal Code, S. 193.*

An application for transfer is not a part of the defence of an accused person and statements made by an accused in an affidavit in support of an application for transfer do not enjoy the immunity conferred by S. 342 of the Cr. P. Code, upon answers to questions put to the accused by the Court trying the case. A. I. R. 1922 Lah. 113, Foll., 28 All. 331 and 33 All. 163, Diss. (*Le Rossignol, J.*) MT. ALLAH WASAI v. EMPEROR. 26 Cr. L. J. 1369=89 I. C. 457=  
A. I. R. 1926 Lah. 12.

**—S. 526—Applicability.**

*—S. 526 (8) does not apply to proceedings under S. 145. (Mukerji and Jack, J.J.) JAMIR SHEIK v. MURARI MOHAN CHAUDHURY. 57 Cal. 869=*

*124 I. C. 522=31 Cr. L. J. 698=*

*1929 Cr. C. 522=50 C. L. J. 331=*

*34 C. W. N. 59=A. I. R. 1929 Cal. 778.*

*—Although a "case" in Cl. 8, S. 526, includes a proceeding under S. 145, a party in a proceeding under S. 145 cannot apply for adjournment under Cl. (8). S. 526. (Mullick and Scroope, J.J.) LOKA MAHTON v. KALI SINGH. 6 Pat. 553=8 P. L. T. 716=*

*28 Cr. L. J. 1035=106 I. C. 219=*

*A. I. R. 1927 Pat. 351.*

*—"Inquiry or trial" do not apply to transfer pro-*

**CR. P. CODE (1898), S. 526—Apprehension—Consultation with superiors.**

*ceedings pending before District Judge.*

The reference in Cl. (8) to "inquiry or trial" is intended to apply to those inquiries or trials which are specially referred to in the earlier portion of the Code and the words do not apply to transfer proceedings pending before the District Judge. (*Mullick and Kulwant, J.J.*) MUHAMMAD SHARIF v. HARI PRASAD LAL. 5 Pat. 229=97 I. C. 974=8 P. L. T. 66=  
27 Cr. L. J. 1214=A. I. R. 1927 Pat. 59.

*—Proceedings under S. 145 cannot be transferred.*

S. 526 does not empower a High Court to transfer proceedings under S. 145 of the Code as such proceedings cannot be described as a criminal case which means a case in which a person is accused of an offence. (*Martineau, J.*) NARAIN SINGH v. GANDHARV RAJ. 76 I. C. 868=25 Cr. L. J. 276=  
A. I. R. 1925 Lah. 48.

*—S. 526 of the Cr. P. Code, which clothes the High Court with power to transfer any case from any file to any other file, controls S. 195 (3) and Ss. 476-A and 476-B of the Code. The Court to which an appeal against an order refusing or granting a sanction for prosecution is transferred is invested with all the powers of the ordinary Court of Appeal or revision for hearing the particular appeal or revision against the order under S. 195, of the Code and can grant or refuse sanction or proceed under S. 476. (Kinkhede, A. J. C.) BU-DHABAI v. ALIBHAI. 86 I. C. 428=26 Cr. L. J. 796=  
A. I. R. 1925 Nag. 358.*

*—Applies to enquiries under Workman's Breach of Contract Act (XIII of 1859).*

An enquiry under the Act, XIII of 1859 is an enquiry by a Magistrate or a Criminal Code within S. 6, Cr. P. Code and although the object of the enquiry is merely to issue coercive orders and if necessary to enforce the same by a sentence of imprisonment, there is nothing to show that such an enquiry is excluded from the operation of S. 526, Cr. P. Code. The definition of "enquiry" given in S. 4, cl. (k) which includes every enquiry other than a trial conducted under the Code of Criminal Procedure by a Magistrate or a Court is not exhaustive so as to exclude an enquiry under the Workman's Breach of Contract Act of the nature above referred to. (*Kanhaiya Lal, J.*) BANSI v. LAKSHMI DAS. 75 I. C. 984=45 All. 700=  
21 A. L. J. 619=4 L. R. A. Cr. 140=  
25 Cr. L. J. 72=A. I. R. 1924 All. 76.

*—Power of transfer exists even in the case of proceedings under S. 145, Cr. P. Code. (11 O.C. 61, Foll. 34 A. 533; 26 M. 188 Ref.; 25 B. 279. Ref.) (Simpson, A. J. C.) MUHAMMAD NAGI KHAN v. RANI RAHAMATUNNISA. 76 I. C. 562=25 Cr. L. J. 194=  
A. I. R. 1923 Oudh 161.*

**—S. 526—Apprehension—Condition of accused.**

*—The state of mind of the accused with whom the Magistrate had grown angry in a case will be taken into consideration while deciding upon an application for transfer made by him in another case if he is an ignorant villager who would be frightened by the Magistrate being angry with him in one case and would believe that in another case the Magistrate would be for that reason prejudiced against him and not where he is well experienced in the art of litigation. (Dulal, J.) BAQRIDU v. EMPEROR. 125 I. C. 32=  
31 Cr. L. J. 764=1930 Cr. C. 739=  
A. I. R. 1930 All. 495.*

**—S. 526—Apprehension—Consultation with superiors.**

*—Act forms a ground for transfer.*

*Where a Magistrate before disposing of a bail appli-*

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cation consulted the District Magistrate and refused the application as advised by the latter :

*Held*, that though both the Subordinate Magistrate in consulting the District Magistrate and the latter in advising him in connexion with the orders to be passed on the bail application, may have acted with the best of intentions, it cannot be denied that such action on their part was wholly unjustified and was certainly calculated to raise a reasonable apprehension in the mind of the petitioner that he will not have a fair trial. (*Sargeant v. Dale*, (1877) 2 Q. B. D. 558, Ref. (*Tek Chand, J.*) *CHIRANJI LAL v. CROWN*. 9 Lah. 537=29 Cr. L. J. 815=111 I. C. 319=A. I. R. 1928 Lah. 1.

**—S. 526—Apprehension—Existence of.**

Ground for transfer is not to be decided in abstract—What is to be determined is whether Magistrate behaved so as to give legitimate ground for fear of impartial trial. (*Dalal, J.*) *GHASSOO v. EMPEROR*. 1930 A. L. J. 606=123 I. C. 685=31 Cr. L. J. 555=1930 Cr. C. 993=A. I. R. 1930 All. 737.

It is not necessary for a petitioner to establish that the Magistrate is actually prejudiced against him. All that he need prove is that the conduct of the trial by the Magistrate has been such as to cause a reasonable apprehension in the mind of the accused that he will not receive a fair trial. (*Jai Lal, J.*) *KANWAR SEN v. EMPEROR*. 109 I. C. 812=10 A. I. Cr. R. 351=29 Cr. L. J. 620 (Lah.).

In order to decide the advisability of transfer, the question is not whether the belief that the applicant would not get justice is reasonable or unreasonable but whether it exists or not, though the only way of deciding whether it exists or not is to see whether it might reasonably be expected to exist in a person of the standard of intelligence and honesty common in the class to which the accused belongs. A. I. R. 1926 Nag. 448, Foll. (*Prideaux, A. J. C.*) *JAIRAM SINGH v. EMPEROR*. 28 Cr. L. J. 188=99 I. C. 860=A. I. R. 1927 Nag. 384.

In an application for transfer what has to be established is a belief in the mind of the accused person that his case will not be fairly tried. (*Hallifax, A. J. C.*) *MAHARAJ SINGH GOND v. EMPEROR*. 27 Cr. L. J. 1062=97 I. C. 38=A. I. R. 1927 Nag. 48.

**—Principle explained.**

It is not sufficient for the applicant for transfer merely to allege that he would not get an impartial trial, but he must place before the Court the facts which gave rise to this belief in his mind. The Court should not make an order for transfer unless it is satisfied that on the facts disclosed in the application and affidavit there arises a reasonable apprehension that the applicant may not have a fair and impartial trial. But at the same time what the Court has to consider is not merely the question whether there has been any real bias in the mind of the presiding Judge against the applicant, but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the judge, are nevertheless such as are calculated to create in the mind of the applicant a justifiable apprehension that he would not have an impartial trial. The law has regard not so much to the motive which might be supposed to bias the Judge, as to the susceptibilities of the litigant parties. One important object is to clear away every thing which might engender suspicion and distrust of the

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tribunal, and so to promote the feeling of confidence in the administration of justice which is essential to social order and security. (*Surgent v. Dale* (1877) 2 Q. B. D. 558, Ref. (*Shadi Lal, C. J.*) *AMAR SINGH v. SADHU SINGH*. 6 Lah. 396=7 L. L. J. 241=26 P. L. R. 273=26 Cr. L. J. 853=86 I. C. 709=A. I. R. 1925 Lah. 361.

*—Fear of outside influence.*  
Where the accused had reason for apprehending that influences outside the Court might bear upon the course of their trial, and where the Trying Magistrate recording the evidence of the identification witness slurred over the uncertainty and hesitation of the witness.

*Held*, that the case should be transferred. (*Foster J.*) *RABINDRA NATH SINGH v. EMPEROR*. 84 I. C. 441=26 Cr. L. J. 297=A. I. R. 1925 Pat. 339.

*—General rule can't be laid down.*  
It is difficult to lay down any hard and fast rule under which transfer is made, for the circumstances of one case might differ from those of the other but the principles under the decisions of the various cases go to establish that if there are circumstances in a case which raise a reasonable apprehension in the mind of an accused person that he would not receive fair dealings at his trial the case should be transferred to a calmer atmosphere. (*Jwala Prasad, J.*) *BINODE BEHARY v. EMPEROR*. 81 I. C. 78=5 P. L. T. 63=2 Pat. L. R. Cr. 69=25 Cr. L. J. 590=A. I. R. 1925 Pat. 115.

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Where cross-examination by Magistrate on question suggested by Public Prosecutor after defence cross-examination arouses suspicion in mind of accused—Case should be transferred. (*Jafar Ali, J.*) *HAFIZULLAH v. EMPEROR*. 124 I. C. 688=31 Cr. L. J. 736=1930 Cr. C. 181=A. I. R. 1930 Lah. 173.

Where it appeared (i) that during the course of trial the Magistrate, in contravention of the rule that the Magistrates are not expected to receive private communications either from the parties or their counsel received a letter from the witness for defence calculated to create a reasonable apprehension in the mind of the petitioner that he was a friend of the Magistrate; (ii) that the witnesses of the petitioner were treated in a manner different from that in which witnesses of the opposite party were treated; (iii) that Magistrate while complying with the prayer for postponement as the petitioner wanted to move for transfer to another Court passed an illegal order imposing condition when he had not discretion but to postpone.

*Held*, that a strong ground was made out for transfer. (*Jai Lal, J.*) *DAYAWANTI v. BETANAND*. 119 I. C. 327=30 P. L. R. 657=30 Cr. L. J. 1048=1929 Cr. C. 216=A. I. R. 1929 Lah. 702.

Magistrate conducting a trial on a gazetted public holiday in compliance with the request of a police officer constitutes sufficient ground for the case being transferred. (*Zafar Ali, J.*) *RAM DIVA v. EMPEROR*. 107 I. C. 779=29 Cr. L. J. 294=10 A. I. Cr. R. 22=A. I. R. 1928 Lah. 334.

It is not proper for a Magistrate to frequently cross-examine prosecution witnesses or disallow questions which the complainant may desire to put to the defence witnesses for the purpose of showing their partiality but if the Magistrate acts in such a manner the complainant cannot thereby be held to have reason

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to apprehend (I. : the Magistrate will not give a fair trial to his case. (*Wazir Hasan, A. J. C.*) **ABDUL AZIZ v. GANESH PRASAD.** 82 I. C. 49 =

25 Cr. L. J. 1185 = A. I. R. 1925 Oudh 52. —S. 526—Apprehension—Grounds for.

Request to have access to papers seized by police disallowed unreasonably—Trying Magistrate demanding heavy bail—Sufficient reasons to create apprehension. (*Bhide, J.*) **DINA NATH v. EMPEROR.**

123 I. C. 534 = 31 Cr. L. J. 532 = 1929 Cr. C. 636 = A. I. R. 1929 Lah. 860.

Copies of statements recorded under S. 164 not given to accused's counsel—Copies of statements recorded under S. 162 applied at beginning of cross-examination but not immediately supplied—Magistrate ordering accused's counsel to start cross-examination at 4-15 p.m. of witness whose chief examination lasted for whole day—These incidents gave reasonable apprehension in accused's mind that they may not have fair trial and justified transfer of case. A. I. R. 1925 Lah. 361, Foll. (*Skemp, J.*) **GHULAM NABI v. EMPEROR.**

117 I. C. 377 = 30 Cr. L. J. 760 = A. I. R. 1929 Lah. 429.

Where the Magistrate deliberately refused to give accused facilities to the applicant to prosecute his civil suit connected with the same facts, and while examining him under S. 342 put questions by way of cross-examination and did not allow accused to add to his statement when shown to him under S. 364, it was likely that the circumstances would give rise in accused's mind to reasonable apprehension that he would not get fair trial, so as to justify transfer of the case. A. I. R. 1923 Lah. 264 and A. I. R. 1925 Lah. 361, Rel. on. (*Bhide, J.*) **FAQIR SINGH v. EMPEROR.**

110 I. C. 801 = 10 Lah. 223 = 30 P. L. R. 385 = 11 A. I. Cr. R. 1 = 29 Cr. L. J. 769 =

A. I. R. 1929 Lah. 382.

**Cumulative effect to be considered.**

It is not necessary, when supporting an application for transfer, to establish that there is any actual bias in the mind of the Magistrate concerned. It is the cumulative effect likely to be produced on the mind of an ordinary reasonable accused person that has to be seen. The question whether sufficient grounds are made out for a transfer is often a matter of opinion and depends on inferences to be drawn from facts that have happened. (*Sulaiman, Ag. C. J. and Dalal and Mukerji, J.J.*) **THREE VAKILS OF JHANSI, In the matter of.**

26 A. L. J. 1250 = 110 I. C. 686 = 29 Cr. L. J. 750 = A. I. R. 1928 All. 396

Complainant exempted from personal appearance on certain dates, while accused ordered to furnish bail on his coming late on account of the missing of the train—This does not amount to a sufficient ground for transfer. (*Tek Chand, J.*) **HARI KRISHEN DAS v. EMPEROR.** 29 P. L. R. 667 = 29 Cr. L. J. 867 =

11 A. I. Cr. R. 200 = 111 I. C. 451 = A. I. R. 1928 Lah. 757.

When the entire evidence in the case has been recorded and the case has been argued by the respective parties, and the only thing that remains to be done is for the Magistrate to pronounce his judgment the expression of opinion by him at this stage that the petitioner had taken a prominent part in the affair is not a reason to apprehend that the Magistrate has prejudged the case against the petitioner. (*Jai Lal, J.*) **TEKCHAND v. EMPEROR.** 108 I. C. 608 = 29 Cr. L. J. 429 =

10 A. I. Cr. R. 144 (Lah.).

**Hospitality of complainant's son.**

Although Magistrate receives hospitality in ignorance

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of the fact that his host is the son of the complainant, it would naturally raise a reasonable apprehension in the mind of the accused that they would not have a fair trial in the Magistrate's Court, and a transfer should be ordered. (*Fforde, J.*) **NARAIN SINGH v. EMPEROR.**

27 Cr. L. J. 565 = 94 I. C. 133 = A. I. R. 1926 Lah. 347.

**Expression of distinct opinion.**

Where the trying Magistrate had expressed a distinct opinion in his order in a previous case that the applicant was guilty of abetting the accused in that previous case who were servants, held there was ample ground for a reasonable apprehension that appellant would not receive impartial trial. (*Findlay, Offg. J. C.*) **VISHWANATH PRASAD v. EMPEROR.** 27 Cr. L. J. 210 =

92 I. C. 162 = A. I. R. 1926 Nag. 98.

**Fear of superior officer's influence.**

The fear in the accused's mind that a Deputy Magistrate making an enquiry prior to commitment would be influenced by the opinion, as to the guilt of the accused, of the District Magistrate formed in the extra-judicial inquiry as to the collection of evidence and to the proper conduct of the prosecution and that he would not get justice in the Court of the Deputy Magistrate is not a sufficient ground to transfer the inquiry to another Magistrate. (*Dalal, J. C.*) **UMA NATH SUKLA v. EMPEROR.** 93 I. C. 1047 = 2 O. W. N. 847 =

27 Cr. L. J. 551 = A. I. R. 1925 Oudh 731.

**Magistrate's attempt to compromise case can reasonably cause suspicion of partiality.**

A natural suspicion can arise in the minds of parties and the case should be transferred on the application of one of the parties where the Magistrate has made an attempt to have the case compromised because what the Court has to consider in a question of transfer is not alone the question whether the Presiding Magistrate has really any bias in his mind against the applicant for transfer but also whether the applicant for transfer may reasonably have entertained an apprehension of partiality on the part of the Magistrate in view of any incidents which may have happened, though such incidents are capable of explanation and may be altogether independent in their origin of any actual bias in the Magistrate's mind: 35 All. 5 Foll. (*Dalal, A. J. C.*) **GAYA CHARAN MISRA v. KUNWAR BHADUR.**

81 I. C. 58 = 25 Cr. L. J. 570 = A. I. R. 1925 Oudh 179.

If the Magistrate makes observations which go to show that he is not favourable to the prosecution, complainant has cause for reasonable apprehension in his mind that the case is not being tried in a fair way, and there is sufficient ground to order transfer of the case. (*Kulwant Sahay, J.*) **SHEODHARI RAI v. JHINGUR RAI.** 88 I. C. 993 = 7 P. L. T. 49 =

26 Cr. L. J. 1249 = A. I. R. 1925 Pat. 818.

**Criminal trial—The real question.**

In regard to a petition to transfer a case from one Magistrate to another the question to be considered is whether it is possible from the accused's point of view, to say that his apprehension is not reasonable. Where it was alleged that the complainant was closely associated with the Magistrate's brother in electioneering work and the Magistrate himself was assisting his brother in electioneering, held, that under the circumstances the accused's apprehension of unconscious injustice was not unreasonable, held further that no slur was thereby cast on the Magistrate. (*Sanderson, C. J. and Cuming, J.*) **PULIN BEHARI DAY v. ASHUTOSH GHOSH.** 81 I. C. 560 = 39 C. L. J. 330 =

25 Cr. L. J. 944 = A. I. R. 1924 Cal. 981.



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—An erroneous view of the law is not a reasonable ground for apprehension that the case will not be properly tried. (*Kulwant Sahay, J.*) NANDA KISHORE MISRA *v.* KALIKA MISRA. 77 I. C. 810 = 5 P. L. T. 487 = 1924 P. H. C. C. 196 = 25 Cr. L. J. 458 = A. I. R. 1924 Pat. 695.

**—S. 526—Apprehension—Immaterial.**

—*Criterion for transfer.*

The criterion for a transfer under Cl. (1) (a), S. 526, is that the High Court must be of opinion that the applicant will not receive a fair and impartial trial in the Court below. The mere fact that the applicant entertains an absolutely unreasonable belief that he will not have a fair trial would not be sufficient to order a transfer under Cl. (e), S. 526 (1), Cr. P. Code. A. I. R. 1926 Nag. 448, Doubt. (*Findlay, J. C.*) PANDU RANG KRISHNAJI *v.* EMPEROR. 105 I. C. 226 = 10 N. L. J. 184 = 28 Cr. L. J. 898 = 9 A. I. Cr. R. 49 = A. I. R. 1928 Nag. 21.

—It is not sufficient to found an application for transfer that the applicant is apprehensive that he will not get a fair trial. No Court ought to interfere by an order for transfer unless it is satisfied by clear and unimpeachable evidence that the Court, or the individual, from whom it is proposed to transfer the case, has by some personal conduct rendered himself unfit, or unlikely to give the accused a fair trial. Subject to that salutary provision local people must take the local Courts as they find them. (*Walsh, Ag. C. J.*) RAZA HUSAIN *v.* EMPEROR. 99 I. C. 105 = 8 L. R. A. Cr. 17 = 28 Cr. L. J. 73 = 7 A. I. Cr. R. 149 = A. I. R. 1927 All. 184.

**—S. 526—Apprehension—Influence.**

—Where the accused suspected that the whole atmosphere in the place of trial was against him and was afraid that the local authorities would influence the Magistrate in prejudicing his mind against the accused, *Held*, that a good ground for transfer was made out. (*Kinkhede, A. J. C.*) ANANT WASUDEO CHANDIKAR *v.* KING-EMPEROR. 83 I. C. 723 = 7 N. L. J. 155 = 26 Cr. L. J. 163 = A. I. R. 1924 Nag. 243.

**—S. 526—Apprehension—Possibility of.**

—*In cases of doubt of personal impartiality of the Judge or where his acts and orders create reasonable apprehension in accused, transfer should be granted but not otherwise.*

Where any doubt can be shown as regards the personal impartiality of the presiding Judge of the Court, a transfer should immediately be granted; but where no such personal grounds can be shown a transfer should only be granted when the Magistrate has shown by his acts or orders that there is a possibility that he may be prejudiced against the accused or, at any rate, that the accused might have a reasonable apprehension that he is so prejudiced. Such an apprehension should not arise from the ordinary acts of a Magistrate performed in the course of a case. During the conduct of a protracted trial it necessarily happens that many points arise upon which the Magistrate has to give a decision, and the fact that he makes a decision against the accused is not sufficient to warrant any apprehension of impartiality if the order is passed in good faith and the reasons for the order are duly stated. 10 N. L. R. 15; A. I. R. 1926 Nag. 448; 23 Cal. 499; 19 All. 64; 10 C. W. N. 441; 1 N. L. R. 134; 2 Q. B. D. 558, Ref. (*Staples, A. J. C.*) K. FASUDDIN *v.* EMPEROR. 117 I. C. 213 = 30 Cr. L. J. 728 = 1929 Cr. C. 47 = A. I. R. 1929 Nag. 172.

**—S. 526—Apprehension—Reasonableness of.**

—*Where susceptibilities of accused are moved by*

**CR. P. CODE (1898), S. 526—Apprehension—Reasonableness of.**

*fact that Magistrate has outside knowledge of proceedings, case should be transferred.*

A Judge or Magistrate having outside knowledge in respect of matters which form the subject-matter of the proceedings before him and having such knowledge from outside the Court before the actual hearing of these proceedings commences is in a position of embarrassment in dealing with the case. The question is not in these cases as to whether the Magistrate having such outside knowledge will utilise that knowledge for the purpose of decision in the case but the question is whether there can be any reasonable apprehension in the minds of the accused persons that the Magistrate having the outside knowledge before him may not be betrayed by it into taking a view which the evidence might not support. Where the susceptibilities of the accused persons are reasonably moved by the reason of the fact that the Magistrate has outside knowledge not based on evidence on record, the case should be transferred from him: *Sergeant v. Dale*, 2 Q. B. D. 558; 20 Cal. 857 and 23 Cal. 495, Ref. (*Mitter and S. K. Ghose, J. J.*) SATINDRA NATH *v.* EMPEROR. 125 I. C. 275 = 31 Cr. L. J. 805 = 1929 Cr. C. 597 = A. I. R. 1929 Cal. 809.

—In dealing with an application for transfer what the Court has to consider is not so much the question whether there has been any real bias in the mind of the presiding Judge against the applicant, but it is the question whether by the remarks of the Judge a reasonable apprehension is created in the mind of the applicant that he would not have an impartial trial; A. I. R. 1925 Lah. 361, Foll. (*Jai Lal, J.*) SIKANDARLAL PURI *v.* EMPEROR. 113 I. C. 321 = 10 Lah. 778 = 12 A. I. Cr. R. 96 = 30 Cr. L. J. 129 = A. I. R. 1928 Lah. 975.

—*Bona fide apprehension by reasonable man that accused will not receive fair trial is sufficient ground—Magistrate convicting other persons on similar evidence is no ground.*

The policy of law is to inspire confidence in the minds of the accused persons in the administration of justice and in the integrity of the Magistracy. The superior Courts are expected to have due regard to the susceptibilities of the accused persons and if they are satisfied that there are reasonable grounds, that is, grounds which a reasonable person placed in the position of an accused person considers to be sufficient for entertaining apprehension that the accused will not have a fair trial in the Court of the Magistrate then an order for transfer should be made. The mere fact that the Magistrate has on a previous occasion tried other cases against other accused on similar evidence and convicted them is no ground for transfer. A. I. R. 1924 Lah. 257 and 4 C. W. N. 824, Dist.; 33 All. 583; 31 Cal. 715 and 36 Cal. 104, Foll. (*Jai Lal, J.*) AMAR NATH *v.* EMPEROR. 29 Cr. L. J. 295 = 107 I. C. 788 = A. I. R. 1928 Lah. 460.

—Whether apprehensions of the accused are true or not, it is not for the appellate Court to decide; it is enough for the transfer of the case if he has reasonable ground for such an apprehension. (*Jwala Prasad and Ross, J. J.*) CHHANU PRASAD SINGH *v.* EMPEROR. 107 I. C. 160 = 9 A. I. Cr. R. 486 = 29 Cr. L. J. 229 (Pat).

—*Question to be considered is whether accused reasonably thinks that he would not have a fair trial.*

In a dealing with applications for transfer, the High Court has to consider not whether any real bias exists in the mind of the presiding Judge against the accused, but the question is whether circumstances do not exist which

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though they may be susceptible of explanation, are nevertheless calculated to create in the minds of the accused a reasonable apprehension that they would not have a fair and impartial trial. In determining whether the apprehension is reasonable or not the Court has not to come to a conclusion on abstract principles but has to bear in mind the degree of intelligence of the accused. *Sergeant v. Dale*, (1877) 2 Q. B. D. 558 and *The King v. Sussex Justices ex parte Mc. Carthy*, (1924) 1 K. B. 256, Foll.; A. I. R. 1923 Lah. 264; A. I. R. 1925 Lah. 361 and Lah. Cr. M. 8 of 1926, Ref. Where the accused had a reasonable belief that they had by various acts of theirs incurred the displeasure of the District Magistrate and other local authorities, and that they would not have a fair and impartial trial in that district and the belief was strengthened by the fact that the Superintendent of Police conferred with the District Magistrate with regard to their cases before the prosecutions were actually launched and there was the further circumstance that legal practitioners at the place evaded taking up the cases of accused.

*Held*, that the cases of accused ought to be transferred. (*Tek Chand, J.*) **MUTSADI LAL v. EMPEROR.**

28 Cr. L. J. 787 = 104 I. C. 227 =  
A. I. R. 1927 Lah. 709.

—*Immaterial—Allegation must be examined and found true.*

If an accused person does in fact believe that he will not have a fair and impartial trial in a certain tribunal, it is in the last degree inexpedient that he should be tried by it and the case must be transferred, unless that is impossible, however high the certainty of the impartiality of that tribunal may be in the minds of all right-thinking men, and however discreditable to him the existence of that belief in his mind may be. But the allegation of the accused, like any other, must be examined and found true before it can be accepted. The question is not whether the belief is reasonable or unreasonable but whether it exists or not though the only way of deciding whether it exists or not is to see whether it might reasonably be expected to exist in a person of the standards of intelligence and honest common in the class to which the accused belongs. 10 N. L. R. 15, Not. Appr. (*Halifax, A. J. C.*) **ABDULLA v. EMPEROR.**

22 N. L. R. 99 = 27 Cr. L. J. 835 = 95 I. C. 755 =  
A. I. R. 1926 Nag. 448.

—*Accused's degree of intelligence important factor.*

It is of the utmost importance that persons arraigned before the Court should have confidence in the impartiality of the Court and if a person has a reasonable cause to apprehend that the Court before whom he is being tried is not completely free from bias, a transfer should be directed. In deciding what is reasonable cause, regard must be had not so much to the motives which might be supposed to bias the judge as to susceptibility of the parties. Hence the degree of intelligence possessed by an accused who applies for transfer must be taken into consideration while deciding his application. If the actions of the Judge though capable of being explained and though traceable to a superior sense of duty are calculated to create in the mind of the accused an apprehension that he may not have an impartial trial the case should be transferred to some other Judge for trial. (*Moti Sagar, J.*) **AHMAT DIN v. EMPEROR.**

25 Cr. L. J. 638 = 81 I. C. 126 = A. I. R. 1925 Lah. 101.

—**S. 526—Apprehension—Strong language.**

—Use of strong language by Court is never calculated to satisfy the litigant public before it. An officer is sometimes bound to feel strongly on particular occasions, but as soon as he expresses himself strongly, he

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gives himself away and if he raises by his language, an apprehension in the mind of a party that the Officer is prejudiced the officer has only himself to thank. Besides a calm state of mind is absolutely essential for the disposal of all cases whether civil or criminal. (*Mukerji, J.*) **MUHAMMAD AKBAR v. EMPEROR.**

47 All. 288 = 23 A. L. J. 133 = 26 Cr. L. J. 538 =  
6 L. R. A. Cr. 57 = 85 I. C. 378 = A. I. R. 1925 All. 283.  
—**S. 526—Bias.**

—The exercise by the Magistrate of the discretion vested in him by law in granting bail is no proof of bias on his part. (*Kincaid, J. C.*) **JUMO v. EMPEROR.**

95 I. C. 939 = 20 S. L. R. 136 = 27 Cr. L. J. 859 =  
A. I. R. 1926 Sind 257.

—Refusal to grant an application for a gun license put in after the expiration of the usual season for the granting of gun licenses is no evidence of bias. (*Foster, J.*) **RABINDRA NATH v. EMPEROR.**

84 I. C. 441 =

26 Cr. L. J. 297 = A. I. R. 1925 Pat. 339.

—**S. 526—Costs.**

—Where an application for the transfer of a case has been made to the High Court and has been thrown out on the ground that it is frivolous or vexatious, the Local Government opposing the application is entitled to recover its costs from the applicants. (*Boys, King and Sen, J.J.*) **EMPEROR v. KANVER SEN.**

123 I. C. 330 = 1930 A. L. J. 209 = 52 All. 263 =  
1930 Cr. C. 319 = 31 Cr. L. J. 485 =

A. I. R. 1930 All. 206 (F.B.).

—There is not and there cannot be a cast iron rule that the Crown neither pays nor receives costs. Exceptions may be grafted upon this rule by local statute. The peculiar circumstances of a case may also necessitate a departure from the said rule. *Johnson v. Reg.* (1904) A. C. 817, Rel. on.; 36 Mad. 601, (P. C.) Ref. (*Boys, King and Sen, J.J.*) **EMPEROR v. KANVER SEN.**

123 I. C. 330 = 1930 A. L. J. 209 = 52 All. 263 =  
1930 Cr. C. 319 = 31 Cr. L. J. 485 =

A. I. R. 1930 All. 206 (F.B.).

—**S. 526—De Novo trial.**

—The District Magistrate cannot impose, without the consent of the accused while transferring a case, a condition that there would be no *de novo* trial, the right being recognized by S. 350 (1). (*Jai Lal, J.*) **GOWARDHAN DAS v. ABBAS ALI.**

1930 Cr. C. 176 =  
121 I. C. 374 = 31 Cr. L. J. 257 =  
A. I. R. 1930 Lah. 168.

—*Order for retrial from the stage of irregularity—Counsel's consent.*

Convictions of certain accused were set aside on appeal on the ground that provisions of S. 342 had not been complied with, and re-trial was ordered from the place where the irregularity had occurred. The accused prayed for transfer on the ground that as they had no further statement or evidence to offer it was a foregone conclusion that the Magistrate would convict them, again.

*Held*, that no general rule could be laid down for such cases but as the counsel for petitioner had said that the accused would not demand a *de novo* trial which otherwise they could claim, the case could be transferred to another Magistrate who was to take up the trial from the place where the irregularity had occurred. (*Dalip Singh, J.*) **TEJ MUHAMMAD v. EMPEROR.**

124 I. C. 679 = 31 Cr. L. J. 727 = 1930 Cr. C. 161 =  
A. I. R. 1930 Lah. 153.

—The trial Magistrate committed an illegality vitiating the trial. Further many of the witnesses both of the prosecution as also of the accused were examined after the illegality happened. The Magistrate had considered all the evidence and expressed his opinion on it.

**CR. P. CODE (1898), S. 526—De Novo trial.**

*Held*, that it would be proper to order a *de novo* trial by another Magistrate. (*Mirsa and Patkar, J.J.*)  
**EMPEROR v. LAXMAN RAMSHET ALWE.**

31 Bom. L. R. 593 = 53 Bom. 578 =  
 1929 Cr. C. 130 = 121 I. C. 588 = 31 Cr. L. J. 309 =  
 A. I. R. 1929 Bom. 309.

—Sessions Judge hearing appeal from a conviction on a complaint made by him under S. 476-A—Practice explained.

A witness made two conflicting statements in a trial before a Sessions Judge who made a complaint to the District Magistrate stating that the second of the two statements was false, the Magistrate framed a charge in respect of the second statement only and convicted the accused: On appeal which was heard by the same Sessions Judge, re-trial was ordered.

*Held*, that the accused is entitled to a decision from a Judge who approaches his case with an open mind; and that the proceedings should be quashed on the ground that the complainant and the appellate Court were one and the same and it would not be illegal but most inadvisable to submit the accused to a fresh trial because of the initial mistake of the Court in not framing the charge in the alternative and the principle of *nemo debet bis vexari* applies in the spirit if not in the letter. (*Harrison, J.*) **SAL v. EMPEROR.**

8 Lah. 496 = 28 P. L. R. 688 = 106 I. C. 342 =  
 29 Cr. L. J. 6 = A. I. R. 1927 Lah. 671.

—Case remanded by appellate Court for re-trial need not necessarily be transferred to another Magistrate.

It is not a general rule that when a case is remanded by the appellate Court for re-trial, it should always be sent to a different-Magistrate to the one who held the trial originally, merely on the ground that the former Magistrate having already expressed an opinion against the accused when convicting him the latter has a reasonable apprehension that he will not have a fair trial in the Court of that Magistrate. A.I.R. 1926 Cal. 1178, Dist. (*Jai Lal, J.*) **MAHOMED SHOFI v. EMPEROR.**

28 Cr. L. J. 647 = 103 I. C. 103 =  
 A. I. R. 1927 Lah. 546.

—Re-trial—Order after quashing conviction—Re-trial by another Magistrate is advisable.

Where accused have once been convicted and the conviction is upset by superior Court and re-trial ordered, unless it is impossible to get a Magistrate other than the one who has already convicted the accused or unless there be circumstances which would necessitate the trial of the same case before the same Magistrate over again, it is desirable that the trial should not be held before the same Magistrate. (*Rankin and Mukerjee, J.J.*) **BALI RAM KALWAR v. SITARAM KALWAR.**

30 C. W. N. 1002 = 27 Cr. L. J. 1188 = 97 I. C. 948 =  
 A. I. R. 1926 Cal. 1173.

**—S. 526—Duty of Counsel.**

—Statements of clients should be tested by pleader.

Although it is perfectly true in one sense that a legal adviser must accept statements of fact from his client yet in applications for transfer statements imputing prejudice or unfairness or corruption to Magistrates should not be made unless the statements of the client as tested by the adviser are found sustainable, unless they are found to be corroborated and unless adviser has taken some steps not necessarily to pledge himself for his client's veracity but such as to give him, as a reasonable man, ground for belief that the statements at any rate are such as should be properly investigated. The duty of the legal profession is a very serious one both with regard to applications of this kind and also in respect of pleadings. An application for transfer draf-

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ted by mukhtar contained a statement which would have been considered as a statement that there was such a relationship between the Magistrate and the person who was mentioned as having visited him. as to make it undesirable that Magistrate should sit and try a case in which the interests of that person were adversely affected. The statement was found to be totally unfounded and untrue.

*Held*, that the mukhtar was guilty of professional misconduct. (*Courtney-Terrell, C. J., Ross and Kulwant Sahay, J.J.*) **S. MUKHTAR, MADHEPURA. In the matter of.**

116 I. C. 762 = 8 Pat. 575 =

10 P. L. T. 711 = A. I. R. 1929 Pat. 151 (F. B.).

—Although every application for adjournment for the purpose of a transfer indirectly implies that there is a belief in the mind of the accused person that he would not have a fair trial, an application for adjournment under S. 526 does not always amount to an allegation of partiality made by the accused's vakil against the trying Magistrate. If an application is made in good faith, the mere fact that it turns out subsequently that there are not sufficient grounds for transfer would not lead to a necessary inference that there was misconduct on the part of the practitioners who were responsible for such an application. A.I.R. 1924 All. 253, Dist. (*Sulaiman, Ag. C. J., Dhal and Mukerji, J.J.*) *In the matter of THREE VAKILS OF JHANSI.*

26 A. L. J. 1250 = 110 I. C. 686 = 29 Cr. L. J. 750 =  
 A. I. R. 1928 All. 396. (S. B.).

**—S. 526—Duty of Court.**

—Section is mandatory—Deviation makes proceedings illegal.

S. 526 (8) embodies a statutory mandate which Courts ought to respect and obey and consequently if subsequent to an application under that section the Magistrate without granting adjournment proceeds with the case, the trial becomes illegal and not merely irregular and curable under S. 537. A.I.R. 1924 All. 533; A.I.R. 1928 All. 660 and A.I.R. 1928 All. 268, Rel. on. (*Sen, J.*) **LUTTUR v. EMPEROR.** 124 I. C. 17 = 31 Cr. L. J. 590 = 1930 A. L. J. 547 = 1930 Cr. C. 375 =

A. I. R. 1930 All. 263.

—Where a rule of law is absolute in terms, the said rule has got to be observed and duly given effect to, and it is no province of a Magistrate to deviate from the said rule. (*Sen, J.*) **LUTTUR v. EMPEROR.** 1930 A. L. J. 547 = 124 I. C. 17 = 31 Cr. L. J. 590 = 1930 Cr. C. 375 = A. I. R. 1930 All. 263.

—Magistrate apprised of the transfer application at a late stage—Order stating that he refrained from further proceedings, but cancelling bail bonds—Case fit for transfer.

Where an accused applied for transfer of his case to the High Court without informing the trying Magistrate and where the Magistrate examined a number of witnesses for the prosecution and examined the accused and the accused in answer to one of the questions disclosed that he had applied for transfer and the Magistrate made an order stating that he refrained from taking further proceedings until the order of the High Court, but at the same time cancelled the bail, holding that there was *prima facie* evidence against the accused.

*Held*, that this was not either a correct or a consistent attitude for the learned Magistrate to adopt. Once having correctly expressed an opinion that he "refrained from further proceedings" in view of the application made to the High Court, he ought to have stayed his hands completely for the time and certainly he ought not to have taken the serious and drastic step of cancelling the bail bonds of the accused and that this proceeding was likely to produce a reasonable apprehension in the

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mind of the accused that he would not have a fair and impartial trial before the Court, and this was therefore a fit case for transfer. (*Agha Haidar, J.*) **TAKAYA RAM v. EMPEROR.** 1930 Cr. C. 1054=

**A. I. R. 1930 Lah. 958.**

—*Proper application for transfer should be insisted upon when allegations are made against trial Magistrate.*

It is no doubt true that a District Judge can transfer a case *suo motu*, but when action is taken at the instance of a party, a proper application should as a rule be insisted upon, specially when allegations are made against the trial Magistrate. The functions of the District Magistrate under S. 528 which empowers him to transfer cases from the Courts of the Magistrate subordinate to him are judicial functions and must be exercised with due observance of the procedure and formalities which have to be followed in all other judicial matters. He must be moved by a proper application openly presented in the Court by the aggrieved party personally or through a person duly authorized by him for that purpose. Sufficient ground for transfer must be shown and notice to the other side must be issued before order for transfer is passed. The Magistrate has also to record his reasons for transferring the case. (*Jai Lal, J.*) **GOWARDHAN DAS v. ABBAS ALI.** 1930 Cr. C. 176=121 I. C. 374=31 Cr. L. J. 267=

**A. I. R. 1930 Lah. 168.**

—Where the accused in the course of a trial applies for an adjournment for the purpose of moving the High Court for transfer and the Court rejects the application on the ground that it had been made after the trial had begun, such rejection is contrary to the terms of S. 526 (8) and vitiates the whole proceedings. (*Walster and Cornish, J.J.*) **NATHAN v. EMPEROR.** 124 I. C. 501=31 Cr. L. J. 715=1930 Cr. C. 187=

53 Mad. 165=2 M. Cr. C. 222=30 M. L. W. 883=1930 M. W. N. 78=A. I. R. 1930 Mad. 187=57 M. L. J. 763.

—*Proceedings under S. 145.*

In proceedings under S. 145 it is not obligatory upon the Magistrate to grant an adjournment on receipt of an application filed by a party, intimating him that an application would be made for transfer under S. 526, and asking him to adjourn the case for that purpose. The application should be overruled and the rejection is not violation of the provisions of the Code. (*Mukerji, and Jack, J.J.*) **JAMIR SHEIK v. MURARI MOHAN CHAUDHURY.** 57 Cal. 869=124 I. C. 522=31 Cr. L. J. 698=1929 Cr. C. 522=50 C. L. J. 331=34 C. W. N. 59=A. I. R. 1929 Cal. 778.

—The Magistrate is not bound to entertain an application for adjournment, for applying to High Court for transfer, if it does not state the grounds or if it is made at a very late stage of the proceedings, e.g., when the evidence of one party has been closed. (*Mukerji and Jack, J.J.*) **JAMIR SHEIK v. MURARI MOHAN CHAUDHURY.** 57 Cal. 869=124 I. C. 522=31 Cr. L. J. 698=1929 Cr. C. 522=50 C. L. J. 331=34 C. W. N. 59=A. I. R. 1929 Cal. 778.

—*Imposing condition is illegal.*

Where it is notified to the Court that an application is intended to be made and a postponement prayed for, the Court has no discretion but to grant postponement and the order of the Court imposing a condition while complying with the prayer is illegal. (*Jai Lal, J.*) **DAYAWANTI v. BITANAM.** 119 I. C. 327=30 P. L. R. 657=30 Cr. L. J. 1048=1929 Cr. C. 216=A. I. R. 1929 Lah. 702.

—*Power to pass emergent orders.*

When an accused person presents an application

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under S. 526, Cl. (8), Cr. P. Code, it is the duty of the Court to stay all judicial proceedings, that is, that the Court should not go on hearing the case which was before it; but it is not right to say that as an effect of the application the jurisdiction of the Court ceases and that the Court cannot pass any emergent order which the law authorizes it to pass. (*Walsh and Banerji, J.J.*) **HAJI BAGRIDI v. EMPEROR.** 26 A. L. J. 398=

**9 A. I. Cr. R. 269=9 L. R. A. Cr. 37=108 I. C. 569=**

**29 Cr. L. J. 448=9 L. R. A. Cr. 102=**

**10 A. I. Cr. R. 142=A. I. R. 1928 All. 268.**

—*Transfer even at advanced stage of trial—When ordered.*

If good grounds for a transfer of a criminal case are made out, the Court ought not to refuse it merely because the case has reached an advanced stage or that the transfer may entail expense and trouble to all concerned. A Magistrate made certain premature and ill-advised remarks regarding the testimony of certain defence witnesses and held out threats to the accused regarding the sentence and the effect of his application for transfer of a case. From all this it appeared that the attitude of the Magistrate towards the accused was hostile to them; and a reasonable apprehension was created in the mind of the accused that he would not get justice from him. The trial of the case however, was so far advanced that the entire evidence for the prosecution and the defence had been recorded and a date was fixed for the hearing of arguments.

*Held*, the case was a fit one for ordering a transfer. **Misc. Revn. No. 104 of 1924; Misc. Cr. Case No. 78 of 1924, Rel. on. (Jai Lal, J.) SIKANDAR LAL PURI v. EMPEROR.** 113 I. C. 321=10 Lah. 778=

**12 A. I. Cr. R. 96=30 Cr. L. J. 129=**

**A. I. R. 1928 Lah. 975.**

—When an accused notifies to the Court before which his case is pending, his intention to make an application under S. 526, Cl. (8), for a transfer of his case, it is the duty of the Magistrate to grant adjournment. The Magistrate has no power to proceed with the hearing of the case until a reasonable postponement has been granted. All the subsequent proceedings after his refusal are unwarranted by law and ought to be set aside. (*Addison, J.*) **(GHULAM RASUL v. EMPEROR.** 109 I. C. 360=29 Cr. L. J. 536=

**A. I. R. 1928 Lah. 850.**

—*Atmosphere engendering suspicion.*

The trial of a case should be in an atmosphere which does not create even a suspicion that there has been or is likely to be an improper interference with the course of justice. It is not merely of some importance but is of fundamental importance that justice should not only be done but should manifestly be seen to be done. *Sergeant v. Dale*, (1877) 1 Q. B. D. 537; *King v. Sussex Justices*: Ex parte *McCarthy*, (1914) 1 K. B. 256; *Rex v. Essex Justices*: Ex parte *Parkins*, (1927) 2 K. B. 475; A. I. R. 1923 Lah. 264 and A. I. R. 1925 Lah. 361, Foll. (*Tek Chand, J.*) **HARI KISHEN DAS v. EMPEROR.** 29 P. L. R. 667=111 I. C. 451=

**29 Cr. L. J. 867=11 A. I. Cr. R. 200=**

**A. I. R. 1928 Lah. 757.**

—Under the amended S. 526 (8) as soon as the Public Prosecutor, complainant or the accused person notifies to the Court his intention to make an application to the High Court for transfer, the Magistrate is bound to adjourn the case and it is not competent to him, after such an application has been made, to record any evidence at all. A. I. R. 1924 All. 533, Ref. (*Tek Chand, J.*) **CHIRANJI LAL v. CROWN.** 9 Lah. 587=29 Cr. L. J. 815=111 I. C. 319=

**A. I. R. 1928 Lah. 1.**

**CR. P. CODE (1898), S. 526—Duty of Court.**

—The convenience of the accused has to be considered rather than that of the complainant for transferring a case. (*Le Rossgnol, J.*) **SOHAN LAL v. GOPAL SINGH.** 27 Cr. L. J. 563=94 I. C. 131= A. I. R. 1926 Lah. 493.

**—Obligation to adjourn.**

Where an application is made to adjourn a case to enable the accused to apply for transfer, it is not for the Magistrate to decide whether the applicant had an apprehension that he would not receive a fair trial at his hands. He is bound to adjourn the case unless in his judgment he was *bona fide* satisfied that the applicant had no intention to make an application for transfer: A. I. R. 1926 Sind 137, Rel. on. A refusal to adjourn the case without just cause is by itself a sufficient ground for transfer under S. 526. 3 S.L.R. 155 and 8 S.L.R. 341, Foll. (*Rupchand Bilaram, A. J. C.*) **JATOI v. EMPEROR.** 20 S. L. R. 122=

27 Cr. L. J. 935=96 I. C. 391= A. I. R. 1926 Sind 288.

—Whenever an intention to make an application under S. 526 of the Cr. P. Code is notified to the Court, the Magistrate is not bound to adjourn or postpone the case, unless he is satisfied that the accused person has a *bona fide* intention to make an application to the High Court. (*Kennedy, J. C. and DeSouza, A. J. C.*) **NATHOMAL v. EMPEROR.** 20 S. L. R. 54=

27 Cr. L. J. 40=91 I. C. 72= A. I. R. 1926 Sind 137.

—S. 526 is imperative and at any stage an accused notifying to the Court his intention to apply for transfer the Court must postpone the case for giving reasonable time for making the application. (*Sulaiman, J.*) **SATRAJ SINGH v. EMPEROR.** 83 I. C. 699=

22 A. L. J. 430=5 L. R. A. Cr. 57= 26 Cr. L. J. 139=A. I. R. 1924 All. 533.

—A case having once been dismissed on the report of the police by a Magistrate was resurrected in the form of a complaint at the suggestion of the Revenue Assistant. The Magistrate subsequently noted that as he had expressed an opinion on the case, he thought it better he should not try it. *Held*, that this was a good ground for transfer. Applications for transfer giving good reasons, if the allegations be correct, why a case should be transferred, require to be seriously dealt with and should not be casually brushed aside as *fazul*. (*Harrison, J.*) **BADAN SINGH v. THE CROWN.** 5 L. L. J. 520=A. I. R. 1924 Lah. 257.

**—S. 526—Fair trial.**

—*Copy of statement of witnesses to police—Refusal to grant.*

When a copy of a written statement made by a witness before the police is asked for, it is the bounden duty of the Magistrate, and it does not depend upon his volition or good-will that he should refer to the statement made before the police and furnish a copy or record a definite order that he did not think it expedient in the interests of justice to furnish the accused with the copy. Nor can he insist upon a written application for the same an oral request being sufficient. Therefore, insistence on a written application and refusal to grant copies on misapprehension of law laid down under S. 162, or on other flimsy pretext are enough circumstances to give the accused person reasonable belief that the Magistrate had no desire to be fair to him. 36 Cal. 560, Ref. (*Datal, J.*) **GHASOO v. EMPEROR.** 1930 A. L. J. 606=123 I. C. 685= 31 Cr. L. J. 555=1930 Cr. C. 993=

A. I. R. 1930 All. 737.

—The observations alleged to be made by the Magistrate in another case, which are derogatory of the

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complainant, cannot be held to indicate that the complainant will not have a perfectly fair trial in deciding, first, a matter of accounts only, and secondly, a question as to the criminal liability not of the complainant but of the accused in the case. (*Marten, C. J., Mirza and Broomfield, JJ.*) *In re SHAMDASANI* (No. 1.) 54 Bom. 553=32 Bom. L. R. 1123= 1930 Cr. C. 1065=A. I. R. 1930 Bom. 477 (F.B.).

—The mere fact that a police officer, who was in Court, addressed the Magistrate during the proceeding is not a ground for suspecting that the Magistrate would be prejudiced in the trial and that the accused would not receive a fair trial. (*Pullan, J.*) **TAH SHAH v. EMPEROR.** 1 L. C. 186=

28 Cr. L. J. 902=105 I. C. 230= A. I. R. 1927 Oudh 294.

**—S. 526—Grounds.**

Absence of Bias.  
Absence of legal advice.  
Apprehension.  
Communal feeling.  
Convenience.  
Cross complaint.  
Delay.  
Discussion outside.  
Favour.  
Friendship.  
Harassment.  
Hostility.  
Hurry.  
Improper procedure.  
Interest.  
Intricate case.  
Local influence  
Magistrate's action in other capacity.  
Opinion formed.  
Reality of.  
Relation.  
Substantiation of.  
What is not.

**—S. 526—Grounds—Absence of Bias.**

—Where the Magistrate was clearly wrong in refusing to grant copies of statements previously recorded and made by prosecution witnesses but where his order was a *bona fide* one made under a genuine mistake of law,

*Held*, that the Magistrate did not act under any bias or prejudice and therefore an application for transfer on that ground could not be granted. (*Staples, A. J. C.*) **K. FASIUDDIN v. EMPEROR.** 117 I. C. 213=

30 Cr. L. J. 728=1929 Cr. C. 47= A. I. R. 1929 Nag. 172.

**—S. 526—Grounds—Absence of Legal Advice.**

—Where certain proceedings under S. 107, Cr. P. Code, assumed an importance of their own in the locality and it appeared that the accused could not get legal assistance because their lawyers were systematically worried by the authorities and an application was made on their behalf for transfer,

*Held*, that the cases should be transferred for trial to another place where a more calm and quiet atmosphere prevailed. (*Tek Chand, J.*) **ROSHAN LAL v. EMPEROR.** 31 P. L. R. 694=1930 Cr. C. 1050=

A. I. R. 1930 Lah. 954.

—Where no practitioner in a district ordinarily employed in criminal cases is willing to act for the accused, it is a good ground for transfer of the case to another district. (*Simpson, A. J. C.*) **LALTA v. TAKOOR AHMAD.** 88 I. C. 1048=2 O. W. N. 682=

26 Cr. L. J. 1272=A. I. R. 1925 Oudh 672.

## CR. P. CODE (1898),

## —S. 526—Grounds—Apprehension.

Cases which assume an importance of their own should be tried in a calm and quiet atmosphere where all proper and legitimate facilities can be provided both to the prosecution and the defence. Where certain incidents take place in a district, which raise a reasonable apprehension in the minds of the accused that they cannot have a fair and impartial trial there, then the accused are entitled to have their case transferred to another district; A. I. R. 1923 Lah. 264; A. I. R. 1925 Lah. 351 and A. I. R. 1928 Lah. 1, Rel. on. (*Tek Chand, J.*) ROSHAN LAL v. EMPEROR.

31 P. L. R. 694 = 1930 Cr. C. 1050 =

A. I. R. 1930 Lah. 954.

Where adjournments are repeatedly made by a trying Court to bring pressure on the accused person to produce his absconding co-accused persons, the accused must have had reasonable apprehensions in their mind that their case would not be tried in that calm and judicial atmosphere and with that detachment which every accused person is entitled to in a Court of justice. Therefore this is a sufficient ground for transfer of the case. (*Agha Haidar, J.*) FAKIR MOHAMMAD v. EMPEROR.

1930 Cr. C. 1049 =

A. I. R. 1930 Lah. 953.

## —S. 526—Grounds—Communal feeling.

## —Principle explained.

In cases of transfer where communal interest are involved a transfer should be granted with considerable hesitation. In such cases the matter is not to be decided in the abstract whether a certain Magistrate would deal with a matter impartially or not. The question always would be whether through some error or unfortunate accident the Magistrate has behaved in a way to give legitimate ground for fear to one party or the other. Where certain Mahomedans were prosecuted by the police out of several against whom a complaint was made by Hindus and the Magistrate who was a Hindu ordered the prosecution without waiting for the report of the police inquiry and the Magistrate delayed and ultimately refused the application of the accused copies of statements made before the police and also conducted a local inquiry.

Held, that it was proper case for transfer. (*Dalal, J.*) GHASSOO v. EMPEROR.

123 I. C. 685 =

1930 A. L. J. 606 = 31 Cr. L. J. 555 =

1930 Cr. C. 993 = A. I. R. 1930 Ail. 737.

Where the complaint was by Mussalmans, accusing a Hindu of doing acts in a Mussalman graveyard, with intent to injure their feelings,

Held, that the complaint should, if possible, be tried by a European Magistrate. (*Skemp, J.*) HARI KISHEN v. ALLAH BAKSH.

102 I. C. 556 =

28 Cr. L. J. 588 = 8 A. I. Cr. R. 260 =

A. I. R. 1927 Lah. 520.

Where there is a certain amount of communal feeling over a case to such an extent that one of the parties is unable to persuade the defence witnesses to appear before the Court and give evidence, as they are afraid that if they do so, there will be danger as regards their safety at the hands of the other party.

Held, that it is proper that the case should be transferred to some other Court. (*Kulwant Sahay, J.*) HALIM v. EMPEROR.

98 I. C. 607 =

8 P. L. T. 153 = 27 Cr. L. J. 1391 =

A. I. R. 1927 Pat. 86.

Where a Hindu-Muhammadian question is involved in the case it is desirable that European Magistrate should enquire into and determine it. 127 P. L. R. 1915, Foll. (*Zafar Ali, J.*) MANGAT v. EMPEROR.

87 I. C. 976 = 26 Cr. L. J. 1056 = 26 P. L. R. 267 =

## CR. P. CODE (1898), S. 526—Grounds—Favour.

A. I. R. 1925 Lah. 626.

## —S. 526—Grounds—Convenience.

The fact that it would be inconvenient for the person against whom proceedings have been started under S. 110 to summon witnesses from the place of his residence is no ground for transferring the case to the Court within whose jurisdiction such a person resides. 14 A.L.J. 1074, Rel. on. (*Kincaid, J. C.*) GHULAM KADIR v. EMPEROR.

98 I. C. 109 =

27 Cr. L. J. 1261 = 20 S. L. R. 310 =

A. I. R. 1927 Sind 59.

## —S. 526—Grounds—Cross-complaint.

It is desirable that cross-complaints should ordinarily be disposed of by the same Magistrate. The mere fact that the complaint of one party is dismissed and that he is apprehensive of a conviction is by itself no good ground for a transfer. (*Coldstream, J.*) WALIDAD v. NIZAMUDDIN.

111 I. C. 854 =

29 Cr. L. J. 934 = A. I. R. 1929 Lah. 48.

## —S. 526—Grounds—Delay.

Where the proceedings of the Magistrate were dilatory and he issued a warrant against the accused's wife who was a pardanashin lady,

Held, that a transfer was desirable. (*Shadi Lal, C. J.*) HARI KISHAN v. POLO RAM.

99 I. C. 1025 =

27 P. L. R. 604 = 28 Cr. L. J. 225 =

A. I. R. 1927 Lah. 16.

Where the trying Magistrate ordered that he would examine only one witness a day during the trial and thus prolonged the trial of the case,

Held, that this is a sufficient ground for transfer of the case from that Magistrate to another. (*Harrison, J.*) NARAIN DAS v. EMPEROR.

89 I. C. 451 =

26 Cr. L. J. 1363 = A. I. R. 1926 Lah. 78.

## —S. 526—Grounds—Favour.

—Failure of Magistrate to discharge functions under S. 342, Cr. P. Code, judicially.

The Court alone is authorized to examine the accused person and the counsel for the complainant or the prosecution should not be allowed to take part in the examination. Under S. 342 the questions should not be put so as to cross-examine the accused or with a view to elicit from him statements which would lead to his conviction. Further it is of the utmost importance in a criminal case that the trying Magistrate should keep himself at arm's length from both sides and should try to hold the scales even between them. He should not conduct the proceedings in such a manner as to give an impression that he is being guided by one side or the other. Where a Magistrate does not discharge these statutory functions under S. 342 in a judicial manner and acts as the mouthpiece of the Public Prosecutor in conducting the examination of the accused that is a valid ground for the transfer of the case from his Court. (*Tek Chand, J.*) FAQIR SINGH v. EMPEROR.

123 I. C. 570 = 1930 Cr. C. 174 = 31 Cr. L. J. 560 =

A. I. R. 1930 Lah. 166.

Court has power to summon any person as witness if his evidence appears essential for the just decision of the case. And no question of bias against the accused can arise unless it is shown that the Court was guiding or assisting the prosecution. (*Staples, A. J. C.*) FASIUDDIN v. EMPEROR.

117 I. C. 213 =

30 Cr. L. J. 728 = 1929 Cr. C. 47 =

A. I. R. 1929 Nag. 172.

That the case has unnecessarily been adjourned on several occasions in order to enable the complainant to appear is not sufficient ground for transfer. (*Jai Lal, J.*) MOULA BAKSH v. MARSHALL.

96 I. C. 878 = 27 Cr. L. J. 1022 =

A. I. R. 1926 Lah. 628.



**CR. P. CODE (1898), S. 526—Grounds—Favour.**

—An accused is entitled to transfer of the case which is sent to a particular Magistrate at the request of the complainant. (*Moti Sagar, J.*) GHARSI MAL v. DEBI SAHAI. 81 I. C. 637 = 25 Cr. L. J. 989 = A. I. R. 1925 Lah. 121.

**—S. 526—Grounds—Friendship.**

—The fact that a Magistrate, fifteen years before had been a class-fellow of somebody who was either a complainant, a respondent or an advocate in the case is not a fit ground for transfer. (*Mears, C. J.*) GOKUL PRASAD v. EMPEROR. 115 I. C. 641 = 30 Cr. L. J. 522 = 1929 A. L. J. 616 = 10 L. R. A. Cr. 95 = 1930 Cr. C. 374 = A. I. R. 1930 All. 262.

—Where one of the prosecution witnesses is alleged to be a great friend of complainant and the Magistrate also is on friendly terms with the witness, the case should be transferred to another Magistrate. (*Jai Lal, J.*) TRILOK SINGH v. THE CROWN. 95 I. C. 318 = 8 L. L. J. 257 = 27 Cr. L. J. 782 = 27 P. L. R. 843 = A. I. R. 1926 Lah. 410.

—Where the accused was an election agent of a rival candidate with the Magistrate before whom he was to be tried at the Council election and where the chief witness in the case was a friend of the Magistrate, *Held*, that there were sufficient grounds to justify a transfer of the case to another Magistrate. (*Moti Sagar, J.*) NIHAL SINGH v. EMPEROR. 89 I. C. 912 = 26 Cr. L. J. 1440 = A. I. R. 1925 Lah. 615.

**—S. 526—Grounds—Harassment.**

—Where the accused were residents of one district and the complainant himself originally resided in that district and the incident which has led to the prosecution of the accused for defamation, also took place in that district.

*Held*, that the case has been instituted in another district in order to harass the accused and should be transferred to the former. (*Shadi Lal, C. J.*) GURDIT SINGH v. EMPEROR. 28 P. L. R. 211 = A. I. R. 1927 Lah. 271.

**—S. 526—Grounds—Hostility.**

—Complaint under S. 107 made on Sunday—Magistrate taking complainant's statement on Sunday and issuing warrant against accused, for amount far beyond accused's means, with two sureties—When two persons offered security, enquiry held in their absence and on finding that they had not immovable property worth security amount, their security rejected—Other persons offering security and their bond attested by Honorary Magistrate—Honorary Magistrate called to appear and after his examination that security also rejected—Magistrate's conduct was characterised by vindictiveness and desire to harass accused and so transfer of case to another Magistrate held justified. (*Jai Lal, J.*) CHETANAND v. GURBAKSH SINGH. 125 I. C. 615 = 31 Cr. L. J. 980 = 1930 Cr. C. 812 = A. I. R. 1930 Lah. 668.

—Magistrate's attitude hostile to complainant—Transfer was allowed.

Where further proceedings having been stayed by the High Court's order one of the two complainants appeared before the Magistrate on the date fixed for a hearing and apprised him of that order but the Magistrate instead of staying further proceedings issued a warrant for the arrest of the complainant who had not appeared.

*Held*, that there was no justification for this action of the Magistrate. That the Magistrate's attitude was clearly hostile to the complainants and the case must be transferred. (*Zafar Ali, J.*) FAZAL AHMAD v. ABDUL LAH KHAN. 91 I. C. 536 = 26 P. L. R. 701 =

**CR. P. CODE (1898), S. 526—Grounds — Improper Procedure.**

27 Cr. L. J. 104 = 7 L. L. J. 571 = A. I. R. 1926 Lah. 151.

—Merely the ground that the Sub-divisional Officer of the sub-division, where the accused is being tried, is on inimical terms with the accused is not sufficient to transfer the case to some other sub-division. (1877) 2 Q. B.D. 558, Dist.; 10 C.W.N. 441, Ref. (*Rupchand Bilaram, A. J. C.*) MOTUMAL MORANDMAL v. MAHOMED RAMZAN. 95 I. C. 466 = 19 S. L. R. 117 = 27 Cr. L. J. 802 = A. I. R. 1926 Sind 253.

**—S. 526—Grounds—Hurry.**

—Where, beyond the mere fact that the proceedings against the petitioners were hurried there is nothing to indicate that the inquiry had not been fair and impartial, and the petitioners remain unrepresented through no fault of the Magistrate, an application under S. 526 for transfer of cases cannot be granted. (*Tapp, J.*) JAGIR SINGH v. EMPEROR. 125 I. C. 322 = 31 Cr. L. J. 812 = 1930 Cr. C. 677 = A. I. R. 1930 Lah. 529.

**—S. 526—Grounds—Improper Procedure.**

—An accused applied for transfer of his case to the High Court without informing the trying Magistrate. The Magistrate examined a number of witnesses for the prosecution and also the accused. The accused in answer to one of the questions disclosed that he had applied for transfer and the Magistrate thereupon made an order stating that he refrained from taking further proceedings until the order of the High Court, but at the same time cancelled the bail holding that there was *prima facie* evidence against the accused.

*Held*, That this was not either a correct or a consistent attitude for the learned Magistrate to adopt. Once having correctly expressed an opinion that he "refrained from further proceedings" in view of the application made to the High Court, he ought to have stayed his hands completely for the time and certainly he ought not to have taken the serious and drastic step of cancelling the bail bonds of the accused and that this proceeding was likely to produce a reasonable apprehension in the mind of the accused that he would not have a fair and impartial trial before the Court, and this was therefore a fit case for transfer. (*Agar Haidar, J.*) TAKAYA RAM v. EMPEROR. 1930 Cr. C. 1054 = A. I. R. 1930 Lah. 958.

—Where adjournments are repeatedly made by a trying Court to bring pressure on the accused person to produce his absconding co-accused persons, the accused must have had reasonable apprehension in their minds that their case would not be tried in that calm and judicial atmosphere and with that detachment which every accused person is entitled to in a Court of justice. Therefore this is a sufficient ground for transfer of the case. (*Agar Haidar, J.*) FAKIR MAHOMED v. EMPEROR. 1930 Cr. C. 1049 = A. I. R. 1930 Lah. 953.

—Directions of appellate Court with regard to trial disregarded—Application under S. 526 by accused ignored and proceedings continued—Matter not irrelevant expunged from written statement of accused by Magistrate—*Held* these incidents were sufficient to justify transfer of the case to another Magistrate. (*Tek Chand, J.*) RAM PIARA LAL v. EMPEROR. 1930 Cr. C. 978 = A. I. R. 1930 Lah. 882.

**—Wrong order under S. 250, Cr. P. C.**

Where the Magistrate without discharging the accused passed an order under S. 250 calling upon the complainant to show cause why he should not give compensation to the accused persons which was clearly wrong, and it was clear that he did not intend to discharge the accused.

**CR. P. CODE (1898), S. 526—Grounds—Improper Procedure.**

*Held*, that it was obvious that it would be a mere farce to allow the complaint to be tried by the Magistrate and a transfer should be granted. (*Dalip Singh, J.*)  
**RAM LUBHAYA v. JAGAN NATH.**

117 I. C. 883=30 Cr. L. J. 854=  
 1929 Cr. C. 181=30 P. L. R. 361=  
 A. I. R. 1929 Lah. 623

—The Magistrate must adjourn the case on notification of intention of the accused to make an application. The disobedience on the part of the Magistrate of a statutory mandate is sufficient to entitle the applicant to obtain a transfer of the case. (*Dalal, J.*)  
**WALIDAD KHAN v. EMPEROR.**

9 L. R. A. Cr. 127=  
 10 A. I. Cr. R. 352=26 A. L. J. 1321=  
 29 Cr. L. J. 671=10 I. C. 223=  
 A. I. R. 1928 All. 660.

**—Prosecution of witness for perjury at conclusion of his evidence.**

Where in a criminal case a certain witness was being examined and at the conclusion of the evidence of this witness the Magistrate ordered his prosecution under S. 193, I. P. C. and at the conclusion of the hearing of the case on that date that he did formally order his prosecution.

*Held*, that the action of the Magistrate however well intended it may be, was, to say the least of it, precipitate. The proper time, if he was inclined to take action against any witness under S. 476, Criminal P. C. would have been at the time of delivering judgment in the main case. (*Agha Haidar, J.*)  
**GOPAL SINGH v. EMPEROR.**

106 I. C. 456=29 Cr. L. J. 40=  
 9 A. I. Cr. R. 426=A. I. R. 1928 Lah. 180.

**—Circumstances causing apprehension in accused's mind that he will not have fair trial described.**

A case was started against the accused under S. 377, on an incomplete chalan. The accused applied, as soon as the case was called, under S. 344, Cr. P. Code. for adjournment on the ground that he had been served only three hours before, that he wanted time to get copies of the statements made by witnesses to the police or before Magistrate under S. 164, and that this leading counsel was out of station on account of the Muharram holidays. This application was rejected by the Court on the ground that another advocate was present in Court on behalf of the petitioner. The accused then presented another application under S. 526 (8) stating that he intended to apply for the transfer of the case from the Magistrate's Court and praying that the case be adjourned to enable him to do so. The Magistrate rejected the application assuming that the accused wanted to apply under S. 528. In the course of the trial which then commenced, the first and important witness in respect of whom the offence was alleged to be committed stated that he made the allegations against the accused at the instance of a person, who was alleged to be a bitter enemy of the accused, that his previous statement before a Magistrate was made under pressure. A complaint was made against this witness by the Magistrate under S. 476, Cr. P. Code. The next witness was then called, but he did not give any direct evidence against the accused. Though at least one other witness for the prosecution was present in Court, the Magistrate did not examine him but passed an order adjourning the case on the ground that he had "lot of treasury work to do." The accused then moved the High Court for transfer of the case and an *ad interim* order was passed staying further proceedings.

*Held*, that all the above incidents would necessitate the transfer of the case to another Court. A. I. R. 1925 Lah. 361. *In re McCarthy*, (1924) 1 K. B. 256 and A.I.

**CR. P. CODE (1898), S. 526—Grounds—Interest.**

R. 1923 Lah. 264, Rel. on. (*Tek Chand, J.*) **CHIRANJI LAL v. CROWN.** 111 I. C. 319=9 Lah. 537=  
 29 Cr. L. J. 815=A. I. R. 1928 Lah. 1.

—When an application is made for postponement of the case in order to enable the petitioner to apply for transfer, it is highly improper for the trying Magistrate to make a preliminary enquiry into the grounds for transfer and decide himself the merits of the grounds. This circumstance is sufficient to order a transfer of the case. (*Fforde, J.*)  
**MUGHEES UD-DIN v. CROWN.**

92 I. C. 894=27 Cr. L. J. 382=27 P. L. R. 67=  
 A. I. R. 1926 Lah. 236.

**—Local inspection and collection of evidence behind back of parties.**

In a case under S. 486, Penal Code, the Magistrate, after some witnesses were examined for the defence, himself visited the markets in order to make personal enquiries regarding the case without giving any notice to the parties. After this enquiry he summoned some witness on his own initiative.

*Held*, that the course adopted was illegal. By making personal enquiries the Magistrate made himself an important witness in the case and incapacitated himself to proceed with trial. (*Carr, J.*)  
**P. A. PAKIR MAHOMED v. EMPEROR** 97 I. C. 60=4 Rang. 106=  
 27 Cr. L. J. 1084=A. I. R. 1926 Rang. 180.

—The refusal to afford a suspect such reasonable opportunity on the part of a Magistrate amounts to a failure on his part to exercise his discretion in a wise and proper manner and though such refusal may not form by itself a ground for transfer, it is a factor which the higher Court would seriously take into consideration. (*Rupchand Bilaram, A. J. C.*)  
**JATOI v. EMPEROR.**

96 I. C. 391=20 S. L. R. 122=27 Cr. L. J. 935=  
 A. I. R. 1926 Sind 2-8.

—Where an offence is being inquired into and tried by a Court contrary to the provisions of S. 177, the error can be rectified by the High Court by transfer to the Court having jurisdiction. The High Court is not bound to quash the proceedings. 23 O. C. Diss. (*Dalal, J. C.*)  
**MUBARAK ALI v. ABDUL HAQ.**

85 I. C. 721=26 Cr. L. J. 577=  
 A. I. R. 1925 Oudh 490.

**—Violation of S. 138, Evidence Act.**

Generally it is not the province of the Court to examine witnesses and as a rule of the Court the Court should leave the witnesses to the pleaders to be dealt with as is provided for in S. 138 of the Indian Evidence Act; where therefore the Court took the witnesses into its own hands and proceeded with their examination and they were not permitted to be examined by the complainant or his pleader. *Held*, that a ground for transfer of the case was made out. (*Wazir Hasan, J.*)  
**JANKI v. THAKUR SHEO NARAYAN SINGH.**

82 I. C. 154=11 O. L. J. 333=  
 25 Cr. L. J. 1226=27 O. C. 246=  
 A. I. R. 1924 Oudh 371.

**—S. 526—Grounds—Interest.****—When a sufficient ground.**

Section 556 is based on the maxim *nemo debet esse iudex in propria causa*. The expression "a party or personally interested" implies that a direct personal pecuniary interest, however small in the result of the case, disqualifies a Judge, Magistrate or Justice from trying a case, but where such interest is not pecuniary the disqualifying interest should have substantially the same effect so as to create a reasonable suspicion of bias. The mere possibility of a bias is, however, not enough. Where the only interest in the result of a case tried by a Magistrate is that he is concerned in it in his

**CR. P. CODE (1898), S. 526—Grounds—Interest.**

public capacity it may fairly be presumed that his interest is not so substantial as to warrant the inference that he is likely to have a real bias in the matter. If in addition to his being so interested there are other circumstances to suggest the real likelihood of a bias, it is another matter. English Case-law referred to. (*Rupchand Bilaram, A. J. C.*) MOHANDAS JOYRAMDAS v. EMPEROR. 98 I. C. 405 = 27 Cr. L. J. 1333 = 20 S. L. R. 171 = A. I. R. 1927 Sind 8

—Court issuing warrant for arrest is not interested in prosecuting persons who rescue judgment-debtor from lawful arrest under the warrant. (*C. C. Ghose and Duval, J. J.*) SALIMADDIN v. EMPEROR. 43 C. L. J. 234 = 27 Cr. L. J. 555 = 93 I. C. 1049 = A. I. R. 1926 Cal. 605.

—*Acts indicating interest are grounds for transfer.* Where a seat on the dais was given to a gentleman, not necessarily having any connection with the case while the Magistrate was hearing it; where he received visits from the complainant and the accused during the conduct of the proceedings thereby laying himself open to an imputation, and where the Magistrate accepted a lift in the complainant's car and sat in it with the complainant's brother.

*Held*, it was advisable to transfer the hearing of the case. (*Stuart, C. J.*) GANPAT SAHAI v. KUSHALENDRA PRATAB SAHI. 93 I. C. 962 = 3 O. W. N. 245 = 27 Cr. L. J. 498 = 13 O. L. J. 644.

—Where a Magistrate has interested himself in a case pending before him in the way of obtaining a settlement by the parties, it is to the interest of both the parties and it is but fair to the Magistrate himself that he should not hear the case. (*Mukerji, J.*) MUSAFFAR HUSAIN v. MUHAMMAD YAQUB. 47 All. 411 = 23 A. L. J. 191 = 26 Cr. L. J. 869 = 86 I. C. 805 = A. I. R. 1925 All. 289.

—Taking more than a formal part in the police investigation would serve as a ground for transfer. 2 L. B. R. 299, Foll. (*Young, J.*) NGA PO THA v. EMPEROR. 89 I. C. 261 = 26 Cr. L. J. 1317 = 4 Bur. L. J. 65 = A. I. R. 1925 Rang. 219.

**—S. 526—Grounds—Intricate case.**

—Cases, which are likely to be keenly contested and intricate in nature, are, on the whole, likely to be more efficiently disposed of by subsidiary Magistrates than by Honorary Magistrates. (*Findlay, J. C.*) PANDURANG KRISHNAJI v. EMPEROR. 10 N. L. J. 184 = 28 Cr. L. J. 898 = 105 I. C. 226 = 9 A. I. R. 1928 Nag. 21.

—S. 526—Grounds—Local influence.

—Cases which assume an importance of their own should be tried in a calm and quiet atmosphere where all proper and legitimate facilities can be provided both the prosecution and the defence. Where certain incidents take place in a district which raise a reasonable apprehension in the minds of the accused that they cannot have a fair and impartial trial there, then the accused are entitled to have their case transferred to another district. A. I. R. 1923 Lah. 264; A. I. R. 1925 Lah. 351 and A. I. R. 1928 Lah. 1, Rel. on. (*Tek Chand, J.*) ROSHAN LAL v. EMPEROR. 31 P. L. R. 694 = 1930 Cr. C. 1050 = A. I. R. 1930 Lah. 954.

—Where a number of officials in the district are personally concerned, whether as witnesses or otherwise, in the case, it is desirable that it should be tried elsewhere. (*Boys, J.*) BHOLA NATH v. MRS. VASHESHWAR NATH SINGH. 28 Cr. L. J. 1011 = 106 I. C. 99 = A. I. R. 1927 All. 708.

**—S. 526—Grounds—Magistrate's action in other capacity.**

—Certain illegal *parwanas* were issued by the

**CR. P. CODE (1898), S. 526—Grounds—Opinion formed.**

accused prior to his arrest for the offence for which he was being tried. The District Magistrate had written him to withdraw those *parwanas* but he refused to do so. Subsequently the case was started against him and he applied for a transfer of the case on the ground that the District Magistrate was prejudiced owing to his refusal to withdraw the *parwanas*.

*Held*, that there was nothing improper on the part of the District Magistrate in requesting the accused to withdraw the illegal *parwanas* and that it was not a ground for a transfer of the case. (*Countts and Das, J. J.*) MAHADEO SINGH v. EMPEROR. 81 I. C. 49 = 25 Cr. L. J. 561 = A. I. R. 1922 Pat. 494.

**—S. 526—Grounds—Opinion formed.**

—The mere fact that the Magistrate has in a cross case expressed an opinion adverse to the accused is not necessarily a sufficient ground to transfer the case. (*Findlay, J. C.*) DAYARAM v. EMPEROR. 29 Cr. L. J. 589 = 109 I. C. 605 = 10 A. I. R. 1928 Nag. 217.

—The mere fact that a District Magistrate has come to the conclusion that there is a *prima facie* case against the accused is no ground for transfer of the case from the district unless it can be shown that he is influencing its result directly or indirectly. (*Jai Lal, J.*) JAWALA SINGH v. EMPEROR. 28 Cr. L. J. 190 = 99 I. C. 862 = A. I. R. 1927 Lah. 164.

—*Pungent remarks on the conduct of the witness.* The Magistrate in recording the evidence of a witness made a note that the witness faltered and from his demeanour it appeared that he had not told the truth.

*Held*, that there were sufficient grounds for transfer of the case. (*Sukrawardy and Mukerji, J. J.*) GOLAN BARI GAZI v. YAR ALI KHAN. 86 I. C. 708 = 29 C. W. N. 316 = 26 Cr. L. J. 852 = A. I. R. 1925 Cal. 480.

—Where a case was sent to a Magistrate for disposal with a remark by the District Magistrate that it was quite a clear case and the defence was ridiculous,

*Held*, transfer of the case to another District is justified. (*Simpson, A. J. C.*) MOHAMMAD YAKUB v. KING-EMPEROR. 90 I. C. 309 = 2 O. W. N. 688 = 26 Cr. L. J. 1525 = A. I. R. 1925 Oudh 690.

—Superior officer expressing to the trial Magistrate his belief in innocence of the accused justifies the transfer of the case. (*Kendall, A. J. C.*) RUP NARAIN BAKKAL v. ABDUL HAMID KHAN. 82 I. C. 766 = 11 O. L. J. 657 = 25 Cr. L. J. 1374 = A. I. R. 1925 Oudh 90.

—Where the Court has already formed very strong opinion of the conduct of the accused whose prosecution was ordered by the Court under S. 166, I. P. C., transfer should be ordered. (*Sulaiman, J.*) SATRAJI SINGH v. EMPEROR. 83 I. C. 699 = 22 A. L. J. 430 = 5 L. B. A. Cr. 57 = 26 Cr. L. J. 139 = A. I. R. 1924 All. 533.

—Where a Magistrate passed certain remarks regarding accused's guilt in another case before him while convicting him in one case, the other case should be transferred from his file. (*Wazir Hasan, J. C.*) CHAUDHRI ZAHIRUDDIN v. EMPEROR. 83 I. C. 718 = 11 O. L. J. 556 = 26 Cr. L. J. 158 = A. I. R. 1924 Oudh 433.

—Expression of opinion in miscellaneous proceedings does not justify transfer of the main case. (*Wazir Hasan, A. J. C.*) JANG BAHADUR v. EMPEROR. 77 I. C. 721 = 11 O. L. J. 54 = 25 Cr. L. J. 433 = A. I. R. 1924 Oudh 338.

—The fact that the trying Magistrate is believed to have made up his mind that there is no likelihood of

**CR. P. CODE (1898), S. 526—Grounds—Opinion formed.**

a breach of peace is not a sufficient ground for transfer. If he forms any opinion on the question of possession which might hamper him in dealing with the evidence on that point, it might no doubt be proper ground for transferring the case. (*Simpson, A. J. C.*) MUHAMMAD NAQI KHAN *v.* RANI RAHAMAT UNNISSA.

76 I. C. 562 = 25 Cr. L. J. 194 =  
A. I. R. 1923 Oudh 161.

**—S. 526—Ground—Reality of.**

—An application for transfer cannot be granted simply because it is apprehended that in the ultimate judgment which the Magistrate would deliver in the case, he would not give effect to a certain legal objection which might be taken at the trial. (*Agha Haidar, J.*) MUHAMMAD AZIM *v.* NIAZ MUHAMMAD.

107 I. C. 773 = 29 Cr. L. J. 289 = 10 A. I. Cr. R. 8 =  
A. I. R. 1928 Lah. 317.

—Application for transfer cannot be granted lightly on fanciful and sentimental grounds. (*Agha Haidar, J.*) MASHAR KHAN *v.* EMPEROR.

107 I. C. 108 =  
29 Cr. L. J. 220 = 9 A. I. Cr. R. 514 =  
A. I. R. 1928 Lah. 276.

**—S. 526—Grounds—Relation.**

—Where a Crown case is being conducted by the Court Inspector, the mere fact that the complainant has engaged to watch the case, a pleader who is a near relation of the Magistrate trying the case is no ground for the transfer of the case so long as the pleader is only watching the case. A. I. R. 1925 Oudh 348, Diss. from. (*Bucknill, J.*) DWARIKA SINGH *v.* EMPEROR.

95 I. C. 764 = 7 P. L. T. 770 =  
1926 P. H. C. C. 383 = 27 Cr. L. J. 844 =  
A. I. R. 1926 Pat. 464.

—It is undesirable that a member of the legal profession should practice in a Court presided over by a near relation. Where the complainant's muktair was a near relation of the Magistrate and where the muktair-nama was not filed until the day on which the case was transferred to that Magistrate.

*Held*, that transfer to some other Magistrate must be ordered. (*Newbould and B. B. Ghose, J.J.*) NITYV. RANJAN MANDAL *v.* EMPEROR.

88 I. C. 607 =  
29 C. W. N. 648 = 26 Cr. L. J. 1183 =  
A. I. R. 1925 Cal. 806.

—The mere fact that the Magistrate's son is a pleader and that he has been engaged by the other side is no ground for granting a transfer to another Court. (*Pullan, A. J. C.*) PEARAY LAL *v.* PUTTAN.

85 I. C. 56 = 26 Cr. L. J. 440 =  
A. I. R. 1925 Oudh 348.

**—S. 526—Grounds—Substantiation of.**

—Charge under S. 304, I. P. C.—Conviction for lesser offence—Private complainant—Transfer when ordered.

If a Magistrate convicts an accused on a minor charge when he should have committed him to Sessions on a graver charge, there is a remedy provided by the law, but it would be a very dangerous thing for the High Court to interfere in a pending case and transfer it from the Court which is seised of it because the Court during the hearing of the case takes a particular view of the law or the facts.

In a charge under S. 304, I. P. C., which is instituted on a police report and in which the prosecution is in the hands of the Public Prosecutor, exceptionally strong grounds would have to be shown before the High Court would exercise its power of transfer at the instance of a private complainant when the responsible authorities are satisfied that there is no ground for withdrawing the case from the Court which is hearing it. (*Daniels, J.*)

**CR. P. CODE (1898), S. 526—Interpretation.**

EMPEROR *v.* BHIKCHAND. 93 I. C. 246 =  
7 L. R. A. Cr. 71 = 27 Cr. L. J. 454 =  
A. I. R. 1926 All. 307.

—It is not desirable that a litigant should be able to get a transfer at his will and pleasure by making an application containing unfounded allegations against a judicial officer, and then representing that after making those allegations he could not expect to get justice from him. If this principle is accepted every application for transfer is bound to succeed. (*Shadi Lal, C. J.*) MT. LACHMI *v.* CROWN. 96 I. C. 395 = 8 L. L. J. 303 =  
27 P. L. R. 491 = 27 Cr. L. J. 939 =  
27 P. L. R. 570 = A. I. R. 1926 Lah. 470.

**—S. 526—Grounds—What is not.**

—Mere fact that in another case Judge came to particular conclusion.

Where it is sound doctrine that a reasonable apprehension in the mind of an accused that he will not have a fair trial is a sufficient ground for transfer, yet in applying the doctrine regard must be had to the circumstances in each case, and the mere fact that in another case, on other evidence the Judge has come to a particular conclusion is not in itself a sufficient ground for transfer. 31 Cal. 715; 36 Cal. 904, Foll. (*Macpherson, J.*) RAMYAD SINGH *v.* EMPEROR.

124 I. C. 846 = 11 P. L. T. 248 = 31 Cr. L. J. 732 =  
1930 Cr. C. 709 = A. I. R. 1930 Pat. 337.

—The fact that the Magistrate proposes to examine complainant who is a very old man and who for many years has not left the precincts of his residence, as a witness, at the latter's residence, and where the accused is given every opportunity of being represented and conducting his case there, does not call for a transfer of the case. (*Stuart, C. J.*) ISHWAR DAS *v.* EMPEROR.

92 I. C. 856 = 27 Cr. L. J. 344 =  
A. I. R. 1926 Oudh 290.

—The fact that the Magistrate trying a case is subordinate to the officer making the complaint is not sufficient ground for transfer. (*Halifax, A. J. C.*) WASUDEO *v.* EMPEROR.

89 I. C. 897 =  
24 Cr. L. J. 1425 = A. I. R. 1925 Nag. 433.

—Where one of the grounds for transfer was that an officer purely of Judicial Department may be authorised to deal with the case,

*Held*, that the High Court will not under ordinary circumstances be justified in accepting a ground which insinuates condemnation of the whole body of Magistrates serving in the executive line. (*Kinkhede, A. J. C.*) ANANT WASUDEO CHANDEKAR *v.* KING-EMPEROR.

83 I. C. 723 = 7 N. L. J. 155 =  
26 Cr. L. J. 163 = A. I. R. 1924 Nag. 243.

—Where the only reason assigned for a transfer was that the Magistrate had already tried certain other persons charged with the same offence.

*Held*, that no sufficient ground for transfer was made out. (*Dalal, A. J. C.*) DALSHER *v.* EMPEROR.

74 I. C. 544 = 24 Cr. L. J. 800 =  
A. I. R. 1924 Oudh 247.

**—S. 526—Interpretation.**

—“Any person” meaning.

The words “any person” in S. 526 (6-a) are comprehensive enough to include (1) the Crown or the Local Government, (2) any private individual who has an interest in the subject-matters of the complaint, as also (3) all or any one of the accused persons. (*Boys, King and Sen, J.J.*) EMPEROR *v.* KANVER SEN.

123 I. C. 330 = 52 All. 263 = 1930 A. L. J. 209 =  
1930 Cr. C. 319 = 31 Cr. L. J. 485 =  
A. I. R. 1930 All. 206 (F.B.).

—“Reasonable apprehension of not having a fair trial”—Meaning explained.

**CR. P. CODE (1898), S. 526—Interpretation.**

All that is necessary for the accused under S. 526 (1) (a) to establish is the circumstances have arisen which have afforded a reasonable apprehension in his mind that he would not receive justice in the Court of the Magistrate, it is not necessary to establish that the Magistrate is actually prejudiced. In other words, it is to be established that Magistrate has conducted himself in such a manner that there is a reasonable apprehension in his mind that he would not approach the case with an impartial mind. The apprehension, of course, must be such as a reasonable person would entertain. (*Jai Lal, J.*) **SAHIB RAM v. EMPEROR.** 127 I.C. 150 = 31 Cr. L. J. 1172 = 1930 Cr. C. 921 = A. I. R. 1930 Lah. 877.

**—S. 526—Powers of High Court.**

—The High Court has power to transfer case to the Court having jurisdiction from a Court not having jurisdiction. 18 All. 350; 8 Bom. 312 and 2 Bom. L. R. 394, Rel. on: 36 Mad. 387; 9 All. 191 (P.C.); 42 Mad. 791; 23 O. C. 87; A. I. R. 1925 Oudh 490 and A. I. R. 1925 Pat. 187, Ref. (*Aston, A. J. C.*) **WAHID BUX v. EMPEROR.** 120 I. C. 81 = 1929 Cr. C. 678 = 30 Cr. L. J. 1121 = A. I. R. 1929 Sind 250.

—By S. 5 read with S. 526 High Court has jurisdiction to transfer cases from village panchayats constituted under the U.P. Village Panchayat Act of 1920. A.I.R. 1926 All. 27, Rel. on. (*Iqbal Ahmed, J.*) **BAS-DEO S. MISRA v. BADUL MISRA.** 49 All. 188 = 25 A.L.J. 757 = 8 L. R. A. Cr. 33 = 28 Cr. L. J. 94 = 7 A. I. Cr. B. 246 = 99 I.C. 126 = A. I. R. 1927 All. 199.

—High Court cannot transfer criminal proceedings pending before village panchayat.

A village panchayat constituted under the Local Act VI of 1920 is not a "criminal Court" within the meaning of Ch. II of the amended Cr. P. Code; therefore, S. 526 would have no application. So also S. 22 of the Letters Patent (Allahabad) does not apply and the High Court has no jurisdiction to direct the transfer of a case from a panchayat constituted under the Local Act.

Per *Kanhaya Lal, J.* A village panchayat is a Court for the purpose of S. 22 of the Letters Patent, and in the absence of any limitation imposed by any Act, the High Court has power under the section to transfer any criminal proceeding pending before a village panchayat to another village panchayat empowered to take cognizance thereof. (*Stuart and Kanhaya Lal, J.J.*) **SAT. NARAIN v. SARJU.** 83 I. C. 350 = 46 All. 167 = 21 A. L. J. 925 = 25 Cr. L. J. 1390 = A. I. R. 1924 All. 265.

—Transfer of case pending in another province.

High Court has no jurisdiction to transfer criminal cases which are in the course of hearing in another province. 44 C. 595, Dist., nor has it jurisdiction to declare, e.g., that a particular case is triable exclusively in Benares and not in Calcutta. (*Walsh, J.*) **RADHIKA NATH v. JOTISH CHANDRA SAH.** 73 I. C. 523 = 24 Cr. L. J. 635 = A. I. R. 1924 All. 71.

—Inherent power—High Court has no power apart from S. 526.

The High Court's powers of revision are in express terms limited to those conferred by certain sections mentioned in S. 439. S. 526 is not one of these. The Letters Patent does not confer any power of transfer over and above that conferred by S. 526 since cl. 28 is qualified by cl. 36. (*May Oung, J.*) **ASHU v. MG. PO KHAN.** 1 Rang. 632 = 2 Bur. L. J. 236 = 25 Cr. L. J. 485 = 77 I. C. 885 = A. I. R. 1924 Rang. 100.

**CR. P. CODE (1898), S. 526—Who can apply.****—S. 526—Procedure.**

—S. 526, sub-S. (8) makes it imperative on the magistrate to grant an adjournment if the party proposes to apply to the High Court for transfer and for this right to apply to the High Court, it is not necessary to apply before the Chief Presidency Magistrate under S. 528 for the same purpose. (*Marten, C.J., Mirza and Broomfield, J.J.*) *In re SHAMDASANI, NO. (2).* 32 Bom. L. R. 1128 = 1930 Cr. C. 1067 = A. I. R. 1930 Bom. 480 (F.B.).

—A separate application for transfer of an appeal jointly filed by two or more accused is not absolutely necessary, though a joint appeal had been filed. (*Halls-fax, A.J.C.*) **MAHARAJ SINGH GOND v. EMPEROR.** 27 Cr. L. J. 1062 = 97 I. C. 38 = A. I. R. 1927 Nag. 48.

—Application for transfer lies directly to the High Court.

An application under S. 526 for a transfer of a criminal case pending before a Subordinate Magistrate lies direct to the High Court, and it is unnecessary that such an application should be made in the first instance to the District or Sub-Divisional Magistrate under S. 528 of the Cr. P. Code. (*Kennedy, J. C. and De Souza, A.J.C.*) **NATHOOMAL v. EMPEROR.** 20 S.L.R. 54 = 27 Cr. L. J. 40 = 91 I.C. 72 = A. I. R. 1926 Sind 137.

**—S. 526—Rights of accused.**

—To apply to High Court direct.

If an accused desires to go direct to the High Court for transfer of his case under S. 526, instead of first proceeding under S. 528, his right to do so as a matter of law, cannot be excluded under the Code since the passing of the present sub-S. 8, S. 526. 6 Bom. L. R. 480, Dist. (*Marten, C.J., Mirza and Broomfield, J.J.*) *In re P. D. SHAMDASANI, NO. (2).* 32 Bom. L. R. 1128 = 1930 Cr. C. 1067 = A. I. R. 1930 Bom. 480 (F.B.).

**—S. 526—Who can apply.**

—Only the Court.

Since 1923 proceedings under S. 476, Cr. P. Code are taken only by the Court in the interest of justice when it thinks fit to do so. It is not now open to a private person to take proceedings after taking the sanction of the Court under S. 195. A private person may move the Court but it is for the Court to decide whether to take action and initiate the proceedings. A person moving the Court to take action under S. 476 cannot therefore be considered to be an interested person within the meaning of S. 526 (3) and also has no *locus standi* to apply for the transfer of a case, the Court being the "complainant." (*Bhide, J.*) **RAM SARUP v. MOHAM-MAD MEHR DIL KHAN.** 31 P. L. R. 840 = 127 I. C. 152 = 31 Cr. L. J. 1174 = 1930 Cr. C. 917 = A. I. R. 1930 Lah. 873.

—'Party interested'—Preferential rights of Public Prosecutor in case of conflict.

"A party interested" in S. 526 (3) does not necessarily mean a complainant, i.e., a person presenting a 'complaint' as defined in S. 4 (h), but may include a police informant. Moreover, where the conduct of a case is in the hands of a Public Prosecutor and where there is a conflict between the Public Prosecutor and "the party interested" the right of the former must prevail; because it is the Public Prosecutor, and not the informant, who is primarily responsible for the conduct of the case. A.I.R. 1925 Pat. 818 and A.I.R. 1926 Lah. 156, Rel. on. (*Carguen, J.*) **RAJA GOPAL RAO v. NARAYANNA REDDI.** 2 M. Cr. C. 199 = 30 M.L.W. 640 = 120 I. C. 80 = 30 Cr. L. J. 1163 = 1929 Cr. C. 612 = A. I. R. 1929 Mad. 844 =

**CR. P. CODE (1898), S. 526—Who can apply.**

57 M.L.J. 547.

—Even in a cognizable case sent up for trial by the police a complainant is entitled to apply for transfer under S. 526, but his rights are subordinate to those of the Crown, so that where there is a conflict between the private prosecutor and the Public Prosecutor in the matter of a transfer of a case, the right of the latter must prevail. 4 Pat. L.J. 656, Foll. (*Zafar Ali, J.J.*) *BAGH ALI v. MUHAMMAD DIN.* 6 Lah. 541=

27 Cr. L. J. 411=27 P.L.R. 80=  
93 I.C. 75=A. I. R. 1926 Lah. 156.

**—Position of private prosecutor.**

A private person who lodges an information before the police of a certain offence and a criminal prosecution is started upon that information, is a person who is interested in the prosecution within the meaning of cl. (3) of S. 526, and therefore he is entitled to apply for transfer under S. 526, but his rights are subordinate to those of the Crown: in other words, if the Public Prosecutor, or the person who is conducting the prosecution on behalf of the Crown, is unwilling to have the case transferred, the person at whose instance the case was started has no right to get the case transferred. (*Kulwant Sahay, J.*) *SHEODHARI RAI v. JHINGUR RAI.* 88 I. C. 993=7 P. L. T. 49=

26 Cr. L. J. 1249=A. I. R. 1925 Pat. 818.

**—S. 526—Miscellaneous.**

—The pronouncing of judgment is no part of the trial and hence application for transfer made after the case is closed but before the pronouncing of judgment is not made in the course of the trial. Court's refusal to adjourn case, on such application being made does not violate the provisions of S. 526(8). (*Reilly, J.*) *PUBLIC PROSECUTOR, MADRAS v. CHOCKALINGA AMBALAM.* 52 Mad. 355=29 M. L. W. 108=1929 M. W. N. 60=2 M. Cr. C. 1=118 I. C. 274=30 Cr. L. J. 908=A. I. R. 1929 Mad. 201=56 M. L. J. 216.

**—Second adjournment to approach High Court cannot be claimed as of right.**

If an application for adjournment is made on the ground that the accused desired a transfer, it would of necessity be presumed that the application was to be made to the High Court and not to the District Magistrate. Once a case has been adjourned and the accused has not taken advantage of the adjournment to appear before the High Court and plead his case he would not be entitled to a second adjournment to give him another opportunity to appear before the High Court when he neglected to take advantage of the first opportunity. (*Dalal, J.*) *KISHORE RAI v. EMPEROR.*

9 L. R. A. Cr. 145=10 A. I. Cr. R. 485=  
111 I. C. 855=29 Cr. L. J. 935=  
1929 A. L. J. 60=A. I. R. 1928 All. 753.

—The existence of a village feud may well be within the knowledge of a Sub-Divisional Officer as also statements of apprehension that a false case will be brought against a man. But these are not sufficient reasons to cite the officer as witness for defence in a case so as to necessitate a transfer of a case to another Magistrate where such officer is the trying Magistrate. (*Stuart, C. J.*) *HARI HAR BAKSH SINGH v. KING-EMPEROR.* 3 O. W. N. 944=

99 I. C. 97=28 Cr. L. J. 65=  
7 A. I. Cr. R. 179=A. I. R. 1927 Oudh 31.

—After an application is made to a Court under S. 526 for adjournment to enable an accused person to apply for transfer of the case, the Court does not become incompetent to make ancillary orders not affecting the merits of the case, such as requiring an accused to execute a bond under S. 117(3). 3 S.L.R. 155 and

**CR. P. CODE (1898), S. 528—De Novo trial.**

1 S. L. R. Cr. 35, Diss. from : 31 Cal. 715 Rel. on. (*Kincard, J. C. and Barlee, A. J. C.*) *SAHIB DINO v. EMPEROR.* 21 S. L. R. 93=

7 A. I. Cr. R. 326=99 I. C. 605=  
28 Cr. L. J. 173=A. I. R. 1927 Sind 148.

—A person making an affidavit containing a false statement made in support of an application for transfer of a case pending in one Criminal Court to another under S. 526, is guilty under S. 191, P.C. 20 Cal. 724; 5 S. L. R. 102; and 10 S.L.R. 64 Dist. (*Tayabji, A.J.C.*) *SANWAL v. EMPEROR.* 99 I. C. 341=

28 Cr. L. J. 133=A. I. R. 1927 Sind 113.

—Where a complaint has been dismissed for default by a Magistrate a fresh complaint based on the same facts, but filed in another Court should be sent to the former for trial. (*Jai Lal, J.*) *DHARI MAL v. EMPEROR.* 27 Cr. L. J. 719=94 I. C. 911=

A. I. R. 1926 Lah. 445.

**—S. 528—Adjournment.**

—An application for transfer made to the District Magistrate is under S. 528 and under S. 528 there is no injunction given to the trial Court to adjourn proceedings in order to enable the accused person to apply to the District Magistrate. (*Dalal, J.*) *KISHORE RAI v. EMPEROR.*

9 L. R. A. Cr. 145=10 A. I. Cr. R. 485=  
111 I. C. 855=29 Cr. L. J. 935=1929 A. L. J. 60=  
A. I. R. 1928 All. 753.

**—S. 528—Appeal.**

—District Magistrate has no appellate powers as regards an order by a Sub-Divisional Magistrate withdrawing a case from a subordinate Magistrate.

Under S. 528 (2) the District Magistrate and the Sub-Divisional Magistrate have equal authority in withdrawing cases from a subordinate Magistrate and the District Magistrate shall not exercise powers of an appellate Court as regards orders passed by the Sub-Divisional Magistrate. If he considers the Court to which the case is transferred by the Sub-Divisional Magistrate not the proper Court for the trial of the case, for reasons to be stated by him, he should transfer the case to any Court which he thinks proper after notice to the accused. 26 Mad. 130, Foll. (*Dalal, J.*) *KISHORI LAL v. EMPEROR.* 10 A. I. Cr. R. 1=9 L. R. A. Cr. 85=30 Cr. L. J. 654=116 I. C. 751=A. I. R. 1928 All. 546.

**—S. 528—Convenience of accused.**

—The convenience of the accused must be regarded in considering the question whether a fair and impartial trial is likely to be held. (*Mullick, J.*) *JAGDAMBA SAHAY v. EMPEROR.*

9 A. I. Cr. R. 537=29 Cr. L. J. 373=  
108 I. C. 329=A. I. R. 1928 Pat. 347.

**—S. 528—De Novo trial.**

—Transfer to the transferred magistrate to avoid de novo trial—Not effective—Convenience of the parties to be considered.

The Magistrate who tried the case was transferred when most of the witnesses had been examined. The succeeding Magistrate granted a *de novo* trial. After this, District Magistrate transferred the case to the previous Magistrate who had been transferred, on the ground that the small amount of work that remained to be done could best be done by the same Magistrate who had tried the case so far and that to transfer the case to him was, therefore preferable to the whole case being heard again by a new Magistrate.

*Held*, that even the Magistrate to whom the case was thus transferred could not take up the case from the point at which he had left it and that he must start the case *de novo*, all the previous proceedings being considered to have been wiped out.



**CR. P. CODE (1898), S. 528—De Novo trial.**

*Held*, further that the District Magistrate's order of transfer took no notice of the hardship and inconvenience of parties and witnesses by such transfer and that it must be set aside. (*Madhavan Nair, J.*) SARDAR KHAN SAHIB v. ATHANLLA. 35 I. C. 254 =

26 Cr. L. J. 510 = 20 M. L. W. 847 =  
A. I. R. 1925 Mad. 174 = 47 M. L. J. 926

**—S. 528—Fresh transfer.**

Section 528 cannot be so read as to imply that after a District Magistrate has transferred some cases from one file to the file of another Magistrate, a Sub-Divisional Magistrate, who is subordinate to the District Magistrate, has jurisdiction to nullify that order by ordering a fresh transfer of the cases to his own file. (*Mukerji, J.*) MUHAMMAD AKBAR v. EMPEROR. 47 All. 288 = 23 A. L. J. 133 = 26 Cr. L. J. 538 =

6 L. R. A. Cr. B. 57 = 85 I. C. 378 =  
A. I. R. 1925 All. 283.

**—S. 528—Grounds.**

It is not the object of S. 528 that a case should be transferred merely because it is going against a particular party. (*Mullick and Kulwant Sahay, JJ.*) GOBIND SWAIN v. KING-EMPEROR. 83 I. C. 345 = 2 Pat. 333 = 1923 P. H. C. C. 47 =

1 Pat. L. R. Cr. 109 = 25 Cr. L. J. 1385 =  
A. I. R. 1923 Pat. 228.

**—S. 528—Grounds for transfer.****—Communal feeling.**

Courts should not be influenced by general allegations regarding the so-called communal feelings and cases should not be transferred on basis of such allegations for an intolerable position would arise if it were open to any accused person in a case of communal or quasi communal nature to obtain a transfer of a case from the Court of a Hindu Magistrate merely because he, the accused, was Mohamedan or vice versa. A.I.R. 1928 Nag. 21, Foll. (*Jai Lal, J.*) GOWARDHAN DAS v. ABBAS ALI. 1930 Cr. C. 176 =

121 I. C. 374 = 31 Cr. L. J. 257 =  
A.I.R. 1930 Lah. 168.

**—Loss of confidence in the impartiality of the Judge.**

Where one of the accused was informed by his pleader that the Magistrate had told him that he would convict the persons accused unless they compromised a certain civil suit with the complainant,

*Held*, that this communication by the pleader whether the message was in fact given by the Magistrate or not coupled with the fact that a warrant was issued in a summons case in the first instance was sufficient to deprive the accused of all confidence in the impartiality of the Magistrate and that the case should be transferred. (*Tek Chand, J.*) MECH RAJ v. BAZ KHAN. 28 Cr. L. J. 988 = 105 I. C. 812 = 9 A. I. Cr. B. 129 =

A. I. R. 1928 Lah. 75.

**—S. 528—Interference by High Court.**

The High Court will not ordinarily entertain an application for a relief which could equally be granted by a Subordinate Court until recourse has first been had to the Court. (*Daniels, J.*) RAVI CHUNDER SAHAI v. SUNDER SINGH. 87 I. C. 112 = 26 Cr. L. J. 960 =

6 L. R. A. Cr. 87 = A. I. R. 1925 All. 640.

**—S. 528—Notice.**

*Powers to be sparingly exercised—Notice should be served upon opposite party.*

The powers given by S. 528 are very extensive but the wide discretion that the Magistrate is clothed with should be sparingly exercised. It should only be exercised where it is absolutely necessary to meet the demands of justice. But before an order of transfer is made, it

**CR. P. CODE (1898), S. 528—Notice.**

is proper and it is just that the notice of the application for transfer together with the copy of the affidavit, if any, should be served upon the other party and an opportunity afforded to the latter to show cause why the application for transfer should not be granted. It is also necessary that the Magistrate should record his reasons for the transfer to bring out the fact that it was not an arbitrary order but was a judicial pronouncement. 3 All. 749, Rel. on. (*Sen, J.*) JAGESHAR v. EMPEROR. 120 I. C. 261 = 31 Cr. L. J. 30 =

1930 A. L. J. 148 = 1929 Cr. C. 660 =

11 L. R. A. Cr. 48 = A. I. R. 1929 All. 932.

**—Madras High Court practice.**

Although S. 528 (2) does not say that notice of an application for the transfer of a case from one Court to another shall be given to the accused, still according to the practice of the Madras High Court it is desirable to give such notice. And so a transfer made without such notice must be set aside for want of notice. 6 M. L.T. 14; 26 Mad. 41; 8 M.L.T. 222; A.I.R. 1928 Mad. 560, Rel. on. (*Odgers, J.*) KAMATCHI AMMAL v. EMPEROR. 119 I. C. 385 = 1929 M. W. N. 265 =

2 M. Cr. C. 93 = 30 M. L. W. 401 =  
30 Cr. L. J. 1043 = 1929 Cr. C. 12 =  
A. I. R. 1929 Mad. 511.

*Baker, J.*—A case should not be transferred without notice to the parties. 22 Bom. 549 and 1 Bom. L. R. 347, Foll. (*Patkar and Baker, JJ.*) *In re* SHRIPAD CHANDAVARKAR. 52 Bom. 151 = 30 Bom. L. R. 70 =

9 A. I. Cr. B. 563 = 29 Cr. L. J. 317 =  
108 I. C. 27 = A. I. R. 1928 Bom. 184.

An order of transfer without giving notice to the opposite party, though not desirable, is not illegal. (*Shadi Lal, C. J.*) RAHIM GHANI v. FAZAL ILAHI. 28 Cr. L. J. 38 = 99 I. C. 70 =

7 A. I. Cr. B. 199 = A. I. R. 1927 Lah. 80.

**—Question as to is not of legality, but one of propriety.**

Although S. 528 does not provide for the giving of a notice to the opposite party, still on general principle notice should be given to the party affected, before an order for transfer is made. 7 C.W.N. 114, Ref.; 14 C. P.L.R. 190 Cr., Foll. But a want of notice under S. 528 does not amount to illegality. The question of notice is one of propriety rather than of legality, and as such, it is one to be decided on the facts of each particular case. 21 Bom. L.R. 276, Ref. (*Kinkhede, A. J. C.*) KARANCHANDRA v. EMPEROR. 102 I. C. 213 =

28 Cr. L. J. 517 = 8 A. I. Cr. B. 186 =  
A. I. R. 1927 Nag. 244.

**—Transfer without notice to opposite party is not illegal.**

A transfer under S. 528 is not illegal for want of notice to the opposite party. 23 P.R. 1902, Cr. Diss. from, 21 Bom. L. R. 276, Foll. (*Zafar Ali, J.*) BAGH ALI v. MUHAMMAD DIN. 6 Lah. 541 =

27 Cr. L. J. 411 = 27 P. L. R. 80 =

93 I. C. 75 = A. I. R. 1928 Lah. 156.

**—Non-issue is not fatal.**

The omission to issue a notice to the accused before ordering the transfer on application of complaint is certainly irregular. Although, as a rule of practice, it is desirable that notices should be issued, the law is not mandatory upon the point and the omission to issue notice is not in itself a reason for setting aside an order of transfer. (*Mullick and Kulwant Sahay, JJ.*) GOVIND SWAIN v. KING-EMPEROR. 83 I. C. 345 =

2 Pat. 333 = 1923 P. H. C. C. 47 =

1 Pat. L. R. Cr. 109 = 25 Cr. L. J. 1385 =  
A. I. R. 1923 Pat. 228.

## CR. P. CODE (1898),

## —S. 528—Order without reasons.

—An order for transfer of a criminal case without reasons required by cl. 5 is bad and should be set aside. (*Spencer, J.*) VENKATA REDDI, *In re*.

83 I. C. 1005 = 20 M. L. W. 384 =  
26 Cr. L. J. 221 = A. I. R. 1924 Mad. 873.

## —S. 528—Power of Chief Presidency Magistrate.

—Chief Presidency Magistrate can recall a case transferred by Additional Chief Presidency Magistrate.

A complaint was made of criminal breach of trust against one to the Additional Chief Presidency Magistrate who directed the Police to enquire and report. Thereon the Additional Chief Presidency Magistrate transferred the case for disposal to the fourth Presidency Magistrate. The accused applied to the Chief Presidency Magistrate asking on the ground of jurisdiction, that the case should be recalled to his file. The Chief Presidency Magistrate withdrew the case to his own file from the file of the fourth Presidency Magistrate under S. 528 of Cr. P. Code.

*Held*, that as the Additional Presidency Magistrate was subordinate to the Chief Presidency Magistrate, the Chief Presidency Magistrate had jurisdiction to make the order of recall. (*Greaves and Duval, J.J.*)

MOHINI MOHAM ROY v. PUNAM CHANDNA SEDHIA.  
83 I. C. 661 = 51 Cal. 820 = 39 C. L. J. 595 =  
28 C. W. N. 903 = 26 Cr. L. J. 101 =  
A. I. R. 1924 Cal. 911.

## —S. 528—Proper procedure.

—Where with regard to an offence which has been the subject of police report and has not been finally disposed of by a Magistrate, a District Magistrate thinks it necessary to continue proceedings against the accused it is more regular for him to withdraw the pending case to his own file under S. 528, rather than to begin separate proceedings by taking cognizance of the same offence under S. 190 (1) (c); 5 C. W. N. 488 and 4 C. W. N. 242, Dist. (*James, J.*) GHANA MAHAPATRA v. EMPEROR.  
123 I. C. 78 = 31 Cr. L. J. 472 =  
1929 Cr. C. 582 = A. I. R. 1929 Pat. 710.

## —S. 528—Reasons for order.

—Reasons for order under S. 528 need not necessarily be given.

S. 528 does not require in terms that the Magistrate should give any reason, but it is a sound rule of practice that there should be something on the record showing why the order was made. (*Mullick and Kulwant, J.J.*) MAHAMMAD SHARIF v. HARI PRASAD LAL.  
5 Pat. 229 = 97 I. C. 974 = 8 P. L. T. 66 =  
27 Cr. L. J. 1214 = A. I. R. 1927 Pat. 59.

## —S. 528-A—Claim under S. 275, Cr. P. C.

—The claim to be tried as an Indian British subject mentioned in S. 528-A and 528-B is a different and distinct one from the claim to be tried by a majority of Indian Jury as mentioned in S. 275, though it can only be put forward by a person who has, in the language of that section been found under the provisions of the Code to be an Indian British subject. (*Mukerji, J.*) EMPEROR v. HARENDRA CHANDRA CHAKRAVARTHY  
84 I. C. 929 = 51 Cal. 980 = 29 C. W. N. 384 =  
26 Cr. L. J. 385 = A. I. R. 1925 Cal. 384.

## —S. 528-A—No duty to ask accused.

—Claim to be tried as European British subject.

Magistrate is not obliged to ask the accused whether he would claim to be tried as a 'European' British subject. (*Cuming and Graham, J.J.*) CARMEN v. O'BRIEN.  
54 Cal. 1041 = 107 I. C. 353 = 29 Cr. L. J. 245 =  
9 A. I. Cr. R. 471 = A. I. R. 1928 Cal. 97.

## —S. 528-A—Procedure on claim.

—Procedure in mofussal and in Presidency Towns discussed.

## CR. P. CODE (1898), S. 528-B—Scope and effect.

An Indian British subject to be dealt with as such must put in his claim before the Magistrate before whom he is brought for the purpose of enquiry or trial. This applies to Presidency Magistrates as well as Magistrates in the mofussal. If the Magistrate rejects the claim and tries him, the decision shall, form a ground of appeal from the sentence or order passed in such appeal. This applies to Presidency Magistrates as well as to Magistrates in the mofussal. If the Magistrate rejects the claim and commits him to the Court of Session, he may repeat the claim before the said Court. Such repetition may only be made in a Court of Session and not the High Court exercising Original Criminal Jurisdiction. If the Court of Session rejects the claim and tries him, the decision shall form a ground of appeal from the sentence or order passed in such trial. It necessarily follows that if a claim is made before a Presidency Magistrate and rejected by him and the accused is committed to the High Court, there is no provision for repetition of the claim before the High Court, and the accused will not be entitled to put in, under S. 275 of the Cr. P. Code, before the High Court, a further claim for being tried by a jury the majority of whom should be Indians. Where no such claim is put forward before a Magistrate, there being no provision for repetition of the claim before the High Court, S. 528-B, is a bar to the assertion of the same in any subsequent stage of the case. (*Mukerji, J.*) EMPEROR v. HARENDRA CHANDRA CHAKRAVARTHY.  
84 I. C. 929 =  
51 Cal. 980 = 29 C. W. N. 384 = 26 Cr. L. J. 385 =  
A. I. R. 1925 Cal. 384.

## —S. 528-A—Time for making claim.

—Accused must claim his right before Magistrate —If not, he is barred from raising it subsequently.

It is a condition precedent to the determination of the status of an accused person that he should assert his right to be tried as a person belonging to a particular nationality before the Magistrate to whom he is sent up for trial. It is the assertion of that claim which gives jurisdiction to the Magistrate to inquire into the matter and to give a finding thereon, which, if adverse to the accused, may be challenged in the subsequent proceedings. But if the accused has failed to assert the plea at the proper time, the provisions of S. 528-B in express terms prevent him from asserting it in any subsequent stage of the case. (*Rupchand Bilaram, A. J. C.*) EMPEROR v. SOOMAR ABDULLA.  
110 I. C. 577 = 22 S. L. R. 472 =  
29 Cr. L. J. 721 = A. I. R. 1929 Sind 23.

—The claim to be tried as a European British subject under S. 29-A, Cr. P. Code, must be made before the enquiry or trial actually begins so far as a case which falls within S. 528-A, Cr. P. Code, is concerned. Not having made this claim when a person is first brought before the Magistrate for the purpose of trial or inquiry, it is not open to revive or make it at any subsequent stage. (*Cuming and Graham, J.J.*) CARMEN v. O'BRIEN.  
107 I. C. 353 =  
54 Cal. 1041 = 29 Cr. L. J. 245 =  
9 A. I. Cr. R. 471 = A. I. R. 1928 Cal. 97.

## —S. 528-B—Effect of waiver.

—Failure to plead status of European British subject before Court of first instance debars accused from claiming that status subsequently. (*Walmsley and Mukerji, J.J.*) T. C. S. MARTINDALE v. EMPEROR.  
84 I. C. 1041 = 40 C. L. J. 256 =  
52 Cal. 347 = 29 C. W. N. 447 = 26 Cr. L. J. 491 =  
A. I. R. 1925 Cal. 14.

## —S. 528-B—Scope and effect.

—Cr. P. C. S. 443—Failure to avail of S. 528-A does not debar accused from relying on S. 443 cls. (a) or (b).

**CR. P. CODE (1898), S. 528-B—Scope and effect.**

Per *Walmsley, J.*—The omission of the accused person to avail himself of the right to claim the benefit of S. 528-A does not conclude the matter and he is not debarred from urging that the considerations mentioned in cls. (a) or (b) of S. 443 exist.

Per *Mukerji, J.*—A claim to be tried under the provisions of Chapter 33 of the Code is wholly different from a claim to be tried as an European British subject or an Indian British subject or an European not being an European British subject or an American. It is the latter claim only which is dealt with in Chapter 44 of the Code in which S. 528-A and 528-B occur and so far as the former claim is concerned the questions of status of the claimant does not always arise as is evident from the provisions of S. 443 (1)(b) of the Code. Consequently Ss. 528 A and 528 B can have no application to S. 449 under which the right of appeal is claimed in Ch. 33. *Emperor v. Harendra Chandra Chakravarti, Foll. (Walmsley and Mukerji, J.J.)* T. C. S. MARTINDALE v. KING-EMPEROR. 84 I. C. 1041=52 Cal. 347=40 C. L. J. 256=1929 C. W. N. 447=26 Cr. L. J. 401=A. I. R. 1925 Cal. 14.

**—S. 528-B—Time for making claim.**

—The claim on the ground of status may be made at any time before the commitment is made. (*Mukerji, J.*) *EMPEROR v. HARENDRA CHANDRA CHAKRAVARTHY*. 84 I. C. 929=51 Cal. 980=29 C. W. N. 384=26 Cr. L. J. 385=A. I. R. 1925 Cal. 384.

**—S. 529—Erroneous transfer of case.**

—*Good faith—Proceedings in the transferred Court are not invalid.*

Where the first Class Magistrate having had the case transferred to him by the Sub-Divisional Magistrate transferred it *bona fide* to a Third Class Magistrate who finally disposed of it and there was nothing to show that the First Class Magistrate did not believe that he had power to so transfer.

*Held*, that the case was one that fell under cl. (f), S. 529, Cr. P. Code, and though the First Class Magistrate was not empowered by law to transfer the case to the Third Class Magistrate, the transfer being *bona fide* his order of transfer should not be treated as so invalid as to prevent the Third Class Magistrate, who took cognizance upon the transfer, from having jurisdiction to try the accused. 36 All. 166, Not Foll. (*Fawcett and Mirza, J.J.*) *HASANALI v. EMPEROR*. 115 I. C. 399=30 Bom. L. R. 653=30 Cr. L. J. 467=12 A. I. Cr. R. 303=A. I. R. 1928 Bom. 286.

**—S. 529—Joinder of charges.**

—Where an accused is charged with and tried at one trial for four offences, it is not merely an irregularity but an illegality which vitiates the trial. 25 Mad. 61 (P. C.), Foll.; A. I. R. 1927 (P. C.) 44 Dist.; 28 M. L. J. 397 and 5 Pat. L. J. 11, Ref. (*Curgenven, J.*) *VIRASWAMI NAIDU v. EMPEROR*. 127 I. C. 295=31 Cr. L. J. 1195=1930 Cr. C. 580=3 M. Cr. C. 185=A. I. R. 1930 Mad. 508.

**—S. 529—Non-compliance with provisions.**

—It is not every failure to comply with a mandatory provision of the law which renders the proceedings void. A. I. R. 1925 Rang. 258, Foll. (*Carr, J.*) *TAN KYI LIN v. EMPEROR*. 98 I. C. 177=5 Bur. L. J. 100=27 Cr. L. J. 1281=A. I. R. 1926 Rang. 193.

**—S. 529—Offence beyond powers.**

—A Magistrate of the 2nd Class cannot take cognizance of a complaint that certain persons were guilty of murder. Where therefore he does entertain such a complaint and finding it to be false takes action under S. 190, though defect in conviction could be

**CR. P. CODE (1898), S. 530—Offence triable by a Higher Court.**

cured by S. 529, complainant cannot be prosecuted for false complaint. The powers of a 2nd Class Magistrate can be extended only to the extent specified in S. 37 and Sch. 4 which provisions are to be read with S. 190 in such cases. (*Koss and Kulwant Sahay, J.J.*) *BENGALI GOPE v. EMPEROR*. 94 I. C. 896=5 Pat. 447=7 P. L. T. 335=27 Cr. L. J. 704=A. I. R. 1926 Pat. 400.

**—S. 529—Trial without Jurisdiction.**

—Where a Magistrate, not having jurisdiction but otherwise competent, tries a charge, the irregularity is excused by the provisions of S. 529 (e). A. I. R. 1921 All. 123, Dist. (*Dalal, J.*) *KHUBCHAND v. EMPEROR*. 8 A. I. Cr. R. 402=8 I. R. A. Cr. 144=4 I. R. 1927 All. 791.

**—S. 530—Admitting depositions in another case.**

—If in a trial Court the depositions given by defence witnesses, when examined as prosecution witnesses in the counter case, are filed with the consent of both sides, and if these witnesses are called and examined in the presence of the accused and swear to the truth of their previous statements, which are then filed with their consent to save time that there is nothing illegal or irregular in such procedure. A. I. R. 1923 Mad. 32, Expl.; A. I. R. 1927 Lah. 781; A. I. R. 1924 Lah. 104 and A. I. R. 1926 Bom. 231, Dist. (*Wallace and Jackson, J.J.*) *KRISHNAYYA NAIDU v. EMPEROR*. 127 I. C. 289=53 Mad. 775=31 Cr. L. J. 1191=1930 M. W. N. 410=3 M. Cr. C. 188=1930 Cr. C. 577=A. I. R. 1930 Mad. 505=58 M. L. J. 547.

**—S. 530—Magistrate.**

—“Magistrate” includes a Sessions Judge, so that the dismissal of an appeal by a Sessions Judge where appeal lay only to the High Court was held to be void *ab initio*. (*Duckworth, J.*) *ABDULLA, In re*.

84 I. C. 437=26 Cr. L. J. 293=2 Rang. 386=A. I. R. 1925 Rang. 39.

**—S. 530—Offences chargeable.**

—*Trial for charges named in complaint.*

A magistrate was entitled to try the accused under the sections named in the complaint and he tried him accordingly.

*Held*, that it cannot be said, because another section could also be charged in the complaint, therefore the trial under the sections charged in the complaint is void. 12 Mad. 54 and 24 Mad. 675, Dist. (*Bennet, J.*) *SRIPAT RAI v. EMPEROR*. 1931 Cr. C. 10=1930 A. L. J. 1422.

**—S. 530—Offence triable by a Higher Court.**

—Where the Magistrate doubted whether the facts justified a charge of dacoity or not and where he was invited by the defence to deal with the case himself and accepting the invitation framed a charge under Ss. 147, 440 and 380 Penal Code, and convicted the accused under those sections and did not frame a charge under S. 395, Penal Code, it is not open to the defence to object on the ground that the Magistrate had no jurisdiction. (*Beaumont, C. J. and Madgavkar, J.*) *NURMAHOMED KADARBHAI v. EMPEROR*. 1930 Cr. C. 1182=32 Bom. L. R. 1279=A. I. R. 1930 Bom. 595.

—When an offence under S. 332, Penal Code, which is triable by a Court of Session or by a Presidency Magistrate or by a 1st Class Magistrate, is tried by a 2nd Class Magistrate and the accused is convicted the conviction is certainly illegal. (*Devadoss, J.*) *AROKIANADHAN, In re*. 111 I. C. 126=10 A. I. Cr. R. 561=1928 M. W. N. 465=1 M. Cr. C. 173=29 Cr. L. J. 798.

## CR. P. CODE (1898),

—S. 530—Offences within and without jurisdiction.  
 —Magistrate—Ignoring circumstances of aggravation so that the offence may be within the jurisdiction—Improper but not void.

Where the facts disclose an offence within the jurisdiction of the Magistrate it is a fallacy to say that he is not empowered by law to try the person charged for the offence which is within his jurisdiction because the facts disclose a more serious offence which is beyond his jurisdiction. He is expressly so empowered. Whether in so doing he adopts a proper course is another question. No doubt it is improper on the part of a Magistrate to intentionally ignore circumstances of aggravation which show that an offence beyond his jurisdiction was in fact committed as well as an offence within his jurisdiction, as, for instance, if a second class Magistrate should ignore the violence used in committing theft (S. 379), instead of sending the accused before a first class Magistrate to be tried for robbery (S. 392). Here the action of the second Class Magistrate would be improper, but his proceedings would not be void. 25 Mad. 61 (P. C.), Dist. (*Brown, J.*) DAWSON v. EMPEROR.

88 I. C. 276=26 Cr. L. J. 1108=2 Rang. 455=  
 A. I. R. 1925 Rang. 45.

## —S. 530—Offences without jurisdiction.

—Conviction for a lesser offence when facts constitute a graver offence—Not void.

When a Magistrate convicts the accused of an offence triable by him though the facts disclosed also constitute a graver offence, not triable by him, his proceedings are not void under the provisions of S. 530. (A. I. R. 1926 Pat. 36 Foll.) 4 Bom. L. R. 267; 10 C. 85; 13 B. 502, 24 M. 675 Appr.) High Court will not interfere, when no objection was taken either before the Magistrate or in the Court of appeal to the jurisdiction of the trial Court and the accused are not prejudiced. (*Macpherson, J.*) BALGOBIND THAKUR v. EMPEROR.

96 I. C. 873=7 P. L. T. 496=27 Cr. L. J. 1017=  
 A. I. R. 1926 Pat. 393.

## —S. 530—Recording evidence.

—Where part of the evidence in a case is recorded by a Magistrate who has no jurisdiction, and part of the evidence by a Magistrate who has jurisdiction, conviction is illegal and retrial is necessary. (*C. C. Ghose and Cammiade, J.J.*) BUDHU TATUA v. EMPEROR.

109 I. C. 175=55 Cal. 65=47 C. L. J. 122=  
 29 Cr. L. J. 464=A. I. R. 1928 Cal. 183.

## —S. 530—Summary trial.

—Where on a charge under Ss. 147, 323 and 506, Penal Code the Magistrate issued process and tried the accused summarily but convicted them only under S. 323.

Held, that the proceedings of the Magistrate were void as the case fell under S. 530 (q) Cr. P. Code. It is mainly of an offence with regard to which process is issued, for which the accused is tried and it could not be said that the accused was not tried under S. 147 27 C. W. N. 148 Foll. (*Fawcett and Mirza, J.J.*) GHANU SADU v. EMPEROR.

109 I. C. 220=  
 30 Bom. L. R. 371=52 Bom. 254=  
 10 A. I. Cr. R. 191=29 Cr. L. J. 492=  
 A. I. R. 1928 Bom. 142.

## —S. 530—Transfer of case.

—The proceedings of a Magistrate trying a case transferred by him to another Magistrate but which has not been retransferred to him are without jurisdiction and altogether void. 30 Cal. 449 and 32 Cal. 783, Appr. (*Pandalai, J.*) GOLUSU APPALANARASIAH v. EMPEROR.

125 I. C. 557=81 Cr. L. J. 895=  
 1930 Cr. C. 763=1930 M. W. N. 413=  
 A. I. R. 1930 Mad. 705.

## CR. P. CODE (1898), S. 533—Appeal.

## —S. 530—Wrong attachment.

—Where land has been attached under S. 88 without a warrant, the High Court would interfere under inherent powers to set right the irregularity though not according to S. 89. (*Harrison, J.*) BUTTA v. EMPEROR.

96 I. C. 977=27 P. L. R. 825=  
 8 L. L. J. 608=27 Cr. L. J. 1025=  
 A. I. R. 1926 Lah. 662.

## —S. 531—Accused beyond jurisdiction.

—Where the place where the breach of the peace was apprehended was within the Magistrate's jurisdiction, but the accused resided outside it, and no question of jurisdiction was raised in the trial Court and the Magistrate passed order under S., 107, and no prejudice is caused to the accused,

Held, that the irregularity, if there was one, is cured by S. 531. (*Daniels, J.*) RAM DEO SINGH v. EMPEROR. 97 I. C. 652=49 All. 228=25 A. L. J. 44=  
 27 Cr. L. J. 1132=7 L. R. A. (Cr.) 174=  
 A. I. R. 1926 All. 767.

## —S. 531—Offence outside jurisdiction.

—The High Court has got power to quash a commitment order passed by a Magistrate ordering an accused person to stand his trial in a Sessions Court which has no territorial jurisdiction over the place where the offence alleged was committed. (*Adami and Bucknil, J.J.*) MT. BHAGWATI v. EMPEROR. 83 I. C. 577=  
 3 Pat. 417=26 Cr. L. J. 49=  
 A. I. R. 1925 Pat. 187.

## —S. 532—Applicability.

—Offence not triable by Sessions or High Court—Accused committed—S. 532 does not apply.

Section 532 has no reference to a case in which a Magistrate who has general powers to commit an accused person to the High Court commits an accused over whom he has no jurisdiction or commits him for an offence which upon true construction of the Code is not triable by a Court of Sessions or High Court. (*Rankin, C. J. C. C. Ghose, Ruckland, B. B. Ghose and Mukerji, J.J.*) GIRISH CHANDRA v. EMPEROR.

123 I. C. 433=31 Cr. L. J. 506=57 Cal. 1042=  
 50 C. L. J. 408=34 C. W. N. 13=1929 Cr. C. 468=  
 A. I. R. 1929 Cal. 756 (F. B.)

## —S. 532—Interpretation.

—Section 532 is a curing or remedial section and it must be strictly interpreted in the interests of the accused person. (*Rankin, C. J. and C. C. Ghose, Buckland, B. B. Ghose and Mukerji, J.J.*) GIRISH CHANDRA v. EMPEROR.

123 I. C. 433=31 Cr. L. J. 506=  
 57 Cal. 1042=50 C. L. J. 408=34 C. W. N. 13=  
 1929 Cr. C. 468=A. I. R. 1929 Cal. 756 (F. B.)

## —S. 533—Appeal.

—Conviction on a report of an Excise Analyst—Report inadmissible—Appellate Court can order examination of the Excise Analyst as a witness—Judge acting on the admission of the pleader for accused—Procedure is merely irregular and S. 537 would apply.

In a trial of an offence under S. 43 (1) (a) of the Bombay Abkari Act, 1878, the report of the Excise Analyst that one bottle which had been sent to him contained cocaine and that some other things contained no cocaine, was tendered in evidence, and upon this evidence the accused was convicted. On appeal, the Sessions Judge held that the report of the Excise Analyst was inadmissible in evidence and, therefore, proposed to have the Excise Analyst examined under S. 428, Criminal P. Code. Upon this the pleader for the accused stated that he did not want to challenge the genuineness or the correctness of the certificate, and that he was prepared to admit that the powder in the bottle sent to the Excise Analyst was cocaine. The Sessions Judge

**CR. P. CODE (1898). S. 533—Appeal.**

acted upon this statement.

*Held*, that even assuming that the Judge should not have acted upon the admission of the pleader of the accused, the case was one of mere irregularity, which had not caused a failure of justice and which, therefore, could be properly held to fall under S. 537, Cr. P. Code.

*Held*, further, that this was a case where the provisions of S. 428, Cr. P. Code, could properly be availed of in order to have legal evidence as to the contents of the bottle.

*Held*, further, that the Sessions Judge could legally act upon the admission of the applicant's pleader in the appeal.

*Held*, further, that S. 58, Evidence Act, did apply to justify the action of the Sessions Judge, proceedings being of an appellate Court. (*Fawcett and Mirza, J.J.*) **BANSILAL GANGARAM v. EMPEROR.**

112 I. C. 110=52 Bom. 686=30 Bom. L. R. 646=  
29 Cr. L. J. 990=11 A. I. Cr. R. 243=  
A. I. R. 1928 Bom. 241.

**—Principle explained.**

Though S. 164 lays down that no Magistrate shall record any confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily, still it is nowhere laid down that the Magistrate shall record any note showing what questions he has put to the person and how he has satisfied himself that the confession is made voluntarily. But it is advisable that the Magistrate should always record a memorandum showing that he has, by questioning the person making it, satisfied himself that the confession is made voluntarily. The footnote to the recorded confession was as follows:—"The statement was written in my presence and hearing. It was read over to the accused, and he admitted it to be correct. It contains a true and full account of the statement made by him."

*Held*, that the footnote complied with the provisions of S. 164 before it was amended by the Act of 1923 though not with the new provisions which had been added in 1923. As the Magistrate, however, had under the provisions of S. 533 been duly called as a witness and examined, and his evidence showed that he had in fact complied with the provisions of law, the document in which the confession was recorded was fit to be admitted in evidence. (*Scott-Smith and Fforde, J.J.*) **KEMAN v. EMPEROR.**

88 I. C. 18=6 Lah. 58=  
26 Cr. L. J. 1074=26 P. L. R. 346=  
A. I. R. 1925 Lah. 315.

—Non-compliance with the formalities as to verification at the end of the confession is an irregularity cured by S. 533. (*Kennedy, J. C. and Kemp, A. J. C.*) **EMPEROR v. (PIR) MAHOMED BUX.**

85 I. C. 833=16 S. L. R. 143=26 Cr. L. J. 609=  
A. I. R. 1921 Sind 145.

**—S. 533—Defective footnote.****—Presumption under principle explained.**

If, when a document is tendered in evidence at a trial purporting to be a confession of the accused, it is found to contain the memorandum required by S. 164 (3), a presumption arises under S. 80 of the Evidence Act that all the necessary formalities purporting to have been performed have in fact been performed and the document is admissible in evidence without further proof. If, however, the said memorandum does not appear or is defective, the document is inadmissible unless the defect can be cured by the examination of the Magistrate who recorded it, under S. 533. The provisions of S. 164 (3) render it incumbent on a Magistrate who is called on to record a confession to explain to the person who is to make it that he is not bound to make a confession at all, and that if he does so it may be used

**CR. P. CODE (1898), S. 533 — Omission of footnote.**

as evidence against him. Further the Magistrate should only record the confession if upon examination of the person making it, he has reason to believe that it will be made voluntarily. Where the memorandum at the foot of confession recorded does not conform with the form as laid down, the defect is curable if it is of form and not of substance. If as a matter of fact the statement was duly recorded, that is to say, after the required explanation had been given, but the Magistrate had failed to embody that fact in the certificate, such a defect would be curable. If the explanation had not in fact been made the statement could not be held to have been "duly made" and S. 533 cannot be appealed to. (*Broadway and Addison, J.J.*) **PARTAP SINGH v. EMPEROR.**

93 I. C. 978=6 Lah. 415=  
7 L. L. J. 482=27 Cr. L. J. 514=  
A. I. R. 1925 Lah. 605.

**—S. 533—Deposition of Magistrate.**

—Deposition of the Magistrate that he complied with all the requirements of S. 164 cures a defect in their compliance: A. I. R. 1925 Lah. 315 and A. I. R. 1925 Lah. 605, Foll. (*Addison and Dalip Singh, J.J.*) **RAHMAT v. EMPEROR.**

113 I. C. 65=  
30 Cr. L. J. 49=11 L. L. J. 5=11 A. I. Cr. R. 506.

**—S. 533—Formal defects.**

—S. 533 is intended primarily to cure a defect of form only and not one of substance: A. I. R. 1922 Lah. 237, Foll. (*Raza and Nanavatty, J.J.*) **PRAG v. EMPEROR.**

128 I. C. 215=7 O. W. N. 909=  
1930 Cr. C. 1073=A. I. R. 1930 Oudh 449.

**—S. 533—Interpretation.**

—Operation of saving clause in S. 533 is to cure want of proper certificate by Magistrate.

The words "notwithstanding anything contained in the Evidence Act, 1872, S. 91" indicate that a confession must in every case be recorded in the first instance; but S. 533 is by its terms confined to confessions or statements recorded under S. 164 or S. 364 of the Code. Moreover, the words "notwithstanding anything contained in the Evidence Act, 1872, S. 91" so far as they apply to S. 164 really are intended to make the oral testimony of the Magistrate admissible to prove the fact that notwithstanding the absence of a certificate that he complied with the provisions of that section, he did as a matter of fact comply with such provision. The operation of this saving clause is therefore intended to cure the defect of want of proper certificate by the Magistrate. (*Jai Lal and Currie, J.J.*) **JOG RAJ v. EMPEROR.**

1930 Cr. C. 682=A. I. R. 1930 Lah. 534.

**—S. 533—Irregularity in procedure.**

—Even if a statement be not recorded strictly in conformity with S. 164 so long as the Magistrate purports to have recorded it under that section, and even after the statement has been received in evidence, S. 533 can be resorted to and evidence taken that an accused person duly made the statement recorded. S. 533 plainly provides that notwithstanding anything contained in S. 91, Evidence Act, such statement shall be admitted, if the error has not injured the accused as to his defence on the merits: 18 Cal. 549; 21 Bom. 495; and 32 Cal. 550, Ref. 9 Mad. 224, Dist.; 17 Cal. 862, Diss. from. (*Maung Ba and Brown, J.J.*) **RA YIN v. EMPEROR.**

121 I. C. 782=7 Rang. 759=  
31 Cr. L. J. 297=1930 Cr. C. 245=  
A. I. R. 1930 Rang. 53.

**—S. 533—Omission of footnote.**

—When the Magistrate has complied with the provisions of S. 164, but has failed to append to the record the necessary certificate required by S. 164, S. 533 comes into operation and on proof by the

**CR. P. CODE (1898), S. 533 — Omission of footnote.**

Magistrate that he had complied with the provisions of S. 164, the record becomes admissible. S. 533 is by its terms confined to confessions or statements recorded under S. 164 or S. 364. After the Magistrate has been examined and the Court is satisfied that the statement was duly made it is the record of such a statement that has been made admissible by S. 533 and not the evidence of the Magistrate about the terms of the statement. (Case law discussed.) (*Jai Lal and Currie, J.J.*) **JOG RAJ v. EMPEROR.** 1930 Cr. C. 682 =

A. I. R. 1930 Lah. 534.

**—S. 533—Warning to accused.**

—*Exact words of warning are immaterial.*

The exact words of the warning, which must be given to a person making a statement in the nature of a confession, are not very material provided the Magistrate explains, and the person making the statement clearly understands, that he need not make a confession. (*Scott-Smith and Fforde, J.J.*) **BAWA SINGH v. CROWN.** 89 I. C. 1026 = 7 L. L. J. 250 =

26 P. L. R. 579 = 26 Cr. L. J. 1458 =

A. I. R. 1925 Lah. 448.

**—S. 533—Writing questions and answers**

—*Magistrate failing to write questions and answers as required by S. 364—Defect is curable.*

Section 533 applies not only to omissions to comply with the provisions of law but also to infractions of the law.

Where a Magistrate while recording a confession of the accused fails to reduce into writing the questions and answers as required by S. 364, the defect is curable under S. 533 by examining the Magistrate as a witness provided no injury is caused to the accused as to his defence on the merits. Further the confession recorded by the Magistrate is itself admissible because the expression "such statement" in S. 533 refers to statement regarding which the Magistrate is called to give evidence. 21 Bom. 495; 23 Bom. 221; 9 Mad. 224, A. I. R. 1923 All. 90; A. I. R. 1925 Pat. 191, Rel on. (*Mirza and Patkar, J.J.*) **RAMA KARIYAPPA v. EMPEROR.** 120 I. C. 350 = 31 Cr. L. J. 97 =

31 Bom. L. R. 565 = A. I. R. 1929 Bom. 327.

**—S. 534—Defect cured.**

—The omission of the Magistrate to inform the accused of their rights under Cr. 33, as required by S. 447, is absolutely cured by the provisions of S. 534. (*Robinson, C. J. and Maung Gyi, J.*) **U. ZAGRIYA v. EMPEROR.** 89 I. C. 459 = 4 Bur. L. J. 44 =

3 Bang. 220 = 26 Cr. L. J. 1371 =

A. I. R. 1925 Rang. 239.

**—S. 535—Applicability.**

—The contention that S. 535 only applies to a trial where no charge at all has been framed is not correct. The section is applicable to a case in which no charge had been framed of the offence of which the appellant has been convicted. (*Newbould and B. B. Ghose, J.J.*) **ABDUL RAHIM v. EMPEROR.** 88 I. C. 1055 =

41 C. L. J. 474 = 26 Cr. L. J. 1279 =

A. I. R. 1925 Cal. 926.

**—S. 535—Charge framed against one accused.**

—Where the accused was tried and convicted under S. 506, Penal Code, without framing a charge but a charge was framed against the co-accused under S. 506 who was also convicted,

*Held*, that the omission to frame the charge did not prejudice the accused. (*Stuart, J.*) **GANGA PRASAD v. EMPEROR.** 76 I. C. 568 = 25 Cr. L. J. 200 =

A. I. R. 1923 All. 476.

**—S. 535—Contempt proceedings.**

—Section 535 ought not to be applied to summary

**CR. P. CODE (1898), S. 536—Revision.**

proceedings for contempt. (*Heald and Chari, J.J.*) **EBRAHIM MAMMOJEE v. EMPEROR**

4 Rang. 257 = 27 Cr. L. J. 1241 = 98 I. C. 57 =

A. I. R. 1926 Rang. 188.

**—S. 535—Conviction in appeal.**

—*Charge under S. 147, I.P.C.—Conviction under S. 323 valid.*

Where the accused were convicted of rioting under S. 147, the common object of which was stated to be to assault and in prosecution of which they did assault and evidence was directed towards assault committed by the accused but in appeal the accused were acquitted of rioting.

*Held*, that though the accused were acquitted of rioting they could be convicted in appeal under S. 323 though no charge was framed under that section as the accused would not be prejudiced. (*Jwala Prasad, J.*) **ULFAT KHAN v. EMPEROR.** 29 Cr. L. J. 374 =

108 I. C. 333 = 10 A. I. Cr. R. 31 =

A. I. R. 1928 Pat. 359.

**—S. 535—Effect of setting aside.**

—*Previous order of conviction set aside—Order cannot be used in subsequent trials.*

A Magistrate is not entitled to use an order which had been set aside, as proof that the accused was an old offender, on the ground that the previous order was set aside either in appeal or revision on technical grounds. (*Carr, J.*) **NGA PO THAN v. EMPEROR.**

89 I. C. 320 = 26 Cr. L. J. 1344 =

3 Rang. 156 = A. I. R. 1925 Rang. 277.

**—S. 535—Grounds for quashing.**

—A mere omission or irregularity to comply with S. 360 unaccompanied by any probable suggestion of any failure of justice having been thereby occasioned, is not enough to warrant the quashing of a conviction. (*Lord Phillimore*). **V. M. ABDUL RAHMAN v. KING EMPEROR.** 100 I. C. 227 = 5 Rang. 53 = 54 I. A. 96 =

25 A. L. J. 117 = 31 C. W. N. 271 =

1927 M. W. N. 103 = 38 M. L. T. 64 =

4 O. W. N. 283 = 8 P. L. T. 155 = 28 Cr. L. J. 259 =

6 Bur. L. J. 65 = 29 Bom. L. R. 813 =

45 C. L. J. 441 = 7 A. I. Cr. R. 362 =

A. I. R. 1927 P. C. 44 = 52 M. L. J. 585 (P. C.).

**—S. 535—Omissions in charge.**

—Omission to specify common object in the charge does not vitiate the trial unless the omission has prejudiced the accused or resulted in a failure of justice. (*Fawcett and Mirza, J.J.*) **HASANALI MAJAWAR v. EMPEROR.** 115 I. C. 399 = 28 Bom. L. R. 653 =

30 Cr. L. J. 467 = 12 A. I. Cr. R. 303 =

A. I. R. 1928 Bom. 286.

**—S. 536—Legality and Objection.**

—The trial by jury of an offence which is triable with the help of assessors is not necessarily invalid. The objection to the trial, if any, should be raised in the trial Court and not in appeal. (*Sundaram Chetty, J.*) **KARUPA THEVAN v. EMPEROR.** 1930 M. W. N. 776.

**—S. 536—Revision.**

—On a charge under Ss. 434, 392 and 397, while the jury returned a verdict of not guilty with regard to the counts under the said sections, they at the same time found the accused guilty of voluntarily causing hurt by a dangerous weapon, an offence triable by a Judge only with assessors:

*Held*, that the conviction or sentence in such a case should not be set aside or interfered with in revision unless it is clear that the irregularity had led to some miscarriage of justice: 26 Mad. 243, Dist. (*Srinivasa Aiyangar, J.*) **ARUMUGA KONE v. EMPEROR.**

108 I. C. 214 = 1927 M. W. N. 299 =

29 Cr. L. J. 351 = 1 M. Cr. C. 211 =



**CR. P. CODE (1898), S. 536 (1)—Trial by Jury—Objection to.**

**A. I. R. 1928 Mad. 275.**

**—S. 536 (1)—Trial by Jury—Objection to.**

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**—S. 537.**

**Absence of complaint.**

**Charge.**

**Essentials for vitiation.**

**Examination of accused.**

**Examination of complainant.**

**Examination of witness.**

**Hearing accused.**

**Judgment.**

**Local inspection.**

**Mode of trial.**

**Procedure.**

**Reading over depositions.**

**Recording of reasons.**

**Sanction.**

**Scope.**

**Verdict of Jury.**

**Miscellaneous.**

**—S. 537—Absence of complaint.**

—The want of a complaint for a particular offence is quite a different thing from an error, omission or irregularity in the complaint. It affects the jurisdiction of the Court and the legality of the trial and the case does not fall within the provisions of S. 537. (*Mya Bu, J.*) **T. SATHI REDDY v. EMPEROR. 126 I. C. 530=**

**31 Cr. L. J. 1060=1930 Cr. C. 585=**

**A. I. R. 1930 Rang. 153.**

—What S. 537 provides is an error, omission or irregularity in the complaint and not the entire absence of the complaint without which no cognizance of the offence can be taken under the law. (*Mukerji and Graham, J.J.*) **MOHIM CHANDRA v. EMPEROR.**

**116 I. C. 638=33 C. W. N. 285=49 C.L.J. 342=**

**30 Cr. L. J. 658=56 Cal. 824=13 A. I. Cr. R. 103=**

**A. I. R. 1929 Cal. 172.**

—Cantonment Board lodging a complaint signed by execution officer filing no authority but having power to file such complaint—Affidavit filed in the revision Court showing that he had an authority to do so—Omission to file is curable. **116 P. L. R. 1907, Foll. (Addison, J.) KHUSHAL CHAND v. EMPEROR. 111 I. C. 326=**

**11 A. I. Cr. R. 13=29 Cr. L. J. 822=**

**A. I. R. 1928 Lah. 946.**

—The absence of a complaint in writing as required by S. 195 (1), of the public servant concerned or his superior makes the Court a Court not of competent jurisdiction and, therefore renders valueless the plea of previous acquittal as a bar to his re-trial on the same facts after proper complaint is made. S. 537 (a) does not apply as in the first trial there cannot be said to be an error, omission or irregularity in a complaint, but an absence of complaint altogether. (*Kincard, J. C. and Tyabji, A. J. C.*) **FAKIR MAHOMED v. EMPEROR.**

**97 I. C. 417=27 Cr. L. J. 1105=21 S. L. R. 1=**

**A. I. R. 1927 Sind 10.**

—The absence of sanction or complaint under S. 195, Cr. P. Code, vitiates the whole proceedings and the defect is not cured by S. 537, which applies to errors of procedure and not to substantive errors of law. Where a trial is contrary to law it is no trial at all and disobedience to an express provision of law as to the mode of the trial is not an irregularity which can be cured by S. 537, Cr. P. Code. It is an illegality which

**CR. P. CODE (1898), S. 537—Charge.**

vitiates the whole trial. Absence of complaint or irregularity in complaint makes whole proceedings void *ab initio*. (*Raza, J.*) **RAM SAMUJH v. EMPEROR.**

**96 I. C. 521=1 Luck. 523=3 O. W. N. 614=**

**27 Cr. L. J. 969=7 A. I. Cr. R. 45=**

**A. I. R. 1926 Oudh 485.**

—Where the complainant was examined on oath by the Magistrate when cognizance was taken of the offence, absence of a complaint in writing would only amount to an error, omission or irregularity as contemplated by S. 537 of the Code (*Kulwant Sahay, J.*) **LACHMI SINGH v. KING-EMPEROR. 81 I. C. 620=**

**5 P. L. T. 505=1924 P. H. C. C. 18=**

**25 Cr. L. J. 972=A. I. R. 1924 Pat 691.**

**—S. 537—Charge.**

—Where a charge is defective under S. 234 as having been presented out of time the trial is vitiated. The defect in the charge is not a mere irregularity so as to be cured by S. 537. (*Pearson and Jack, J.J.*) **KALUMIAN v. EMPEROR. 34 C. W. N. 959.**

—Offence under S. 415—His mere surplussage to state in charge that any person suffered loss as a result of misrepresentation and such defect curable.

*F* borrowed money from *M* on security of *N*, on basis of two mortgage bonds and having arranged to sell the mortgaged property induced *M* to accompany him to a petition writer to get a sale-deed drafted. The bonds were left with the petition-writer and *M* went away to get a document registered. *N* and *F* making a false representation to petition-writer that *M* wanted to see to the bonds, took them away. *F* and *N* were followed, but the bonds could not be recovered. In the charge it was recited that *F* and *N* obtained the bonds after making false representation to the petition-writer and that as a result of the misrepresentation, *M* suffered loss. It was contended that the charge was defective.

*Held*, that it was not necessary to state in the charge that a result of false representation made by *F* and *N*, *M* suffered any loss. The mere fact that the petition writer as a result of the deception of *N* handed the bond to him was sufficient to bring his conduct within the definition of cheating. The addition in the charge that *M* suffered loss as a result of the misrepresentation was a mere surplussage and the defect was cured by S. 537, Cr. P. Code. (*Jai Lal, J.*) **FATEH HAIDAR v. EMPEROR. 1930 Cr. C. 467=**

**A. I. R. 1930 Lah. 407.**

—It cannot be assumed that if a mandatory provision of the Code has been infringed in framing the charge, the Court must of necessity be held to have failed in administering justice to the accused. S. 537 affords no real grounds for any such assumption. The impugned procedure must be one that is not only prohibited by the Code but also works actual injustice to the accused. **A. I. R. 1927 P. C. 44, Foll. (Wallace and Jackson, J.J.) K. RAMARAJA TEVAN v. EMPEROR.**

**127 I. C. 654=55 Mad. 937=1930 M. W. N. 377=**

**1930 Cr. C. 1033=A. I. R. 1930 Mad. 857.**

—Failure to define accurately common object.

It is not a general proposition of law that a conviction under S. 147, I. P. Code, cannot be supported wherever the common object, as stated in the charge, is not precisely made out. Failure to define expressly and accurately the common object with which an unlawful assembly acts is an error, omission or irregularity as may be cured by S. 537: **36 Cal. 865 and 37 Cal. 340, Rel. on.; 6 M. L. J. 17; 27 Cal. 990 and 33 Cal. 295, Ref. (Curgenven, J.) VENKADU v. EMPEROR.**

**121 I. C. 862=1930 Cr. C. 188=31 M. L. W. 236=**

**1930 M. W. N. 80=3 M. Cr. C. 67=**

**31 Cr. L. J. 347=A. I. R. 1930 Mad. 188.**

**CR. P. CODE (1898), S. 537—Charge.**

—The omission to give the substance of the charge in an order under S. 112 is not a mere irregularity when it is shown that the objection was taken before the trial Court and when it is established that there has been a failure of justice. (*Pandalai, J.*) **KALIA GOUNDAN v. EMPEROR.** 1930 M. W. N. 698 = 32 M. L. W. 320 = 127 I. C. 652 = 1930 Cr. C. 1035 = A. I. R. 1930 Mad. 859.

—When the charge is on the face of it meaningless and ununderstandable, but where the accused and his counsel know the nature of the offence the accused is charged with, and no failure of justice has resulted the vagueness or incomprehensibility of the charge is cured by S. 537. (*Baguley, J.*) **K. C. V. REDDY v. EMPEROR.** 125 I. C. 266 = 31 Cr. L. J. 793 = 1930 Cr. C. 661 = 8 Rang. 25 = A. I. R. 1930 Rang. 201.

—The joinder of two offences in a single charge is only an irregularity cured by S. 537, and not an illegality: 40 Cal. 846 Diss. from; A. I. R. 1922 Cal. 573; A. I. R. 1925 Cal. 341; and A. I. R. 1927 Cal. 17; Dist.; 19 C. W. N. 972, Foll. (*Cuming and Lort Williams, J.J.*) **AJGAR SHAIKH v. EMPEROR.**

117 I. C. 596 = 48 C. L. J. 138 = 32 C. W. N. 839 = 30 Cr. L. J. 799 = A. I. R. 1928 Cal. 700.

—*Penal Code, S. 504.*

In a prosecution under S. 504, if the accused is aware of the words complained of but the Magistrate does not specifically mention the objectionable words in the charge, the accused not being misled by the technical defect in the charge, his conviction is not vitiated. (*Tek Chand, J.*) **SHANKAR LAL v. EMPEROR.** 104 I. C. 437 = 28 Cr. L. J. 821 = A. I. R. 1927 Lah. 702.

—Where in a prosecution under S. 498, Indian Penal Code, the accused were not charged with knowledge or reason to believe that the abducted woman was a married woman and the accused knew what they were charged with and what it was necessary for the prosecution to prove,

*Held*, that this fact by itself would not affect the case. (*Dalip Singh, J.*) **ALLAH DIN v. EMPEROR.**

101 I. C. 451 = 28 Cr. L. J. 419 = A. I. R. 1927 Lah. 432.

—When a Court of appeal is dealing with an appeal against an acquittal there is no provision of the Code under which a defect in the charge can be condoned. (*Campbell, J.*) **EMPEROR v. ABDUR RAHMAN.** 28 Cr. L. J. 170 = 99 I. C. 602 = 7 A. I. Cr. B. 319 = A. I. R. 1927 Lah. 109.

—*Penal Code, S. 120-B.*

Omission to specify in the charge the persons who were parties to the conspiracy is an irregularity curable by S. 537, Cr. P. Code. (*Percival, J. C. and Rupchand Bilaram, A. J. C.*) **HAJI SAMO v. EMPEROR.** 101 I. C. 458 = 28 Cr. L. J. 426 = 8 A. I. Cr. B. 11 = A. I. R. 1927 Sind. 161.

—Where a charge of cheating gives the month in which the offence was committed, but the exact date is not given, the irregularity is curable. (*Bucknill, J.*) **FARZAND ALI v. EMPEROR.** 96 I. C. 221 = 1926 P. H. C. C. 207 = 27 Cr. L. J. 909 = A. I. R. 1926 Pat. 347.

—Where the accused is charged jointly with having stolen six specific animals belonging to five specific persons by five different acts of theft from those five specific persons,

*Held*, that the error is not a mere technicality which can be set right under S. 537. The trial is wholly illegal 25 Mad. 61 (P. C.) Foll. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) **HYDER v. EMPEROR.**

91 I. C. 64 = 20 S. L. R. 3 = 27 Cr. L. J. 32 =

**CR. P. CODE (1898), S. 537—Charge.**

A. I. R. 1926 Sind. 129.

—*Omission of S. 149 I. P. Code from charge is not illegality.*

S. 149 creates no offence but is like S. 34 merely declaratory of a principle of the common law and its object is to make it clear that an accused who comes within that section cannot put forward as a defence that it was not his hand which inflicted the grievous hurt. A person cannot be tried and sentenced under S. 149 alone, no punishment being provided by the section. Therefore the omission of S. 149 from a charge does not create an illegality by reason of S. 233, Criminal Procedure Code which provides that for every distinct offence of which any person is accused there shall be a separate charge. (*Spencer, Krishnan and Ramesam, J.J.*) **THUTHUMALAI GOUNDER, In re.**

82 I. C. 465 = 25 Cr. L. J. 1297 = 47 Mad. 746 = 20 M. L. W. 261 = 35 M. L. T. 21 = A. I. R. 1925 Mad. 1 = 47 M. L. J. 221 (F.B.).

—A trial *de novo* must not be ordered when no charge has been framed or when a defective charge has been framed. In such a case what must be done is to order a fresh trial from the stage at which the illegality occurred. Ss. 225 and 537 of the Cr. P. Code, remedy any defect due to the omission in the charge of the particulars required by S. 223 of the Code. (*Hallifax, A. J. C.*) **GANGADHAR v. BHANGI SAO.**

81 I. C. 976 = 25 Cr. L. J. 1152 = A. I. R. 1925 Nag. 147.

—*Real charge understood—No prejudice.*

Where it was intended to allege one general conspiracy to commit an offence or offences under S. 420 of the Indian Penal Code by cheating the Government of India of large sums of money and the transactions in linseed oil, turpentine and water-soluble oil, were overt acts from which the conspiracy might be inferred and this was explained to the Counsel who appeared for the accused at different periods of the trial and the accused fully understood the charge.

*Held*, that although the allegations amounted to charges of three different conspiracies it was not a bad charge as the accused knew what the charge was. The mere fact of there being three letters in respect of the three articles is not inconsistent with the existence of one general conspiracy. The fact that there were many transactions intervening between the dates of the three matters alleged as overt acts by the prosecution, and that it was proved that such transactions were fraudulent or dishonest is not inconsistent with the existence of one general conspiracy. Although the charge should have contained an allegation of the person or persons who were alleged to have been deceived and induced to issue the cheque the omission should not be regarded as a fatal defect in the charge, where the accused were not misled and there was no failure of justice by reason of the omission of the above-named particulars from the charge. Where objection was taken to the charge of cheating the Government of India by inducing them to deliver a cheque for Rs. 59,265 in payment of five bills that the five bills therein referred to were presented at different dates, and that if any offence was committed by the appellants in respect of the bills, there were five separate offences of cheating and five separate offences could not be included in one charge.

*Held*, the offence charged under S. 420, Indian Penal Code, would not be complete until the Government of India, being induced thereto by the alleged fraudulent bills, delivered the cheque for Rs. 59,265. Until the last of the five bills was delivered the inducement was not complete, and until the cheque was issued the offence under S. 420, Indian Penal Code, was not complete.

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Therefore, the charge did not include five separate offences as alleged, but one offence only. (*Sanderson, C. J. and Richardson, J.*) **P. E. BILLINGHURST v. KING-EMPEROR.** 82 I. C. 545=27 C. W. N. 821=25 Cr. L. J. 1313=A. I. R. 1924 Cal. 18.

**—S. 537—Essentials for vitiation.**

—The infringement of the provisions of S. 162, Cr. P. Code, is an irregularity which can be cured under S. 537 if it has not been occasioned a failure of justice. In considering whether a particular infringement of the provisions of the Cr. P. Code, is one which does or does not come within the purview of S. 537, what one has to consider is whether any vital rule of procedure has been broken and whether the irregularity goes to the root of the proceedings. 35 Cal. 61, Appl. L. R. 28 I. A. 257, Dist. 45 All. 124, Ref. (*Beaumont, C. J. and Madgavkar, J.*) **NUR MAHOMED KADAR-BHAI v. EMPEROR.** 32 Bom. L. R. 1279=1930 Cr. C. 1182=A. I. R. 1930 Bom. 595.

—Court should look to substance rather than to form.

Per *Page, J.*—When the decision of a Criminal Court in substance appears to be correct, an appeal Court should endeavour to uphold the decision even in cases where the rules of procedure by which the trial is to be regulated have been transgressed; except where the breach of the prescribed rules is of so grave a nature, where the form of trial was substantially different from that provided by law for the offence charged, or where, although the violation of the rules was not so profound as to radically alter the mode of trial, it is proved that thereby in the event a failure of justice has in fact been occasioned. (*Rankin, C. J. C. C. Ghose, Suhrwardy, Pearson and Page, J.J.*) **EMPEROR v. ERMANALI.**

57 Cal. 1228=123 I. C. 664=1930 Cr. C. 212=34 C. W. N. 296=51 C. L. J. 171=31 Cr. L. J. 536=A. I. R. 1930 Cal. 212 (F. B.).

—Per *Page, J.*—Whether a particular breach of the procedure prescribed in the Code vitiates the proceedings or not must depend upon the gravity of the breach and the consequences that are presumed or proved to have flowed from it. *Allen v. Flood*, (1901) A. C. 506, Rel. on. (*Rankin, C. J., C. C. Ghose, Suhrwardy, Pearson and Page, J.J.*) **EMPEROR v. ERMANALI.**

123 I. C. 664=57 Cal. 1228=1930 Cr. C. 212=34 C. W. N. 296=51 C. L. J. 171=31 Cr. L. J. 536=A. I. R. 1930 Cal. 212 (F. B.).

—Where a copy of the oral statement of the accused made to a police officer was not supplied to him on the ground that it had not been reduced to writing. *Held*, that in the absence of prejudice the omission to supply copies did not affect the legality of the conviction. (*Pullan, J.*) **ABDUL KARIM v. EMPEROR.**

7 O. W. N. 957=1930 Cr. C. 1211=A. I. R. 1930 Oudh 505.

—Reception of inadmissible evidence—No substantial injustice—Trial not vitiated.

Misreception of a piece of evidence which is inadmissible but which has very little weight and admission of which causes no substantial injustice, does not vitiate the trial. (*Courtney Terrel, C. J. and Dhawle, J.*) **SOHRAI SAO v. EMPEROR.**

11 P. L. T. 148=124 I. C. 836=31 Cr. L. J. 721=9 Pat. 474=1930 Cr. C. 515=A. I. R. 1930 Pat. 247.

—Where there is no contravention of any express provisions of the Cr. P. Code, S. 537 cures if there is any error. (*Suhrwardy and Graham, J.J.*) **MAHENDRA NATH v. EMPEROR.**

124 I. C. 827=31 Cr. L. J. 750=49 C. L. J. 374=1929 Cr. C. 54=A. I. R. 1929 Cal. 428.

**CR. P. CODE (1898), S. 537—Essentials for vitiation.**

—Wrong Section mentioned in Summons—Accused approved of correct Section before trial—No material.

Where in the Summons by mistake a wrong section is mentioned as the provision of law under which the accused was prosecuted, but where the Magistrate told the accused when he appeared in answer to the summons, the correct section under which he was being prosecuted, the accused is aware of the case he has to meet and there is no such material irregularity as to justify the quashing of conviction. (*Shadi Lal, C. J.*) **MUHAMMAD SADIQ v. DELHI ELECTRIC SUPPLY & TRACTION CO.** 116 I. C. 889=30 Cr. L. J. 702=13 A. I. Cr. R. 115=1929 Cr. C. 601=A. I. R. 1929 Lah. 867.

—Failure to comply with a mandatory provision of law is not necessarily an illegality that vitiates the proceedings, the real question being whether the failure has been prejudicial to the accused. A. I. R. 1925 Cal. 1246; A. I. R. 1926 Bom. 534, Foll. (*Waller and Pandalai, J.J.*) **TIRUMANA GOUNDAN v. EMPEROR.** 1929 M. W. N. 506=116 I. C. 366=30 Cr. L. J. 623=2 M. Cr. C. 189=13 A. I. Cr. R. 45=1928 Cr. C. 25=A. I. R. 1929 Mad. 544.

—Non-cognizable offence—Complaint instead of charge-sheet filed—Not material irregularity.

The Police after making investigation of a non-cognizable offence filed by a complainant to the Magistrate instead of submitting the charge-sheet.

*Held*, that although the Courts followed by the Police was irregular, there was no material irregularity. 17 Bom. L. R. 69, Dist. (*Curgenven, J.*) **PONNUSWAMI OODAYAR v. EMPEROR.** 23 M. L. W. 769=2 M. Cr. C. 39=115 I. C. 481=30 Cr. L. J. 469=12 A. I. Cr. R. 299=A. I. R. 1929 Mad. 115.

—In a trial of an offence under S. 43 (1) (a) of the Bombay Abkari Act, 1878, the report of the Excise Analyst that one bottle which had been sent to him contained cocaine and that some other things contained no cocaine, was tendered in evidence and upon this evidence the accused was convicted. On appeal the Sessions Judge held that the report of the Excise Analyst was inadmissible in evidence and therefore, proposed to have the Excise Analyst examined under S. 428, Cr. P. Code. Upon this the pleader for the accused stated that he did not want to challenge the genuineness or the correctness of the certificate, and that he was prepared to admit that the powder in the bottle sent to the Excise Analyst was cocaine. The Sessions Judge acted upon this statement. *Held*, that even if the admission could not be legally acted on, the irregularity did not vitiate the trial. (*Fawcett and Mirza, J.J.*) **BANSILAL GANGARAM v. EMPEROR.**

112 I. C. 110=30 Bom. L. R. 646=52 Bom. 686=29 Cr. L. J. 990=11 A. I. Cr. R. 243=A. I. R. 1928 Bom. 241.

—The tests to be applied in considering whether a particular infringement of the provision of the Cr. P. Code is one which does or does not come within the purview of S. 537 are; Does the error go to the whole root of the trial? Does it in effect vitiate the proceedings? Has the Court assumed an authority which it does not possess? If the error is of such a nature, the proceedings are vitiated in their very inception and S. 537 has no application. But the mere fact that a certain provision of the Code is imperative does not in itself indicate that a breach of the provision vitiates the whole proceedings. A. I. R. 1925 Rang. 258, Foll.

Per *Doyle, J.*—Mandatory directions may be either imperative or directory. They deal either with what

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shall or with what shall not be done. It is possible to have degrees of disobedience of positive but of prohibitory directions. Prohibitory directions offer very little difficulty since disobedience amounts nearly always to an illegality. In considering positive directions, it must be remembered that the distinction between simple irregularities and illegalities is one not of degree, but of essence. If therefore the disobedience of a mandatory injunction is measurable, so to speak, quantitatively, and, if a minor infringement of that mandatory injunction which does not go to the root of a trial may be admitted, a general infringement of the same nature constitutes an irregularity which may necessitate the annulment of the particular trial, but is not an illegality incurable under S. 537 of the Code of Criminal Procedure. (*Maung Ba and Doyle, J.J.*) **ABDUL RAHMAN v. EMPEROR.** 94 I. C. 717 = 4 Bur. L. J. 213 = 27 Cr. L. J. 669 = A. I. R. 1926 Rang. 53.

—S. 537 (a) of the Cr. P. Code has no application to cases in which there has been a disregard or disobedience of the whole of some mandatory provision of the Code; but the section applies only to cases where there has been a failure to comply with some part of such a provision in the course of a general compliance with the whole. (*Hallifax, A.J.C.*) **GANGADHAR v. BHANGI SAO.** 81 I. C. 976 = 25 Cr. L. J. 1152 = A. I. R. 1925 Nag. 147.

—*Defects in procedure even in contravention of positive enactments are curable.*

A positive enactment by the Code that a certain trial shall not take place is obviously a very different thing from a positive enactment that in the course of such a trial certain detailed procedure shall be followed. In the one case an infringement of the enactment amounts to an assumption of jurisdiction and vitiates the trial from the very beginning. In the other case an infringement merely amounts to an error, omission or irregularity in the procedure adopted in the course of the trial. S. 537 of the Code aims at curing infringements of the latter type. 25 Mad. 61 (P. C.), Expl. If the error is of the former nature, the proceedings are vitiated in their very inception, and S. 537 has no application. But the mere fact that a certain provision of the Code is imperative does not in itself indicate that a breach of that provision vitiates the whole proceedings. (*Brown, J.*) **NGA HLA U v. EMPEROR.** 89 I. C. 312 = 26 Cr. L. J. 1336 = 3 Rang. 139 = A. I. R. 1925 Rang. 258.

**—S. 537—Examination of accused.**

—*Non-compliance with S. 256—Trial vitiated.*

The provision that the accused should be asked whether he wishes to cross-examine the prosecution witnesses on a date subsequent to that upon which he is called upon to plead to the charge, inserted in S. 256 by the amending Act of 1923 by words "at the commencement of the next hearing," is obviously intended to give the accused an interval of time to think out the lines of his defence before he is called upon to inform the Court how he intends to proceed and an omission of this new procedure is an irregularity which vitiates the whole trial. 7 L. L. J. 114, Foll. (*Subhedar, A.J.C.*) **GIRDHARI v. EMPEROR.** 124 I. C. 619 = 31 Cr. L. J. 705 = 1930 Cr. C. 831 = A. I. R. 1930 Nag. 255.

—*Fresh prosecution witnesses—Omission to examine accused again—Irregularity.*

A number of witnesses for the prosecution were examined and then the accused himself was examined. At the next hearing two witnesses for the Crown, who had not previously been examined, were examined and after

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that, a considerable number of the other prosecution witnesses were recalled and cross-examined. Subsequently the defence witnesses were examined but the accused was not examined again and a judgment was passed against him.

*Held*, that the provisions of S. 342 were not obeyed as that section would require the accused to be re-examined when the prosecution witnesses had been recalled and cross-examined and to be further examined after two fresh Crown witnesses had been examined.

*Held further*, that such violation if it did not lead to a failure of justice would not vitiate the proceedings and is a mere irregularity which could be cured under S. 537. A. I. R. 1922 Mad. 512; A. I. R. 1923 Cal. 196; A. I. R. 1923 Cal. 668; A. I. R. 1923 Cal. 470 and A. I. R. 1924 Cal. 975, Diss. from.; A. I. R. 1924 Lah. 84; A. I. R. 1925 Pat. 414; A. I. R. 1923 All. 81; A. I. R. 1925 Rang. 258 and A. I. R. 1927 P. C. 44, Rel. on; 25 Mad. 61 (P. C.) and A. I. R. 1923 Mad. 609 (F.B.), Rel. (*Carr, J.*) **K. M. SUBBAYA NAIDU v. EMPEROR.** 120 I. C. 230 = 7 Rang. 470 = 1929 Cr. C. 507 = 30 Cr. L. J. 1164 = A. I. R. 1929 Rang. 331.

—*Omission to examine at proper time is an irregularity curable.*

The accused should be examined just before he enters on to his defence and produces his witnesses, i.e., after all the prosecution witnesses have been completely done with and any irregularity in omitting to examine him at proper time will come within the purview of S. 537 and will call for interference, if it has occasioned a failure of justice. A. I. R. 1923 Mad. 609 (F.B.), Rel. on. (*Ashworth, J.*) **SUDAMAN v. EMPEROR.** 100 I. C. 1055 = 25 A. L. J. 379 = 8 L. R. A. Cr. 51 = 28 Cr. L. J. 399 = 7 A. I. Cr. R. 343 = 49 All. 551 = A. I. R. 1927 All. 475.

—The omission to comply with the provisions of S. 242 is nothing more than a curable irregularity where a failure of justice has not been caused. (*Findlay, J. C.*) **DAMDOO v. HARBA.** 101 I. C. 895 = 28 Cr. L. J. 511 = 8 A. I. Cr. R. 175 = A. I. R. 1927 Nag. 210.

—*S. 342 applies to summons cases—Provisions are mandatory—Non-compliance is not curable.*

Section 342 applies even in summons cases. The initial statement of the accused in such cases under S. 242 when he is called upon to show cause under S. 243 before evidence is led does not dispense with the necessity for the examination by the Court and the statement by the accused under S. 342 at the close of the evidence for the prosecution, in explanation of the circumstances appearing in the evidence against him. The omission is a violation of the express procedure ensuring an essential right of the accused person and is not an irregularity curable under S. 537. A. I. R. 1922 Bom. 290 and 5 P. L. J. 430, Foll. (*Kennedy, J. C. and Madgavkar, A. J. C.*) **EMPEROR v. PARIO.** 98 I. C. 186 = 19 S. L. R. 121 = 27 Cr. L. J. 1290 = A. I. R. 1926 Sind 281.

—The entire omission to question an accused generally on the case after the prosecution witnesses have been examined and before the accused enters on his defence renders the trial from that point onwards and not *ab initio* improper or illegal. S. 537 cannot condone the error but the defect must be rectified in a fresh trial commencing from the point at which the error was committed. (*Hallifax, A. J. C.*) **GANGADHAR v. BHANGI SAO.** 81 I. C. 976 = 25 Cr. L. J. 1152 = A. I. R. 1925 Nag. 147.

**CR. P. CODE (1898), S. 537—Examination of accused.**

—*Accused has right to be examined after further cross-examination of the prosecution witnesses—Omission vitiates the conviction.*

An accused person has a right to be examined and to state his case after the further cross examination of prosecution witnesses, even though he has already been examined before the charge was framed and he was called on for his defence. That right is fundamental and the omission to so examine him cannot be regarded as a mere error or irregularity, which can be cured by S. 537, Cr. P. Code, but vitiates the conviction. A.I.R. 1923 Cal. 164; A.I. R. 1924 Cal. 975 and A.I. R. 1922 Mad. 512, Foll. (*Godfrey, J.*) **AH KHAUNG v. EMPEROR.** 92 I. C. 752=4 Bur. L. J. 143=

27 Cr. L. J. 336=A. I. R. 1925 Rang. 363.  
—Where it was found that the omission to formally examine, after close of prosecution and before defence, the person called upon to furnish security had not prejudiced him, *held*, that the omission is only an irregularity curable under S. 537. 50 Cal. 223. Not Foll. (*C. C. Ghose and Cumming, J.J.*) **BINODE BEHARI NATH v. EMPEROR.** 81 I. C. 909=

50 Cal. 985=25 Cr. L. J. 1085=A. I. R. 1924 Cal. 392.  
—It is a fatal defect to examine the accused, before all the prosecution witnesses are examined and it is not curable by S. 537. (*Bucknill, J.*) **TILAK GOPE v. BHAYA RAM.** 62 I. C. 870=22 Cr. L. J. 598 (Pat.).

**—S. 537—Examination of Complainant.**

—The fact that a complainant is not examined on oath is no illegality but a mere irregularity under the law in Madras Presidency. 11 Mad. 443 and A. I. R. 1924 Mad. 587, Ref. (*Wallace, J.*) **MOLAIAPPA GOUNDAN v. EMPEROR.** 115 I. C. 242=52 Mad. 79=

28 M. L. W. 621=1 M. Cr. C. 317=30 Cr. L. J. 482=A. I. R. 1928 Mad. 1235=55 M. L. J. 715.

—Failure to examine the complainant is an error of procedure and where it has caused no injury to applicant and no failure of justice under S. 537 it is curable. (*Pratt, J.*) **GOPICHANU v. EMPEROR.**

1 Rang. 517=76 I. C. 865=25 Cr. L. J. 273=A. I. R. 1924 Rang. 87.

**—S. 537—Examination of witnesses.**

—*Witness giving opposite answers—Charge to the jury—Defective procedure.*

One of the witnesses, in answer to a question put in cross-examination, said that the reason why information was not given to the police immediately after the occurrence although the police station was only a short distance away from the scene of occurrence was that the persons who had committed the offence were then unknown. The Judge then told the foreman of the jury to put the question in another form to the witness and the witness said that he and others had recognized the appellants at the place of occurrence and seen them running away. The Judge said to the jury in his charge "as to this particular witness he had no doubt said in answer to an invalid question from the pleader for the defence which was repeated by me that the culprits could not be ascertained that night. If you think that he gave the answer after understanding the question, there is an end of the case for prosecution and the accused should be forthwith acquitted. If on the other hand you think that he did not understand the question you are to consider what he had stated before and what he said later on in answer to foreman's question." The Judge did not record anything from which it could be inferred that the witness did not understand the question put to him.

**CR. P. CODE (1898), S. 537—Hearing accused.**

*Held*, that the procedure followed by the Judge was wrong. (*Suhrawardy and Cammiade, J.J.*) **MAHAM-MAD SAGIRUDDIN v. EMPEROR.** 113 I. C. 280=

30 Cr. L. J. 120=A. I. R. 1928 Cal. 551.

—Cross-examination and arguments *inter partes* are out of place in an enquiry into the truth of the complaint. Such departure from the strict letter of the law constitutes a mere irregularity and the High Court should not in the exercise of its discretion direct a further enquiry. 14 Cal. 141, Dist. (*Foster, J.*) **RAM SARAN SINGH v. MD. JAN KHAN.** 26 Cr. L. J. 1394=

89 I. C. 706=7 P. L. T. 36=A. I. R. 1926 Pat. 34.

—*Evidence Act, S. 167—Inadmissible evidence let in—Duty of appellate Court.*

What a Court of appeal has to consider is whether the reception of inadmissible evidence influenced the minds of the jury so seriously as to lead them to a conclusion which might have been different but for its reception. Hence where inadmissible evidence has been admitted, there are two points for consideration firstly whether the reception of the inadmissible evidence has in fact occasioned a failure of justice, and secondly whether if it is excluded there was sufficient evidence to justify the verdict of the jury. (*Sanderson, C.J. and Chotzner, J.*) **HARENDRA NATH SAHA v. EMPEROR.**

84 I. C. 451=40 C. L. J. 313=26 Cr. L. J. 307=A. I. R. 1925 Cal. 161.

—Where, after the close of the defence evidence the Court examined the police Sub-Inspector as a witness,

*Held*, that the omission to give accused an opportunity to rebut the evidence was an illegality not curable by S. 537. (*Broadway, J.*) **SHUJAN CHAND v. EMPEROR.** 87 I. C. 923=26 Cr. L. J. 1035=

26 P. L. B. 312=A. I. R. 1925 Lah. 531.

—*Witnesses not examined but only their previous statements merely read over to them—Illegality not curable.*

Where an accused, after seven prosecution witnesses were examined, claimed to be tried as an European British subject and he is dealt as such and some witnesses are examined but as regards the remaining, *i.e.*, previous seven witnesses for the Crown the course adopted was as follows: When each witness came into the box the recorded statement of the evidence given by him at the first hearing was read out to him. A few further questions were then put to the witness and he was tendered for cross-examination; some witnesses were not even sworn.

*Held*, that this method of presenting the evidence for the prosecution is irregular, and not only irregular but entirely illegal, and the defect is not curable by S. 537. (*Fforde, J.*) **JOHN THOMAS LYME v. THE CROWN.** 77 I. C. 425=

4 Lah. 382=25 Cr. L. J. 377=A. I. R. 1924 Lah. 17.

**—S. 537—Hearing accused.**

—*Written address of counsel—Propriety of.*

In matters where counsel on behalf of accused is entitled to be heard, he is entitled generally to be heard by an oral address and not by written speech. Written addresses filed by counsels do not stand higher than notes of counsels' arguments taken down by the Magistrate and cannot form part of the record. No doubt address of counsel is a valuable right which every party accused of crime who engages counsel to defend him is entitled to regard as such. But if the Magistrate asks the counsel to write out his address in lieu of addressing him it constitutes not an illegality or nullity but only an irregularity which might be waived. The right to address the Magistrate on the case is for the benefit of

**CR. P. CODE (1898), S. 537—Hearing accused.**

the accused and he is entitled to waive such right and his counsel is entitled to waive it in favour of a written address. (*Mirza and Patkar, J.J.*) VINAYAK LAXMAN BHATKHANDE v. EMPEROR. 113 I. C. 612 = 30 Bom. L. R. 1530 = 12 A. I. Cr. R. 73 = 30 Cr. L. J. 185 = 53 Bom. 119 = A. I. R. 1928 Bom. 557.

—Criminal trial—Effective hearing—Last opportunity.

The right of counsel in criminal matters is not only that they shall be heard, but that they shall be given an opportunity of being effectually heard. Where counsel on behalf of his client has the right of being heard last (where the accused has not called any evidence on his behalf) in the matter, counsel is entitled to an opportunity to be so heard. If an accused is heard in such a case, the mere fact that he was not heard last is not an illegality which would vitiate the trial but is merely an irregularity to which provisions of S. 537, Cr. P. Code, would apply. (*Mirza and Patkar, J.J.*) VINAYAK LAXMAN BHATKHANDE v. EMPEROR.

113 I. C. 612 = 30 Bom. L. R. 1530 = 12 A. I. Cr. R. 73 = 30 Cr. L. J. 185 = 53 Bom. 119 = A. I. R. 1928 Bom. 557.

**—S. 537—Judgment.**

A judgment of a Bench of Magistrate has to be signed as required by law and the requirements of public policy necessitate the writing of the full name of the Magistrate who signs the judgment and the mere putting in of the initials is not a sufficient compliance with the mandatory provisions of S. 265 of the Code. Where one of the three Magistrates of a Bench merely initials instead of signing his name, the irregularity cannot be cured by S. 537. 25 Cal. 911; 32 I. C. 393; 23 Cal. 896 and A. I. R. 1926 Mad. 827, Rel. on. (*Sundaram Chetty, J.*) (VELINALLI) BRAHMAIAH v. EMPEROR. 1930 Cr. C. 1123 = 1930 M. W. N. 787 = 32 M. L. W. 280 = A. I. R. 1930 Mad. 867 = 59 M. L. J. 674.

—Though it is desirable that Magistrates should obey the express provisions of the law, yet the omission to write a judgment before pronouncing a sentence should not necessarily vitiate the trial, unless such omission has in fact occasioned a failure of justice. 14 All. 242 and 27 Mad. 237, not Foll.; 23 Cal. 502, Rel. on. (*Maung Ba, J.*) MOHAMED HAYAT MULLA v. EMPEROR. 120 I. C. 225 = 7 Rang. 370 = 1930 Cr. C. 203 = 30 Cr. L. J. 1166 = A. I. R. 1930 Rang. 77.

—Two factions — Two distinct trials—Evidence similar—Disposal in one judgment by appellate Court caused no injustice and hence should be upheld.

Two parties were charged for their attacks on each other in the same occurrence, and the charges were tried separately at two distinct trials. The evidence given for the prosecution was similar to a substantial extent in each case. Each party was a witness against the other but there was also independent evidence. Although they were tried separately, the High Court gave one judgment, but treated the cases as two cases which have been separately tried. There was, however, a body of separate evidence which was applicable to each case, and that in itself was enough for the conviction.

Held, that, although technical it might have been better to keep the evidence entirely distinct and to have delivered two separate judgments, no injustice has followed from what was done. (*Viscount Haldane.*) MADAT KHAN v. KING-EMPEROR.

100 I. C. 126 = 8 Lah. 198 = 45 C. L. J. 418 = 29 Bom. L. R. 784 = 28 P. L. R. 167 = 25 M. L. W. 724 = 28 Cr. L. J. 254 =

**CR. P. CODE (1898), S. 537—Mode of trial.**

31 C. W. N. 393 = 1927 M. W. N. 68 = 7 A. I. Cr. R. 350 = A. I. R. 1927 P. C. 26 = 52 M. L. J. 441 (P. C.).

—Where the only case in appeal was one of considering whether the evidence did justify the conclusion that the accused persons were responsible for a particular act, and the appellate Court did not state in its judgment the points for determination, and the reasons for a finding on each point specifically in the manner contemplated by Ss. 367 and 424 but in fact it had gone into the case and said: "The Magistrate's findings of fact are fully justified by the evidence."

Held, there was not an "absence" of a judgment and the irregularity in drawing up the judgment was curable under S. 537. (*Fawcett and Madgavkar, J.J.*) P. RAOJIBALA v. EMPEROR. 97 I. C. 737 = 28 Bom. L. R. 1029 = 27 Cr. L. J. 1153 = A. I. R. 1926 Bom. 512.

—Where the judgment was entirely in the handwriting of the Magistrate,

Held, in the circumstances the case of the irregularity of the judgment not being signed, was covered by S. 537. (*Mukerji, J.*) RAM SUKH v. EMPEROR.

86 I. C. 64 = 23 A. L. J. 8 = 6 L. R. A. Cr. 41 = 47 All. 284 = 26 Cr. L. J. 688 = A. I. R. 1925 All. 299.

—Pronouncing sentence before writing judgment is an irregularity covered by S. 537 and is curable except in case of failure of justice. (14 All. 242, Diss.) (*Moti Sagar, J.*) ATA MUHAMMAD v. EMPEROR.

81 I. C. 193 = 25 Cr. L. J. 705 = A. I. R. 1925 Lah. 137.

—Where the Magistrate did not make an order in writing as required by S. 145 (1),

Held, that S. 537, Cr. P. Code, is sufficient to cure this defect. (*Carr, J.*) MO PO LON v. MG BA ON.

84 I. C. 548 = 26 Cr. L. J. 324 = 3 Bur. L. J. 256 = A. I. R. 1925 Rang. 111.

**—S. 537—Local inspection.**

—If a Magistrate makes use of knowledge derived from a local inspection without affording the accused an opportunity to cross-examine or to explain the points against him, he acts with material irregularity sufficient to vitiate the trial. 2 P. L. T. 455, Foll. (*Iqbal Ahmed, J.*) TIRKHA v. NANAK. 100 I. C. 371 = 25 A. L. J. 377 = 28 Cr. L. J. 291 = 8 L. R. A. Cr. 59 = 7 A. I. Cr. R. 391 = 49 All. 475 = A. I. R. 1927 All. 350.

—Failure to record memorandum of inspection—Irregularity is covered by S. 537.

There is no universal rule that disobedience of a mandatory provision in a statute has the consequence of nullification of all proceedings, irrespective of any question of prejudice. Court ought to be careful to comply with the provisions of S. 539-B. Failure by Magistrate to make a record of any relevant facts that he observed at the inspection under S. 539-B is an irregularity falling within S. 537. A. I. R. 1924 Cal. 1035; 52 Cal. 148, Not Foll.; A. I. R. 1925 Cal. 1246; 53 Cal. 46, Foll. (*Fawcett and Madgavkar, J.J.*) EMPEROR v. KHUSHAL JERAM. 97 I. C. 671 = 50 Bom. 680 = 28 Bom. L. R. 1026 = 27 Cr. L. J. 1151 = A. I. R. 1926 Bom. 534.

—S. 537—Mode of trial.

—Where accused are tried jointly under Ss. 302 and 304 and some other sections, Penal Code, and the jury is constituted only of seven persons, the Judge speaking of nine as the required number, and never considering the question whether it was not practicable to have a jury of 9 persons, the jury is illegally constituted, and the illegality cannot be cured by S. 537, Cr.



**CR. P. CODE (1898), S. 537—Mode of trial.**

P. Code. The fact that no appeal was preferred against acquittal under Ss, 302 and 304 makes no difference. All the accused are affected by the illegality. A. I. R. 1930 Cal. 60, Appl. (*Pearson and Jack, J.J.*) SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS, BENGAL *v.* BENOZIR AHMAD.

34 C. W. N. 735 = 51 C. L. J. 578 =  
1930 Cr. C. 1116 = A. I. R. 1930 Cal. 716.

—Where in a summary trial a Magistrate instead of following the procedure prescribed for a warrant case follows that prescribed for a summons case and there is nothing to show that the procedure adopted by the Magistrate caused the accused any prejudice, the trial is not vitiated. A. I. R. 1927 P. C. 44, Ref.; 29 Mad. 372, Dist. (*Percival, J. C. and Barlee, A. J. C.*) MALUK HASAN *v.* EMPEROR.

120 I. C. 526 =  
1930 Cr. C. 69 = 31 Cr. L. J. 123 =  
A. I. R. 1930 Sind. 53.

—Where in a certain village there were two separate riots, intimately connected with one another and two cross cases were started, the magistrate heard them together, the pleaders were the same who freely referred to the evidence in the other case, and the Court found difficulty to decide one case without depending on the evidence in the other,

*Held*, that a Court has no right, technically speaking, to consider at all the evidence given in one case for the purpose of reaching his conclusions in another. But if the reception of the evidence required to enable the point to be decided in the second case is merely a formal repetition of evidence, which has already been given and heard by the same tribunal and it is directed to the same issue or issues of fact, its vain repetition may be reasonably waived. If the parties for their own convenience and other obvious motives, consent to treat the evidence in the former case as though it had been repeated in the latter case, such evidence is by implication and for all practical purposes brought on to the record of the second case, although not actually recorded. Therefore, although technically it might have been better to keep the evidence of the two cases entirely distinct and to have delivered two separate judgments, no injustice followed from its not keeping so: 20 Cal. 537; A. I. R. 1927 P. C. 44 and A. I. R. 1927 P. C. 26, Foll. (*Walsh and Iqbal Ahmad, J.J.*) SUKHAI AHIR *v.* EMPEROR.

50 All. 457 = 26 A. L. J. 176 = 9 L. R. A. Cr. 16 =  
9 A. I. Cr. R. 122 = 30 Cr. L. J. 337 =  
114 I. C. 721 = A. I. R. 1928 All. 593.

—A case of joint trial of several persons of acts not committed in the course of the same transaction is not a mere case of irregularity which can be cured by the provisions of S. 537, but on the other hand it is a case of illegality and vitiates the whole trial. 25 Mad. 61 (P. C.), Foll. (*Aga Haidar, J.*) MUHAMMADI *v.* EMPEROR.

100 I. C. 965 = 28 Cr. L. J. 357 =  
7 A. I. Cr. R. 558 = A. I. R. 1927 Lah. 274.

—It is only an irregularity curable by S. 537 to consolidate more than one similar complaint and to record evidence by consent of the accused in one of them and to use it in the others. (*Fawcett and Madgavkar, J.J.*) EMPEROR *v.* HARJIVAN VALJI.

50 Bom. 174 = 28 Bom. L. R. 115 = 98 I. C. 407 =  
27 Cr. L. J. 1335 = A. I. R. 1926 Bom. 231.

—In a warrant case tried summarily, a failure to examine accused under S. 342 does not vitiate the trial, if prejudice is not caused. A. I. R. 1925 Oudh 603, Ref. (*Stuart, C. J.*) GIRDHARI LAL *v.* EMPEROR.

3 O. W. N. 534 = 95 I. C. 932 = 27 Cr. L. J. 852 =  
A. I. R. 1926 Oudh 424.

**—S. 537—Procedure.**

—There is very serious prejudice caused to the

**CR. P. CODE (1898), S. 537—Procedure.**

accused amounting to a failure of justice by the trying Magistrate rushing through and completing the trial of the accused on a Sunday without his consent and without affording him an opportunity of properly defending himself by appointing a pleader and so the whole trial is void. (1864) W. R. Cr. 2 and 17 Bom. L. R. 918, Foll. (*Subhedar, A. J. C.*) GIRDHARI *v.* EMPEROR.

124 I. C. 619 = 31 Cr. L. J. 705 = 1930 Cr. C. 831 =  
A. I. R. 1930 Nag. 255.

**—Illegal order of remand.**

Where an application under S. 476 for prosecution of a person is rejected, but on appeal the appellate Court, purporting to act under S. 476 (B), remands the proceedings for further enquiry which results in the complaint being filed against the person, and his conviction, the procedure followed is in strict conformity with the Code, and though the order of remand may be illegal, where the illegality has not led to the failure of justice, it is sufficiently covered by the wide provisions of S. 537. 25 Mad. 61 (P. C.), Dist. (*Wild, J. C. and Rupchand, A. J. C.*) RAJABALI HASSANALI *v.* EMPEROR.

1930 Cr. C. 1147 =  
A. I. R. 1930 Sind. 315.

—Any irregularity or illegality in the search can neither vitiate the trial nor affect the conviction of the accused where the accused has not been prejudiced by the defect. A. I. R. 1924 All. 214, Foll. (*Serr, J.*) RURE MAL *v.* EMPEROR.

120 I. C. 266 =  
31 Cr. L. J. 35 = 1930 A. L. J. 229 =  
13 A. I. Cr. R. 138 = 11 L. R. A. Cr. 21 =  
1929 Cr. C. 665 = A. I. R. 1929 All. 937.

—Trial and conviction by the Magistrate of an accused person, apart from the orders of the Sessions Judge directing further enquiry and setting aside dismissal of the Magistrate does not disclose any illegality of procedure so as to vitiate the conviction, but is merely an irregularity which does not affect conviction unless the irregularity has occasioned failure of justice. A. I. R. 1927 P. C. 44; 25 Mad. 61 (P. C.), Dist.; 36 Cal. 415, Foll. (*Adami and Wort, J.J.*) JANAKDHARI SINGH *v.* EMPEROR.

8 Pat. 537 =  
10 P. L. T. 725 = 31 Cr. L. J. 146 =  
120 I. C. 632 = 1929 Cr. C. 353 =  
A. I. R. 1929 Pat. 469.

—Investigation by Sub-Inspector where it should have been by an Inspector—Irregularity is curable.

A conviction or acquittal does not depend upon the question what particular officer actually conducts the investigation which results in his trial. That is determined mainly by the evidence that is given at the trial and considered; and the question whether that evidence has, in the first place, been elicited by an Inspector or by a Sub-Inspector is of very minor importance and does not really affect the result of a trial, except to this extent that the theory is that the higher the rank of the police officer investigating, the more careful and unimpeachable his enquiry is likely to be. Therefore, an irregularity occasioned by a Sub-Inspector investigating into an offence, while investigation should have been made by an Inspector, is curable by S. 537. (*Fawcett and Mirza, J.J.*) SHIVABHAT *v.* EMPEROR.

52 Bom. 238 = 30 Bom. L. R. 392 = 29 Cr. L. J. 551 =  
109 I. C. 487 = 10 A. I. Cr. R. 308 =

A. I. R. 1928 Bom. 162.

**—Defective initiation.**

A conviction by a Court of Sessions cannot be set aside on revision simply to the ground that there is a defect in the initiation of proceedings in the commitment Court or some irregularity in the commitment proceedings. Magistrates are entitled to take cognizance of non-cognizable offences upon a report made in

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writing by a police officer without examining the officer on oath. (*Tek Chand, J.*) SHANKAR LAL *v.* EMPEROR.  
104 I. C. 437=28 Cr. L. J. 821=

A. I. R. 1927 Lah. 702.

—Committing Magistrate conducting identification proceedings and giving evidence before himself of those proceedings—Trial is not vitiated.

Where the committing Magistrate, as part of his duties in connexion with the proceedings, conducted all the jail identifications in person and in order to give the defence a better opportunity of preparing their criticisms on the conduct of the investigation, took the unusual course of going into the witness-box during the committal proceedings.

*Held*: that though it certainly would appear to be open to objection for a Magistrate to decide on the value of his own evidence yet where the Magistrate had not to decide but solely to commit, there is nothing objectionable to the course adopted by him, and the action does not vitiate the committal of the trial. 27 All. 33 Rel. on. (*Stuart, C. J. and Raza, J.*) RAM PRASAD *v.* EMPEROR.  
106 I. C. 721=1 L. C. 339=

2 Luck. 631=8 A. I. Cr. B. 449=

A. I. R. 1927 Oudh 369.

—Irregularities in proceedings taken under S. 476 are not condoned under the law as it stands after amendment. 1927 Oudh 51, Appr. (*Stuart, C. J. and Raza, J.*) DORE SAH *v.* EMPEROR.

4 O. W. N. 640=103 I. C. 409=28 Cr. L. J. 681=

8 A. I. Cr. B. 400=A. I. R. 1927 Oudh 326.

—Where the Magistrate wrote the order under S. 107 on the back of a Police report and instead of sending a copy of his order with the summons he gave the substance of the information in the summons itself,

*Held*, that irregularity is covered by the provision of S. 537. 11 Bom. L. R. 740, Appl. (*Daniels, J.*) RAM DEO SINGH *v.* EMPEROR. 97 I. C. 652=

25 A. L. J. 44=27 Cr. L. J. 1132=

7 L. R. A. Cr. 174=A. I. R. 1926 All. 767.

—The action of a Magistrate in not recording the substance of the information he had received does not amount to a mere irregularity which would be covered by S. 537. (*Banerji, J.*) NIHAL *v.* KING-EMPEROR. 49 All. 5=24 A. L. J. 908=

7 L. R. A. Cr. 165=28 Cr. L. J. 9=99 I. C. 41=

A. I. R. 1926 All. 759.

—Complaint by Court to self.

Petitioner gave evidence in a case tried by the Chief Presidency Magistrate. Part of his evidence was regarded as false and the Magistrate deemed it necessary to take proceedings under S. 476, Cr. P. Code. He accordingly drew up a complaint. This complaint he preferred in his own Court and then he transferred it to a Presidency Magistrate for disposal. The latter issued process, held an inquiry and committed the petitioner for trial. The petitioner was then tried and convicted.

*Held*, by Court (*Rankin and Chakravarti, J.J.* dissenting) that the procedure was not illegal.

*Held*, per *Walmesley, J.*—The Magistrate committed nothing worse than an irregularity which may be disregarded.

*Held*, per *Rankin, J.*—The proceedings have been had throughout in defiance of the express provisions of the Code of fundamental principles of law.

*Held*, per *Cuming, J.*—There is nothing in the Code that prevents a Magistrate from taking cognizance of his own complaint.

*Held*, per *B. B. Ghose, J.*—The complaint and the subsequent trial was not illegal and the irregularity was

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curable under S. 532 (1), Cr. P. Code. (*Walmesley, Rankin, Cuming, B. B. Ghose and Chakravarti, J.J.*) EMPEROR *v.* COLIN MACKENZIE MACKAY.

53 Cal. 350=43 C. L. J. 310=30 C. W. N. 276=

27 Cr. L. J. 385=93 I. C. 33=

A. I. R. 1926 Cal. 470 (F.B.).

—Where one of two accused is discharged and the other is subsequently acquitted and on the latter occasion the complainant is ordered to show cause and pay compensation to both accused, procedure is illegal under S. 250 of the Code as amended—The defect is incurable under S. 537. (*Sanderson, C. J. and Chotwani, J.*) SURESH CHANDRA GUPTA *v.* ABDUL JABBAR.

85 I. C. 129=29 C. W. N. 127=26 Cr. L. J. 449=

A. I. R. 1925 Cal. 264.

—Where a case, which under the new Code was made triable by Court of Session, was pending before a Magistrate when the new Code came into force and the Magistrate instead of committing the accused to Session Court concluded it himself and passed sentence against the accused.

*Held*, the trial was illegal and the illegality was not curable under S. 537. (*Moti Sagar, J.*) JIMUN SHAH *v.* EMPEROR. 85 I. C. 645=26 Cr. L. J. 549=

A. I. R. 1925 Lah. 378.

—The defect of not serving on the accused a copy of the preliminary order is cured by S. 537. (*Hallifax A. J. C.*) NARAYAN RAO *v.* EMPEROR.

81 I. C. 170=25 Cr. L. J. 682=

A. I. R. 1925 Nag. 33.

—Where the Magistrate failed to serve a copy of the preliminary order under S. 145, clause 1 and to post the order on the land,

*Held*, that these were irregularities curable by S. 537. (*Carr, J.*) MAUNG MAUK *v.* MAUNG PO YIN.

94 I. C. 708=3 Rang. 169=27 Cr. L. J. 660=

A. I. R. 1925 Rang. 270.

—Burma Habitual Offenders' Restriction Act (Act II of 1919), S. 7.

Omission to state the period of restriction in the preliminary order does not render the whole proceeding void. 2 R. 524 Dist. It is only an irregularity curable by Upper Burma Criminal Justice Reg. Chap. XV. (*Carr, J.*) MAUNG THWE *v.* EMPEROR.

89 I. C. 527=3 Rang. 74=26 Cr. L. J. 1391=

A. I. R. 1925 Rang. 214.

—Where the discovery of the articles showing the guilt of the accused and found at the search, is proved by direct evidence any irregularity or illegality in the search can neither vitiate the trial nor affect a conviction. (*Sulaiman, J.*) ALI AHMAD *v.* EMPEROR.

81 I. C. 615=46 All. 86=21 A. L. J. 856=

4 L. R. A. Cr. 252=25 Cr. L. J. 967=

A. I. R. 1924 All. 214.

—S. 205, Cr. P. Code, applies only to cases in which the Magistrate has issued a summons in the first instance. It does not apply to a case where accused has been arrested without or after the issue of a warrant. Where the Magistrate allowed the accused to be present through pleader at his request.

*Held*, the defect in jurisdiction would not have been cured even if there had been an express request on his part; for jurisdiction could not be conferred by any consent, and the defect is not curable under S. 537. (*Mullick and Buckmill, J.J.*) ABDUL HAMID *v.* KING-EMPEROR. 75 I. C. 72=2 Pat. 793=

4 P. L. T. 648=1923 P. H. C. C. 239=

2 Pat. L. R. Cr. 1=24 Cr. L. J. 872=

A. I. R. 1924 Pat. 46.

## CR. P. CODE (1898).

## —S. 537—Reading over depositions.

—An omission to comply with the terms of S. 360 only amounts to an irregularity which if a failure of justice has not been caused, will not necessitate the setting aside of the proceedings. However, Magistrates should follow the procedure strictly. A.I.R. 1927 P. C. 44, Foll. (*Boys and Kendall, J.J.*) *JIWAN SINGH v. SHEODAN SINGH*. 102 I. C. 210 =

7 A. I. Cr. R. 530 = 8 L. R. A. Cr. 78 =  
28 Cr. L. J. 514 = A. I. R. 1927 All. 764.

—Reading of depositions to witnesses by interpreter, while other witnesses are being examined by Court—No prejudice caused—Procedure is merely irregular and curable under S. 537 and not illegal vitiating trial.

Per *Maung Ba, J.*—The sole object of this provisions of the law seems to be ensure the accuracy of the record. A proposition that failure to strictly comply with the provisions of S. 360 will under any circumstances vitiate a trial, no matter whether it has caused a failure of justice or not, is too broad. Failure to strictly comply with the provision of S. 360 should be considered as a mere irregularity curable by S. 537 if no prejudice is caused. Each case should be decided on its own merits. The plain provisions of the law should not be disregarded for the sake of convenience. A.I.R. 1925 Cal. 831 and A. I. R. 1924 Cal. 889, Diss. Disobedience of S. 360 of the Code of Criminal Procedure is an irregularity not amounting to an illegality. The convenience of advocates or a desire to accelerate the disposal of a case are not sufficient reasons for disobeying a mandatory injunction. Expediency *per se* has never been regarded as a warrant for a deliberate violation of law. 25 M. 61 (P.C.), Expl (*Maung Ba and Doyle, J.J.*) *ABDUL RAHMAN v. EMPEROR*. 94 I.C. 717 = 4 Bur. L. J. 213 =

27 Cr. L. J. 669 = A. I. R. 1926 Rang. 53.

—The violation of S. 360 Cr. P. Code is incurable under S. 537. (*Newbould and Mukerji, J.J.*) *HIRALAL GHOSE v. EMPEROR*.

83 I. C. 905 = 52 Cal. 159 = 28 C.W.N. 968 =

26 Cr. L. J. 261 = 41 C. L. J. 224 =

A. I. R. 1924 Cal. 889.

—Irregularity in taking evidence—Separate trial—Common witness examined in one case—Evidence read over in the other—No prejudice caused—Validity of trial unaffected.

Several cases were tried separately but the evidence of such witnesses as were common to all the cases was not recorded separately in all the cases. It was only read out to them and admitted by them to be correct. This procedure was followed with the consent of the counsel for the accused. It was however, clear that no prejudice was caused for the accused.

*Held*, that the procedure adopted was irregular, but it did not affect the validity of the trial as no prejudice was caused. 10 Cal. 405; 8 P.R. 1925 (Cr.), Ref.; 9 P.R. 1912 (Cr.), Dist. (*Scott-Smith, J.*) *NARAIN SINGH v. EMPEROR*. 72 I. C. 527 = 24 Cr. L. J. 415

A. I. R. 1924 Lah. 228

—Omission to read over the evidence to the witness does not vitiate the order under S. 145. (*Foster, J.*) *SONDI SINGH v. SRI GOVIND SINGH*.

76 I. C. 25 = 5 P. L. T. 237 = 2 Pat. L. R. Cr. 108 =

25 Cr. L. J. 89 = A. I. R. 1924 Pat. 786.

## —S. 537—Recording of reasons.

—Omission—Only irregularity.

Omission to record reasons under S. 256, for questioning the accused forthwith after the framing of the charge, as to whether he wishes to re-call any of the prosecution witnesses for further examination amounts to no more than an irregularity in procedure covered

## CR. P. CODE (1898), S. 537—Rejection of complaint.

by S. 537, and would not be a ground for setting aside the conviction unless it has occasioned a failure of justice. A.I.R. 1927 All. 217; A. I. R. 1926 Lah. 155, Rel. on.; A.I.R. 1929 Bom. 309, Dist. (*Mirza and Broomfield, J.J.*) *VISHRAM NARAYAN DEVI v. EMPEROR*. 124 I. C. 810 = 32 Bom. L. R. 596 =

31 Cr. L. J. 743 = 1930 Cr. C. 693 =

A. I. R. 1930 Bom. 241.

—Reasons must be adequate.

It is not so much the recording of the reasons as the adequacy thereof which should count in the determination of the question if the provisions of S. 256, have been complied with. If no good reasons are forthcoming, merely recording them in writing by the Magistrate would not save the trial from the taint of an incurable irregularity if it results in prejudice to the accused. The reasons that the Magistrate had to go out for urgent work or that the prosecution witnesses had to leave the place of trial immediately are not good reasons for taking up a case on Sunday and rushing through the trial without giving the accused proper opportunity to defend himself. (*Subedar, A. J. C.*) *GIRDHARI v. EMPEROR*.

124 I. C. 619 = 31 Cr. L. J. 705 =

1930 Cr. C. 831 = A. I. R. 1930 Nag. 255.

—Omission is merely irregularity.

The omission to record the reason at the proper stage of the proceeding cannot be more than a mere irregularity. Unless that omission has prejudiced the accused person or occasioned a failure of justice, it will be an irregularity curable under S. 517. Every failure to comply with the mandatory provisions of the Code does not amount to an illegality vitiating the trial. 25 Mad. 61 (P.C.), Ref.; A.I.R. 1927 P. C. 44, Rel. on. (*Maung Ba, J.*) *NGA BA ON v. KING-EMPEROR*.

6 Bur. L. J. 114 = 9 A. I. Cr. R. 33 = 28 Cr. L. J. 861 =

104 I.C. 637 = A. I. R. 1927 Rang. 248.

—The provision contained in S. 256 is not mandatory, but merely directory and the irregularity can be cured under S. 537, provided that there has been no consequent failure of justice and where it is clear that the omission to record the reasons has not caused any prejudice to the accused, the trial is not illegal. (*Shadi Lal, C.J.*) *MT. GHASITI v. KING-EMPEROR*.

6 Lah. 554 = 27 Cr. L. J. 408 = 93 I. C. 72 =

27 P.L.R. 85 = A. I. R. 1926 Lah. 155.

—Omission to record reasons is neither an illegality nor an irregularity which vitiates the proceedings. 5 Cr. L. J. 12, Ref. (*Zafar Ali, J.*) *EMPEROR v. WARYAM SINGH*. 76 I. C. 398 = 5 L.L.J. 407 =

25 Cr. L. J. 174 = A. I. R. 1924 Lah. 90.

## —S. 537—Rejection of complaint.

—Though order of remand is illegal is covered by S. 537.

There is nothing in the Code which lays down that once a Magistrate declines under S. 476 to file a complaint he is *functus officio*, or that a complaint subsequently filed by him confers no jurisdiction to deal with the person complained against. A refusal by the Magistrate under S. 476, to file a complaint against an accused person does not attract the applicability of the doctrine of *autre fois* acquit enunciated by S. 403. Nor does it amount to judgment within the meaning of Ss. 366 and 369 which may not therefore subsequently reviewed. Where an application under S. 476 for prosecution of a person is rejected, but on appeal the appellate Court purporting to act under S. 476 (b) remands the proceedings for further enquiry which results in the complaint being filed against the person, and his conviction, the procedure followed is in strict conformity with the Code,

**CR. P. CODE (1898), S. 537—Rejection of complaint.**

and though the order of remand may be illegal, where the illegality has not led to failure of justice, it is sufficiently covered by the wide provisions of S. 537, 25 Mad. 61 P. C., Dist. (*Wild, J. C. and Rupchand, A.J.C.*) **RAJABALI HASSANALI v. EMPEROR.**

1930 Cr. C. 1147 = A.I.R. 1930 Sind 315.

**—S. 537—Sanction.**

Where there is no separate order as contemplated by S. 476 for sanction to prosecute, but the order is embodied in the complaint, it is a trifling irregularity which may be overlooked under S. 537. (*Harrison, J.*) **INAYATULLAH v. EMPEROR.**

101 I. C. 186 = 28 Cr.L.J. 410 = A. I. R. 1927 Lah. 379.

**—Prosecution under Stamp Act.**

For a prosecution for an offence under Ss. 30 and 65 of the Stamp Act, the sanction of the Collector is indispensable and subsequent according of sanction cannot validate institution of such proceedings without sanction nor is the defect curable by S. 537, Cr. P. Code, 9 Bom. 27; 9 Bom. 288; 21 P. R. 1915 (Cr.); 37 Cal. 467, Rel. on. (*Kinkhede, A.J.C.*) **RAMJIWAN MARWADI v. LACHIMI.** 104 I.C. 108 = 10 N.L.J. 21 = 9 A.I.Cr.R. 2 = 28 Cr. L.J. 780 = A.I.R. 1927 Nag. 202.

The provisions of S. 195 (c) read with S. 476 are imperative and non compliance with them is an illegality not curable by S. 537. A.I.R. 1926 All. 700, Rel. on. (*Kinkhede, A. J. C.*) **TULARAM MARWADI v. EMPEROR.**

100 I. C. 1044 = 7 A.I.Cr.R. 521 = 21 Cr. L. J. 388 = A. I. R. 1927 Nag. 184.

A sanction under S. 195 omitting to specify the particulars such as the Court or other place in which, and the occasion on which the offence was committed, is liable to be set aside in revision. The defect cannot be cured by S. 537. (*Moti Sagar, J.*) **JASWANT SINGH v. KING-EMPEROR.** 81 I.C. 209 = 25 Cr. L. J. 721 = A. I. R. 1925 Lah. 139.

Conviction under S. 474 at a trial in which the charge was framed under section 471 is irregular for want of sanction and the trial is vitiated as want of sanction is not a mere technical irregularity curable under S. 537, Cr. P. Code. (*Wazir Hasan and Pullan, A.J.Cs.*) **SURAT BAHADUR v. KING-EMPEROR.**

81 I. C. 986 = 25 Cr. L. J. 1162 = 11 O.L.J. 640 = A.I.R. 1925 Oudh 158.

Want of sanction under S. 195 does not bar interference by High Court under S. 537. (*Marleod, C.J. and Shah, J.*) **EMPEROR v. SHANKAR BALAKRISHNA.**

76 I.C. 1035 = 24 Bom. L.R. 484 = 47 Bom. 31 = 25 Cr. L. J. 315 = A.I.R. 1922 Bom. 368.

**—S. 537—Scope.**

S. 537 may be taken to cover any irregularity in the widest sense of that term, provided there has been no failure of justice. The appellate Court ought not to order a re-trial in a case where provisions of S. 361 are overlooked without satisfying itself whether or no a failure of justice has been occasioned. A.I.R. 1927 P. C. 44, Rel on; 25 Mad. 61 (P.C.), Disc. (*Jackson, J.*) **ERRAPPA v. EMPEROR.**

1930 Cr.C. 186 = 31 M.L.W. 386 = 1929 M.W.N. 898 = 125 I.C. 253 = 31 Cr. L.J. 827 = 2 M.Cr.C. 252 = A. I. R. 1930 Mad. 186.

Disregard to the provisions of S. 233 is not an irregularity that can be remedied by S. 537 but is altogether illegal. 26 All. 195 and 33 Cal. 295, Foll. (*Barlee, J.C. and Kalumal, A.J.C.*) **ALI MAMOMED v. EMPEROR.**

119 I. C. 532 = 30 Cr. L. J. 1073 = 1930 Cr.C. 126 = A. I. R. 1930 Sind 62.

The trial Magistrate is competent to record the evidence of witnesses himself although the order of

**CR. P. CODE (1898), S. 537—Scope.**

remand directed to have evidence recorded by means of commission; and even if this be an irregularity, it is covered by S. 537. (*Jas Lal, J.*) **SIKANDAR v. EMPEROR.**

118 I. C. 643 = 30 Cr. L. J. 948 = 11 L.L.J. 370 = A. I. R. 1929 Lah. 104.

Section 537 does not cover cases of the illegality of the trial. A Magistrate held that certain accused could not be tried jointly and professing to hold separate charges he framed separate charges. However, main evidence had been already recorded and he disposed of the cases by writing one judgment.

Held, that procedure amounted to an illegality which could not be cured under S. 537. (*Jas Lal, J.*) **SANDAGAR SINGH v. EMPEROR.**

109 I. C. 811 = 10 A.I.Cr. R. 319 = 29 Cr.L.J. 619 (Lah.).

**—Not a curable irregularity.**

Before a complaint under S. 476 is made, it is necessary that a Court which thinks that an offence mentioned in S. 195, sub-S. (1), Cl. (b) or Cl. (c) has been committed should record a finding to that effect and, after recording such finding, may make a complaint. The provision to record a finding is not merely directory but it is mandatory. When the section of the Code requires a certain thing to be done, it is not open to the Court to say that it is optional for a Court to do it or not, and therefore, failure by the Court to record a finding is not irregularity curable by S. 537. (*Devadoss, J.*) **MUNUSWAMI NAIDU v. EMPEROR.**

110 I.C. 588 = 1928 M.W.N. 229 = 10 A.I.Cr.R. 378 = 1 M.Cr.C. 126 = 29 Cr. L. J. 372 = A. I. R. 1928 Mad. 783.

Wort, J.—S. 537 deals with certain specified irregularities and does not mention nor in any way affects matters of the construction of the Courts. It deals with irregular proceedings of competent Courts and not the constitution of the Court itself. (*Ross, Allanson and Wort, J.J.*) **AKBAR ALI v. EMPEROR.**

7 Pat. 61 = 8 P.L.T. 800 = 28 Cr. L. J. 881 = 104 I.C. 897 = A. I. R. 1928 Pat. 1.

**—Not curable.**

S. 537 applies only to mere errors of procedure arising out of mere inadvertence, and not to substantive errors of law, and that section does not apply to cases of disregard or disobedience of mandatory provisions of the Code. The section has not the effect of curing material irregularities and absolute illegalities. The failure of a Magistrate to follow the procedure enjoined by S. 137 (1) vitiates his order, and is not a mere irregularity of the nature contemplated by S. 537 (a). 25 Mad. 61, Foll. (*Iqbal Ahmed, J.*) **TIRKA v. NANAK.**

100 I.C. 371 = 25 A.L.J. 377 = 8 L. R. A. Cr. 59 = 28 Cr.L.J. 291 = 7 A.I.Cr.R. 391 = 49 All. 475 = A.I.R. 1927 All. 350.

Section 537 applies to mere errors of procedure arising out of mere inadvertence and does not apply to cases of disregard of a mandatory and imperative provisions of the Code. (*Iqbal Ahmed, J.*) **BANKA SINGH v. GOKUL.**

49 All. 325 = 25 A.L.J. 246 = 8 L.R.A.Cr. 39 = 28 Cr. L. J. 231 = 7 A.I.Cr.R. 267 = 99 I.C. 1031 = A. I. R. 1927 All. 286.

The provisions of S. 537, Cr. P. Code, are applicable to errors of procedure arising out of mere inadvertence, and not to substantive errors of law. S. 537 has no application to cases where there has been a disregard of the mandatory provisions of the Code. (*Iqbal Ahmed, J.*) **BHORA v. TARA SINGH.**

49 All. 270 = 25 A.L.J. 155 = 8 L.R.A.Cr. 25 = 28 Cr.L.J. 159 = 7 A.I.Cr. R. 198 = 99 I.C. 415 = A. I. R. 1927 All. 267.

Rankin, J.—S. 537 is applicable under Cl. 26 of the Letters Patent. (*Walmsley, Rankin, Cumming, B.*

**CR. P. CODE (1898), S. 537—Scope.**

*B. Ghose, and Chakravarti, J.J.*) **EMPEROR v. COLIN MACKENZIE.** 53 Cal. 350 = 30 C.W.N. 276 = 27 Cr. L. J. 385 = 43 C.L.J. 310 = 93 I.C. 33 = A.I.R. 1926 Cal. 470 (F.B.).

—Passing an order of forfeiture without notice to the party whose bond is forfeited amounts itself to a failure of justice even if the same order would eventually have been passed if the case had been heard. (*Daniels, A.J.C.*) **SARJU v. THAKURAIN JAI RAJ KUMAR.** 77 I. C. 733 = 25 Cr. L. J. 445 = A. I. R. 1925 Oudh 51.

—*Infringement of statute is not covered by S. 537.*

S. 537 of the Code does not apply to an infringement of statutory requirement. It only applies to errors omissions and irregularities of a technical nature which may occur by accident or oversight in the course of proceedings conducted in the mode prescribed by statute 25 Mad. 98 Foll. Where two cross cases were tried together and the accused in each case replied that the prosecution evidence in one be considered as defence evidence in the other and it was so considered.

*Held*, that the procedure was illegal and this is not curable by S. 537. (*Broadway and Fforyde, J.J.*) **ALLU v. EMPEROR.** 75 I. C. 980 = 4 Lah. 376 = 25 Cr. L. J. 68 = 6 Lah. L. J. 103 = A. I. R. 1924 Lah. 104.

**—S. 537—Verdict of jury.**

—*Jury returning verdict of guilty in respect of minor offence—Verdict of jury is right and is covered by S. 537 (a).*

An accused was convicted by a jury of an offence under S. 325, I.P.C., and the verdict of the jury was accepted by the Sessions Judge. It was contended that the Judge used the jury as assessors in accepting the verdict for an offence with which the accused was not specifically charged and that therefore the High Court could go into the facts as if the verdict amounted to an opinion of the assessors.

*Held*, that the effect of S. 238, Cr. P. Code, was to invest a jury trying an offence under S. 307, I. P. C., with authority to find that the facts proved only constitute a minor offence and to return a verdict of guilty of such offence. It cannot be disputed that, in view of the charge under S. 307, I.P.C., the fact that no charge under S. 325 was framed is not even a defect or irregularity and, as such, curable under S. 537 (a), Cr. P. Code, for the simple reason that, under S. 238 (1) Cr. P. Code, the accused was liable, without separate charge, to be convicted incidentally of the minor offence under S. 325, I.P.C. The High Court could not interfere and go into the question of facts on which the jury delivered the verdict they did. 26 Mad. 243, Ayyangar, J., Foll. (*Findlay, J.C.*) **NARAYAN SINGH v. EMPEROR.** 123 I. C. 477 = 31 Cr. L. J. 557 = 1929 Cr. C. 410 = A. I. R. 1929 Nag. 295.

—*Jury—Non-direction is misdirection, only if it makes jury to come to a wrong conclusion.*

It is only when the non-direction is such that there are grounds for thinking that the jury by reason of it may have been put on the wrong track and made to arrive at a wrong conclusion that such non-direction can amount to a misdirection. (*Allanson and Sen, J.J.*) **BAJIT MIAN v. EMPEROR.** 6 Pat. 817 = 29 Cr. L. J. 81 = 106 I. C. 673 = 9 A. I. Cr. R. 221 = 9 P. L. T. 191 = A. I. R. 1928 Pat. 120.

—Before a verdict can be set aside under S. 537 (a), there must be a reasonable ground for apprehending that the misdirection may have affected the jury's verdict. (*Daniels, J.*) **DHIRAJI v. AKASI.** 24 A. L. J. 506 = 7 L. R. A. Cr. 123 =

**CR. P. CODE (1898), S. 539-A—False statements.**

27 Cr. L. J. 785 = 95 I. C. 385 = A. I. R. 1926 All. 429.

—The omission of a Judge to lay down the law by which the jury are to be guided as required by S. 267 Code of Cr. Procedure is something more than misdirection. It is a failure to comply with an express provision of the law and S. 537 of the Code of Cr. Procedure is not applicable in such a case. (*Wazir Hasan, J.C.*) **NAWAB ALI v. EMPEROR.** 81 I. C. 953 = 11 O. L. J. 315 = 25 Cr. L. J. 1129 = A.I.R. 1924 Oudh 411.

—The mere fact that one question was put to the Judge by the Jury not in open Court but in chambers was no more than an irregularity and did not vitiate the trial. (*Newbould and Suhrawardy, J.J.*) **BILAS CHANDRA BANERJEE v. KING-EMPEROR.** 77 I. C. 231 = 27 C. W. N. 626 = 25 Cr. L. J. 343 = A. I. R. 1923 Cal. 647.

**—S. 537—Miscellaneous.**

—The passage beginning "unless such error" does not qualify (a) only, but also the other letters of the alphabet. (*Lord Phillimore.*) **V. M. ABDUL RAHMAN v. KING EMPEROR.** 5 Rang. 53 = 54 I. A. 96 = 31 C. W. N. 271 = 1927 M. W. N. 103 = 38 M.L.T. 64 = 4 O. W. N. 283 = 8 P. L. T. 155 = 100 I.C. 227 = 28 Cr. L. J. 259 = 6 Bur. L. J. 65 = 29 Bom. L. R. 813 = 45 C. L. J. 441 = 7 A. I. Cr. R. 362 = A. I. R. 1927 P. C. 44 = 25 A. L. J. 117 = 52 M. L. J. 585 (P. C.).

—Where a Sessions Judge is trying a case with the aid of assessors it is the Judge plus the assessors who constitute the Court, not the Judge alone and where therefore the Sessions Judge has tried a case with the aid of a number of assessors less than that fixed by law there has been no trial at all. This wrong procedure cannot be cured by S. 537 for that section refers only to errors of procedure and not to substantive errors of law. 45 All. 125, Ref. (*Prideaux and Kinkhede, A.J.Cs.*) **JAIRAM KUNBI v. KING-EMPEROR.** 77 I.C. 811 = 20 N.L.R. 129 = 25 Cr. L.J. 459 = A. I. R. 1924 Nag. 287.

—**S. 539—Bench Magistrate.**  
—An affidavit sworn before a Bench Magistrate in Sind is one sworn before a proper person under S. 539 according to the rules of the Sind Judicial Commissioner's Court. (*Kinkhede, J. C. and Barlee, A. J. C.*) **EMPEROR v. KUNDAN.** 7 A. I. Cr. R. 336 = 28 Cr. L. J. 168 = 99 I. C. 600 = A. I. R. 1927 Sind 128.

**—S. 539—Validity of affidavits.**

—An affidavit made before a Magistrate in a case over which he has no seisin is not valid and cannot be used in High Court. 14 Cal. 653 and 8 C. W. N. 40, Dist. (*Jwala Prasad and Macpherson, J.J.*) **RAM-CHANDRA MODAK v. EMPEROR.** 5 Pat. 110 = 7 P. L. T. 304 = 27 Cr. L. J. 499 = 93 I. C. 963 = A.I.R. 1926 Pat. 214.

—Affidavits sworn before Presidency Magistrates of Calcutta are not admissible in the Patna High Court. Criminal Rev. 255 of 1925, Ref. (*Macpherson, J.*) **B. N. RY. CO. LTD. v. SHAIKH MAHBUL.** 92 I. C. 697 = 7 P. L. T. 343 = 27 Cr. L. J. 313 = 1926 P. H. O. C. 74 = A. I. R. 1925 Pat. 755.

—**S. 539-A—False statements.**  
—Where a deponent while swearing an affidavit under S. 539-A swears of his personal knowledge of the truth of allegations and the allegations are ultimately found to be false he is guilty under S. 199, I.P.C., although he has not separately stated what facts he had reasonable grounds, to believe to be true as required by

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third clause of the section. 14 Cal. 653, Dist. (*Jwala Prasad and James, J.J.*) **RAM SARUP SINGH v. EMPEROR.** 116 I.C. 755=30 Cr. L. J. 645=

13 A. I. Cr. R. 91=A. I. R. 1929 Pat. 156

—A person renders himself liable to prosecution for false statements made in an affidavit in support of an application under S. 439 as required by S. 539-A. 20 Cal. 724 and 5 S.L.R. 102, Dist. (*Kincaid, J. C. and Barlee, A.J.C.*) **EMPEROR v. KUNDAN.**

7 A. I. Cr. R. 336=28 Cr. L. J. 168=99 I. C. 600= A. I. R. 1927 Sind 128.

**—S. 539-A—Nazir.**

—A nazir of Civil Court has no authority to administer oath for the purposes of an affidavit or statement to be used in a Criminal Court and a person making such statement cannot be convicted under S. 199. 14 Cal. 653; 35 All. 58; and A. I. R. 1926 Pat. 214, Rel. on. (*Madgavkar and Baker, J.J.*) **GANPAT DEVAJI PATIL v. EMPEROR.** 116 I. C. 248=

31 Bom. L. B. 144=30 Cr. L. J. 593=

13 A. I. Cr. R. 14=A. I. R. 1929 Bom. 136.

**—S. 539-B—Evidence without oath.**

—It is irregular, on local inspections, to take into account the evidence of witnesses not recorded on oath and the irregularity is not curable. (*Findlay, J. C.*) **NISARALI v. SECRETARY, MUNICIPAL COMMITTEE.**

28 Cr. L. J. 495=101 I. C. 671=

8 A. I. Cr. R. 296=A. I. R. 1927 Nag. 250.

**—S. 539-B—Inspection without parties' knowledge.**

—In a case under S. 486, Penal Code, the Magistrate, after some witnesses were examined for the defence, himself visited the markets in order to make personal enquiries regarding the case without giving any notice to the parties. After this enquiry he summoned some witnesses on his own initiative.

*Held*, that the course adopted was illegal. By making personal enquiries the Magistrate made himself an important witness in the case and incapacitated himself to proceed with the trial. (*Carr, J.*) **PAKIR MAHOMED v. EMPEROR.** 97 I. C. 60=4 Rang. 106=

27 Cr. L. J. 1084=A. I. R. 1926 Rang. 180.

**—S. 539-B—Local inspection.**

—Inquiries from spectators are irregular. (*Tek Chand, J.*) **UDHO RAM v. EMPEROR.**

122 I.C. 95=31 Cr. L. J. 346=10 Lah. 790=

31 P. L. R. 39=A. I. R. 1929 Lah. 120.

—Using knowledge derived from—Accused not given opportunity to explain—Material irregularity.

If a Magistrate makes use of knowledge derived from a local inspection without affording the accused an opportunity to cross-examine or to explain the points against him, he acts with material irregularity sufficient to vitiate the trial. 2 P. L. T. 455, Foll. (*Iqbal Ahmed, J.*) **TIKHA v. NANAK.** 49 All. 475=

25 A. L. J. 377=28 Cr. L. J. 291=

7 A. I. Cr. R. 391=100 I. C. 371=

A. I. R. 1927 All. 350.

**—S. 539-B—Note of inspection, if necessary.**

—It is open to Magistrate to use the evidence of his own eyes *i.e.*, the local inspection to test the truth of what the witnesses have deposed to. 2 Weir, Cr. 728, Foll. (*Ayling and Odgers, J.J.*) **THACHORTH HYDROSS, In re.** 75 I. C. 695=18 M. L. W. 113=

1923 M. W. N. 860=25 Cr. L. J. 7=

A. I. R. 1923 Mad 694=45 M. L. J. 279.

**—S. 539-B—Non-compliance.**

—The provision in S. 539-B, cl. (2) is mandatory and the failure to comply with this express direction of law is an illegality and not an irregularity which could be cured if it is held that there was no prejudice to the accused. (*Newbould and Mukerji, J.J.*) **HRI DOY**

**CR. P. CODE (1898), S. 539-B—Omission to make memorandum.**

**GOVINDASUR v. EMPEROR.**

82 I. C. 767=

52 Cal. 148=25 Cr. L. J. 1375=

40 C. L. J. 149=A. I. R. 1924 Cal. 1035.

**—S. 539-B—Omission to make memorandum.**

—The absence of a memorandum of a local inspection did not render a trial or inquiry illegal. 25 A.L.J. 377, Dist.; 52 Cal. 1245 Dist.; 53 Cal. 46, A.I.R. 1925 Cal. 353; 50 Bom. 686 and A.I.R. 1926 Rang. 193 (1), Ref. (*Bennet, J.*) **TODAR MAL v. KING EMPEROR.** 1931 Cr. C. 14=1930 A. L. J. 1437.

—Omission to place on record the memorandum of a local inspection is an irregularity which may result in vitiating the conviction if there was any prejudice resulting from the default. A. I. R. 1924 Cal. 1035 and A. I. R. 1925 Cal. 1246, Ref. (*Kinkhede and Mohi-uddin, A. J. C.*) **MUSA v. EMPEROR.**

114 I. C. 609=30 Cr. L. J. 333=1929 Cr. C. 257=

A. I. R. 1929 Nag. 233.

—Mere omission to record a memorandum under S. 539 (b) is not an illegality vitiating the proceedings. A. I. R. 1925 Cal. 1246, Foll. (*Fawcett and Mirza, J.J.*) **NURUDIN SHEIKH ADAM v. EMPEROR.**

11 A. I. Cr. R. 260=30 Bom. L. R. 954=

29 Cr. L. J. 1005=112 I. C. 221=A. I. R. 1928 Bom. 433.

—It is very desirable that a judicial officer conducting a local investigation should place upon record the result of his inspection at once so that the parties may have an opportunity of seeing what the facts are which the judicial officer considered to be established by the local investigation and he should never deliver his judgment relying upon that investigation without giving an opportunity to the parties to rebut his opinion. 37 Cal. 340, Foll. (*Addison, J.*) **JAWALA SINGH v. EMPEROR.** 10 Lah. 138=10 A. I. Cr. R. 435=

29 Cr. L. J. 719=110 I. C. 463=

A. I. R. 1928 Lah. 479.

—There is no universal rule that disobedience of a mandatory provision in a statute has the consequence of nullification of all proceedings, irrespective of any question of prejudice. Court ought to be careful to comply with the provisions of S. 539-B. Failure by Magistrate to make a record of any relevant facts that he observed at the inspection under S. 539-B is an irregularity falling within S. 537. A. I. R. 1924 Cal. 1035; 52 Cal. 148, Not Foll.; A.I.R. 1923 Cal. 1246; 53 Cal. 46, Foll. (*Fawcett and Madgavkar, J.J.*) **EMPEROR v. KHUSHAL JERAM.** 50 Bom. 680=

28 Bom. L. R. 1026=27 Cr. L. J. 1151=

97 I. C. 671=A. I. R. 1926 Bom. 534.

—Absence of memorandum is not necessarily prejudicial.

Where the Magistrate did not prepare memorandum of the facts observed and place it on the record, as required by S. 539-B but in his judgment, after referring to the evidence of certain witnesses as to the place where the bottles of opium were found he said, "This consideration combined with my own personal observation of the spot has led me to the conclusion that the exhibit bottles could not have been 'planted' in the place where they were found, without the knowledge and assent of the persons selling in the shop."

*Held*, that the Magistrate's failure to record a memorandum has not been prejudicial to the accused and has not occasioned a failure of justice. (*Carr, J.*) **TAN KYI HIM v. EMPEROR.** 5 Bur. L. J. 100=

27 Cr. L. J. 1281=98 I. C. 177=A. I. R. 1926 Rang. 193.

—Section 539-B does not introduce any new principle; for the Calcutta High Court had often laid down that a memorandum should be prepared, so that both sides to an enquiry or trial might know what the Magistrate



**CR. P. CODE (1898), S. 539-B—Omission to make memorandum.**

during his enquiry had noticed or failed to notice. Where the local enquiry was made in the presence of the petitioner's pleader who did not, however, ask the Magistrate to record a memorandum or to attach a memorandum to the record or to give him a copy.

*Held*, he could not be allowed to say that for this formal defect the proceedings should be set aside, unless he could show that the Magistrate's omission had caused prejudice. (*Walmsley and B. B. Ghose, J.J.*) *W.R.T. FORBES v. MAHAMMAD ALI HAIDAR KHAN.* 90 I. C. 308 = 42 C. L. J. 131 = 26 Cr. L. J. 1524 = 53 Cal. 46 = A. I. R. 1925 Cal. 1246.

**—S. 539-B—Opportunity to explain.**

—A Magistrate is entitled to inspect a place in order to understand the evidence. But if he receives an impression which is in favour of one side or the other, he should give an opportunity to the side against which he forms an impression to explain away, if possible, the impression created in his mind by the inspection. (*Devadoss, J.*) *KADIR BATCHA SAHIB v. EMPEROR.*

1928 M. W. N. 69 = 37 M. L. W. 654 = 29 Cr. L. J. 539 = 109 I. C. 363 = 1 M. Cr. C. 28 = A. I. R. 1928 Mad. 494 = 54 M. L. J. 442.

**—S. 539-B—Purpose of inquiry.**

—Where a Magistrate holds local inquiry and uses that not for the purpose of understanding the evidence but for the purpose of obtaining information which did not appear from the evidence of other witnesses, he commits material irregularity which vitiates the whole trial. A. I. R. 1928 Pat. 567. Foll. (*Faiz Ali, J.*) *HARI MOHAN BISWAS v. EMPEROR.*

115 I. C. 556 = 12 A. I. Cr. R. 432 = 30 Cr. L. J. 491.

—*Local inquiry made not to understand evidence but to obtain further information—Procedure irregular and ultra vires.*

From the judgment of a Magistrate it appeared that he used the local enquiry made in the case not for the purpose of understanding the evidence only, but for the purpose of obtaining information which did not appear from the evidence of the witnesses. There were other matters in the judgment which clearly showed that in a sense the Magistrate made himself a witness in the case.

*Held*, that the procedure was quite irregular and in adopting it the Magistrate went beyond the powers granted to him by the Cr. P. Code. (*Macpherson and Wort, J.J.*) *EMPEROR v. FAKIRA MAHANTI.*

10 A. I. Cr. R. 455 = 29 Cr. L. J. 656 = 10 P. L. T. 279 = 110 I. C. 112 = A. I. R. 1928 Pat. 567.

—*Local inspection cannot take the place of evidence itself.*

A local inspection by a Magistrate is only permitted by S. 539-B, for the purpose of properly appreciating the evidence in the case and cannot take the place of evidence itself. 1 P. L. T. 569, Rel. on. (*Iqbal Ahmad, J.*) *TIRKHA v. NANAK.* 100 I. C. 371 =

49 All. 475 = 25 A. L. J. 377 = 28 Cr. L. J. 291 = 8 L. R. A. Cr. 59 = 7 A. I. Cr. R. 391 = A. I. R. 1927 All. 350.

**—S. 539-B—Recording of facts.**

—The Magistrate under S. 539-B should record a memorandum of any relevant facts observed by him at the time of inspection. (*Iqbal Ahmad, J.*) *TIRKHA v. NANAK.* 49 All. 475 = 25 A. L. J. 377 =

28 Cr. L. J. 291 = 8 L. R. A. Cr. 59 = 7 A. I. Cr. R. 391 = 100 I. C. 371 = A. I. R. 1927 All. 350.

**—S. 539-B—Revision.**

—When an order of discharge was challenged on

**CR. P. CODE (1898), S. 540—Examination when case closed.**

the ground that S. 539-B was not complied with, but was in reality obeyed, the High Court declined to interfere. A. I. R. 1924 Cal. 1035, Dist. (*Pradeaux, A. J. C.*) *EMPEROR v. JODHRAJ.* 28 Cr. L. J. 180 =

99 I. C. 852 = A. I. R. 1927 Nag. 397.

**—S. 540—Absence of parties.**

—*Court going to the parties, village and examining witnesses without notice to parties and deciding case on such evidence—Procedure is bad.*

Section 540 confers very wide powers upon a Court, but the wider the powers the greater the exercise of discretion required of a Magistrate. 12 A. L. J. 15 and A. I. R. 1923 Cal. 690, Ref. Where in a case under S. 488, Cr. P. Code, witnesses were examined on both sides, but the Sub-Divisional Magistrate finding himself unable to arrive at any definite conclusion from their evidence as to the legitimacy of the child, took the course of going to the village and examining without previous notice four of its residents as Court witnesses and based his decision on their evidence.

*Held*, that the Court in pursuing this course went beyond the reasonable discretion afforded by S. 540. 24 Cal. 167, Dist. (*Curgewer, J.*) *NARAYAN NAIR v. MANIKKATH KULAPPURA VETTEL BHARGAVI AMMA.* 100 I. C. 123 = 38 M. L. T. 39 = 25 M. L. W. 251 = 28 Cr. L. J. 251 = 7 A. I. Cr. R. 351 = A. I. R. 1927 Mad. 361 = 52 M. L. J. 118.

**—S. 540—Bias against accused.**

—Court has power to summon any person as witness if his evidence appears essential for the just decision of the case. And no question of bias against the accused can arise unless it is shown that the Court was guiding or assisting the prosecution. (*Staples, A. J. C.*) *K. FASIUDDIN v. EMPEROR.* 117 I. C. 213 =

30 Cr. L. J. 728 = 1929 Cr. C. 47 = A. I. R. 1929 Nag. 172.

**—S. 540—Cross-examination.**

—If a witness is called under S. 540 both sides have a right to cross-examine that witness freely. It is wholly misleading to describe as a cross-examination that which consists of certain questions being suggested by the defence to the Court and those questions being put by the Court. (*Boys, J.*) *PITA v. EMPEROR.*

85 I. C. 719 = 47 All. 147 = 26 Cr. L. J. 575 = 6 L. R. A. Cr. 17 = A. I. R. 1925 All. 285.

**—S. 540—Disclosure of names.**

—Under S. 540 a Magistrate may summon any person as a Court witness at any stage of the proceedings, but in fairness to the parties and with a view to afford them an opportunity of proper cross-examination he should (save under exceptional circumstances) inform them beforehand of the names etc. of these witnesses. (*Tek Chand, J.*) *UDHO RAM v. EMPEROR.*

122 I. C. 95 = 10 Lah. 790 = 31 P. L. R. 39 = 31 Cr. L. J. 346 = A. I. R. 1929 Lah. 120.

**—S. 540—Discovery of witnesses.**

—The power to summon a witness does not by any means imply a power to discover such witness by personal inquiry out of Court. (*Carr, J.*) *P. A. FAKIR MAHOMED v. EMPEROR.* 97 I. C. 60 =

4 Rang. 106 = 27 Cr. L. J. 1084 = A. I. R. 1926 Rang. 180.

**—S. 540—Examination when case closed.**

—Even after both parties have closed their cases Court may summon any person as a witness, if his evidence appears to it, essential to the just decision of the case. (*Odgers, J.*) *P. C. PERUMAL, In re.* 77 I. C. 290 = 19 M. L. W. 272 = 34 M. L. T. 165 = 1924 M. W. N. 308 = 25 Cr. L. J. 354 =

## CR. P. CODE (1898).

A. I. R. 1924 Mad. 587=46 M. L. J. 325.

## —S. 540—Exercise of discretion.

*Discretion should be exercised by the Magistrate with a great deal of caution.*

The discretion given to Magistrate under S. 540 has to be exercised with a great deal of caution. Where after the defence was closed and arguments were heard the Magistrate felt on the records as they stood that some points had been left obscure and in order to elucidate them it was necessary to recall certain witnesses and to examine a new witness, and when this evidence had been recorded, he took the precaution of asking the accused if he wanted to add anything to his previous statement and on his replying in the negative he heard further arguments and then proceeded to decide the case.

*Held*, that there was no illegality in the procedure adopted nor had the petitioner been prejudiced in any way by it. 75 I. C. 541, Rel. on; A. I. R. 1924 Lah. 104 and A. I. R. 1925 Lah. 531, Dist. (*Tek Chand, J.*) MANGAT RAI v. EMPEROR. 110 I. C. 676=

10 I. L. J. 262=29 P. L. R. 703=

10 A. I. Cr. R. 519=29 Cr. L. J. 740=

A. I. R. 1928 Lah. 647.

## —S. 540—Power when exercised.

*Per Waller, J.*—The power of the Magistrate to call a person as a Court witness is wide but it ought not to be exercised when the prosecution has wantonly failed to examine the witness and when the application to have the person examined as a Court witness is made after the whole case had closed. (*Waller and Ananthakrishna Iyer, J.J.*) COLLETT v. EMPEROR.

1929 M. W. N. 395.

## —S. 540—Procedure.

Where a witness is examined as a prosecution witness after the whole of the defence evidence has been recorded, the procedure is contrary to the provisions of S. 252. Such a procedure though not objected to, causes injustice to the accused and the whole trial is vitiated. A. I. R. 1927 P. C. 44 and 25 Mad. 61, Rel. on. (*Dalip Singh, J.*) KARAM CHAND v. EMPEROR.

111 I. C. 396=29 P. L. R. 613=

11 A. I. Cr. R. 182=29 Cr. L. J. 844=

A. I. R. 1928 Lah. 953.

## —S. 540—Rebutting evidence.

Under S. 540, Court has power to admit rebutting evidence for the purpose of contradicting evidence adduced on behalf of the defence, if the Court thinks it to be essential to the just decision of the case. (*Graham and Lort Williams, J.J.*) NAYAN MANDAL v. EMPEROR.

125 I. C. 746=31 Cr. L. J. 918=

34 C. W. N. 170=1930 Cr. C. 134=

A. I. R. 1930 Cal. 134.

*Defence closed—Rebutting evidence by prosecution is admissible if it could not have been produced earlier.*

Where after, the case for the defence is closed, the prosecution offers to give rebutting evidence to falsify the case for the defence, and it is found that the prosecution could not possibly offer that evidence at any earlier stage, fresh rebutting evidence should be admitted. The second part of the section is imperative. If the new evidence appears to the Court essential to the just decision of the case, the Court has no choice but is bound to take the evidence. (*May Oung, J.*) MAUNG PO HMYIN v. J. B. BHATTACHARJEE and EMPEROR.

76 I. C. 649=1 Rang. 308=2 Bur. L. J. 127=

25 Cr. L. J. 217=A. I. R. 1923 Rang. 216.

## —S. 540—Scope.

Section 540 gives a Judge the fullest discretion to recall a witness at any stage of a trial and makes it

## CR. P. CODE (1898), S. 544—Private prosecutions.

imperative for him to do so, if he considers further evidence essential to the just decision of the case. Thus where an essential document has been overlooked by the prosecution, it is the Judge's duty to have it admitted in evidence. (*Waller and Cornish, J.J.*) KESAVA PILLAI v. EMPEROR.

1919 Cr. C. 485=

30 M. L. W. 642=2 M. Cr. C. 298=

1929 M. W. N. 901=A. I. R. 1929 Mad. 837=

57 M. L. J. 681.

Section 540 is not controlled by S. 342 and therefore where the accused is once examined as required by S. 342 and then a witness is examined under S. 540 Cr. P. C., a Court is not bound to examine the accused again after recording the statement of that witness. (*Shadi Lal, C. J.*) FAZZAL KARIM v. EMPEROR.

89 I. C. 842=26 Cr. L. J. 1418=

A. I. R. 1926 Lah. 154.

## —S. 540-A—Applicability.

*Scope—Accused permitted to be absent in order to visit relative—Validity of order dispensing with presence—Irregularity.*

Where the Judge passed an order under S. 540-A, Cr. P. Code, dispensing with the presence of the accused so as to enable the latter to visit his relative and it appeared that the order was made after the sanction of the Government and after taking the necessary undertaking from the accused, *Held*, that the order was not correct because the section is applicable only to cases where the accused is "incapable of remaining before the Court": *Held*, however that the defect was under the circumstances a mere irregularity curable by S. 537, Cr. P. C. and that the trial could be proceeded with without recalling the witnesses. (*King, J.*) EMPEROR v. RADHARAMAN.

1930 A. L. J. 1076=

1930 Cr. C. 1201=A. I. R. 1930 All. 817.

## —S. 540-A—Illness.

*Court cannot appoint pleader without his consent to expedite enquiry.*

Where the accused is not represented by a pleader and is unable to attend personally, being ill, the Court cannot proceed with the case by assigning him a pleader, for such a counsel is neither chosen by him nor given to him with his express or implied consent and in fact does not really represent him and no Court has any authority to force upon a prisoner the services of a counsel if he is unwilling to accept them. The employment of a counsel places him in a confidential position which, of course, will not exist in the case of a pleader, assigned without the accused's consent. Moreover, the pleader might advance a defence which the accused would never have made and yet for which he must be responsible. *Reg v. Yscuado*, 6 Cox C. C. 386 Ref. (*Shadi Lal, C. J. and Broadway, J.*) EMPEROR v. SUKH DEV.

126 I. C. 72=11 Lah. 220=

31 Cr. L. J. 977=31 P. L. R. 824=

1929 Cr. C. 351=A. I. R. 1929 Lah. 705.

## —S. 544—Costs of summons, etc.

*To be borne by the Crown.*

All criminal prosecutions are at the instance of the Crown and the Crown is really the prosecutor in a Criminal case and all costs ought to be paid by the Crown for summoning witnesses for the prosecution. (*Kulwant Sahay, J.*) NANDA KISHORE MISRA v. KA. IKA MISRA.

77 I. C. 810=25 Cr. L. J. 458=

5 Pat. L. T. 487=1924 P. H. C. C. 196=

A. I. R. 1924 Pat. 695.

## —S. 544—Private prosecutions

*Complainant must pay reasonable expenses of witnesses in advance, if not paid, Court has right to refuse to issue process.*

**CR. P. CODE (1898), S. 544—Private prosecutions.**

In private prosecution the complainant must pay the reasonable expenses of the witnesses, although it is open to the Local Government to make rules which would permit, in certain cases, the liability to be transferred to the Crown. The payment in respect of diet money and travelling expenses fall under the head of "other fees payable" and the Court has a perfect right to insist upon those fees being paid in advance before the processes are issued, and to refuse to issue process for the attendance of witnesses unless the travelling expenses and diet money of such witnesses have been deposited by the complainant in advance. (*Stuart, C.J. and Raza, J.*) **RAM DULARI v. MUSTAQ AHMAD.** 3 Luck. 363=29 Cr. L. J. 664=110 I. C. 216=5 O.W.N. 26=9 A. I. Cr. R. 431=A. I. R. 1928 Oudh 226.

**—S. 544—Travelling allowances.**

—Amount to be specified.

A Court ordering a party to deposit the travelling allowance of a witness should state the amount of travelling allowance to be deposited. (*Kulwant Sahay J.*) **GOURI SHANKER v. THE COLLECTOR OF MUZAFFARPUR.** 87 I. C. 421=6 P. L. T. 215=3 P. L. R. Cr. 127=26 Cr. L. J. 965=A. I. R. 1925 Pat. 553.

**—S. 545—Absence of fine.**

—Section 545 does not justify compensation to be paid to the complainant where no fine is imposed on the accused. (*Wazir Hasan, J.C.*) **MUNNEY MIRZA v. KING-EMPEROR.** 81 I. C. 940=25 Cr. L. J. 1116=A. I. R. 1925 Oudh 110.

**—S. 545—Expenses of prosecution.**

—Expenses incurred in successfully prosecuting defendant for a wrongful act can be recovered by civil suit. (*Hallifax, A.J.C.*) **GANGADHAR v. BHANGI SAO.** 95 I. C. 35=A. I. R. 1926 Nag. 365.

**—S. 545—Notice of compensation.**

—Appeal—Notice should be given to complainant where compensation has been awarded to him.

Though there is no express provision of law in case of an order under S. 250 or S. 545, Cr. P. Code with regard to notice upon the opposite party, one of the fundamental principles of law is that no order should be passed to the detriment or prejudice of a party without giving him an opportunity of being heard in defence, and therefore a Court hearing the appeal would be exercising proper discretion to give notice to the complainant, who has been awarded compensation, of the hearing of the appeal. (*Suhrawardy and Duval, J.J.*) **BHARASA NOW v. SUKDEO.** 53 Cal. 969=43 C. L. J. 583=27 Cr. L. J. 1086=7 A. I. Cr. R. 94=97 I. C. 62=A. I. R. 1926 Cal. 1054.

—S. 545—Security proceedings.

—S. 545 of the Cr. P. Code does not apply to a case under S. 107; consequently an order directing the accused to pay costs of the complainant is *ultra vires*. (*Sulaiman, J.*) **SHEO PRASAD SINGH v. MAHANGOO NAINA.** 77 I. C. 828=5 L.R.A. Cr. 12=25 Cr. L. J. 476=A. I. R. 1924 All. 694.

**—S. 545—Theft.**

—There is no provision in the Code for ordering payment of compensation to the person whose property was stolen by accused and destroyed. (*Hallifax, A. J. C.*) **BHURA alias TURAB v. EMPEROR.** 26 Cr. L. J. 1495=90 I. C. 151=A. I. R. 1926 Nag. 89.

**—S. 546—Costs.**

—An order for payment of costs is not competent under S. 546-A when the case is one of a cognizable

**CR. P. CODE (1898), S. 556—Acquiescence or consent.**

offence. (*Kendall, A. J. C.*) **NUR-UD-DIN v. KING-EMPEROR.** 81 I. C. 985=25 Cr. L. J. 1161=A. I. R. 1925 Oudh 109.

**—S. 547—Suit for ex enses.**

—There is no provision in the Code under which the Court can order payment of diet money to a witness. That power is vested in the Court under the general rules of the High Court and therefore a suit for recovery of such money is maintainable in a civil Court. S. 547, Cr. P. Code, does not apply to such a case. (*Suhrawardy and Page, J.J.*) **KAMAL v. PARAMASUKH.** 29 C.W.N. 1033=90 I. C. 488=A. I. R. 1926 Cal. 289.

**—S. 548—Copies.**

—It is for the litigant, and not for the Magistrate to decide what copies he should have in order to move the superior court and the Magistrate has no jurisdiction to thrust upon the party copies which he does not want and to make him pay for them. When a party applies for the copy of a particular order the Magistrate cannot force him to pay for and take copies of other orders also. (*Shadi Lal, C.J.*) **AMAR SINGH v. SADHU SINGH.** 6 Lah. 396=7 L.L.J. 241=26 P.L.R. 273=26 Cr. L. J. 853=86 I. C. 709=A. I. R. 1925 Lah. 361.

**—S. 548—Record.**

—The record intended is the magisterial record. In proceedings under S. 107, it begins usually with the order under S. 112, except in cases falling within cl. (3) of that section. The information which leads to action under S. 107 is often of the most varied kind and of a confidential nature, and it does not form part of the record within the meaning of S. 548 to a copy of which the accused is entitled. (*Pandulal, J.*) **ANANTAPADMANABHAIAH v. EMPEROR.** 1930 M.W.N. 1100=32 M.L.W. 784=1930 Cr. C. 1191=A. I. R. 1930 Mad. 975=59 M. L. J. 914.

**—S. 550—Exercise of powers.**

—Where a Sub-Inspector of Police on a report made to him of theft and cheating closed a shop in order to be able to show to the Magistrate in the case of cheating that the shop or rather the goods contained in it had been sold to the shop-keeper for an inadequate price, it was unnecessary and undesirable to close the shop and put a stop to the business, but it was not illegal. (*Jackson, A.J.C.*) **KARAN SINGH v. NANDA KISHORE.** 1929 Cr. C. 596=A. I. R. 1929 Nag. 334.

**—S. 551—Search.**

—Where a search is made actually by a Sub-Inspector of Police who is not in charge of a police station, but it is made under the supervision of a Circle Inspector, the search is not illegal. (*Dalal, J.*) **SHIAM LAL v. EMPEROR.** 8 A. I. Cr. R. 7=8 L. R. A. Cr. 92=26 Cr. L. J. 652=103 I. C. 108=A. I. R. 1927 All. 516.

**—S. 555—Scope.**

—S. 555 deals with the form of the warrant itself and nothing more, and the words of S. 555 are not intended to supersede the provisions of S. 90. (*Sanderson, C.J. Chatterjee, Richardson, Buckland and Pantton, J.J.*) **THE GOVERNOR OF ASSAM v. SAHEDULLAH.** 27 C. W. N. 857=38 C. L. J. 77=75 I. C. 129=24 Cr. L. J. 881=A. I. R. 1924 Cal. 1.

**—S. 556—Acquiescence or consent.**

—Where a Magistrate is disqualified to try a case under S. 556, the disqualification is not cured by consent or acquiescence of parties, nor can want of *bona fides* on the part of the objector to the jurisdiction, affect the question of disqualification. 32 All. 635 and 2 Cal. 23.

**CR. P. CODE (1898), S. 556—Acquiescence or consent.**

Appr. (*Patkar and Wild, J.J.*) SHAMDASANI, *In re*.  
53 Bom. 716 = 31 Bom. L. R. 925 =  
122 I. C. 141 = 31 Cr. L. J. 383 = 1929 Cr. C. 433 =  
A. I. R. 1929 Bom. 404.

**—S. 556—Appeal and revision.**

—The Sessions Judge who files the complaint under S. 476 is disqualified from hearing the applications made to him under Ss. 435 and 437 owing to the complaint under S. 476 having been dismissed, and from making an order directing the persons against whom the complaint was initially made to be committed to the Sessions Court presided over by himself. 15 Bom. L. R. 104, Dist..

Per *Fawcett, J.*—The Judge or Magistrate who proceeds under the provisions of S. 476 is a party to the case in which he is a complainant, within the meaning of S. 556. (*Shah and Fawcett, J.J.*) MUDKAYA ANDANAYA HIREMATH, *In re*.  
28 Bom. L. R. 1302 =  
7 A. I. Cr. R. 227 = 28 Cr. L. J. 53 =  
99 I. C. 85 = A. I. R. 1927 Bom. 35.

—A witness made two conflicting statements in a trial before a Sessions Judge who made a complaint to the District Magistrate stating that the second of the two statements was false, the Magistrate framed a charge in respect of the second statement only and convicted the accused. On appeal which was heard by the same Sessions Judge, re trial was ordered.

*Held*, that the accused is entitled to a decision from a Judge who approaches his case with an open mind; and that the proceedings should be quashed on the ground that the complainant and the appellate Court were one and the same and it would not be illegal but most inadvisable to submit the accused to a fresh trial because of the initial mistake of the Court in not framing the charge in the alternative and the principle of *nemo debet bis vexari* applies in the spirit if not in the letter. (*Harri-son, J.*) SAI v. EMPEROR.  
106 I. C. 342 =  
8 Lah. 496 = 28 P. L. R. 688 = 29 Cr. L. J. 6 =  
A. I. R. 1927 Lah. 671.

**—S. 556—Business or friendly relations.**

—If a Magistrate is in close business or friendly relationship with a party it is on the whole undesirable that he should take part in hearing a case in which the interests of such a person are gravely affected. (*Courtney Terrel, C. J., Ross and Kulwant Sahay, J.J.*) *In the matter of* MUKHTAR MADHEPURE.  
8 Pat. 575 = 116 I. C. 762 = 10 P. L. T. 711 =  
A. I. R. 1929 Pat. 151 (F.B.).

**—S. 556—Cantonment cases.**

—Cantonment Magistrate can try a complaint lodged by Cantonment Board even though the Magistrate is a member of the Board. (*Addison, J.*) KHUSHAL CHAND v. EMPEROR.  
11 A. I. Cr. R. 13 = 29 Cr. L. J. 822 =  
111 I. C. 326 = A. I. R. 1928 Lah. 946.

**—S. 556—Conducting identification proceedings.**

—Committing Magistrate—Procedure irregular.

Where the committing Magistrate, as part of his duties in connexion with the proceedings, conducted all the jail identifications in person and in order to give the defence a better opportunity of preparing their criticisms on the conduct of the investigation, took the unusual course of going into the witness-box during the committal proceedings.

*Held*, that though it certainly would appear to be open to objection for a Magistrate to decide on the value of his own evidence, yet where the Magistrate had not to decide but solely to commit, there is nothing objectionable to the course adopted by him, and the action does not vitiate the committal of the trial. 27 All.

**CR. P. CODE (1898), S. 556—Local inspection.**

33, Rel. on. (*Stuart, C. J. and Raza, J.*) RAM PRASAD v. EMPEROR. 2 Luck. 631 = 1 L. C. 339 =  
8 A. I. Cr. R. 449 = 106 I. C. 721 =  
A. I. R. 1927 Oudh 369.

**—S. 556—Construction and scope.**

—“A party or personally interested” imply direct personal pecuniary interest—The mere fact that a certain order of the Magistrate passed as Executive Officer is likely to be challenged is not sufficient ground for transfer.

A Magistrate is not disqualified by S. 556 from trying a case based on a private complaint and which has not been filed under his direction or sanction merely and solely on the ground that the validity of certain orders passed by him in his capacity as an executive or as a Revenue Officer is directly put in issue in the case and that the innocence or the guilt of the accused considerably depends on the effect of such orders. This section is based on the maxim *nemo debet esse iudex in propria causa*. The expression “a party or personally interested” implies that a direct personal pecuniary interest, however small in the result of the case, disqualifies a Judge, Magistrate or Justice from trying a case, but where such interest is not pecuniary the disqualifying interest should have substantially the same effect so as to create a reasonable suspicion of bias. The mere possibility of a bias is, however, not enough. Where the only interest in the result of a case tried by a Magistrate is that he is concerned in it in his public capacity it may fairly be presumed that his interest is not so substantial as to warrant the inference that he is likely to have a real bias in the the matter. If in addition to his being so interested there are other circumstances to suggest the real likelihood of a bias, it is another matter. English Case-law referred to. (*Rupchand Bilaram, A. J. C.*) MOHANDAS JOYRAMDAS v. EMPEROR.  
20 S. L. R. 171 = 27 Cr. L. J. 1333 = 98 I. C. 405 =  
A. I. R. 1927 Sind 98.

**—S. 556—Directing prosecution.**

—Sanctioning or directing prosecution does not incapacitate.

A Court which sanctions or directs a prosecution is not thereby rendered incompetent to try the offence or to hear an appeal against a conviction for it. There might of course be special circumstances in a case which render it improper that the Judge or Magistrate who sanctioned or directed the prosecution should hear the appeal against the conviction obtained in that prosecution. (*Hallifax, A. J. C.*) PANDIA MAHAR, *In re*.  
76 I. C. 395 = 89 I. C. 1049 = 25 Cr. L. J. 171 =  
26 Cr. L. J. 1481 = A. I. R. 1924 Nag. 23.

**—S. 556—Disqualification, what is.**

—Prosecution under S. 282, Companies Act—Magistrate shareholder of Company—Magistrate is disqualified to try case. (*Patkar and Wild, J.J.*) P.D. SHAMDASANI, *In re*.  
53 Bom. 716 = 31 Bom. L. R. 925 =  
122 I. C. 141 = 31 Cr. L. J. 383 = 1929 Cr. C. 433 =  
A. I. R. 1929 Bom. 404.

—The mere fact that the Magistrate issued a search warrant prior to the institution of the case does not disqualify him from trying the case within S. 556. Nor is the mere fact, that the accused may possibly object that the warrant was issued on insufficient materials, sufficient to amount to a disqualification. 13 Bur. L. T. 154, Dis-sented from. (*Daniels, J.*) MD. ALIKHAN v. EMPEROR.  
24 A. L. J. 568 = 7 L. R. A. Cr. 137 =  
27 Cr. L. J. 783 = 95 I. C. 319 =  
A. I. R. 1926 All. 428.

**—S. 556—Local inspection.**

—Explanation to S. 556 merely means that the local inquiry would not amount to a necessity for trans-

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fer, but there may be circumstances under which it would be advisable to direct a transfer from the Court of a Magistrate who has made a local inquiry. (*Dalal, J.*) GHASSOO v. EMPEROR. 1930 A.L.J. 606 = 123 I. C. 685 = 31 Cr. L. J. 555 = 1930 Cr. C. 993 =

A. I. R. 1930 All. 737.

—While making local inspection to appreciate evidence Magistrate creating evidence and introducing it into case for his decision—He went beyond his jurisdiction. (*Wort, J.*) HALDHAR THAKUR v. EMPEROR. 116 I. C. 767 = 30 Cr. L. J. 652 =

13 A. I. Cr. R. 89 = A. I. R. 1929 Pat. 160.

—Recording result of local inspection after delivery of judgment is irregular. The Magistrate should record the result of his local inspection and allow the parties to adduce evidence and arguments if they so desire regarding what he has recorded. However where local inspection is used only to confirm the documentary and oral evidence on the record conviction will not be set aside. (*Greaves and Chotzner, JJ.*) BHOLA NATH NANDI v. KEDAR NANDI. 81 I. C. 193 =

25 Cr. L. J. 705 = A. I. R. 1925 Cal. 353.

—The judgment of a Magistrate is not vitiated by the fact that he inspected the *locus in quo* and stated in his judgment what he saw there. (*Ayling and Odgers, JJ.*) THACHROTH HYDROSS, *In re.*

75 I. C. 695 = 18 M. L. W. 113 =

1923 M. W. N. 860 = 25 Cr. L. J. 7 =

A. I. R. 1923 Mad. 694 = 45 M. L. J. 279.

**—S. 556—Magistrate, a witness.**

—The examination of the trying Magistrate as a witness does not in any way prevent him from deciding the case. (*Pullan, J.*) JAWAD HUSSAIN v. EMPEROR. 2 Luck. 503 = 1 L. C. 159 = 103 I. C. 401 =

8 A. I. Cr. R. 321 = 28 Cr. L. J. 673 =

A. I. R. 1927 Oudh 296.

—The existence of a village feud may well be within the knowledge of a Sub-Divisional Officer, as also statements of apprehension that a false case will be brought against a man. But these are not sufficient reasons to cite the officer as witness for defence in a case so as to necessitate a transfer of a case to another Magistrate where such officer is the trying Magistrate. (*Stuart, C. J.*) HARIHAR BAKSH SINGH v. EMPEROR.

99 I. C. 97 = 3 O. W. N. 944 = 28 Cr. L. J. 65 =

7 A. I. Cr. R. 179 = A. I. R. 1927 Oudh 31.

—Where the complainant applied to the District Magistrate who ruled that as the evidence of the trying Magistrate was only formal, there was no harm in his recording his own evidence and at the same time trying the case, and then the Magistrate recorded his own evidence and was examined and cross-examined as a witness in the case, while the accused took no steps to get the case transferred from his Court, to the Court of any other Magistrate.

*Held*, that the evidence was only formal evidence and the Magistrate was not personally interested within S. 566. 19 Mad. 263, not Foll. and 27 All. 33, Foll. (*Raza, J.*) MOHAMMAD JAN v. EMPEROR.

97 I. C. 953 = 3 O. W. N. Sup. 178 =

27 Cr. L. J. 1183 = A. I. R. 1926 Oudh 557.

—Where the Magistrate, who committed the accused, was himself a Magistrate of the first class, but passed an order of commitment on the ground that he was a witness of the identification proceedings in the case,

*Held*, that the proper course for him, was to have moved the District Magistrate. 17 A. L. J. 456, Foll. (*Ryves, J.*) EMPEROR v. RAM JATAN.

81 I. C. 153 = 21 A. L. J. 420 =

4 L. R. A. Cr. 215 = 25 Cr. L. J. 665 =

**CR. P. CODE (1898), S. 556—Prosecution by local bodies.**

A. I. R. 1924 All. 185.

**—Public Gambling Act.**

An accused under the Act has the right to examine the Magistrate issuing the warrant as a witness to enquire from him what was the information received by him and how the warrant was filled up and therefore he is materially prejudiced by the trial of the case by the very Magistrate who issued the warrant. (*Zafar Ali, J.*) RAJA RAM v. EMPEROR. 73 I. C. 521 =

5 L. L. J. 429 = 24 Cr. L. J. 633 =

A. I. R. 1924 Lah. 247.

**—S. 556—Own knowledge.**

—A Magistrate is not precluded from trying a case of which he has taken cognisance on his own knowledge under S. 190 (c) provided he has complied with the provisions of S. 191. In such a case S. 556 ceases to operate. (*Hald, J.*) NGA CHIT KYAW v. KING EMPEROR. 84 I. C. 249 = 3 Bur. L. J. 121 =

26 Cr. L. J. 249 = A. I. R. 1924 Rang. 352.

**—S. 556—Pecuniary interest.**

—Pecuniary interest even to small extent is a sufficient disqualification independently of the question whether the Magistrate is really biased or likely to be biased. 20 Bom. 502, Foll; Queen v. Farrent., 20 Q. B. D. 58; Allinson v. General Council of Medical Education and Registration, 1 Q. B. 750; Leeson v. General Council of Medical Education and Registration, 43 Ch. D. 366, Ref.; 8 Bom. L. R. 947 and 15 All. 192, Dist. (*Patkar and Wild, JJ.*) P. D. SHAMDASANI *In re.* 122 I. C. 141 = 31 Cr. L. J. 883 =

53 Bom. 716 = 31 Bom. L. R. 925 =

1929 Cr. C. 433 = A. I. R. 1929 Bom. 404.

**—S. 556—Prosecution by local bodies.**

—Magistrate presiding over meeting sanctioning prosecution—Disqualified.

If a prosecution has been directed in pursuance of orders passed by a local body in a meeting presided over or attended by a Magistrate in his capacity as an office bearer or member thereof such Magistrate is 'legally interested' in the matter and is disqualified from trying the matter in his judicial capacity. The explanation covers only those cases in which the Magistrate, though a member, has not taken part in directing or sanctioning the prosecution. 3 P. R. 1895 (Cr.); 5 P. R. 1896 Cr. and 32 All. 635, Foll; 1 Rang. 517, Dist. (*Tek Chand, J.*) MAHOMED BAKHSH v. EMPEROR.

116 I. C. 881 = 30 Cr. L. J. 698 = 10 Lah. 718 =

1929 Cr. C. 310 = 30 P. L. R. 706 =

13 A. I. Cr. R. 106 = A. I. R. 1929 Lah. 718.

—Where a Magistrate, as a member of District Board, presided at a meeting of the Board at which the proposal in the Commissioner's letter to start the prosecutions was adopted, and it was resolved that the police be called in to make an enquiry and to proceed against such of the District Board officials as the result of the enquiry might warrant.

*Held* that the Magistrate is debarred from trying the cases (*Broadway, J.*) HAN RAJ v. EMPEROR.

108 I. C. 271 = 9 L. L. J. 583 = 29 P. L. R. 282 =

29 Cr. L. J. 371 = A. I. R. 1928 Lah. 114.

—The Magistrate giving formal sanction as President of Committee but not directing prosecution is not disqualified.

The mere fact that the trying Magistrate was the President of the Town Committee would clearly give him no personal interest in the proceedings under S. 162 of Barma Municipal Act, the more so, that the offence though punishable under the Municipal Act is not of a peculiarly municipal nature but one against the common safety. Where it was not alleged that the Magistrate as

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the President of the Committee made any enquiries before sanctioning the prosecution or that he attended any meeting of the Committee in which the subject of the prosecution of the accused was debated, but as the proceedings could not be initiated without formal sanction being obtained.

*Held*, this sanction which was merely an authorization for prosecution and not an order to prosecute, gave the Magistrate no personal interest in the proceedings. It was not necessary for him to form any opinion on the merits of the case before according formal sanction to the prosecution as president of the Town Committee. It is however extremely undesirable that when other Magistrates are available a Magistrate should try a case in which he has, in a different official capacity given formal sanction to the prosecution. 32 All. 635, Dist.; 21 M. 238, Foll. (*Pratt, J.*) *GOPICHAND v. EMPEROR*.

76 I. C. 865 = 1 Rang. 517 = 25 Cr. L. J. 273 = A. I. R. 1924 Rang. 87.

**—S. 557—Scope.**

—S. 557 does not forbid a pleader to practise in any Court but forbids him to sit as a Magistrate in certain Courts. (*MacCall, A. J. C.*) *KING-EMPEROR v. NGA THA SHWIN*. 76 I. C. 1031 = 4 U. B. R. 127 = 25 Cr. L. J. 311 = A. I. R. 1923 Rang. 119

**—S. 561-A—Bail.**

—A High Court has inherent jurisdiction to stay the execution of its own order when the ends of justice require it. Where an application for special leave to appeal to the Privy Council has been lodged but not heard,

*Held*, that it would be within the power of the High Court to grant bail. 15 P. R. 1908, not Foll.; 24 Mad. 161, Foll. (*Sulaiman and Banerji, J.J.*) *PT. RAM SAROOP v. KING EMPEROR*. 98 I. C. 593 = 8 L. R. A. Cr. 2 = 27 Cr. L. J. 1377 = 25 A. I. Cr. R. 97 = 49 All. 247 = 7 A. I. Cr. R. 29 = A. I. R. 1927 All. 97.

—Under S. 561-A the High Court is at liberty to interfere with an order granting bail passed by a Sessions Judge. (*Kinkhede, A. J. C.*) *LOCAL GOVERNMENT v. GULAM JILANI*. 82 I. C. 755 = 25 Cr. L. J. 1363 = A. I. R. 1925 Nag. 228.

**—S. 561-A—Charge without grounds.**

—If a charge is framed where none should have been framed the proceeding of the Magistrate becomes irregular and the High Court has power to interfere, under S. 435 as well as under S. 561-A to prevent abuse of the process of any Court or as necessary to secure the ends of justice. (*Mukerji, J.*) *GOKUL PRASAD v. DEBI PRASAD*. 86 I. C. 284 = 23 A. L. J. 21 = 6 L. R. A. Cr. 60 = 26 Cr. L. J. 748 = A. I. R. 1925 All. 311.

**—S. 561-A—Cognizance of offence.****—Lahore High Court.**

Jurisdiction to take cognizance of offences must be expressly conferred on the Lahore High Court in order to enable it to punish the offenders, and the inherent powers of that Court cannot be invoked for that purpose. (*Jailal, J.*) *FAQIR SINGH v. ALI MAHOMED*. 115 I. C. 428 = 30 Cr. L. J. 460 = 12 A. I. Cr. R. 413 = A. I. R. 1929 Lah. 217.

**—S. 561-A—Condition for exercising powers.****—Principle explained.**

The special jurisdiction recognized by S. 561-A can be invoked only in exceptional cases for which no express provision has been made by the Code, and to redress only such grievance as calls for an immediate relief, which can be granted only by the High Court. The inherent jurisdiction should be exercised with due

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care and caution and must conform to sound general principles and precedents. It was never contemplated by the legislature that the High Court should exercise its inherent power for making pronouncements upon questions of law in order to guide a Magistrate in conducting a preliminary enquiry. A. I. R. 1928 Lah. 462 and 33 Cal. 927, Ref. (*Shadi Lal, C. J. and Broadway, J.*) *EMPEROR v. SUKHDEO*. 123 I. C. 280 = 1930 Cr. C. 533 = 31 Cr. L. J. 482 = 31 P. L. R. 482 = A. I. R. 1930 Lah. 465.

**—S. 561-A—Delivery of things.**

—The section empowers the High Court, with a view to secure the ends of justice, to direct a party to re-deliver goods to the proper person who is wrongly ordered to deliver them to another under S. 144. 3 M. L. W. 498 and 28 C. L. J. 483, Foll. (*Iqbal Ahmad, J.*) *HAFIZUDDIN v. LABORDE*. 105 I. C. 815 = 50 All. 414 = 26 A. L. J. 83 = 28 Cr. L. J. 991 = 8 L. R. A. Cr. 149 = 8 A. I. Cr. R. 362 = A. I. R. 1928 All. 14.

**—S. 561-A—Estoppel.**

—Prosecution under S. 415, Penal Code—Sessions Court recommending to the High Court that proceedings be quashed—Judge of the Chief Court ordering the proceedings to continue—Subsequently accused praying, under S. 561-A, the Chief Court to quash proceedings—Previous decision of the Judge of the Chief Court does not constitute estoppel against powers of the Chief Court under S. 561 and S. 439. (*Wazir Hasan and Raza, J.J.*) *SHEO SARAN VAISH v. JITENDRA NATH DAS*. 110 I. C. 209 = 5 O. W. N. 357 = 10 A. I. Cr. R. 445 = 29 Cr. L. J. 677 = A. I. R. 1928 Oudh 292.

**—S. 561-A—Exemption from attendance.**

—High Court can, under its inherent powers, pass an order excusing the personal attendance of the accused and permitting him to represent himself in Court by a pleader. 14 Bom. L. R. 236; 17 C. W. N. 1248; A. I. R. 1927 Rang. 73 and A. I. R. 1926 Bom. 218, Rel. on. (*Munie, A. J. C.*) *MT. SARJI v. MT. BHIMI*. 121 I. C. 651 = 1930 Cr. C. 149 = 26 N. L. R. 50 = 12 N. L. J. 180 = 31 Cr. L. J. 284 = A. I. R. 1930 Nag. 61.

**—S. 561-A—Exemption of Juror.**

—Court has inherent power to exempt any particular juror on good cause shown. (*Findlay, J. C.*) *SONIA KOSHTI v. EMPEROR*. 99 I. C. 849 = 28 Cr. L. J. 177 = 7 A. I. Cr. R. 333 = A. I. R. 1927 Nag. 117.

**—S. 561 A—Inherent power.**

—Though there is nothing in S. 222 (2) to prevent separate trials in respect of various sums of money misappropriated on several different dates, the Court may, in appropriate cases, stop the trial if it is shown to be oppressive or an abuse of the process of court. (*Pandalai, J.*) *KANAKAYYA v. EMPEROR*. 1930 Cr. C. 1194 = 1930 M. W. N. 1097 = 32 M. L. W. 789 = A. I. R. 1930 Mad. 978 = 59 M. L. J. 854.

**—S. 561-A—Inquiries about deaths.**

—The High Court has power to revise proceedings of a Magistrate under S. 176, either under S. 435, or S. 439, apart from its inherent powers under S. 561-A. A. I. R. 1921 Bom. 3 (F.B.) and 3 Cal. 742, Dist. (*Mirza and Patkar, J.J.*) *LAXMINARAYAN TIMMANNA KARKI, In re*. 112 I. C. 567 = 29 Cr. L. J. 1063 = 30 Bom. L. R. 1050 = 11 A. I. Cr. R. 324 = A. I. R. 1928 Bom. 390.

**—S. 561-A—Interpretation.**

—The words "or otherwise to secure the ends of justice" can only mean that such other inherent power



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as the Court possesses is likewise preserved. The High Court is not given, nor did it ever possess, an unrestricted and undefined power to make any order which, it might please to consider, was in the interests of justice. Its inherent powers are as much controlled by principle and precedent as are its express powers by statute. (*Fforde and Agha Haidar, J.J.*) **RAJA v. EMPEROR.** 110 I. C. 221=10 Lah. 1=

10 A. I. Cr. R. 494=29 Cr. L. J. 669=  
30 P. L. R. 247=A. I. R. 1928 Lah. 462.

**—S. 561-A—Interview of accused with Counsel.**

—Under S. 561-A the High Court has power to interfere and direct the police to permit an interview of the accused with his legal advisers. (*Fawcett and Madgavkar, J.J.*) **LLEWELYN EVANS, In re.**

97 I. C. 801=50 Bom. 741=28 Bom. L. R. 1043=  
27 Cr. L. J. 1169=7 A. I. Cr. R. 292=

A. I. R. 1926 Bom. 551.

**—S. 561-A—Limits on powers.**

—No conflict with statutes.

The inherent jurisdiction of the Court which receives recognition in S. 561-A cannot be invoked for the purpose of doing an act which would conflict with any of the provisions of law or general principles of criminal jurisprudence. The rule of law is firmly established that when a statute confers upon a Court a specific power the Court cannot by relying upon its inherent jurisdiction extend its scope of that power. (*Shadi Lal, C. J. and Broadway, J.*) **EMPEROR v. SUKH DEV.** 126 I. C. 72=11 Lah. 220=

31 Cr. L. J. 977=31 P. L. R. 824=1929 Cr. C. 351=  
A. I. R. 1929 Lah. 705.

**—S. 561-A—Objectionable remarks in judgment.**

—A person, who was not a witness in the case and against whom no witness had deposed anything, was condemned by the Magistrate in his judgment without giving him an opportunity of being heard, and the remarks were absolutely unfounded so far as the record went.

*Held*, that the remarks ought to be expunged from the record. **A. I. R. 1925 Lah. 392, Rel. on. (Addison, J.) MAHARAM v. EMPEROR.** 112 I. C. 686=

29 Cr. L. J. 1102=A. I. R. 1929 Lah. 201.

—*Relevant remarks, forming reasoned basis of argument, cannot be expunged from judgment principle explained.*

Section 561-A declares the inherent jurisdiction of the High Court to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice and if to secure the ends of justice, it appears to be necessary to expunge any matter from the judgment of a criminal Court, then the High Court has power to do so. Principles which govern the action of High Courts in such a case are these, if an unjustifiable attack be made on a person who has had no opportunity of being heard in his own defence, and the remark is irrelevant and separable it can and should be expunged especially if he is neither a party nor a witness. But it is not proper to delete them unless they are separable, that is to say, if they form an integral part of the argument. A Judge or Magistrate is bound to record reasons for his decision and even in the interest of justice, the High Court cannot delete those reasons and leave the decision without its reasoned basis. Unless the remarks are irrelevant or can be expunged without ruining the argument, the High Court cannot legitimately interfere. **A. I. R. 1925 Lah. 392 and A. I. R. 1927 All. 193, Dist.; A. I. R. 1925 Lah. 187, Discussed. (Barlee, J. C. and Kalumal, A. J. C.) K. S. MD. HUSSAIN v. EMPEROR.**

118 I. C. 747=23 S. L. R. 432=30 Cr. L. J. 970=

**CR. P. CODE (1898), S. 561-A—Objectionable remarks in judgment.**

1929 Cr. C. 537=A. I. R. 1929 Sind 243.

—Though the High Court will not entertain any and every application for formally expunging remarks in a judgment made by some person, whether an accused or not an accused, who feels himself aggrieved by remarks made in a judgment, still there are cases in which such action is called for and in such cases the High Court is competent to do so and will do so. (*Boys, J.*) **BADDU KHAN v. EMPEROR.** 108 I. C. 124=

9 L. R. A. Cr. 3=9 A. I. Cr. R. 91=

29 Cr. L. J. 336=A. I. R. 1928 All. 182.

—*High Court can expunge objectionable remarks in lower Court's judgment—The power should be sparingly used—Court should not make remarks against a person who has no chance to explain his conduct.*

The High Court has power to expunge passages from judgments delivered by itself or by a Subordinate Court but this jurisdiction is of an extraordinary nature and has to be exercised with great care and caution. On the one hand it has to be borne in mind that in weighing evidence and arriving at conclusions on questions of fact, lower Courts have to review the conduct of witnesses with reference to particular incidents and at times have to adjudge generally on the veracity or otherwise of such persons and in doing so they have often to make remarks which reflect adversely on their character. It is of the utmost importance to the administration of justice that Courts should be allowed to perform their functions freely and fearlessly and without undue interference by the High Court. At the same time it is equally necessary that the right of Magistrates to make disparaging remarks on persons who appear, or are named, in the course of a trial, is one that should be exercised with great reserve and moderation, especially where the person disparaged has had little or no opportunity of explaining or defending himself. If the conduct of the witness appears to the Judge to be suspicious or otherwise not above board, he has the right and the duty to test his evidence by putting questions to him. But before he is justified in commenting adversely upon his evidence he must establish the particular fact warranting such criticism by proper evidence in Court and not on conjectures or by reference to materials which are not properly on the record. Again, a Magistrate should not in his judgment make observations prejudicial to the character of person, who is neither a witness nor a party to the proceedings and who has no opportunity of being heard. **A. I. R. 1926 Lah. 382, Foll.; A. I. R. 1925 Lah. 187; A. I. R. 1925 Lah. 392; 27 P. R. 1903 (Cr.); and A. I. R. 1927 All. 193, Rel. on. (Tek Chand, J.) H. DALY, In the matter of**

109 I. C. 812=9 Lah. 269=29 P. L. R. 461=

29 Cr. L. J. 620=A. I. R. 1928 Lah. 740.

—The High Court can expunge *suo motu* objectionable remarks in the lower Court's judgment in the exercise of its inherent jurisdiction without notice to trying Magistrate or the District Magistrate. (*Kinkhade, A. J. C.*) **GUNWANT PARASHRAM v. GOVIND BHAI.** 107 I. C. 912=29 Cr. L. J. 313=10 A. I. Cr. R. 19=

A. I. R. 1928 Nag. 242.

—High Court has inherent power to order a deletion of passages, which are either irrelevant or inadmissible and which adversely affect the character of persons before the Court. The High Court, as the Supreme Court of revision, must be deemed to have power to see that Courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it. Such jurisdiction, however, can only be exercised when there is no foundation whatsoever for the remark objected to and not

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where it is a matter of inference from evidence. (*Sulaiman, J.*) PANCHANUN BANERJI v. UPENDRA NATH. 98 I. C. 719 = 49 All. 254 = 25 A. L. J. 100 = 8 L. R. A. Cr. 5 = 27 Cr. L. J. 1407 = 7 A. I. Cr. R. 35 = A. I. R. 1927 All. 193.

—Power should be exercised sparingly.

Section 561-A recognizes the inherent power of the High Court to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice. But the power to expunge a portion of a judgment delivered by a competent Court, if intended for cases of exceptional circumstances and should be exercised very sparingly. There is no precedent for entertaining an application for expunging by a subordinate Magistrate in connexion with a judgment given on appeal by his superior judicial officer. (*Shad Lal, C. J.*) MD. QASAM v. ANWAR KHAN. 93 I. C. 974 = 27 Cr. L. J. 510 = A. I. R. 1926 Lah. 382.

—Under S. 561-A the High Court has inherent power to order the expungement of passages in the order of a Sessions Judge granting bail if such passages are likely to prejudice the Magistrate in the impartial trial of the case. (*Kinkhede, A. J. C.*) LOCAL GOVERNMENT v. GULAM JILANI. 82 I. C. 755 = 25 Cr. L. J. 1363 = A. I. R. 1925 Nag. 228.

**—S. 561-A—Penalising conduct of party.**

—If frivolous and vexatious applications for transfer are resorted to as a means of preventing the ends of justice being attained, the court has the power under S. 561-A to penalise such conduct by committal to prison for contempt of court, apart from the power to direct the payment of costs under S. 526 (6-A). The court may also, in appropriate cases, direct the party to lodge certain sum in court as security for costs incurred by his opponent by such repeated adjournments. (*Marten, C. J., Mirza and Broomfield, J.J.*) SHAM-DASANI, No. (1), *In re*. 54 Bom. 553 = 1930 Cr. C. 1065 = 32 Bom. L. R. 1123 = A. I. R. 1930 Bom. 477 (F. B.).

**—S. 561-A—'Process of court.'**

—Criminal proceeding in a subordinates Court constitute process of the Court and if the High Court comes to the conclusion that the process is being abused, S. 561-A invests the Court with the jurisdiction of passing an order to set aside those proceedings so as to prevent the abuse, but it is a rule of practice that it will be exercised only in exceptional cases: A. I. R. 1924 Cal. 1018 and A. I. R. 1926 Oudh 202, *Ref. (Wazir Hasan, J.)* S. C. MITRA v. RAJA KALI CHARAN. 3 Luck. 287 = 9 A. I. Cr. R. 356 = 106 I. C. 694 = 29 Cr. L. J. 102 = 1 L. C. 653 = A. I. R. 1928 Oudh 104.

—“Process” is a general word, meaning in effect anything done by the Court. (*Fawcett and Madgavkar, J.J.*) LLEWELYN EVANS, *In re*. 50 Bom. 741 = 28 Bom. L. R. 1043 = 27 Cr. L. J. 1169 = 7 A. I. Cr. R. 292 = 97 I. C. 801 = A. I. R. 1926 Bom. 551.

**—S. 561 A—Rehearing of case.**

—Appeal dismissed without reasonable opportunity.

Where an appeal has been dismissed without the appellant or his pleader being given a reasonable opportunity of being heard in support of the same, the order dismissing the appeal must be held to have been passed without jurisdiction and the Court has inherent power to make an order that the appeal should be reheard after giving the appellant or his counsel a reasonable opportunity of being heard in support of the same. (*Scott Smith and Zafar Ali, J.J.*) MUHAM-

**CR. P. CODE (1898), S. 561 A—Scope.**

MAD SADIQ v. THE CROWN. 7 L. L. J. 108 = 26 Cr. L. J. 1169 = 88 I. C. 593 = A. I. R. 1925 Lah. 355.

**—S. 561 A—Restoration of property.**

—High Court cannot make any order which would conflict with the provisions of S. 89, Criminal Procedure Code, in the exercise of their inherent powers and if the application for restoration has not been made within two years from the date of the attachment the Court has no jurisdiction to make restoration: proper remedy is to apply to Government at whose disposal property is according to law. (*Shah, Ag. C. J., and Fawcett, J.*) GURUNATH NARAYAN BETGONI, *In re*.

26 Bom. L. R. 719 = 25 Cr. L. J. 1293 = 82 I. C. 365 = A. I. R. 1924 Bom. 485.

**—S. 561-A—Review of own judgment.**

—It is wrong that the High Court should under S. 491 re-try for itself a question which has already been determined by the same Court in its ordinary original criminal jurisdiction, or to pass an order overriding an order already made by the same High Court. (*Rankin, C. J., and C. C. Ghose, J.*) RAMESHWAR KHIRORIWALLA v. EMPEROR. 114 I. C. 132 = 32 C. W. N. 889 = 56 Cal. 32 = 30 Cr. L. J. 254 = 12 A. I. Cr. R. 145 = A. I. R. 1928 Cal. 367.

—No inherent power.

There has never been an inherent power in the High Court to alter or review its own judgment once it has been pronounced or signed except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on merits. A petitioner was convicted by the trial Magistrate under S. 457, Penal Code. His appeal was rejected by the District Judge. He applied to the High Court in revision against the conviction. The application was rejected. He again made an application to the High Court to reconsider the case.

*Held*, that the previous order could not be reviewed. A. I. R. 1927 Lah. 139, *Diss. from*; 34 Cal. 860 and *Stephenson v. Garnett*, (1889) 1 Q. B. 677, *Ref. (Ffordre and Agha Haidar, J.J.)* RAJU v. EMPEROR.

10 Lah. 1 = 10 A. I. Cr. R. 494 = 29 Cr. L. J. 669 = 110 I. C. 221 = 30 P. L. R. 247 = A. I. R. 1928 Lah. 462.

—S. 561-A is of a very general nature and has no application to the question whether the High Court should review its judgment 19 B. 732, *Rel. on. (Addison, J.)* NAZAR MD. KHAN v. HARA SINGH BEDI. 26 P. L. R. 616 = 27 Cr. L. J. 23 = 91 I. C. 55 = A. I. R. 1926 Lah. 196.

**—S. 561 A—Revision petition not against proper order.**

—On application for revision against order of Assistant Collector instead of against that of Collector who was responsible for that of the Assistant Collector, High Court's inherent power could be exercised under S. 561-A. (*Boys, J.*) MT. RAM SRI v. SRI KISHUN. 82 I. C. 170 = 22 A. L. J. 803 = 5 L. R. A. Cr. 129 = 25 Cr. L. J. 1242 = 46 All. 879 = A. I. R. 1924 All. 777.

**—S. 561-A—Scope.**

—Section 561-A does not confer any new powers but merely declares that such inherent powers as the Court may possess shall not be deemed to be limited or affected by anything contained in the Code. There is no conflict between that section and S. 369. (*Ffordre and Agha Haidar, J.J.*) RAJU v. EMPEROR.

10 Lah. 1 = 10 A. I. Cr. R. 494 = 29 Cr. L. J. 669 = 110 I. C. 221 = 30 P. L. R. 247 = A. I. R. 1928 Lah. 462.

**CR. P. CODE (1898), S. 561-A—Scope.**

—S. 561-A is not limited by S. 369.

Section 561-A is in no way limited or governed by S. 369 and the High Court has power to reconsider the question of sentence when the ends of justice require it. A. I. R. 1927 Lah. 139, Rel. on. (*Nanavutty, J.*) **EMPEROR v. SHIVA DUTTA.** 3 Luck. 680 =

5 O. W. N. 641 = 29 Cr. L. J. 893 =  
111 I. C. 573 = A. I. R. 1928 Oudh 402.

—Section 561-A is in no way limited or governed by S. 369 and High Court has power to reconsider the question of sentence when the ends of justice require it. (*Broadway, J.*) **MATHRAS DAS v. THE CROWN.**

99 I. C. 1039 = 9 L. L. J. 42 = 28 Cr. L. J. 239 =  
A. I. R. 1927 Lah. 139.

—Inherent powers do not extend statutory powers.

The Court cannot, by invoking its inherent powers, extend the powers given to it by statute. [A. I. R. 1925 Mad. 438 (F. B.), Ref.] Criminal Courts are not primarily for the purpose of preventing private parties from sustaining pecuniary loss. (*Devadoss and Wallace, J.J.*) **MARUDAYYA THEVAR v. SHANMUGA SUNDARA THEVAR.** 22 M. L. W. 723 = 1925 M. W. N. 772 =

91 I. C. 702 = 27 Cr. L. J. 126 =  
A. I. R. 1926 Mad. 139 = 49 M. L. J. 593 =

—S. 561-A—Search of house.

—In whatever capacity any officer of the Crown in certain actions taken by him, orders search of the house of a public servant or of a subject of the Crown, the High Court would have jurisdiction independent of the Cr. P. Code to interfere with the Case. (*Dalal, J.*) **BHAVION PRASAD v. EMPEROR.**

9 L. R. A. Cr. 140 = 10 A. I. Cr. R. 450 =  
113 I. C. 78 = 30 Cr. L. J. 62 = 1929 A. I. J. 57 =  
51 All. 377 = A. I. R. 1928 All. 756.

—S. 561-A—Stay of proceedings.

—Mere pendency of a civil suit is not sufficient ground for staying criminal proceedings (18 Bom. 581 and 14 Bom. L. R. 968, Foll.), but if the object of the criminal proceedings in a private prosecution is to prejudice the trial of the civil suit or to use them to coerce the accused into a compromise of the civil suit, the criminal proceedings can be stayed till the decision of the civil suit. 16 Bom. 729; 26 Bom. 785; 30 Mad. 226; 31 Mad. 510; and 5 C. W. N. 44, Foll. (*Mirza and Patkar, J.J.*) **JAHANGIR PESTONJI WADIA v. FRAMJI RUSTOMJI WADIA.** 112 I. C. 477 =

30 Bom. L. R. 962 = 29 Cr. L. J. 1053 =  
11 A. I. Cr. R. 318.

—Where proceedings under Cr. P. Code, S. 476, were started out of a civil case and they proceeded to the stage of decision but in the meanwhile the parent civil case was appealed against and the appeal was pending and the question to be decided in both the proceedings was the same.

Held that the pronouncing of judgment in the criminal case should be stayed till the disposal of the civil appeal. (*Tek Chand, J.*) **KALU MAL v. EMPEROR.**

9 A. I. Cr. R. 13 = 104 I. C. 106 =  
28 Cr. L. J. 778 = A. I. R. 1927 Lah. 669.

—Where the subject-matter of both a criminal case and a civil suit pending in another Court is the same, the criminal case should be stayed. High Court can order stay of proceedings. (*Addison, J.*) **BESHAMBHAR DAS v. EMPEROR.**

97 I. C. 426 = A. I. R. 1927 Lah. 17.

—High Court should avoid except on special grounds.

The High Court in the exercise of its function of superintendence should avoid staying proceedings in a criminal case except on special grounds merely because the same question is in issue in a civil suit. (*Jackson,*

**CR. P. CODE (1898), S. 562—Appeal and revision.**

J.) **GNANASIGAMANI NADAR v. VEDAMUTHU.**

25 M. L. W. 52 = 1927 M. W. N. 54 =  
38 M. L. T. 80 = 99 I. C. 853 =  
28 Cr. L. J. 181 = 7 A. I. Cr. R. 321 =  
A. I. R. 1927 Mad. 308 = 52 M. L. J. 80.

—It would be highly undesirable that the same dispute should be allowed to be fought out in two Courts, namely, criminal and civil Courts, simultaneously. The inherent power of the High Court to stay proceedings is very wide and can be properly exercised in such cases. 2 A. L. J. 747, Dist. (*Sulaiman, J.*) **KANHAIYA LAL v. BHAGWANDAS.**

48 All. 60 = 6 L. R. A. Cr. 153 =  
26 Cr. L. J. 1485 = 23 A. I. J. 956 =  
89 I. C. 1053 = A. I. R. 1926 All. 30.

—S. 561-A—Time barred appeal.

—Under the provisions contained in S. 561 (a) of the Cr. P. Code an appellate Court has got no power to entertain an appeal beyond the time allowed by the limitation schedule. (*Subhedar, A. J. C.*) **MAHADYA v. EMPEROR.** 122 I. C. 257 = 31 Cr. L. J. 381.

—S. 561-A—Warrants under Extradition Act.

—Can be reversed.

Execution by the District Magistrate (or the Chief Presidency Magistrate) in British India of a warrant under S. 7 of Extradition Act is not an executive act. The Magistrate has judicially to consider the matter and decide whether the warrant can be executed according to law and the order of the Magistrate is subject to the revisional powers of the High Court. The order can also be interfered with under S. 561-A. On proper proceedings being taken High Court can also interfere under S. 491. 42 Cal. 793, held too widely stated; 7 Bom. L. R. 463; 41 Cal. 400 and A. I. R. 1922 Pat. 442, Rel. on. (*Mirza and Baker, J.J.*) **BAI AISHA, In re.** 117 I. C. 321 = 31 Bom. L. R. 62 =

53 Bom. 149 = 30 Cr. L. J. 772 =  
A. I. R. 1929 Bom. 81.

—S. 562.

Appeal and revision.

Compensation and fine.

Facts to be considered.

Interpretation and scope.

Jurisdiction.

Offences beyond scope.

Powers when exercised.

Second offence.

Security.

Miscellaneous.

—S. 562—Appeal and revision.

—It is discretionary with the Magistrate to act under S. 562 (1-A) having regard to all or the various matters which are there enumerated and unless it can be said that discretion has been wrongly exercised or has not been judicially exercised, High Court cannot interfere. (*Pearson and Patterson, J.J.*) **SURENDRA NATH v. DHIRENDRA NATH.** 124 I. C. 76 =

31 Cr. L. J. 618 = 1929 Cr. C. 386 =  
A. I. R. 1929 Cal. 785.

—Conviction under S. 408, Indian Penal Code—Lapse of time—Non-interference.

Where a person was convicted under S. 408, Penal Code and was given the benefit of S. 562, Cr. P. Code, by the trial Court and by the time the case went to the High Court in revision, considerable time had passed.

Held, that though usually imprisonment should be given in cases of embezzlement, it was not proper to interfere with the Magistrate's discretion after such a length of time. A. I. R. 1925 Oudh 673; 19 P. W. R. 1910; A. I. R. 1925 Bom. 192; and A. I. R. 1926 Sind 101, Rel. on. (*Addison, J.*) **EMPEROR v. KHAIRATI LAL.**

**CR. P. CODE (1898), S. 562—Appeal and revision.**

107 I. C. 775 = 10 A. I. Cr. R. 27 = 29 Cr. L. J. 291 =  
A. I. R. 1928 Lah. 926.

—However illegal an order might be High Court would refuse to disturb it in revision unless it were unjust, and however legal it might be, High Court would not hesitate to disturb it in revision if it were unjust. High Court is a Court of justice not an Academy of Law. (*Hallifax, A. J. C.*) **EMPEROR v. DAULAT SINGH.** 30 Cr. L. J. 220 = 113 I. C. 911 =

12 A. I. Cr. R. 175 = 11 N. L. J. 245 =  
A. I. R. 1928 Nag. 343.

—High Court will not interfere with order of release unless on strong grounds.

Where the trying Magistrate, before releasing an accused under S. 562 on probation of good conduct considered all relevant circumstances and the Public Prosecutor also said that an order under S. 562 would meet the ends of justice.

*Held*, that the terms of S. 562 (1) are wide and the Court of revision will refuse to set aside an order passed under that section by a Magistrate in the exercise of his discretionary jurisdiction, unless a strong case for interference is made out. 11 Cr. L. J. 389; A. I. R. 1925 Oudh 673, Rel. on. (*Shadi Lal, C. J.*) **EMPEROR v. KESHO RAM.** 28 Cr. L. J. 255 =  
100 I. C. 127 = 7 A. I. Cr. R. 427 =  
A. I. R. 1927 Lah. 353.

—Sub-S. (3) empowers the High Court in the exercise of its power of revision to set aside an order under S. 562 and substitute a sentence of imprisonment. A re-trial need not be ordered. (*Damles, J.*) **EMPEROR v. MT. KESAR.** 24 A. I. J. 228 = 27 Cr. L. J. 303 =  
7 L. B. A. Cr. 28 = 92 I. C. 591 =  
A. I. R. 1926 All. 226.

—An appeal lies under S. 408, C. P. Code, from an order passed under S. 562 (1). A. I. R. 1925 Cal. 329, Foll. (*Macloed, C. J. and Shah, J.*) **MADHAV v. EMPEROR.** 28 Bom. L. R. 671 = 96 I. C. 121 =  
27 Cr. L. J. 873 = A. I. R. 1926 Bom. 382.

—High Court, as a Court of revision is not bound to interfere with an order under S. 562 even when the order is illegal. 19 P. W. R. 1910 and 5 P. R. 1906 (Cr.) Foll. (*Broadway, J.*) **EMPEROR v. HOSHIARA.** 94 I. C. 368 = 27 Cr. L. J. 624 (Lah.).

—An appeal does lie from an order passed under S. 562, Cr. P. Code. 1 Cr. L. J. 543; 24 P. R. 1904; 18 Cr. L. J. 401; 37 All. 31, Ref. to. (*Suhravardiy and Mukherji, J.J.*) **BAHADUR MOLLA v. ISMAIL.** 85 I. C. 135 = 41 C. L. J. 45 = 29 C. W. N. 151 =  
52 Cal. 463 = 26 Cr. L. J. 455 =  
A. I. R. 1925 Cal. 329.

—Subsequent discovery of previous conviction—No ground for revision.

Section 562 is intended primarily for first offenders but the words used "and previous conviction is proved against him" seem to preclude the idea of an inquisition into the past of the accused. If a previous conviction against the accused is proved at the trial it no doubt is a technical bar to an order under S. 562. But if no such conviction is proved, and an order under S. 562 is passed, a subsequent discovery of a conviction of this type is no ground for interference in revision. (*Simpson, A. J. C.*) **KING-EMPEROR v. PARTAB NARAIN.** 88 I. C. 1054 = 2 O. W. N. 593 = 26 Cr. L. J. 1278 =  
A. I. R. 1925 Oudh 673.

—Appeal lies to the Sessions Judge from the order of a Magistrate under S. 562. (*Boys, J.*) **HIRA LAL v. THE KING-EMPEROR.** 82 I. C. 172 =  
46 All. 828 = 22 A. L. J. 751 = 5 L. R. Cr. 131 =  
25 Cr. L. J. 1244 = A. I. R. 1924 All. 765.

**CR. P. CODE (1898), S. 562—Facts to be considered.****—S. 562—Compensation and fine.**

—The order of the Magistrate in awarding a sentence of fine when an order under S. 562, Cr. P. Code, had been passed is illegal. (*Shadi Lal, C. J.*) **KARIM BAKSH v. EMPEROR.** 10 Lah. 722 =  
30 P. L. R. 702 = 30 Cr. L. J. 46 = 112 I. C. 910 =  
1930 Cr. C. 24 = A. I. R. 1930 Lah. 56.

—The order directing the convicts who were released under S. 562 to pay compensation to the complainant is illegal. (*Shadi Lal, C. J.*) **MOHAMMAD ZAMAN v. EMPEROR.** 29 Cr. L. J. 38 =  
106 I. C. 454 = 9 A. I. Cr. R. 327 =  
A. I. R. 1928 Lah. 134.

**—S. 562—Facts to be considered.****—Object of section explained.**

S. 562 has not been enacted with the intention of letting off without imprisonment every juvenile offender on his first conviction for an offence described in the section, regardless of the circumstances in which the crime was committed. S. 562 itself is clear on this point and Magistrates, before applying the section, should carefully take into consideration the attendant circumstances, along with age, character and antecedents of the offender. There can be no manner of doubt that S. 562 has no application to the case of a youth, who grapples with another and after having been separated by others turns back with rage on his adversary, and inflicts a heavy lathi blow on him, killing him almost instantaneously, and later on speaks of his act in a spirit of truculent braggadocio threatening to kill those who attempt to arrest him. If such a person were to be released on probation, the very object with which this salutary provision of the law was enacted would be defeated, and an impression created in the minds of young men that they can commit at least one serious offence with impunity. (*Tek Chand, J.*) **EMPEROR v. ALIA.** 122 I. C. 97 = 31 P. L. R. 115 =  
10 Lah. 876 = 31 Cr. L. J. 348 = 1930 Cr. C. 291 =  
A. I. R. 1930 Lah. 259.

**—Reformatory Schools Act—Act is intended for youthful first offenders.**

The sending of first youthful offenders, whose antecedents are not shown to be bad, to ordinary jails has the effect of making them hardened criminals after they are discharged from such jails. Their association with all classes of offenders has a very unhealthy influence on them. It is the duty of the Magistrate to take into consideration all such matters, when deciding the question of sentence. There are other suitable forms of punishment provided by the law. The provisions of Reformatory Schools Act are intended for cases of youthful offenders. (*Jai Lal, J.*) **EMPEROR v. DHARAM PARKASH.** 27 Cr. L. J. 934 =  
96 I. C. 390 = A. I. R. 1926 Lah. 611.

—The powers of S. 562 are not conferred upon the Magistrate for the purpose of showing favour to any particular class of persons. The sole intention of the section is that the accused person should be given a chance of reformation which he would lose being incarcerated in prison. The exercise of such discretion does need a considerable sense of responsibility in the Magistrate. It is, therefore, at least necessary in dealing with a so-called "first offender" to see that the crime he has committed does not indicate that he is rather a fortunate habitual than a true first offender. (*Kennedy, J. C. and Tyabji, A. J. C.*) **EMPEROR v. MATHRO.** 20 S. L. R. 7 = 27 Cr. L. J. 309 = 92 I. C. 693 =  
A. I. R. 1926 Sind 101.

—The law is no respecter of persons but the terms of S. 562 (1) (a) are wide and character and antecedents

CR. P. CODE (1898), S. 562—Facts to be considered.

of an accused may be taken into account. (*Simpson, A.J.C.*) KING EMPEROR v. PARTAB NARAIN.

88 I. C. 1054 = 2 O. W. N. 593 = 26 Cr. L. J. 1278 = A. I. R. 1925 Oudh 673.

—S. 562—Interpretation and scope.

—Although after the amendment of the Code in 1923 S. 562 is no longer confined to offences under the I. P. C., but extends to all offences. Still in an offence under S. 61 of the Punjab Excise Act, S. 562 should not be resorted to, as such an offence is not usually the first offence, as contemplated by S. 562 19 P. R. 1916 Cr., Appr. (*Campbell, J.*) EMPEROR v. FAIZ TALIB. 27 Cr. L. J. 478 = 93 I. C. 702 = A. I. R. 1926 Lah. 317.

—On a proper construction of S. 562, a first offender, provided the other provisions of the section apply, is entitled to the benefit of the section, even when without such provisions the Magistrate would be obliged to pass a sentence of imprisonment. (In this case the accused was found guilty under S. 381, I. P. C., and his release was held proper. See amended S. 562.—Ed.) (*Macleod, C. J. and Crump, J.*) EMPEROR v. JINGA GAMAJI. 27 Bom. L. R. 111 = 26 Cr. L. J. 694 = 86 I. C. 70 = A. I. R. 1925 Bom. 192.

—S. 562—Jurisdiction.

—The proviso in sub-S. (1) S. 562, governs sub-S. 1-A also. Sub-S. 1-A added to S. 562 in 1923 is not only a part of the same section as the proviso but a part of the same sub-section. A. I. R. 1925 Bom. 479, Foll. A. I. R. 1925 All. 644, Not Foll. (*Hallifax, A. J. C.*) EMPEROR v. DAULAT SINGH. 30 Cr. L. J. 220 = 113 I. C. 911 = 12 A. I. Cr. R. 175 = 11 N. L. J. 245 = A. I. R. 1928 Nag. 343.

—All Second Class Magistrates in the Punjab are duly empowered by Notification No. 431, Home Department to exercise the power of releasing convicted persons on probation of good conduct prescribed by S. 562, Cr. P. Code, dated 18th April 1910. (*Harrison, J.*) EMPEROR v. HASHAM. 109 I. C. 604 = 29 Cr. L. J. 588 = 10 L. L. J. 153 = 29 P. L. R. 215 = 10 A. I. Cr. R. 280.

—Magistrates of the 2nd Class are competent to invoke the provisions of S. 562 in the Punjab. 5 Lah. 36; A. I. R. 1924 Lah. 454; 81 I. C. 948, Overruled. (*Fforde and Addison, J.J.*) EMPEROR v. BAKHSAN. 8 Lah. 38 = 28 Cr. L. J. 316 = 100 I. C. 540 = 28 P. L. R. 285 = A. I. R. 1927 Lah. 102.

—The proviso to Sub-S. (1) of S. 562 of the Code must be read as a part of the said sub-section. It is superseded, as regards the effect of Sub-S. (1-A) by the words 'the Court before whom he is so convicted' in the aforesaid sub-section and cannot be used so as to control those words. A second Class Magistrate who has convicted an accused under Penal Code S. 279 can order his release after due admonition under Cr. P. Code, S. 562 (1-A). High Court will not interfere in revision unless the order is mistaken, injudicious or has caused failure of justice. (*Mears, C. J. and Figgott, J.*) MURLIDHAR v. MAHBOOB KHAN. 85 I. C. 848 = 47 All. 353 = 26 Cr. L. J. 624 = A. I. R. 1925 All. 644.

—Ordinarily when a proviso governs the whole of the provisions of a section, it ought to appear at the end; but the proviso to S. 562 is applicable to the whole of S. 562 including the newly added sub-s (1-A), so that a Third Class Magistrate is not competent to exercise powers to release the offender after due admonition under S. 562 (1-A), though the proviso appears in the middle of S. 562. (*Macleod, C. J. and Coyajee, J.*)

CR. P. CODE (1898), S. 562—Powers when exercised.

EMPEROR v. RANCHHOD HARJIVAN.

89 I. C. 1029 = 27 Bom. L. R. 1019 = 26 Cr. L. J. 1461 = A. I. R. 1925 Bom. 479.

—A Second Class Magistrate cannot pass an order under S. 562. He should in a fit case record his opinion to that effect and should submit to a Magistrate of the First Class or a Sub-Divisional Magistrate for orders. (*Moti Sagar, J.*) EMPEROR v. JAWALI.

81 I. C. 948 = 5 Lah. 36 = 25 Cr. L. J. 1124 = A. I. R. 1924 Lah. 454.

—S. 562—Offences beyond scope.

—S. 562, dealing with first offenders, should not be applied to the case of people discovered with cocaine and other dangerous drugs upon them in defiance of the Excise Act, it being almost certain in all these cases the occasion on which they have been discovered in possession of the drug is not really the first time they have been in such possession. (*Young and Sen, J.J.*) EMPEROR v. TIMMAN. 120 I. C. 264 = 1930 Cr. C. 35 = 31 Cr. L. J. 32 = A. I. R. 1930 All. 19.

—Sub-S. (1-A) S. 562, is confined to cases of an offence under the Penal Code and does not apply to an offence punishable under the City of Bombay Municipal Act. A. I. R. 1926 Bom. 230, Foll. (*Fawcett and Mirza, J.J.*) MERWANJI MISTRY v. EMPEROR. 109 I. C. 502 = 52 Bom. 250 = 30 Bom. L. R. 375 = 29 Cr. L. J. 566 = 10 A. I. Cr. R. 286 = A. I. R. 1928 Bom. 152.

—As one of the alternative punishments for an offence under S. 307, Penal Code, is transportation for life, it is obvious that S. 562 is not applicable and the accused must be sentenced to rigorous imprisonment and fine. (*Tek Chand, J.*) EMPEROR v. BAHAWALI. 117 I. C. 239 = 30 Cr. L. J. 789 = A. I. R. 1928 Lah. 920.

—The offence under S. 409, Penal Code, is beyond the scope of S. 562, Cr. P. Code and so a Magistrate acts without jurisdiction if he releases under S. 562, Cr. P. Code, an accused convicted under S. 409, I. P. C. (*Shadi Lal, C. J.*) EMPEROR v. RAHMAT KHAN. 100 I. C. 225 = 28 Cr. L. J. 257 = 7 A. I. Cr. R. 360 = A. I. R. 1927 Lah. 735.

—Offence under Cl. 2 of S. 457, I. P. C., committed by adult—S. 562 does not apply. (*Cunliffe, J.*) KING-EMPEROR v. NGA PO WUN. 103 I. C. 839 = 6 Bur. L. J. 83 = 8 A. I. Cr. R. 568 = 28 Cr. L. J. 759 = A. I. R. 1927 Rang. 254.

—S. 562 (1 A) only applies to a certain limited class of cases such as theft and so on under the I. P. C., but does not apply to an offence under a totally different Act such as the Motor Vehicles Act. (*Martien and Madgavkar, J.J.*) EMPEROR v. PANDU RANAJI. 93 I. C. 992 = 28 Bom. L. R. 297 = 27 Cr. L. J. 528 = A. I. R. 1926 Bom. 230.

—Accused, a lambardar convicted for pocketing money received as government agent—S. 562 does not apply. (*Campbell, J.*) EMPEROR v. SOHAN SINGH. 94 I. C. 130 = 27 Cr. L. J. 562 = A. I. R. 1926 Lah. 350.

—Offence under S. 381, Penal Code, is not covered. (*May Oung, J.*) KING-EMPEROR v. NGA THAUNG PE. 2 Bur. L. J. 75 = A. I. R. 1924 Bang. 12.

—Section does not apply in a case—I. P. C., S. 411. (*Ross, J.*) KABIR SHAH v. KING-EMPEROR. 85 I. C. 35 = 1923 P. H. C. C. 237 = 1 Pat. L. R. Cr. 174 = 26 Cr. L. J. 419 = A. I. R. 1923 Pat. 297.

—S. 562—Powers when exercised.

—The mere fact that the accused comes of a respectable family cannot be a justification for imposing a

**CR. P. CODE (1898), S. 562—Powers when exercised.**

lighter sentence for the more respectable and better educated a man is, the less temptation there should be to commit offences. (*Adami and Faal Ali, J.J.*) **EMPEROR v. SURENDRA CHANDRA DAS.**

125 I. C. 572 = 31 Cr. L. J. 874 = 1930 Cr. C. 424 = A. I. R. 1930 Pat. 216.

—Enticing away widow of 16 years for honourably marrying her—Discovery by father—Charge against enticing youth under Penal Code S. 366—No attempt to seduce or ill-treat her—Case held fit for criminal being treated as first offender. (*Young, J.*) **MUKHRAM v. EMPEROR.**

120 I. C. 257 = 31 Cr. L. J. 25 = 11 L. R. A. Cr. 15 = 13 A. I. Cr. R. 122 = 1929 Cr. C. 658 = A. I. R. 1929 All. 930.

—When the offence of rape is of a hideous and reprehensible character and committed upon a helpless infant, although the offender may be a lad of 17 years he should not be given the benefit of S. 562. (*Shadi Lal, C. J.*) **EMPEROR v. SARDHA RAM.**

112 I. C. 680 = 29 Cr. L. J. 1096 = A. I. R. 1929 Lah. 198.

—Offence under S. 193, I.P.C.—Deterrent punishment.

A the accused was a complainant in the case against B and had received a bullet wound. He was won over by the defence in the case against B and he deliberately committed perjury intending to screen B. In a case against A under S. 193, Penal Code, the Magistrate proceeded in dealing with A under S. 562.

Held, the Magistrate was wrong in dealing with the accused so leniently and that a deterrent punishment ought to be awarded. (*Broadway, J.*) **EMPEROR v. AKBAR.**

107 I. C. 107 = 29 Cr. L. J. 219 = 9 A. I. Cr. R. 496 = A. I. R. 1928 Lah. 296.

—The Legislature in using the words "an offence punishable with imprisonment" in S. 562(1) must be taken to contemplate an offence primarily punishable with imprisonment and not an offence initially punishable with fine only but which becomes punishable with imprisonment in default of payment of the fine. (*Fawcett and Madgulkar, J.J.*) **EMPEROR v. KASTURI.**

28 Bom. L. R. 1031 = 27 Cr. L. J. 1158 = 97 I. C. 742 = A. I. R. 1926 Bom. 544.

—Where the accused was a widow of over 45, and in committing the offence of forgery she was a puppet in the hands of other accused.

Held, that having regard to the amended provisions of S. 562 instead of sentencing her at once to any punishment, she should be released on her entering into a bond under the section. (*C. C. Ghose and Duval, J.J.*) **EMPEROR v. KIRAN BALA DAS.**

43 C. L. J. 79 = 30 C.W.N. 373 = 27 Cr. L. J. 409 = 93 I. C. 73 = A. I. R. 1926 Cal. 531.

—Where the accused is convicted of cheating and does not make any attempt at restitution and is literate and well able to appreciate his action and its consequences, although he is a young man, he should not be treated under S. 562. (*Campbell, J.*) **EMPEROR v. MUHAMMAD AMIN.**

27 Cr. L. J. 836 = 95 I. C. 756 = A. I. R. 1926 Lah. 570.

—S. 562 cannot be reasonably invoked by a person convicted of an offence which not only implies previous preparation but often escapes detection. It cannot be urged on behalf of such a convict that he had succumbed to a sudden temptation and that the Court should therefore exercise its discretion under the aforesaid section in his favour and give him another chance. (*Shadi Lal, C. J.*) **EMPEROR v. PIARA SINGH.**

7 Lah. 32 = 27 Cr. L. J. 561 = 27 P.L.R. 221 = 94 I.O. 129 = A.I.R. 1926 Lah. 166.

**CR. P. CODE (1898), S. 562—Miscellaneous.**

—Is not applicable where a juvenile offender has shown criminality rather than thoughtlessness.

Before applying S. 562, the Court must consider whether there is a good case for its application or not. Courts in such a case must guard against two things at least, namely, one, danger to the public and the other, danger to the accused himself. Where the crime committed was not a simple crime such as is committed by children out of mere thoughtlessness rather than criminality but showed a general character of craft and deceit.

Held, that the section should not be applied. (*Kennedy, A.J.C.*) **DARYALAL v. EMPEROR.**

82 I.C. 152 = 18 S.L.R. 61 = 25 Cr. L. J. 1224 = A.I.R. 1925 Sind 75.

**—S. 562—Second offence.**

—Where an accused is already placed under probation of good conduct on an earlier conviction, a sentence again placing him under probation for a subsequent offence is illegal. (*Mirza and Broomfield, J.J.*) **EMPEROR v. MAHADEO GOVIND.**

125 I. C. 712 = 31 Cr. L. J. 926 = 1930 Cr. C. 552 = 32 Bom. L.R. 356 = A.I.R. 1930 Bom. 176.

—First offence under Penal Code S. 406 committed several years ago—Offender 55 years old—Amount involved not large—Sentence of Magistrate under S. 562 was upheld. (*Broadway J.*) **EMPEROR v. NURTHU SAIN.**

124 I. C. 315 = 31 Cr. L. J. 653 = 1930 Cr. C. 108 = 31 P. L. R. 334 = A.I.R. 1930 Lah. 92.

—Where two cases against the same accused are tried consecutively and the accused in both is convicted, S. 562 will not apply at the time when second judgment is written, as then he must be considered to be a previous convict (*Harrison, J.*) **EMPEROR v. LAL.**

27 Cr. L. J. 1016 = 96 I. C. 872 = A. I. R. 1926 Lah. 651.

**—S. 562—Security.**

—Failure to furnish—Accused is liable to punishment.

The effect of the order under S. 562 of the High Court in appeal is to set aside the sentence passed on the accused by the lower Court. But if he fails to furnish the security his position is that of an accused, who was convicted, but not sentenced to punishment and is again produced before the Court for the purpose of suitable punishment being awarded. (*Venkatasubba Rao, J.*) **BADSHA, In re.**

86 I. C. 59 = 26 Cr. L. J. 683 = 21 M. L. W. 40 = A. I. R. 1925 Mad. 496.

—The Magistrate should satisfy himself that security can be given before passing the order. But if the person does fail to furnish security the proper course is for Magistrate to pass sentence according to law. (*Carr, J.*) **NASU MEAH v. EMPEROR.**

84 I. C. 349 = 26 Cr. L. J. 285 = 2 Rang. 360 = A. I. R. 1925 Rang. 42.

**—S. 562—Miscellaneous.**

—On a conviction under S. 325, I. P. C. or any other section that says imprisonment may be awarded with a fine in addition, there is no middle course between a real sentence of imprisonment (with or without a fine) and an order under S. 562. (*Hallifax, A. J. C.*) **EMPEROR v. AKOSH KAMBI.**

97 I. C. 1053 = 27 Cr. L. J. 1229 = A. I. R. 1927 Nag. 49.

—An order under S. 562 directing release upon probation of good conduct cannot be said to be a punishment. It is not one of the various kinds of punishments described in S. 53 Penal Code. Under S. 562 the sentence of punishment is postponed and something which is not a punishment is substituted there-



**CR. P. CODE (1898), S. 562—Miscellaneous.**

for. (*Kotval A. J. C.*) *BABA v. EMPEROR.*

74 I. C. 66 = 24 Cr. L. J. 738 = 22 N. L. B. 166 =  
A. I. R. 1924 Nag 37.

**—Sch. II—Amendment.**

—*Trial under Penal Code, S. 477-A—Interpretation of statutes.*

Amendment in Cr. P. Code, Sch. II regarding the trial of an offence under S. 477-A of the Penal Code relates to procedure and has retrospective effect. (*Greaves and Dinwal, J.J.*) *RAJIB LOCKAN DHAR v. JOGESH CHANDRA DAS GUPTA.* 84 I. C. 705 = 28 C. W. N. 998 = 26 Cr. L. J. 353 = A. I. R. 1924 Cal. 983.

**—Sch. II—Jurisdiction.**

—*Penal Code, S. 427—Complainant's statement determines jurisdiction.*

The jurisdiction of the Court to hear a case depends on the allegations with which its help is sought. It may be that after a trial, it is found that the case has been materially exaggerated; but unless it has been found at the very outset that the allegations are exaggerated with the intention of seeking a particular Court for redress, the statement of the complainant has to be accepted for the purposes of jurisdiction.

Where the complainant in a case of mischief, alleged the damage to be Rs. 250 and a Third Class Magistrate tried the offence and found the damage to be Rs. 140 and awarded Rs. 40 as compensation to the complainant, *Held*, that the third class Magistrate had no jurisdiction to try the offence. (*Mukerji, J.*) *RAGHU-NANDANA PRASAD v. EMPEROR.* 85 I. C. 730 = 47 All. 64 = 26 Cr. L. J. 586 =

6 L. R. A. Cr. 39 = A. I. R. 1925 All. 290.

—A Second Class Magistrate is not competent to try an offence under S. 420 of the Penal Code though he has jurisdiction to try an offence under S. 417. (*Venkatasubba Rao, J.*) *RANGAYYA v. SOMAPPA.*

82 I. C. 57 = 20 M. L. W. 919 = 25 Cr. L. J. 1193 = A. I. R. 1925 Mad. 367.

**—Sch. IV—Cognizance of offence beyond powers.**

—*Effect—Complainant cannot be prosecuted for false complaint.*

A Magistrate of the Second Class cannot take cognizance of a complaint that certain persons were guilty of murder. Where therefore he does entertain such a complaint and finding it to be false takes action under S. 190 though defect in conviction could be cured by S. 529 complainant cannot be prosecuted for false complaint. The powers of a Second Class Magistrate can be extended only to the extent specified in S. 37 and Sch. 4 which provisions are to be read with S. 190 in such cases. (*Ross and Kulwant Sahay, J.J.*) *BENGALI GOPE v. EMPEROR.* 94 I. C. 896 = 5 Pat. 447 = 7 P. L. T. 335 = 27 Cr. L. J. 704 = A. I. R. 1926 Pat. 400.

**—Sch. V—Bail bond.**

—*Form 42 includes succeeding Court.*

The terms of the security bond given in Form No. 42 of the Fifth Schedule are wide enough to include the successor of the Court in which the case originally was. (*Daniels, J.*) *MUSTAQUINUDDIN v. EMPEROR.* 92 I. C. 889 = 24 A. L. J. 327 = 27 Cr. L. J. 377 = 7 L. R. A. Cr. 78 = 7 L. R. A. Cr. 152 = A. I. R. 1926 All. 297.

**CRIMINAL PROCEEDINGS.**

See (1) CRIMINAL TRIAL.

(2) JUDICIAL PROCEEDINGS.

**CRIMINAL REVISION.**

See CR. P. CODE, SS. 435 AND 439.

**CRIMINAL TRESPASS.**

See PENAL CODE, SS. 441 AND 442.

**CRIMINAL TRIAL—Acquittal—Grounds for. CRIMINAL TRIAL.**

Acquittal.

Appeal.

Benefit of Doubt.

Circumstantial Evidence.

Civil Dispute.

Confession.

Conviction.

Costs

Counter Cases.

Court's Duty.

Death of Complainant.

Defence.

Duty of Prosecution.

Evidence.

Expunging the Remarks.

First Information.

Further inquiry.

High Court.

Identification.

Irregular Procedure.

Joint Trial.

Judgment.

Local Inquiry.

Local Inspection.

Opinion in prior trial.

Pardon.

Powers of Court.

Practice.

Presumption of innocence.

Private Prosecution.

Privy Council.

Procedure.

Prosecution.

Reference to third Judge.

Re-trial.

Review.

Revision.

Sentence.

Sessions cases.

Stay pending civil proceedings of.

Suspensions.

Transfer.

Trial by Jury.

Vitiating the Trial.

Withdrawal.

Miscellaneous.

**—Acquittal—Grounds for.**

—*Approver's evidence unreliable identification of accused doubtful—Circumstantial evidence insufficient.*

Where a careful consideration of the evidence indicated, first, that the evidence of the approver was unreliable; second, that there was no reliable evidence that the accused were identified to be among the men who had committed the offence; and third, that the circumstantial evidence was not sufficient to warrant the conviction of the accused.

*Held*, that the sentence of the accused should be set aside and the accused should be acquitted. (*C. C. Ghose and Juck, J.J.*) *KAILASH CHANDRA RISHI v. EMPEROR.* 113 I. C. 73 = 43 C. L. J. 481 = 30 Cr. L. J. 57 = 11 A. I. Cr. R. 493.

—Where the prosecution fails to prove its case as laid, the accused are entitled to acquittal. (*Mullick and Jwala Prasad, J.J.*) *PERSHAD TEWARI v. EMPEROR.* 26 Cr. L. J. 1589 = 90 I. C. 661 = A. I. R. 1926 Pat. 5.

**—Compounding of offence.**

Court can acquit accused on the representation of an agent, who had filed complaint on another's behalf, that he desired to compound the offence, without enquiring into the agent's authority to compound. (*Boys, J.*)

**CRIMINAL TRIAL—Acquittal—Grounds for.**

HARBANS v. EMPEROR. 83 I. C. 658 =  
22 A. L. J. 820 = 5 L. R. A. Cr. 143 =  
26 Cr. L. J. 98 = A. I. R. 1924 All. 778.

**—Acquittal—Interference in.****—Petty assaults.**

High Court will not ordinarily interfere to set aside acquittals in petty assaults. (*Jackson, J.*) NAGOOR KANNI NADURA v. SITHU NAICK. 25 M. L. W. 43 =  
38 M. L. T. 35 = 1927 M. W. N. 40 =  
99 I. C. 346 = 28 Cr. L. J. 138 =  
A. I. R. 1927 Mad. 298 = 52 M. L. J. 32.

—The High Court is very reluctant to interfere with an order of acquittal and it does not do so unless the necessity is clearly made out. (*Kennedy, J. C. and Aston, A. J. C.*) EMPEROR v. SUNDERDAS.  
87 I. C. 916 = 19 S. L. R. 111 = 26 Cr. L. J. 1028 =  
A. I. R. 1925 Sind 295.

**—Acquittal—Jury's verdict silent.**

—Does not amount to acquittal.

Where an accused was tried under Ss. 364 and 120-B read with S. 302 and the jury found him guilty under Ss. 120-B and 364 but was silent about the charge of murder.

Held, that the verdict of the jury under S. 120-B read with S. 302 did not by itself negative the charge of murder and hence re-trial for a charge under S. 302 could be ordered. (*Sanderson, C. J. and Cumings, J.*) EMPEROR v. USMAN SARDAR. 81 I. C. 824 =  
39 C. L. J. 264 = 25 Cr. L. J. 1048 =  
A. I. R. 1924 Cal. 809.

**—Appeal—Against acquittal.**

—Treated same as appeal against conviction—  
Sued Judicial Commissioner's Court—Practice.

It is the practice of the Sind Judicial Commissioner's Court in all appeals especially criminal appeals, to pay great deference to the opinion of the Judge presiding over the trial Court, but it will not hesitate to convict in an acquittal appeal more than it should hesitate to acquit in an appeal from a conviction, provided that there are valid grounds for reversing the decision of the learned Judge of the lower Court. 9 S. L. R. 17 and A. I. R. 1924 Bom. 335, Foll. (*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*) EMPEROR v. SULLEMAN KHAN. 98 I. C. 467 = 21 S. L. R. 141 =  
27 Cr. L. J. 1347 = A. I. R. 1927 Sind 92.

—Prosecution relying solely on admissions—Acquittal by lower Court—No case for remand.

In a case where the prosecution produces no evidence and relies entirely on admissions by the accused and where the trial Court acquits the accused the Appellate Court should not remand the case for proper trial, such admissions not being sufficient to enable the crown to procure a legal decision and there being no material for the High Court to supplement the deficiencies of the prosecution by remanding the case for proper trial. (*Scott-Smith and Fforde, J.J.*) EMPEROR v. JASWANT RAI AND CO. 84 I. C. 464 = 5 Lah. 404 =  
26 Cr. L. J. 320 = A. I. R. 1925 Lah. 85.

**—Appeal—Against irregular procedure.**

—Lower Court's decision in substance correct—Rules of procedure transgressed—No ground for reversal—Exceptions.

Per Page, J.—When the decision of a Criminal Court in substance appears to be correct an appeal Court should endeavour to uphold the decision even in cases where the rules of procedure by which the trial is to be regulated have been transgressed; except where the breach of the prescribed rules is of so grave a nature, where the form of trial was substantially different from that provided by law for the offence charged, or where, although the violation of the rules was not so profound

**CRIMINAL TRIAL—Benefit of doubt.**

as to radically alter the mode of trial, it is proved that thereby in the event a failure of justice has in fact been occasioned. (*Rankin, C. J., C. C. Ghose, Suhrawardy, Pearson and Page, J.J.*) EMPEROR v. ERMALALI.

123 I. C. 664 = 57 Cal. 1228 = 1930 Cr. C. 212 =  
34 C. W. N. 296 = 51 C. L. J. 171 =  
31 Cr. L. J. 536 = A. I. R. 1930 Cal. 212 (F.B.).  
—Lower Court's decision just on merits—Breach of procedure—Not disturbed.

Per Page, J.—Rules and Regulations are intended to be the handmaid and not the mistress of the law; in criminal proceedings it is of the utmost importance that a decision just and reasonable on the merits should not be disturbed because in the course of the proceedings some flaw can be detected that is not fundamental and which is not proved to have worked injustice to the accused, although it may constitute a breach of the rules of criminal procedure. *R. v. Justices of the County of London.* (1893) 2 Q. B. 491, Rel. on. (*Rankin, C. J., C. C. Ghose, Suhrawardy, Pearson and Page, J.J.*) EMPEROR v. ERMALALI. 123 I. C. 664 = 57 Cal. 1228 = 1930 Cr. C. 212 = 34 C. W. N. 296 = 51 C. L. J. 171 =  
31 Cr. L. J. 536 = A. I. R. 1930 Cal. 212 (F.B.).

**—Appeal—Delay.**

—A delay of over 4½ months in hearing appeals would amount to a denial of justice in a majority of cases. (*Dalal, J. C.*) BAHADUR v. EMPEROR.

85 I. C. 370 = 27 O. C. 327 = 26 Cr. L. J. 530 =  
A. I. R. 1925 Oudh 501.

**—Appeal—Different parties.**

—May be heard together.

Appeals by different persons convicted by one judgment in a joint trial may be heard together, but they must be made separately. (*Hallifax, A. J. C.*) MAHARAJ SINGH GOND v. EMPEROR. 97 I. C. 38 =  
27 Cr. L. J. 1062 = A. I. R. 1927 Nag. 48.

**—Appeal—Finding of fact.**

—Based on erroneous assumptions cannot stand.

In an appeal by accused against his conviction findings on side issues in favour of prosecution based on palpably erroneous assumptions cannot be allowed to stand. (*Zafar Ali, J.*) H. MANSEL PLEYDELL v. EMPEROR. 96 I. C. 641 = 27 Cr. L. J. 977 = A. I. R. 1926 Lah. 313.

**—Appeal—Non appearance of appellant.**

—Dismissal for—Not warranted.

There is no provision in Cr. P. Code, for the dismissal of an appeal on account of non-appearance of the appellant or his pleader and the appellate Court must even in the absence of the appellant peruse the record and decide the appeal judicially. A. I. R. 1923 All. 175 and 21 P. R. 1895, Foll. (*Broadway, J.*) NIHAL v. EMPEROR. 118 I. C. 391 = 1929 Cr. C. 512 =  
30 P. L. R. 589 = 30 Cr. L. J. 902 =  
A. I. R. 1929 Lah. 849.

**—Appeal—Plea of notice.**

—Not appearing in lower Court in enquiry—Plea that notice was not served cannot be heard.

When a person does not choose to appear before the lower Court in an enquiry, he is not entitled to complain that he had not been served with notice of that proceeding in the appellate Court against the order of the lower Court. (*Devadoss, J.*) SHEIKH DAWOOD v. VELAYUDA SEMMANOTTI. 108 I. C. 65 =  
51 Mad. 606 = 1 M. Cr. C. 89 = 9 A. I. Cr. B. 538 =  
29 Cr. L. J. 322 = 27 M. L. W. 132 =  
A. I. R. 1928 Mad. 194 = 54 M. L. J. 312.

**—Benefit of doubt.**

—Conscious possession of—Reasonable doubt.

In a prosecution for an offence under S. 9 of the Opium Act the onus lies on the prosecution to establish conscious possession by the accused. Where there is some

**CRIMINAL TRIAL—Benefit of doubt.**

element of reasonable doubt the accused should have the benefit thereof. (*Graham and Pancridge, Jj.*)  
**BAKER v. EMPEROR.** 1930 Cr. C. 1060 =  
 A.I.R. 1930 Cal. 668

**Benefit to the accused.**

Where a Court is unable to say which of the two theories is the more likely one, it is bound to take the view which is most favourable to the accused. (*Percival, J. C. and Barlee, A. J. C.*) **NUR KHAN v. EMPEROR.**  
 120 I. C. 520 = 24 S. L. R. 96 = 31 Cr. L. J. 117 =  
 1930 Cr. C. 282 = A. I. R. 1930 Sind 99.

**Evidence evenly balanced—Benefit to accused**

Where there is *prima facie* satisfactory and extremely evenly balanced evidence on either side, the proper course is to give the benefit of doubt to the accused especially when he has been offering satisfactory explanation in respect of the accusation made against him from the very beginning. 16 C. P. L. R. 13 and 4 N. L. R. 146, Appl. (*Findlay, J. C.*) **RAMLAL LODHI v. EMPEROR.** 117 I. C. 212 = 30 Cr. L. J. 727 (Nag.)

**Medical evidence against prosecution theory—Locality and motive not established—Benefit to accused.**

When it is found that the part assigned to any particular accused is falsified by the medical evidence and further when the locality and the motive for the fight are not established, it cannot be said that the accused had taken part in the fight. (*Dulip Singh, J.*) **MAJHI v. EMPEROR.** 103 I. C. 413 = 28 Cr. L. J. 685 =  
 8 A. I. Cr. R. 360 = 9 L. L. J. 369 =  
 A. I. R. 1927 Lah. 617.

Where there is a doubt the accused person must receive the benefit of that doubt. (*Pullan, J.*) **GUR CHARAN v. EMPEROR.** 1 L. C. 190 =  
 8 A. I. Cr. R. 379 = 28 Cr. L. J. 688 = 103 I. C. 416 =  
 A. I. R. 1927 Oudh 611.

Accused is entitled to the benefit of doubt. (*Broadway and Zafar Ali, Jj.*) **MUZAFFAR v. EMPEROR.** 99 I. C. 322 = 8 L. L. J. 410 =  
 27 P. L. R. 632 = 28 Cr. L. J. 114.

**Charge under Arms Act and Opium Act—Acquitted under the latter—Conviction under former also set aside.**

A person was charged under Arms Act and also Opium Act. He was ultimately acquitted under latter on the ground that the opium found in his house may have been brought there by his servant, who was a badmash.

*Held*, that his conviction under the Arms Act should also be set aside for the same reason. (*Zafar Ali, J.*) **BISHAN SINGH v. EMPEROR.** 97 I. C. 743 =  
 8 L. L. J. 404 = 27 P. L. R. 651 = 27 Cr. L. J. 1159.

**Conduct consistent with guilt as well as innocence—Benefit to accused.**

Where the conduct of the accused was as much consistent with his guilt as with his knowledge of the guilt of another and the anxiety to protect him.

*Held*, the benefit of the doubt must accrue in favour of the accused. (*Wazir Hasan, A. J. C.*) **BISHAMBHAR NATH v. EMPEROR.** 87 I. C. 962 =  
 26 Cr. L. J. 1042 = A. I. R. 1925 Oudh 676.

**Police refusing to refer to a diary—Benefit of refusal to accused.**

It may be within the right of the police officers not to refer to a diary, but the accused is entitled to the benefit of their refusal to refer to the diary and to disclose the source of their information. (*Jwala Prasad, J.*) **DEODHARI PANDEY v. EMPEROR.** 86 I. C. 274 =  
 6 P. L. T. 810 = 1925 P. H. C. C. 6 =  
 26 Cr. L. J. 738 = A. I. R. 1925 Pat. 131.

**Meaning of.**

Benefit of doubt means benefit of a real and reasona-

**CRIMINAL TRIAL—Circumstantial evidence.**

ble doubt in the mind of the Court. (*Walsh and Ryves, Jj.*) **LAKHAN v. EMPEROR.** 84 I. C. 548 =  
 5 L. R. A. Cr. 101 = 26 Cr. L. J. 324 =  
 A. I. R. 1924 All. 511.

**Circumstantial evidence.****Principles to be followed laid down.**

The main principles to be followed in criminal cases based on circumstantial evidence are (i) the circumstances in which an inference adverse to the accused is sought to be drawn, must be proved beyond all reasonable doubt and must be clearly connected with the fact sought to be inferred therefrom, and (ii) in order to justify an inference of guilt, the circumstances from which an inference is sought to be drawn must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. 8 C. W. N. 278, Ref. (*Suhrawardy and Patterson, Jj.*) **MST. JAHWA BIBI v. KING-EMPEROR.** 35 C. W. N. 169 =  
 52 C. L. J. 417 = 1931 Cr. C. 43 = A. I. R. 1931 Cal. 11.

In cases where it is doubtful whether death of the deceased was due to strangulation or due to a blow with a lathi, the nature of injuries found to exist on the body of the deceased is a matter of great importance and is generally of considerable assistance in determining the truth or otherwise of the account of the incident as given by the eye witnesses and coming to a conclusion as to how death was caused. (*Tekchand, J.*) **EMPEROR v. ALIA.** 122 I. C. 97 = 31 P. L. R. 115 =  
 10 Lah. 876 = 31 Cr. L. J. 348 = 1930 Cr. C. 291 =  
 A. I. R. 1930 Lah. 259.

In criminal cases based only on circumstantial evidence that evidence should be so strong as to point very clearly to the guilt of the accused. (*Beasley, C. J. and Pandalai, J.*) **SANKARALINGA TEVAN v. EMPEROR.** 124 I. C. 506 = 53 Mad. 590 = 1930 M. W. N. 496 =  
 3 M. Cr. C. 100 = 1930 Cr. C. 632 = 31 Cr. L. J. 712 =  
 31 M. L. W. 451 = A. I. R. 1930 Mad. 632 =  
 58 M. L. J. 397.

The mere fact that the accused conducted the father of the deceased and other persons to the ravine where the corpse was found lying cannot alone, while creating a suspicion against the prisoner, bring the guilt home to him. (*Shadi Lal, C. J. and Agha Haidar, J.*) **GHULAM MD v. EMPEROR.** 114 I. C. 719 =  
 30 P. L. R. 269 = 30 Cr. L. J. 375 = 1929 Cr. C. 102 =  
 A. I. R. 1929 Lah. 558.

The mere fact that an accused was last seen in the company of a man shortly prior to his murder, even coupled with a strong motive for that murder, is obviously not sufficient proof of guilt. (*Fforde, J. on difference between Agha Haidar and Broadway, Jj.*) **BARKATI v. EMPEROR.** 103 I. C. 49 =  
 28 Cr. L. J. 625 = 8 A. I. Cr. R. 273 =  
 A. I. R. 1927 Lah. 581.

In a case of circumstantial evidence in order to justify the inference of guilt the inculcating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. (*Banerji and King, Jj.*) **ABDUL AZIZ v. EMPEROR.** 117 I. C. 348 =  
 10 A. I. Cr. R. 392 = 19 L. R. A. Cr. 132 =  
 30 Cr. L. J. 757.

See also **GHULAM RASUL v. EMPEROR.** (*Shadi Lal, C. J. and Agha Haidar, J.*) 107 I. C. 774 =  
 10 A. I. Cr. R. 5 = 29 Cr. L. J. 289.

**GHAUNS v. EMPEROR.** (*Shadi Lal, C. J. and Coldstream, J.*) 7 Lah. 561 = 27 P. L. R. 611 =  
 27 Cr. L. J. 1004 = 7 A. I. Cr. R. 31 = 9 L. L. J. 39 =  
 96 I. C. 860 = A. I. R. 1926 Lah. 691.

**DINAMANI UDAIPAL RAM TEWARY v. EMPEROR.** (*Jwala Prasad and Macpherson, Jj.*)

## CRIMINAL TRIAL—Circumstantial evidence.

- 98 I. C. 241 = 27 Cr. L. J. 1297 (Pat.).  
 —MAJHI v. EMPEROR. (*Shadi Lal, C. J. and Jas Lal, J.*) 7 L.L.J. 48 = 26 Cr. L. J. 760 = 86 I.C. 344 =  
 A. I. R. 1925 Lah. 323.  
 —MT. SHEWANTI v. EMPEROR. (*Kinkhede, A. J. C.*) 29 Cr. L. J. 561 = 109 I.C. 497 =  
 10 A. I. Cr. R. 358 = A. I. R. 1928 Nag. 257.  
 —RANNUN v. KING-EMPEROR. (*Shadi Lal, C. J. and Addison, J.*) 7 Lah. 84 = 27 Cr. L. J. 709 =  
 27 P. L. R. 583 = 94 I. C. 90 = A.I.R. 1926 Lah. 88.  
 —Must in all human probability point to guilt.

Circumstantial evidence, in order to bring a charge home to an accused person, must be such as to show that within all human probability the act alleged must have been done by the accused person. (*C. C. Ghose and Duval, J.*) ARAJALI v. EMPEROR.

- 98 I. C. 102 = 30 C. W. N. 376 = 27 Cr. L. J. 1254.  
 —Accused found new door-way—Shoes stained with blood—Deceased was paying attentions to the sister of the accused—Evidence inadequate.

Where there was no eye-witness of the affair and circumstantial evidence was that the victim was seen lying wounded on a charpoy with accused No. 1 standing near him and accused No. 2 standing in the door-way of the *Kotha* the scene of murder, that accused No. 1 was at that time wearing a *chadar* and a *Kurta* both of which bore marks of blood and he had blood stains also on his feet and calves that his brother accused No. 2's *chadar* and feet were stained with blood, and that the deceased had been paying attentions to their sister, and that this conduct on his part was resented by the brothers.

Held, that the evidence is wholly inadequate to bring the charge home to accused No. 2 and that he be acquitted. (*Shadi Lal, C. J. and Campbell, J.*) MAHOMED YAR v. THE CROWN. 81 I. C. 173 = 5 L.L.J. 40 = 25 Cr. L. J. 685 = A.I.R. 1924 Lah. 62.  
 —Facts amounting to—Held not sufficient for conviction.

One Bhagwana was found by the police on duty wandering about in a peculiar condition. He was recently with Chajju, Chunna and Ram Gopal his companions. Of these the first two were from Bhagwan's village and the third, was a stranger who joined them during their travel to Jahazgarh. The police were informed that of two *moalis* or money bags placed beneath the bedding on which Bhagwana had been seen sitting when his companions went to sleep one containing Rs. 190 was missing. They were searched and Rs. 209 were found on Ram Gopal. Bhagwana was sent to the dispensary and exhibited symptoms of *dhatura* poisoning. The Sub-Assistant Surgeon gave him a purgative and the resultant stools were found to contain *dhatura*. Chhajju and Chunna in their depositions said that some laddus were offered to them and to Bhagwan by Ram Gopal and after eating these, they ate pans, bought by Ram Gopal at a shop. The pans had an intoxicating effect. Some of the laddus and *mathris* were found on the person of Ram Gopal, but they were reported to have shown no traces of *dhatura*. There was nothing wrong with Chunna and Chhajju. Ram Gopal was sent up for trial and was convicted of an offence S. 328, Penal Code, and sentenced to five years' rigorous imprisonment.

Held, that the circumstantial evidence is not sufficient to justify the conviction. (*Campbell, J.*) RAM GOPAL v. THE CROWN. 77 I.C. 981 = 25 Cr. L. J. 517 = A.I.R. 1923 Lah. 687.

—Should make defence theory highly improbable. A conviction cannot be based on circumstantial evidence unless and until all the inferences to be drawn from the

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whole history of the case point so strongly to the commission of the crime that the defence theory appears in the face of it impossible or highly improbable. 16 P.W. R. 1911 Cr., Foll. (*Abdul Raof, J.*) BAHALI v THE CROWN. 83 I. C. 721 = 26 Cr. L. J. 161 = A. I. R. 1923 Lah. 488.

## —Civil dispute.

—Decree adjusted by getting fresh bond from one judgment-debtor—Subsequent receipt of payment from Official Receiver on behalf of the other insolvent judgment-debtors—Criminal liability.

The accused had obtained a decree against three judgment-debtors. Two out of them had subsequently applied to be adjudicated as insolvents. The accused got his name entered in the list of creditors and proved his debts against them. He then proceeded against the third and obtained from him a fresh bond. Subsequently the Official Receiver made payment to the accused.

Held, that the receipt of the amount cannot in any way render the accused criminally liable. It is a matter for adjustment in a Civil Court. (*Tek Chand, J.*) AMAR NATH v. EMPEROR. 113 I. C. 536 = 10 L.L.J. 485 = 12 A. I. Cr. R. 85 = 30 Cr. L. J. 162 = A. I. R. 1928 Lah. 945.

—Ownership of land—No order of civil adjudication—Criminal Court—If debarred from going into question of ownership.

Where no civil suit has been filed to determine the question of the ownership of the land against the order of a Survey Officer under S. 13, or where such suit being brought its result is not known, a Criminal Court is not debarred from going into the question as to the ownership of the land in respect of which prosecution is launched before the expiry of three years from the date of the Survey Officer's order. (*Devadoss, J.*) PALI-MUTHU AMBALAGAR v. PRESIDENT, UNION BOARD, KATTUPUTHUR. 112 I.C. 589 = 28 M.L.W. 653 = 29 Cr. L.J. 1085 = 1 M.Cr.C. 325 = 52 Mad. 609 = A. I. R. 1928 Mad. 1278 = 56 M.L.J. 360.

## —Cases of civil nature.

It is a very sound principle that parties should not be encouraged to resort to Criminal Courts in cases in which the point at issue between them is one which can more appropriately be decided by a Civil Court. (*Shadi Lal, C. J.*) ISHAR DAS v. EMPEROR. 28 Cr.L.J. 158 = 99 I. C. 414 = A. I. R. 1927 Lah. 145.

—See also (*Abdul Raof, J.*) ABDUL QUADIR v. EMPEROR. 92 I. C. 163 = 26 P. L. R. 422 = 27 Cr. L. J. 211.

—More appropriate remedy open in Civil Court—Criminal case must be disallowed.

Parties should not be encouraged to resort to the Criminal Courts in cases in which the point at issue between them is one which can more appropriately be decided by a Civil Court, and the tendency on the part of litigants to do so should be checked by Criminal Courts who should be on their guard against lending their aid to such procedure. (*Campbell, J.*) LADHA SHAH v. ZAMAN ALI. 26 Cr.L.J. 287 = 84 I.C. 351 = A.I.R. 1925 Lah. 289.

—Compoundable offence—Damages awarded in a Civil suit—Criminal trial not justified.

It is undesirable that an accused should again be put on his trial in a Criminal Court for a compoundable offence after he has purged his offence in the Civil Court in the form of damages. (*Spencer, J.*) THIRUVENGADACHARIAR v. CHOCKALINGAM CHETTY. 76 I. C. 234 = 18 M.L.W. 167 = 25 Cr. L. J. 138 = A. I. R. 1924 Mad. 31.

—Confession.  
 —Retracted confession—Independent corroboration

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required.

There is nothing to prevent a confession although retracted from being given effect to as against the maker. But where the confession has been retracted the general rule is that independent corroboration of the confession should be required in order that the Court may be satisfied that the confession is true. (*Graham and Lort Williams, J.J.*) **EMPEROR v. BALAI GHOSE.**

124 I. C. 486 = 31 Cr. L. J. 667 = 50 C. L. J. 518 =

1930 Cr. C. 141 = A. I. R. 1930 Cal. 141.

—Sole basis of conviction—Statement must be accepted as a whole—Benefit of any mitigating circumstances found.

When the only account of what happened on the night of murder is given by the accused himself and it is his admission contained in that statement that forms the basis of his conviction, the statement should be accepted in its entirety and if it establishes any mitigating circumstance the accused should be given the benefit of it. (*Broadway and Tapp, J.J.*) **EMPEROR v. MOHAMMAD YUSUF.**

121 I. C. 178 = 31 Cr. L. J. 226 =

31 P. L. R. 35 = 1930 Cr. C. 301 =

A. I. R. 1930 Lah. 269.

—Doubt as to how obtained—Benefit of doubt to accused.

If the case against the accused entirely rests on the confession made by the accused and there is a conflict as to the manner in which the confession is obtained the accused is justified in asking the Court to give him the benefit of doubt. (*Broadway and Agha Haidar, J.J.*) **RAHMAN v. EMPEROR.**

119 I. C. 420 =

1930 Cr. C. 104 = 30 Cr. L. J. 1080 =

A. I. R. 1930 Lah. 88.

—Appellate or High Court—Blind acceptance of recording magistrate's opinion as to genuineness and truth of confession—Not proper.

The Court of Session or the High Court cannot merely accept the *ipse dixit* of the Magistrate recording the confession as to its being voluntary. The genuineness and the truth of the confession and the fact of its being voluntarily made are matters which are within the exclusive province of the Court of Session and of the High Court, and neither of them can blindly accept the ready-made opinions of the recording Magistrate on these points without having before it materials from which it could arrive at an independent opinion on these questions. (*Raza and Nanavutty, J.J.*) **PRAG v. EMPEROR.**

128 I. C. 215 = 7 O. W. N. 909 =

1930 Cr. C. 1073 = A. I. R. 1930 Oudh 449.

—Recording of—Must be proper.

The proper recording of confessions which can be shown on the face of them to be voluntary and apparently true is of the highest and supreme importance in criminal trials. (*Raza and Nanavutty, J.J.*) **PRAG v. EMPEROR.**

7 O. W. N. 909 = 1930 Cr. C. 1073 =

128 I. C. 215 = A. I. R. 1930 Oudh 449.

—Implicating co-accused—Corroboration.

Confession implicating a co-accused requires corroboration, if the co-accused is to be convicted on it. (*Adami and Scroope, J.J.*) **KHATUI JAMA KHAN v. EMPEROR.**

123 I. C. 393 = 31 Cr. L. J. 492 = 1930 Cr. C. 767 =

A. I. R. 1930 Pat. 385.

—Retracted confession—Independent corroborative evidence—If necessary—Benefit of doubt.

A retracted confession must be supported by independent and reliable evidence corroborating it in material particulars, but it cannot be laid down as an absolute rule of law that a confession made and subsequently retracted cannot be accepted as evidence of guilt without independent corroborative evidence. But where the corroborative evidence is insufficient to show beyond

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reasonable doubt that the accused had committed the murder, the accused should be given the benefit of doubt. (*Adami and Scroope, J.J.*) **BHAGWAN DAS BHAGAL v. EMPEROR.**

126 I. C. 902 =

31 Cr. L. J. 1128 = 1930 Cr. C. 599 =

A. I. R. 1930 Pat. 289.

—Making a clean breast of all details—Not necessary.

Per *Mirza, J.*—A confession in order to be relied upon need not make a clean breast of all the details in connexion with the crime, but if the Court is satisfied that it has been voluntarily made, it may take into consideration such parts of it as it may by itself or in the light of the other evidence in the case consider to be true. (*Mirza and Patkar, J.J.*) **RAMA KARIYAPPA v. EMPEROR.**

120 I. C. 350 = 31 Cr. L. J. 97 =

31 Bom. L. R. 565 = A. I. R. 1929 Bom. 327.

—Confession voluntarily made—Retracted—Independent corroborative evidence—If necessary.

A retracted confession, if proved to be voluntarily made before a Magistrate, can be acted upon along with other evidence in the case and there is no rule of law, that the retracted confession must be supported by independent evidence corroborating it in material particulars. The use to be made of such a confession is a matter of prudence rather than of law. 19 Bom. 728; 23 Bom. 316; 25 Bom. 168; 21 Mad. 83, Rel. on. 2 U. P. L. R. (All.) 218, Dist. (*Mirza and Patkar, J.J.*) **RAMA KARIYAPPA v. EMPEROR.**

120 I. C. 350 =

31 Cr. L. J. 97 = 31 Bom. L. R. 565 =

A. I. R. 1929 Bom. 327.

—Retracted extra judicial confession if sufficient basis for conviction.

A retracted extra judicial confession can in law be a sufficient basis to support a conviction. Though utmost caution must be used in dealing with retracted confessions, there is no rule that they are not by themselves legal evidence sufficient to justify a conviction. A. I. R. 1921 Sind 129, Foll. (*Rupchand and Barlee, A. J. Cs.*) **SANWALDAS KUNDANDAS v. EMPEROR.**

125 I. C. 44 = 31 Cr. L. J. 753 = 1929 Cr. C. 682 =

A. I. R. 1929 Sind 253.

—As a whole must be considered.

If accused is to be convicted on his confession, it must be taken as a whole and it would be unsafe to use the part against him and discredit the part in his favour. 39 Cal. 855 and 21 Cal. 955, Foll. (*Kumaraswami Sastri, J.*) **SRINIVASA ROW v. EMPEROR.**

109 I. C. 605 = 27 M. L. W. 318 =

1928 M. W. N. 161 = 9 A. I. Cr. R. 493 =

29 Cr. L. J. 589 = 1 M. Cr. C. 113 =

A. I. R. 1928 Mad. 493 = 54 M. L. J. 607.

—Retracted confession—Independent corroborative evidence—If necessary—Credibility depending on circumstances in which it was first made and then withdrawn.

It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by an accused cannot be accepted as evidence of his guilt without independent corroborative evidence but the weight to be given to such a confession must depend upon the circumstances in which the confession was originally made and the circumstances in which it was afterwards withdrawn. The credibility of a confession is in each case a matter to be decided by the Court in the light of the circumstances of every particular case. (*Wazir Hasan, A. J. C.*) **MANNA LAL v. KING-EMPEROR.**

75 I. C. 753 = 27 O. C. 40 =

25 Cr. L. J. 49 = A. I. R. 1925 Oudh 1.

—Retracted confession—Court to be satisfied that it was voluntary and reliable.

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When the only evidence against the accused is his own confessional statement which was retracted before the committing Magistrate as well as before the Sessions Court, the Court has to be fully satisfied that it is a true and really voluntary and reliable statement before admitting it against him. (*Krishnan and Wallace, J.J.*) **BASIREDDI NARAPPA v. EMPEROR.**

76 I. C. 842=18 M. L. W. 606=33 M. L. T. 77=  
33 M. L. T. 156=1923 M. W. N. 697=  
25 Cr. L. J. 210=A. I. R. 1924 Mad. 391=  
45 M. L. J. 613.

—If can be accepted in part.

It cannot be said that a Court is not justified in holding that a confession as a whole may be true, although a particular detail is false especially when the detail refers only to the motive. Courts of law cannot pick out different statements made by an accused and piece them together so as to make a new statement. (*Pipon, J. C.*) **MOTI RAM v. EMPEROR.** 75 I. C. 152=  
24 Cr. L. J. 904 (Lah.).

**—Conviction—**

**Charge.**

**Evidence.**

**Grounds for.**

**Offence under statute.**

**Setting aside.**

**Several offences.**

**When not sound.**

**When sound.**

**—Conviction—Charge.**

—Charge under one section—Conviction under another—Evidence directly relevant to the latter—Conviction right.

The evidence which was given under the charge based upon S. 326 read with S. 149 was directly relevant to the issue under S. 326 read with S. 34. It was proved that the accused being present and armed with a deadly weapon gave an order to other persons armed with deadly weapons to assault the complainant. Although the element of an unlawful common object in the assembly as a whole which would be required to convict the accused persons under S. 326 read with S. 149 was missing, yet the accused formed an assembly within a wider assembly which smaller assembly had a common intention to cause grievous hurt and the complainant suffered injury at their hands. All the necessary ingredients for a conviction under S. 326 read with S. 34 were present before the Magistrate.

*Held*, that the lower Court was right in convicting the accused under S. 326 read with S. 34, even in the absence of a specific charge in the original charge under those Ss. 34 and 326. 34 Cal. 698 and 16 C. W. N. 1077, Dist. 5 Cal. 871; 15 C. W. N. 244; and 12 Bom. H. C. R. 1; Rel. on. (*Courtney-Terrell, C. J. and Adami, J.*) **BHONDU DAS v. EMPEROR.**

113 I. C. 676=7 Pat. 758=30 Cr. L. J. 205=  
12 A. I. Cr. R. 6=11 P. L. T. 111=  
A. I. R. 1929 Pat. 11.

—Charge of offence—Conviction for abetment—Legality.

It is not open to a Court to find a man guilty of abetment of an offence on a charge of the offence itself. 11 Bom. H. C. R. 240, Foll. (*Pullan, J.*) **MAHABIR PRASAD v. EMPEROR.** 97 I. C. 430=49 All. 120=  
24 A. L. J. 998=7 L. R. A. Cr. 180=  
27 Cr. L. J. 1118=A. I. R. 1927 All. 35.

—Charge of offence—Conviction of offence read with S. 114 not charged with—Legality.

*Obiter*.—A man charged with a substantive offence can be convicted of that offence read with S. 114 of the Penal Code although not charged with it. (*Marten and*

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*Kincaid, J.J.*) **KING-EMPEROR v. RANCHHOD SURSANG.**

87 I. C. 600=49 Bom. 84=  
26 Bom. L. R. 954=26 Cr. L. J. 1000=  
A. I. R. 1924 Bom. 502.

—Charge under Ss. 304, 148 and 149—Conviction under S. 307 read with S. 34 or 114—Legality.

Conviction of accused under S. 307 read with S. 34 or 114 is legal though they were charged only with offences under Ss. 304, 148 and 149 of the Penal Code Case-law disc. (*Marten and Kincaid, J.J.*) **KING-EMPEROR v. RANCHHOD SURSANG.** 87 I. C. 600=  
49 Bom. 84=26 Bom. L. R. 954=  
26 Cr. L. J. 1000=A. I. R. 1924 Bom. 502.

—Time and place of offence stated in the charge—Different time and place proved—Conviction bad.

Where the accused is charged with having beaten the complainant at a particular place and at a particular time and the prosecution fails to establish that charge, the accused cannot on that evidence be convicted of having beaten the complainant at a different place on a different occasion. (*Broadway, J.*) **JALALUDDIN v. EMPEROR.** 77 I. C. 823=  
25 Cr. L. J. 471=6 L. L. J. 572=  
A. I. R. 1924 Lah. 616.

**—Conviction—Evidence—Absence of.**

—Evidence before committing magistrate—If preferable to that given in Sessions Court.

Unless there is clearly present, besides the evidence given before the Magistrate, evidence which will show that the evidence given before the Magistrate should be preferred to and substituted for that given before the Sessions Judge, the evidence given before the Magistrate cannot be effectively utilized in support of a conviction. Case-law reviewed. (*Adami and Bucknill, J.J.*) **JEHAL TELI v. KING-EMPEROR.** 84 I. C. 334=  
3 Pat. 781=6 Pat. L. T. 53=26 Cr. L. J. 270=  
A. I. R. 1925 Pat. 51.

—Detained for injuries in hospital for 25 days—Medical evidence absent.

Where two of the complainant party were said to have been severely injured and detained in hospital for about 25 days, *held*, that the absence of medical evidence was a serious defect in the case for the prosecution. (*Mookerjee and Chatterjee, J.J.*) **MAMFRU CHOWDHURY v. EMPEROR.** 81 I. C. 264=  
51 Cal. 418=38 C. L. J. 397=  
25 Cr. L. J. 776=A. I. R. 1924 Cal. 323.

**—Conviction—Evidence—Conflicting.**

—Medical evidence in conflict with that of eye-witnesses.

Where the medical evidence conflicted with the story given by the eye-witnesses, who were also relations of the deceased, *held*, the conviction based on their evidence is untenable. (*Martineau, J.*) **SHER KHAN v. THE CROWN.** 5 L.L.J. 124=A. I. R. 1924 Lah. 59.

**—Conviction—Evidence—Discrepant.**

—Main evidence very discrepant—Track evidence—Value of.

It is impossible to base a conviction merely on track evidence when the main evidence is extremely discrepant and unsatisfactory. (*Jai Lal and Dalip Singh, J.J.*) **RANGA SINGH v. EMPEROR.** 96 I. C. 498=  
8 L. L. J. 457=27 P. L. R. 612=  
27 Cr. L. J. 946=7 A. I. Cr. R. 22.

**—Conviction—Evidence—Examination.**

—Prosecution witnesses—Not examined in accused's presence.

Where important prosecution witnesses who had been examined in the absence of accused, were never called again, or examined in his presence, nor was he allowed



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any chance of cross-examining them and yet he had been convicted,

*Held*, that the conviction was illegal, (*Gokaran Nath Misra, J.*) **CHHOTELAL v. EMPEROR.**

103 I. C. 836 = 1 L. C. 265 = 8 A. I. Cr. B. 566 =

28 Cr. L. J. 756 = A. I. R. 1927 Oudh 353.

—Conviction based on police officer's report—He not examined.

No Magistrate trying a case is supposed to draw material for a conviction from the report of a Sub-Inspector when that Sub-Inspector has not in fact been examined in Court. (*Foster, J.*) **JAI SINGH v. KING-EMPEROR.**

97 I. C. 424 = 27 Cr. L. J. 1112 =

7 A. I. Cr. B. 136 = A. I. R. 1927 Pat. 37.

—Conviction—Evidence—Expert evidence.

—Finger-print evidence—Sufficiency of.

A Court cannot refuse to convict a person on the evidence of a finger-print expert merely on the ground that it is unsafe to base a conviction upon such evidence. A. I. R. 1922 Pat. 73 and A. I. R. 1923 Lah. 622, Not Foll.; A. I. R. 1928 Pat. 129 and A. I. R. 1923 Mad. 178, Foll. (*Agha Haidar, J.*) **SARDARA v. EMPEROR.**

125 I. C. 639 = 31 Cr. L. J. 877 =

1930 Cr. C. 811 = A. I. R. 1930 Lah. 667

—Court doctor's report.

Where accused pleads not guilty, Court doctor's report alone is not sufficient to justify conviction. (*Newbould and Chakravarty, J.J.*) **BUDHU KOIRI v. EMPEROR.**

40 C. L. J. 563 = A. I. R. 1925 Cal. 538.

—Thumb impression taken for comparison—Conviction on—Highly irregular.

A Court should not convict a person of a serious crime solely and entirely upon similarity of thumb-marks or finger-prints, without any corroborative circumstances to support this evidence. The very fact of the taking of a thumb impression of an accused person for the purpose of possible manufacture of the evidence by which he could be incriminated, is in itself sufficient for setting aside the conviction upon the understanding and upon the assumption that such was not really a fair trial. There is no law by which an accused person can be either by words or by gestures or by exposing himself to certain physical treatment made to implicate himself in the crime with which he is charged. When he is on trial such an idea is highly repugnant to all thoughts of the proper administration of justice in this or in any other British Country. (*Das and Bucknill, J.J.*) **BAZARI HAJAM v. KING EMPEROR.**

1 Pat. 242 = 3 P. L. T. 526 = 1922 P.H.C.C. 46 =

23 Cr. L. J. 638 = A. I. R. 1922 Pat. 73.

—Conviction—Grounds for.

—Capital charge plea of guilty—Conviction on—Not expedient—Court must proceed with the case to find out nature of offence.

It is necessary to re-affirm the rule of practice upon which the High Court has long insisted namely that it is not expedient when an accused is on his trial on a capital charge to convict him even upon a plea of guilty entered before the trial Court itself. As a matter of practice the Court should, in its discretion put such a plea on one side and proceed to record and consider the evidence, in order to satisfy itself not merely of the guilt of accused, but of the precise nature of the offence committed and the appropriate punishment for the same. (*Piggott and Walsh, J.J.*) **MT. SUKHA v. EMPEROR.**

73 I. C. 497 = 20 A. L. J. 669 =

24 Cr. L. J. 609 = A. I. R. 1922 All. 266.

—Conviction—Evidence—Identification.

—Evidence of identification is not by itself an unsafe basis for a conviction. 10 O. L. J. 347, Expl.

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(*Stuart, C.J.*) **MATHMA v. EMPEROR.**

2 Luck. 444 = 4 O. W. N. 442 = 101 I. C. 492 =

28 Cr. L. J. 460 = A. I. R. 1927 Oudh 196.

—Conviction—Evidence—Intention.

—Intention important ingredient—Must be clearly established.

When a particular kind of intention is an important ingredient of the offence conviction of the accused of that particular offence without a clear finding that the accused acted with that particular intention or unless the intention was clearly established on the evidence is bad. (*Fazl Ali, J.*) **SOHAN MUNDARI v. EMPEROR.**

31 Cr. L. J. 435 = 122 I. C. 578 =

1929 Cr. C. 280 = A. I. R. 1929 Pat. 520.

—Conviction—Evidence—Motive.

—Immaterial.

Where the fact of murder has been clearly proved by direct evidence, the fact that no motive for the crime can be assigned is no ground against conviction. (*Zafar Ali and Addison, J.J.*) **FAZAL DIN v. EMPEROR.**

125 I. C. 55 = 31 Cr. L. J. 765.

—Motive alone not sufficient.

The motive in itself is quite inadequate to sustain a conviction unless there are other grounds upon which it could rightly be had. (*Ffords and Addison, J.J.*) **ARJAN v. EMPEROR.**

99 I. C. 326 = 28 Cr. L. J. 118 =

A. I. R. 1927 Lah. 74.

—Conviction—Evidence—Previous statements.

—Only eye witness not identifying accused in trial—Previous statement to others—Hearsay—Conviction based on—Unsustainable.

The only eyewitness to the crime alleged to have been committed by the accused did not identify the accused as the assailant in his evidence before the trial Court; but his previous statements to other persons to the effect that the accused was the assailant were admitted in evidence, and on this evidence the accused was convicted.

*Held*, that secondary evidence of a hearsay character which did not corroborate any primary evidence could not be relied on to support a conviction. *Kyaw Zan Hla v. King-Emperor*, Cons. (*Cunliffe, J.*) **EMPEROR v. NGA HLAING.**

6 Rang. 481 =

29 Cr. L. J. 1042 = 11 A. I. Cr. B. 317 =

112 I. C. 466 = A. I. R. 1928 Rang. 295.

—Conviction—Evidence—Quantum of.

—It is not illegal to convict a man on the evidence of only one witness. It must entirely depend on the circumstances of each case. (*Coutts-Trotter, C.J., Devadoss and Beasley, J.J.*) **VEERAPPA GOUNDAN v. EMPEROR.**

114 I. C. 353 =

51 Mad. 956 = 1 M. Cr. C. 56 =

28 M. L. W. 575 = 1929 M. W. N. 185 =

30 Cr. L. J. 317 = A. I. R. 1928 Mad. 1186 =

55 M. L. J. 591 (F.B.).

—Single witness.

It is not illegal to convict an accused person on the statement of only one witness. But the evidence relied upon must be free from all doubt. (*Scott-Smith, J.*) **AZIZ v. EMPEROR.**

26 Cr. L. J. 292 = 84 I. C. 436 =

A. I. R. 1925 Lah. 295.

—Respectable witnesses, larger number for prosecution.

Where a number of respectable witnesses have given evidence in favour of the accused, the Court should not reject their evidence and decide against the accused simply because the prosecution have produced a larger number of respectable witnesses. (*Dalal, J.C.*) **BAHADUR v. EMPEROR.**

85 I. C. 370 =

27 O. C. 327 = 26 Cr. L. J. 530 =

**CRIMINAL TRIAL—Conviction—Evidence—Retracted.**

A. I. R. 1925 Oudh 501.

**—Conviction—Evidence—Retracted.***—Evidence before committing magistrate—Retracted in Sessions—Value of.*

Where a witness has retracted in the Sessions court his statement before the committing Magistrate and it appears that it was done in order to avoid a conviction, it is open to the court to prefer the evidence given before the Magistrate and convict the accused on that basis. (*Beasley, C. J. and Pandalai, J.*) GURUSWAMI PILLAI v. EMPEROR. 1930 M. W. N. 345.

**—Conviction—Evidence—Sufficiency of.***—Identification by voice—Pitch dark night.*

It is very difficult to identify a person in a pitch dark night merely by the modulations of his voice and it is risky to convict a person merely on such identification. (*Broadway and Aga Haidar, J.J.*) BHAGTU v. EMPEROR. 11 A. I. Cr. R. 36 = 29 Cr. L. J. 758 = 110 I. C. 790 = A. I. R. 1928 Lah. 925.

*—Where the prosecution evidence is reliable, stands un rebutted and is overwhelming, convictions cannot be set aside.* (*Addison and Skemp, J.J.*) EMPEROR v. IBRAHIM. 8 Lah. 605 = 28 P. L. R. 649 = 105 I. C. 807 = 28 Cr. L. J. 983 = 9 A. I. Cr. R. 132 = A. I. R. 1928 Lah. 17.

**—Absconding of accused.**

Where there is no evidence against the accused except the fact that he had absconded and when arrested gave a false account of his movements, he cannot be convicted of the offence with which he is charged. (*Das and Scroope, J.J.*) DEVENDRA BHATTACHANDRYA v. EMPEROR. 101 I. C. 881 = 28 Cr. L. J. 497 = 8 P. L. T. 566 = 8 A. I. Cr. R. 151 = A. I. R. 1927 Pat. 257.

**—Chemical examiner not examined—Evidence of report alone.**

Where the appellate Court admitted in evidence the report of the Chemical Examiner without examining him, but the evidence to support conviction was otherwise sufficient,

*Held*, that the dismissal of appeal against conviction was not improper. (*Carr, J.*) TAN KYI LIN v. EMPEROR. 5 Bur. L. J. 100 = 27 Cr. L. J. 1281 = 98 I. C. 177 = A. I. R. 1926 Rang. 193.

**—Time, place and circumstances of incident.**

The evidence must show that the incident alleged happened at the time, in the place and under the precise circumstances narrated on behalf of the prosecution. (*Mookerjee and Chatterjee, J.J.*) MAMFRU CHOWDHURY v. EMPEROR. 81 I. C. 264 = 51 Cal. 418 = 38 Cr. L. J. 397 = 25 Cr. L. J. 776 = A. I. R. 1924 Cal. 323.

**—Witness—Partly false—No conviction for murder can be based wholly on his testimony.**

A part of the statement of a witness having been proved to be false, no absolute reliance can be placed on the rest of his statement and it would be unsafe to base a conviction for murder on the uncorroborated testimony of such a witness. (*Kotval and Pradeaux, A. J. Cs.*) LAXMAN v. EMPEROR. 76 I. C. 237 = 25 Cr. L. J. 141 = A. I. R. 1924 Nag. 33.

**—Charge of opening outlet of water—Irrigation of fields—If sufficient evidence.**

The mere fact that the fields were irrigated by the accused is not sufficient to hold that they were guilty of opening an outlet of water which had been closed under the orders of the Canal authorities. (*Moti Sagar, J.*)

**CRIMINAL TRIAL—Conviction—Grounds for.**

SHEO RAM v. THE CROWN. 82 I. C. 63 = 25 Cr. L. J. 1199 = A. I. R. 1923 Lah. 603.

**—Conviction—Evidence—Witness interested.***—Not mentioned in first information report—Conflicting.*

Where a conviction is based on the evidence of interested witnesses whose names were not mentioned in the first information report as eye witnesses and whose evidence was contradicted by other witnesses on behalf of the prosecution.

*Held*, that a conviction on the evidence of such witnesses is not maintainable. (*Jai Lal, J.*) PALI v. EMPEROR. 92 I. C. 175 = 7 L. L. J. 256 = 26 P. L. R. 816 = 27 Cr. L. J. 223.

**—Conviction—Grounds for.***—Presumptive evidence—Inference of guilt.*

In the case of presumptive evidence in order to justify the inference of guilt, the inculcating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. (*Tek Chand and Tapp, J.J.*) FEROZE v. EMPEROR. 125 I. C. 381 = 31 Cr. L. J. 871 = 1930 Cr. C. 803 = A. I. R. 1930 Lah. 659.

**—Inference of guilt—Nature of inculpatory facts—Mere suspicions.**

In order to justify the inference of guilt the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Mere circumstances of suspicion without more conclusive evidence are not sufficient to justify conviction even though the party offer no explanation of them. (*Zafar Ali and Coldstream, J.J.*) MAHOMED ALI v. EMPEROR. 112 I. C. 212 = 10 L. L. J. 525 = 29 Cr. L. J. 996 = A. I. R. 1929 Lah. 61.

**—Prosecution evidence not conclusive—Grove suspicion—If sufficient.**

Where the prosecution evidence in a case is neither complete nor conclusive, a grave suspicion against the accused is no justification for convicting him of an offence to prove which a high standard of evidence is to be generally required. 37 Cal. 467 and *Reg v. Hodgr, 2 Lewis, 227, Appr.* (*Faiz Ali, J.*) BASUDEH MANDAR v. EMPEROR. 30 Cr. L. J. 835 = 117 I. C. 879 = A. I. R. 1929 Pat. 112.

**—Suspicion—Not sufficient.**

Suspicion is not sufficient to base a conviction upon, nor mere suspicion would warrant harassment of the suspected person by criminal proceedings. (*Broadway, J.*) LILA RAM v. EMPEROR. 109 I. C. 356 = 29 Cr. L. J. 532 = 9 L. L. J. 514 = A. I. R. 1927 Lah. 862.

**—Theories unsupported by evidence.**

Where the Sessions Judge did not believe nine-tenths of the prosecution evidence but convicted the accused on his own theories of the occurrence for which there was nothing on record to support it,

*Held*, that the conviction should be set aside. (*Daniels, J.*) RAM SURAT v. EMPEROR. 98 I. C. 466 = 7 L. R. A. Cr. 769 = 27 Cr. L. J. 134.

**—Strength of prosecution—Not weakness of defence.**

A conviction must stand or fall on the strength of the prosecution and not on the weakness of the defence. (*Broadway and Zafar Ali, J.J.*) NATHA SINGH v. EMPEROR. 6 L. L. J. 579 = 26 Cr. L. J. 949 = 87 I. C. 101 = A. I. R. 1925 Lah. 282.

**—Rioting—Common object two-fold—Both must be proved.**

In a charge of rioting where the common object of

**CRIMINAL TRIAL—Conviction—Grounds for.**

the unlawful assembly as specified in the charge is two-fold, the prosecution case would be much weakened in the absence of evidence as to both the objects. (*Mookerjee and Chatterjee, J.J.*) *MAMFRU CHOWDHURY v. EMPEROR.* 81 I. C. 264=51 Cal. 418=

38 C. L. J. 397=25 Cr. L. J. 776=  
A. I. R. 1924 Cal. 323.

**—Conviction—Several offences.**

*Two offences committed—Separate transactions—Conviction of both.*

If a man commits two offences he can certainly be convicted of them both more especially when they are separate transactions and the commission of one does not necessarily involve the commission of the other. (*Hallifax, A. J. C.*) *GAJANAN SAKHARAM v. THE KING EMPEROR.* 77 I. C. 825=25 Cr. L. J. 473=

A. I. R. 1924 Nag. 162.

**—Conviction—When not sound.**

*Distinction between manslaughter and murder not considered—Conviction for murder not sustainable*

In the judgement of the lower Court which convicted the accused of murder without the aid of a jury there was not the slightest enquiry into whether, assuming that the shot which resulted in the death of the deceased was fired by the accused, the act amounted to manslaughter and not murder. There was no attempt to face the question of whether the standard of proof required to prove murder as against manslaughter had in the case been reached.

*Held.* that if the case had been before a jury and the Judge had not explained to them the possibility of a verdict of manslaughter but had said if not accident the only alternative is murder, that would have been an erroneous summing up. The question as between manslaughter and murder being entirely undealt with and in the absence of evidence sufficient to reach the standard of proof necessary to involve a conviction for murder the conviction must be quashed. (*Viscount Dunedin.*) *BENJAMIN KNOWLES v. EMPEROR.* 124 I. C. 578=34 C. W. N. 599=31 Cr. L. J. 701=

1930 Cr. C. 884=A. I. R. 1930 P. C. 201=  
59 M. L. J. 127 (P. C.)

*Tonga of accused used for abduction—Nothing to show he conspired with or abetted—Indian and English Law.*

A person whose tonga is used for the purpose of abducting a girl is an accessory after fact according to English Law but as such is not punishable under Indian Law when there is nothing in the evidence to show that he conspired with or abetted the person abducting the girl. (*Tapp. J.*) *JOWAYA v. EMPEROR.*

120 I. C. 606=1930 Cr. C. 171=31 Cr. L. J. 131=  
A. I. R. 1930 Lah. 163.

*Pointing out stolen property—Father and brother suspected but discharged—Guilt not established.*

The only evidence on which a person's conviction was based was that he pointed out three places from which portions of the stolen property was recovered. Person's father and brother were also suspected and eventually discharged.

*Held.* that as his relations were also concerned in the crime, it was possible for the person to have knowledge of the places without himself being guilty for any offence and so the recoveries alone were not sufficient to justify the conviction. 18 P. R. 1917, Cr. Dist. (*Bhida, J.*) *SOHAN SINGH v. EMPEROR.*

1930 Cr. C. 107=11 L. L. J. 439=  
125 I. C. 181=31 Cr. L. J. 774=  
A. I. R. 1930 Lah. 91.

*Riot—Identification by injured—Name not mentioned in first information report—Conviction bad.*

**CRIMINAL TRIAL—Conviction—When not sound.**

Since when a riot is committed it is unfortunately easy to add among the names of accused persons against whom the informant or particular witness has a grudge it is very unsafe to convict a person only on identification by the injured person and specially so when the name of the person was not mentioned by the identifier, in his first statement which he made before the Magistrate and without having opportunity of consultation or preparation. (*Courtney Terrell, C. J. and Rowland, J.*) *RAMPAL DAS v. EMPEROR.* 123 I. C. 75=

31 Cr. L. J. 468=1929 Cr. C. 577=  
A. I. R. 1929 Pat. 705.

*Witnesses bitter enemies of accused.*

Conviction should not be based on the evidence of witnesses who are bitter enemies of the accused unless it is supported by the evidence of reliable and disinterested witnesses. (*Shadi Lal, C. J. and Agha Haidar, J.*) *DALIPSINGH v. EMPEROR.* 28 Cr. L. J. 43=

99 I. C. 75=A. I. R. 1927 Lah. 874.

*Rape—Semen found on cloth in accused's house and on silwar worn by the woman—She passed the night with her husband—Neutral circumstance.*

Where in a case of rape the only evidence was the circumstance that semen was detected on a piece of cloth which was recovered from the house of the accused and that it was also discovered on the silwar which was alleged to have been worn by the woman at the time, and the accused was a young man who was married and the woman was a grown-up woman who admittedly passed the night before making the first information report at her husband's house.

*Held.* that that was a wholly neutral circumstance which did not help the case of either side. (*Tek Chand, J.*) *INDAR SINGH v. EMPEROR.* 9 L. L. J. 384=  
A. I. R. 1927 Lah. 867.

*Contradiction on material particular.*

Where the only witness of the complainant on whom any reliance could be placed had contradicted himself on a very material particular,

*Held.* that it would be most unsafe to convict the accused of the offence charged against him, especially when there was previous enmity between the accused and the complainant. (*Addison, J.*) *SARDUL SING v. KING-EMPEROR.* 28 P. L. R. 461=

A. I. R. 1927 Lah. 797.

*Mere association with co-accused.*

Mere association of an accused with his co-accused is not sufficient to base conviction, when it is found that he was not aware exactly about their activities although his association raises a strong suspicion of his guilt. (*Fforde, J.*) *ABDUL AZIZ v. EMPEROR.*

99 I. C. 1009=27 P. L. R. 441=28 Cr. L. J. 209.

*Refusal to examine a witness for defence.*

Where the accused wanted to examine a witness in his own defence but the witness was not examined,

*Held.* that the accused was deprived of a right which he had by law and that his conviction was bad. (*Walsh, J.*) *BHAGWAN DAS v. SADDIQ AHMAD.*

86 I. C. 79=23 A. L. J. 73=26 Cr. L. J. 703=  
6 L. R. A. Cr. 101=A. I. R. 1925 All. 318.

*One of two accused discharged and cited as prosecution witness—Court ordering fresh enquiry—Unwarranted.*

The persons K and P were sent up for trial. P was discharged and cited as a witness for the prosecution and examined against K. After the prosecution had closed their case the Magistrate of his own motion took cognizance of the case against P and ordered a fresh enquiry into the case against both.

*Held.* that such a course was contrary to the traditions of justice in Criminal Courts. (*C. C. Ghose and*

**CRIMINAL TRIAL — Conviction — When not sound.**

*Cuming, J.J.*) EASATULLA MIAN. *In re.*  
76 I.C. 1031 = 25 Cr. L.J. 311 = A.I.R. 1925 Cal. 104.

—Evidence of handwriting expert—Conviction solely on.

A court ought not to accept blindly the evidence of a handwriting expert and should usually require substantial corroboration before making it the basis of conviction. (*Daniels, J.C.*) GIRDHARI LAL v. KING-EMPEROR. 86 I.C. 993 = 12 O.L.J. 194 = 2 O.W.N. 174 = 26 Cr. L.J. 929 = 29 O.C. 1 = A.I.R. 1925 Oudh 413.

—First information report—Value of—In conflict with story in the witness box—Conviction based on the report bad.

First information report is not substantive evidence of the facts recorded in them and a conviction cannot be based on such reports. They can be used to corroborate the witnesses who made them and are of value showing that they told the same story at the first possible occasion. If they tell a different story in Court, the report can be used to contradict them or discredit their testimony. But it is not legitimate for a Court, when witnesses tell a different story in the witness box and contradict the report made by them, to discard the evidence given on oath and to rely on the report. (*Ryves, J.*) JAMALUDDIN v. KING-EMPEROR.

74 I. C. 716 = 24 Cr. L. J. 812 =  
A. I. R. 1924 All. 164.

—Conviction—When sound.

—Offence under general and special law—Prosecution under special law—Exceptions to the rule—Sustainability of conviction under general law.

The proposition, that where a particular set of acts or omissions constitute an offence under the general law and also under a special law the prosecution should be under the special law is confined to cases where the offences are coincident or are practically so. Where the accused was shown to have sent blank papers in an insured cover addressed to himself and claimed the value of currency notes from the Post Office and proceedings were instituted against him for offences under Ss. 420 and 511, I. P. C., and under S. 64 of the Post Office Act and he was convicted for offences under the Penal Code. *Held*, that, assuming that the minor offence under S. 64 of the Post Office Act was proved, it was not illegal to convict the accused for the major offence only. (*Macpherson and Diavale, J.J.*) SUCHIT RAUT v. EMPEROR. 9 Pat. 126 = 11 Pat. L. T. 224 = 125 I. C. 770 = 31 Cr. L. J. 934 = 1930 Cr. C. 1214 = A. I. R. 1930 Pat. 622.

—Search illegal—Property found in possession—Conviction good.

Although a search made in person's house may be illegal rendering the person who made the search liable to be sued for damages, still if some property is found, possession of which is an offence the person in unlawful possession is liable to be convicted. 4 L. B. R. 121, Ref. A. I. R. 1925 Rang. 205, Diss. from. (*Baguley, J.*) MAUNG SAN MYIN v. EMPEROR. 121 I. C. 715 = 7 Rang. 771 = 1930 Cr. C. 241 = 31 Cr. L. J. 303 = A. I. R. 1930 Rang. 49.

—Rioting—Appellate Court rejecting part of prosecution story—Conviction on the rest—Validity.

Where in a trial for the offence of rioting the appellate Court refused to believe part of the prosecution story as to theft and house-breaking but gave sufficient reasons for believing the story of rioting,

*Held* that the conviction for rioting was right as the Court was not precluded from exercising its powers of discretion from eliminating exaggeration from evidence otherwise found to be true 42 Cal. 784, Expl.

**CRIMINAL TRIAL—Counter-cases.**

(*Jackson, J.*) VENKATASWAMY, *In re.*

99 I. C. 1038 = 25 M. L. W. 325 =  
28 Cr. L. J. 238 = A. I. R. 1927 Mad. 410.

—Cocaine found in shop—Accused habitually serving in—Knowledge—Presumption of.

*Held*, that they must have been daily handling the pots in question and that therefore the finding that both of them must have been aware of the existence of the cocaine in the pot is justifiable. (20 A. L. J. 162 and 77 I. C. 447, Dist.) (*Boys, J.*) GANESH v. EMPEROR. 83 I. C. 892 = 5 L. R. A. Cr. 136 = 26 Cr. L. J. 188 = A. I. R. 1924 All. 776.

—Offence consisting of several particulars—Some combine to constitute complete offence—Conviction—Absence of charge—Legality.

Where an accused person has been charged with one offence consisting of several particulars a combination of some of which only constitutes a complete offence and such combination is proved but the remaining particulars are not proved and he is convicted of such offence although not charged with it, he cannot be said to have been misled in his defence by an error in the charge nor can it be said that such an error in the charge occasioned a failure of justice. (*Marten and Kincaid, J.J.*) KING-EMPEROR v. RANCHHOD SURSANG. 49 Bom. 84 = 26 Bom. L. R. 954 = 26 Cr. L. J. 1000 = 87 I. C. 600 = A. I. R. 1924 Bom. 502.

—Costs.

—Costs of prosecution—Crown must bear and not the complainant.

All criminal prosecutions are at the instance of the Crown and the Crown is really the prosecutor in a criminal case and all costs ought to be paid by the Crown for summoning witnesses for the prosecution (*Kulwant Sahay, J.*) NANDA KISHORE MISRA v. KALIKA MISRA. 77 I. C. 810 = 5 P. L. T. 487 = 1924 P. H. C. C. 196 = 25 Cr. L. J. 458 = A. I. R. 1924 Pat. 695.

—Counter-cases.

—To be heard by the same Judge.

Cases and counter-cases should be tried in quick succession by the same Judge, who should not pronounce judgement till the hearing of both cases is finished. (*Jackson, J.*) KRISHNA PANNADI v. EMPEROR. 1929 M. W. N. 883 = 31 M. L. W. 233 = 3 M. Cr. C. 56 = 123 I. C. 10 = 1930 Cr. C. 190 = 31 Cr. L. J. 461 = A. I. R. 1930 Mad. 190 = 58 M. L. J. 352.

—Evidence in one recorded behind the back of the accused.

Evidence led in another case and not recorded in the presence of the accused cannot be used: A. I. R. 1924 Lah. 104, Foll. (*Fforde and Jai Lal, J.J.*) HAYAL v. EMPEROR. 29 Cr. L. J. 282 = 107 I. C. 766 = 10 L. L. J. 389 = A. I. R. 1928 Lah. 380.

—Should be tried and decided at the same time.

Two cross-cases should be tried though separately yet at one and the same time, and judgment in both only given after all the evidence in both cases has been recorded, one should not be postponed till the decision of the other. (*Dalip Singh, J.*) EMPEROR v. KRISHNA MURARI LAL. 112 I. C. 563 = 29 Cr. L. J. 1059 = 11 A. I. Cr. R. 384 (Lah.).

—Accused with a counter-case—Must establish his case independently.

It is advisable that when persons who are accused of serious charges in the Sessions Court have a counter-case and have also to give some substantive evidence in support of it, they should produce that evidence and not rely on the chance of finding discrepancies and

**CRIMINAL TRIAL—Counter-cases.**

loopholes in the prosecution evidence. (*Mullick and Jwala Prasad, J.J.*) **PERSHAD TEWARI v. EMPEROR.**  
26 Cr. L. J. 1589=90 I. C. 661=  
A. I. R. 1926 Pat. 5.

—*Each to be tried on its own requirements—Prayer for adjournment of accused's case after case against him is disposed—If should be granted.*

As regards trial of cross-cases, each case has to be decided according to its requirements. In a trial of cross-cases of rioting, after some witnesses were examined in the case against the petitioner he prayed that the case in which he was complainant might be adjourned till the disposal of the case against him.

*Held*, that for the ends of justice, the case against the petitioner should be disposed of first and then the petitioner's case, if he so wished be taken up since it is not fair to force a person in the position of an accused person to throw himself open to cross-examination by the other side. (*Suhrawardy and Panton, J.J.*)  
**MAKHAN MAPA v. MONINDRA NATH BOSE.**  
90 I. C. 719=42 C. L. J. 83=26 Cr. L. J. 1615=  
A. I. R. 1925 Cal. 1260.

—*Simultaneous trial of counter cases not illegal unless accused is prejudiced.*

There is no prohibition in law for simultaneous trials of counter-cases, but if the accused can show any prejudice on account of the simultaneous trial of two cases then he will be entitled to a setting aside of the conviction (if he has been convicted). (*Kulwant Sahay, J.*) **RAM SARAN SINGH v. NIKHAD NARAIN.**  
88 I. C. 603=6 P. L. T. 477=  
3 Pat. L. R. Cr. 134=26 Cr. L. J. 1179=  
A. I. R. 1925 Pat. 619.

—*The simultaneous but separate trials of two cross-cases of rioting is not bad unless the accused are prejudiced.* (*Kulwant Sahay, J.*) **SHAFAYET KHAN v. EMPEROR.**  
81 I. C. 794=25 Cr. L. J. 1018=  
A. I. R. 1925 Pat. 152.

—*Evidence in one case—Not to be considered in the other.*

In the case of cross-complaints evidence in one case should not be considered in dealing with the case brought by the opposite party. (*C. C. Ghose and Cuning, J.J.*) **GARIBULLA AKANDA v. SARDAR AKANDA.**  
81 I. C. 557=39 C. L. J. 331=  
25 Cr. L. J. 941=A. I. R. 1924 Cal. 813.

—*Postponement owing to police challan—Illegal—Each case to be tried separately from the other—Judgment after both are finished.*

Postponement of a cross-complaint case owing to a police challan is illegal as it is not justified under the provisions of S. 344. The accused in either case cannot be hampered to prove their case on oath. Simultaneous and contemporaneous trial is the proper course though each case must be dealt with wholly separately from the other and each case must be decided on its own merits upon the facts and circumstances appearing therein and judgments in both the cases should be if possible delivered after both the trials are finished. (*Page and Mukerji, J.J.*) **SHEIKH BAHATAR v. NOBADALI.**  
83 I. C. 625=28 C. W. N. 487=  
26 Cr. L. J. 65=A. I. R. 1924 Cal. 634.

—*Two counter-cases of rioting—Stay of proceedings in one, before disposal of other.*

Proceedings in one of two counter-cases of rioting arising out of the same occurrence cannot be stayed merely because the prosecution witnesses in one case if examined as witnesses before the trial of the other case, in which they are the accused, would be seriously prejudiced in their defence, or because after the disposal of that case it may not be necessary to try the counter-

**CRIMINAL TRIAL—Court's duty—Civil dispute.**

case (*Newbould and Suhrawardy, J.J.*) **RAJENDRA NATH GHOSE v. AMRIT LAL CHAKRAVARTI.**  
71 I. C. 697=24 Cr. L. J. 233=  
A. I. R. 1924 Cal. 529.

—*Court's duty—Administration of law.*

—*Legislature has wisely not thought fit to entrust judicial tribunals with the prerogative of mercy and the Judges must remember that they are sworn to administer the law not as they wish it might be but as they find it.* (*Courtney-Terrell, C. J. and Dhaule, J.*) **SOHRAI SAO v. EMPEROR.**  
124 I. C. 836=31 Cr. L. J. 721=  
11 P. L. T. 148=9 Pat. 474=  
1930 Cr. C. 515=A. I. R. 1930 Pat. 247.

—*A Court should keep judicial and executive considerations separate. Where the Court practically held that the accused had been wrongly convicted but that as the situation at the place was likely to cause an embarrassing situation for the executive authorities, it was necessary that they should be offered up as victims to avert such calamity.*

*Held*, that such a course was a travesty of justice. (*Fforde, J.*) **KHEM CHAND v. EMPEROR.**  
89 I. C. 315=26 Cr. L. J. 1339=  
A. I. R. 1925 Lah. 625.

—*Court's duty—Appellate Court.*

—*In a case where the defence is disclosed on behalf of the accused it should be stated as such by the appellate Court and the evidence if any upon which it is founded is to be discussed and a conclusion is to be arrived at by the appellate Court in the same way as in the case for the prosecution. It is not enough to say that the prosecution has been proved and that, therefore, it is unnecessary to deal with the defence case.* (*Pearson and Mullick, J.J.*) **SAMRU v. BANSARI.**  
123 I. C. 742=31 Cr. L. J. 567=  
1929 Cr. C. 197=A. I. R. 1929 Cal. 532.

—*Court's duty—Arguments.*

—*It is the duty of the Court to hear any arguments that may be offered in every criminal trial or proceeding.* (*Dalal, A. J. C.*) **BAJI NATH SAH v. EMPEROR.**  
83 I. C. 340=25 Cr. L. J. 1380=  
27 O. C. 323=A. I. R. 1925 Oudh 228.

—*Court's duty—Benefit of exceptions.*

—*Unlike a civil suit in which the Court is confined more or less to the pleadings, in a criminal case, before a conviction is recorded, it always has to be seen whether the proved or admitted facts bring the case within an exception, which takes it out of the offence defined even though the accused has not specifically relied on getting the benefit of the exception.* (*Mukerji, J.*) **MUHAMMAD GUL v. FAZLEY KARIM.**  
122 I. C. 205=31 Cr. L. J. 369=  
33 C. W. N. 446=56 Cal. 1013=A. I. R. 1929 Cal. 346.

—*Court's duty—Civil dispute*

—*Criminal case on the basis of civil dispute—If criminal offence made out, disposal according to criminal law.*

Where a criminal case is launched on the basis of a civil dispute between the parties it would be proper for the Magistrate to consider whether or not the case was of a civil nature and if he came to the conclusion that only a civil wrong had been committed, he should have said so and dealt with the case accordingly. If, on the other hand, he was of opinion, that a criminal offence had been committed, though he might refer to the evidence in a manner equally appropriate to civil proceedings he should not have lost sight of this fact that he was dealing with a criminal prosecution and ultimately he should have disposed of the case purely from the stand point of the criminal law. (*Buckland and Cuning, J.J.*) **RHABANI PRASAD MOITRA v. HARI CHARAN BHAT.**

**CRIMINAL TRIAL—Court's duty—Civil dispute.**

TACHARJEE. 24 Cr. L. J. 714 = 73 I. C. 938 = 38 C. L. J. 7.

**—Court's duty—Convincing proof.**

—A Judge has not to decide whether the prosecution story is the more probable but whether or not there has been definite and convincing proof. (*Macnair, A. J. C.*) RAMADAYAL v. EMPEROR. 117 I. C. 277 = 30 Cr. L. J. 789 = A. I. R. 1929 Nag. 113.

**—Court's duty—Cruelty to animals.**

—Honorary Magistrates should deal severely with cases of great cruelty to animals. (*Heald, J.*) EMPEROR v. BEJAI. 3 Bur. L. J. 155 = A.I.R. 1924 Rang. 373.

**—Court's duty—Duty of Judge**

—A Sessions Judge should start his interest in a case at the very beginning of the trial and not when the time comes to write or dictate the judgment. First of all the ingredients of an offence ought to be clearly grasped and then attempts made continuously to discover whether the evidence of the complainant and that of the prosecution witnesses did satisfy those ingredients or not. When a consideration of the facts of the case and of their applicability to a particular section of the law are left to the end, a trial is bound to suffer and often a decision is arrived at in conflict with law. (*Dalal, J.*) SURAJ PRASAD v. EMPEROR.

1930 Cr. C. 759 = A.I.R. 1930 All. 534.

—A Judge ought not to take the role of a prosecutor. (*Wazir Hasan, A.J.C.*) SARJU SINGH v. EMPEROR. 88 I.C. 852 = 26 Cr. L. J. 1236 = A.I.R. 1925 Oudh 726.

**—Courts duty—Duty of Magistrate.**

—In a case under S. 19 (1), Arms Act, quantity of lead found with the accused and the neighbourhood were such as to suggest that the lead was used for fishing purposes, the Magistrate merely asked each of the accused whether he admitted having the lead for sale without license although they were not represented by Counsel and on their pleading guilty convicted them.

*Held*, that the Magistrate should have in his examination of the accused put some questions with a view to elucidating from them whether they were *prima facie* vendors of lead for industrial, that is, fishing purposes within the meaning of Arms Act. Sch. 2 (7) (4). (*Doyle J.*) ALI HOSSEIN v. EMPEROR. 1930 Cr. C. 1177 = A.I.R. 1930 Rang. 349.

—It is the duty of the Magistrate, when dealing with ignorant individuals accused of technical offences to go very thoroughly into the evidence, and where they are not defended by advocates to give them some assistance in putting up obvious defensive pleas. (*Doyle, J.*) ALI HOOSSEIN v. EMPEROR. 1930 Cr. C. 1156 = A.I.R. 1930 Rang. 349.

**—Court's duty—Evidence.**

—Discrepancy between honest witnesses—Court should endeavour to clear up.

When two presumably honest witnesses tell discrepant stories there is probably some confusion which can be cleared up and a Court ought not to record the discrepancies without some attempt to discover their origin. (*Jackson, J.*) KUPPUSWAMY IYER. *In re*.

1930 M. W. N. 169.

—Prosecution witness—Testimony inconvenient to prosecution—Cannot be brushed aside.

Per *Waller, J.*—If a witness put forward by the Crown as a witness of truth says something inconvenient the Court cannot brush it aside as being insignificant or on the ground that he had been got at by the defence. (*Waller and Ananthakrishna Iyer, J.J.*) COLLETT v. EMPEROR. 1929 M.W.N. 395.

**CRIMINAL TRIAL—Court's duty—Procedure.**

—Opinion of predecessor—Irrelevant.

A Court is not bound by the opinion of its predecessor about the evidence in a connected case. It should weigh the evidence before it and form its own opinion. (*Broadway, J.*) GODHA v. EMPEROR.

8 Lah. 263 = 28 P. L.R. 433 = 103 I. C. 206 = 28 Cr. L. J. 670 = A. I. R. 1927 Lah. 500.

**—Court's duty—Examination of accused.**

—Must give accused opportunity to explain.

Neither a Magistrate nor a Judge is entitled to cross-examine an accused person but it is their bounden duty to question him generally on the case and give him an opportunity of explaining any point in the evidence against him. (*Boys and Young, J.J.*) GOLI v. EMPEROR. 120 I. C. 202 = 31 Cr. L. J. 8 = 1930 Cr. C. 33 = 1930 A.L.J. 82 = A.I.R. 1930 All. 17.

**—Court's duty—Jurisdiction.**

—Not to go out of way to find a Sessions case.

It is not incumbent upon a Magistrate to go out of his way to find that a case exclusively triable by a Court of Sessions might arise from facts before him, if they were proved. (*Pullan, J.*) BALKISHEN v. EMPEROR.

123 I. C. 756 = 31 Cr. L. J. 563 = 1930 A. L. J. 465 = 1930 Cr. C. 448 = A. I. R. 1930 All. 280.

**—Court's duty—Personal knowledge.**

—Personal knowledge ought not to be imported in deciding a case. (*Scott-Smith, J.*) WALI MUHAMMAD KHAN v. EMPEROR. 81 I. C. 344 = 25 Cr. L. J. 808 = A. I. R. 1925 Lah. 166.

**—Court's duty—Practice.**

—Accused pleading guilty—Case must nevertheless be proceeded with.

The trial of an accused person does not necessarily end if he pleads guilty but evidence may and should be taken in cases of murder as if the plea had been one of not guilty and case decided upon the whole of the evidence including the accused's plea. It is not in accordance with the usual practice to accept a plea of guilty in a case where the natural sequence would be a sentence of death; 8 Bom. L. R. 240; 19 All. 119 and 19 Bom. L. R. 356 Ref. (*C.C. Ghose and Jack, J.J.*) HASARUDDIN MOHAMMED v. EMPEROR.

115 I. C. 582 = 30 Cr. L. J. 508 = 12 A. I. Cr. R. 1320 = A.I.R. 1928 Cal. 775.

**—Court's duty—Previous conviction.**

—Not to prejudice present trial.

In cases where S. 75, Penal Code, is to be applied a great deal more care should be given to the inquiry and trial than is usually given to them. An accused person though he has several convictions behind him is entitled to have his case treated as if it was not a foregone conclusion that he is guilty. (*Boys and Young, J.J.*) GOLI v. EMPEROR. 120 I. C. 202 = 1930 A. L. J. 82 = 1930 Cr. C. 33 = 31 Cr. L. J. 8 = A. I. R. 1930 All. 17.

**—Court's duty—Procedure.**

—Must not shut its eyes to a graver offence proved on facts found.

It is not right for a Court to minimise an offence by shutting its eyes to a graver offence which on the facts found by it has been committed, and to refrain from charging the accused with that offence, and by such abstention to justify itself in trying the case summarily. (*Boys, J.*) MEWA LAL v. EMPEROR.

116 I. C. 789 = 1929 A. L. J. 340 = 10 L. B. A. Cr. 57 = 11 A. I. Cr. R. 402 = 30 Cr. L. J. 686 = 51 All. 540 = A.I.R. 1929 All. 349.

—Prompt disposal—No excuse for not attending to procedure.

While prompt disposal of a criminal case is a matter



**CRIMINAL TRIAL—Court's duty—Procedure.**

of importance, it is of equal or even greater importance to pay proper attention to the procedure prescribed by law. (*Bhude, J.*) **FAQIR SINGH v. EMPEROR.**

110 I. C. 801 = 10 Lah. 223 = 30 P. L. R. 385 =

11 A. I. Cr. R. 1 = 29 Cr. L. J. 169 =

A. I. R. 1929 Lah. 382.

—*Must discontinue proceedings when no offence is disclosed.*

Where on facts as alleged by the complainant himself no criminal offence is disclosed, it will be an abuse of the process of Court to allow criminal proceedings to continue. (*Tek Chand, J.*) **AMAR NATH v. EMPEROR.**

113 I. C. 536 = 10 L. L. J. 485 =

12 A. I. Cr. R. 85 = 30 Cr. L. J. 162 =

A. I. R. 1928 Lah. 945.

—*Should insist upon compliance with procedural law as embodied in statutes and decisions.*

It should be the duty of the presiding officers in criminal trials to see that the requirements of law as laid down in the Cr. P. Code and by the High Courts are complied with fully and satisfactorily. (*C. C. Ghose and Cammiade, J.*) **TUKA MEA v. EMPEROR.**

31 C. W. N. 387 = 28 Cr. L. J. 478 =

101 I. C. 606 = A. I. R. 1927 Cal. 936.

—*Not bound to wait till matter is compounded in arbitration.*

A criminal case is not a matter between parties as a civil case is. A Magistrate is not bound to recognize a reference to arbitration and wait for the arbitrators to make the award though it will be reasonable to do so. If he does not choose to wait he will not be doing anything illegal. But if he chooses to wait and then there is an award, that award may amount to a compounding of the offence in question, and if it is an offence compoundable under S. 345 effect will be given to such compounding. But till the actual compounding takes place the Magistrate is not bound at all to stay his hands but may go on with the trial of the case himself. (*Krishnan, J.*) **RAMALINGA AIYAR v. VARADARA- JULU AIYAR.**

90 I. C. 666 = 26 Cr. L. J. 1594 =

22 M. L. W. 390 = 1925 M. W. N. 753 =

A. I. R. 1925 Mad. 1211 = 49 M. L. J. 544.

**—Death of complainant.**

—*No abatement.*

A criminal prosecution under S. 323 of the Indian Penal Code does not abate by reason of the death of the person injured. 44 Mad. 417, Foll. (*Dalai, J.*) **MUSA v. EMPEROR.**

81 I. C. 719 = 22 A. L. J. 520 =

5 L. R. A. Cr. 96 = 25 Cr. L. J. 1007 =

A. I. R. 1924 All. 666.

**—Defence—Fair opportunity.**

—Before taking action against a person for fabrication of false evidence it is necessary that he should be given an opportunity to substantiate his allegations. (*Devadoss and Wallace, J.*) **SESHAYYA v. B. SUBBARAYUDU.**

90 I. C. 661 = 26 Cr. L. J. 1589 =

1925 M. W. N. 470 = A. I. R. 1925 Mad. 1157.

**—Defence—Ignorance of law.**

—Ignorance of law cannot be pleaded as a defence where the law has been transgressed but where there is a proviso to the law which if pleaded would establish a sound defence an accused may under certain circumstances plead that he was not aware of the proviso. Where in a prosecution for an offence under S. 19 of the Arms Act the accused were not defended by Counsel and they did not plead the exceptions under S. 2 (7) (a) of that Act though the circumstances showed it could well have been pleaded,

*Held*, that the Magistrate ought to have questioned them regarding the possible defence and that the accused could plead the exception in revision. (*Doyle, J.*)

**CRIMINAL TRIAL—Defence—Practice.**

**ALI HOSSEIN v. EMPEROR.** 1930 Cr. C. 1177 =

A. I. R. 1930 Rang. 349.

**—Defence—Pleas.**

—*No offence in law—Plea of guilty—Effect.*

The plea of guilty does not avail, when the offence in question has not been committed in the eye of the law (*Shadi Lal, C. J.*) **MT. DARKAN v. EMPEROR.**

10 A. I. Cr. R. 486 = 110 I. C. 101 =

29 Cr. L. J. 645 = A. I. R. 1928 Lah. 827.

—*Inconsistent pleas—Accused not barred.*

An accused person cannot be barred from setting up inconsistent pleas. 16 Cr. L. J. 76 and A. I. R. 1923 Cal. 717, Rel. on. (*Tek Chand and Coldstream, J.*) **SANTA SINGH v. EMPEROR.**

29 Cr. L. J. 117 =

106 I. C. 709 = A. I. R. 1927 Lah. 710.

—*Plea of self-defence—First taken in Appellate Court—If sustainable.*

Where the accused were convicted of the offence of rioting and in appeal they raised the plea of self-defence for the first time in the whole proceedings,

*Held*, that they were entitled to have the plea examined by the Court. (*Mears, C. J. and Sulaiman, J.*) **AJUDHIA PRASAD v. EMPEROR.**

87 I. C. 597 =

26 Cr. L. J. 997 = 6 L. R. A. Cr. 81 =

A. I. R. 1925 All. 664.

—*Contributory negligence—No place in criminal law.*

The plea of contributory negligence has a distinct and recognised place in the Law of Torts, but finds no place in an indictment for criminal negligence. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) **FRANK CROSSLEY WOODWARD v. CROWN.**

92 I. C. 433 =

18 S. L. R. 199 = 27 Cr. L. J. 257 =

A. I. R. 1925 Sind 233.

—*Right of private defence can be found though not pleaded.*

Even where a right of private defence is not pleaded the Court on finding on the evidence before it, that the accused acted in the exercise of his right of private defence, is bound to take cognizance of this fact. 16 A. L. J. 169, Foll. (*Mukerji, J.*) **EMPEROR v. KISHEN LAL.**

85 I. C. 245 = 22 A. L. J. 501 =

5 L. R. A. Cr. 177 = 26 Cr. L. J. 501 =

A. I. R. 1924 All. 645.

—*Self-defence—General fight between parties—Not available.*

The defence of self-defence which must be specific individual in every case cannot be relied on where there is good evidence to hold that there was a general fight between two parties (*Odgers and Wallace, J.*) **BACHALA PEDA SOMADU v. NETHIPUDI APPIGADU.**

81 I. C. 203 = 47 Mad. 232 = 18 M. L. W. 705 =

33 M. L. T. 159 = 25 Cr. L. J. 715 =

A. I. R. 1924 Mad. 379 = 45 M. L. J. 602.

—*Alternate or inconsistent defence.*

By setting up an inconsistent defence there can be no doubt that the case for the accused becomes considerably weaker than if he settled his best line of defence and set up that defence only. But there is nothing illegal in setting up an alternative and inconsistent defence. (*Newbould and Sukrawaray, J.*) **NAGENDRA CHANDRA DHAR v. KING-EMPEROR.**

76 I. C. 430 =

27 C. W. N. 820 = 38 C. L. J. 203 =

25 Cr. L. J. 190 = A. I. R. 1923 Cal. 717.

**—Defence—Practice.**

—*Accused's statements—Trend of cross-examination—Arguments for defence—Defence ascertained from.*

The nature of the defence is to be ascertained not only from the statements of the accused persons themselves, but also from the trend of the cross-examination

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of the prosecution witnesses and from the arguments of the accused's pleader at the close of the trial. (*Pearson and Patterson, J.J.*) KUTI v. EMPEROR.

127 I. C. 263 = 31 Cr. L. J. 1203 = 1930 Cr. C. 750 = 51 C. L. J. 339 = A. I. R. 1930 Cal. 442.

**—Defence—Prejudice.**

*—Slight inaccuracy of, in charge—No prejudice.*

The accused are not prejudiced because the charge stated that they committed an offence in September whilst the evidence showed that the offence was completed before. (*Brown, J.*) U. PATHADA, U. PADUMA AND U. NANDIYA v. EMPEROR. 84 I. C. 245 = 3 Bur. L. J. 178 = 26 Cr. L. J. 245 = A. I. R. 1924 Rang. 371.

**—Defence—Procedure.**

*—Gaps in case left by prosecution—Attempt to fill up by cross-examination—Deprecated.*

Per *Waller, J.*—It is a curious conception of the duty of an advocate that he should endeavour by means of his cross-examination to fill up the gaps in the case against his client left by the ineptitude of the prosecution. (*Waller and Anantakrishna Iyer, J.J.*) COLLET v. EMPEROR. 1929 M. W. N. 395.

*—Prima facie case proved—Accused should rebut by evidence—Not merely criticise.*

When appearances are against the accused in a case and the prosecution has established *prima facie* the existence of incriminating circumstances, it is the duty of the defence to rebut the presumption arising from them by some tangible evidence other than by mere criticism and suggestions or untested and uncorroborated statements from the dock. (*Buckland, Sukrawardy, and Cammiade, J.J.*) HARI NARAYAN CHANDRA v. EMPEROR. 46 C. L. J. 368 = 29 Cr. L. J. 49 = 106 I. C. 545 = 9 A. I. Cr. R. 228 = A. I. R. 1928 Cal. 27.

*—Prosecution must prove case—Accused then must rebut—Mere relying on discrepancies not enough.*

It is true that the prosecution must prove their case in the first instance before the accused can be called upon to make their defence; but when evidence has once been given on oath by witnesses who profess to have seen the occurrence and who directly implicate the accused and ascribe particular acts to them, it will not avail the accused merely to rely upon a discrepancy here and a discrepancy there or upon the absence of adequate motive or on indications that there may be exaggerations in the prosecution story. They should call witnesses to prove on oath. (*Mullick and Wort, J.J.*) GHANSHAM SINGH v. EMPEROR. 6 Pat. 627 = 107 I. C. 305 = 29 Cr. L. J. 239 = 9 A. I. Cr. R. 460 = A. I. R. 1928 Pat. 100.

*—Prima facie case made out—Accused cannot rely on infirmity of prosecution evidence or presumption of innocence.*

If *prima facie* case is made out against the accused, he cannot rely safely on the presumption of innocence or on the infirmity of the evidence for the prosecution; and then it is open to the Court to convict him. The force of suspicious circumstances is augmented whenever the party attempts no explanation of facts which he may reasonably be presumed to be able and interested to explain. 7 S. L. R. 109, Foll. (*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*) HUKSHAN v. EMPEROR. 98 I. C. 113 = 27 Cr. L. J. 1265 = A. I. R. 1927 Sind. 85.

**—Defence—Right of accused.**

*—Right of cross-examination.*

It is a clear right of the accused to cross-examine prosecution witnesses before the committing Court makes up its mind as to whether there is a case to be commit-

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ted. (*Rantén, C. J. and Patterson, J.*) NANOORAM GOENKA v. FULCHAND JAIPURIA. 57 Cal. 945 = 1930 Cr. C. 1154 = A. I. R. 1930 Cal. 754.

*—Right to be convicted only on convincing evidence.*

An accused is entitled to say that he should only be convicted on clear and convincing evidence and that when there are important discrepancies in the evidence it can neither be clear nor convincing. (*Beasley, C. J. and Cornish, J.*) PEDDA PULLAPPA v. EMPEROR. 1929 M. W. N. 592.

*—Right of address of defence Counsel—Written address—Irregularity not illegality—Waiver of oral address.*

In matters where counsel on behalf of accused is entitled to be heard, he is entitled generally to be heard by an oral address and not by written speech. Written addresses filed by counsels do not stand higher than notes of counsel's arguments taken down by the Magistrate and cannot form part of the record. No doubt address of counsel is a valuable right which every party accused of crime who engages counsel to defend him is entitled to regard as such. But if the Magistrate asks the counsel to write out his address in lieu of addressing him it constitutes not an illegality or nullity but only an irregularity which might be waived. The right to address the Magistrate on the case is for the benefit of the accused and he is entitled to waive such right and his counsel is entitled to waive it in favour of a written address. (*Mirza and Patkar, J.J.*) VINAYAK v. EMPEROR. 12 A. I. Cr. R. 73 = 30 Cr. L. J. 185 = 53 Bom. 119 = 113 I. C. 612 = 30 Bom. L. R. 1530 = A. I. R. 1928 Bom. 557.

*—Warrant case—Reserving cross-examination of complainant—Case treated as summons case after charge—Order unjustifiable.*

In a case tried as a warrant case under S. 323, I. P. C. some of the prosecution witnesses were cross-examined, accused reserving his right of cross-examining the complainant and a charge was framed against the accused. At this stage the Magistrate ordered the case to be treated as one under S. 352, I. P. C., that is to say, as a summons case and the accused were refused permission to further cross-examine the prosecution witness.

*Held*, the order of the Court was unjustifiable and the accused must be allowed to cross-examine all the prosecution witnesses that they may wish to. (*Dalip Singh, J.*) DEVI DAYAL v. MT. RATTAN DEVI. 29 Cr. L. J. 235 = 107 I. C. 285 = A. I. R. 1928 Lah. 294.

*—Not to be pinned to any statement made.*

An accused person is not bound to speak the truth and he cannot be pinned down to any statement that he may have made. (*Broadway and Campbell, J.J.*) KAKAR SINGH v. THE CROWN. 81 I. C. 717 = 25 Cr. L. J. 1005 = 6 L. L. J. 575 = A. I. R. 1924 Lah. 733.

*—Defence—Statement of, accused.*

*—Written statement.*

There is no provision in law for the accused filing a written statement. (*Dawson-Miller, C. J. and Mullick, J.*) EMPEROR v. ZAHIR HAIDER BILGRAMI. 97 I. C. 17 = 7 A. I. Cr. R. 97 = 7 P. L. T. 367 = 27 Cr. L. J. 1041 = A. I. R. 1926 Pat. 566.

*—Duty of prosecution.*

*—Burden on prosecution to establish charge—Suspicion not sufficient.*

The onus of proving everything essential to the establishment of the charge against the accused lies upon the prosecution who must prove the charge substantially as laid. The guilt of the accused must be

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proved beyond a reasonable doubt. The gravest suspicion against the accused will not suffice to convict him of a crime, unless evidence establishes it beyond doubt. (*Raza, I.*) **RANGI LALL v. EMPEROR.**

126 I. C. 679 = 31 Cr. L. J. 1078 = 1930 Cr. C. 725 = 7 O. W. N. 556 = A. I. R. 1930 Oudh 321.

—*Previous conviction should be brought to notice at proper time.*

Although there is a general duty cast on the trial Magistrate to see that all the material evidence is before the Court, still that duty cannot relieve the prosecution from what is primarily their duty to see that matters, such as previous convictions are brought definitely to the notice of the Court at the proper time. (*Boys and Sen, J.J.*) **EMPEROR v. PREM.** 115 I. C. 868 = 1929 A. L. J. 397 = 10 L. R. A. Cr. 76 = 11 A. I. Cr. R. 513 = 30 Cr. L. J. 529 = A. I. R. 1929 All. 270.

—*A few only of the eye-witnesses called by prosecution—Others must be called too—Omission—Adverse inference.*

The police are entitled, if they like, to rest their case on the evidence of two or three eye-witnesses but where it is obvious that there were many other people who could have come forward and given evidence in the matter but who are not called by the prosecution they should be called. Omission to do so is a circumstance against the prosecution. (*Beasley, C. J. and Cornish, J.*) **KUMARASWAMI ASARI v. EMPEROR.** 1929 M. W. N. 587.

—*Ambiguity—Material facts—Must be clearly explained.*

Per *Anantakrishna Iyer, J.*—In a prosecution for a serious offence such as under S. 304-A, I. P. C. great care ought to be taken on the side of the prosecution that nothing ambiguous is left on the records and circumstances having material bearing on the case are to be clearly explained by evidence. (*Waller and Anantakrishna Iyer, J.J.*) **COLLETT v. EMPEROR.** 1929 M. W. N. 395

—*Capital case—Prosecution to lead all available evidence—Option of choosing favourable and withholding hostile evidence—Not allowed.*

Per *Jwala Prasad, J.*—In a capital case it is undoubtedly the duty of the Public Prosecutor to place before the trial Court the testimony of all available witnesses. This salubrious rule should be adhered to for the ends of justice and the prosecution should not be left the option of choosing witnesses who would support the prosecution case and withholding those who would not. Unless it is shown by facts and circumstances in the case that the witnesses were withheld because they would not tell the truth, the prosecution should not be left the option to choose. To allow such an option is to create embarrassment. The Court should have the whole of the material evidence and of all eye-witnesses whether in favour of or hostile to the prosecution so as to form its own opinion upon the entire evidence. 10 C.L.R. 161 and 42 Cal. 422, Appr. (*Jwala Prasad and Jam, J.J.*) **MATHURA TEWARY v. EMPEROR.** 120 I. C. 37 = 10 P. L. T. 177 = 8 Pat. 625 = 30 Cr. L. J. 1136 = 1929 Cr. C. 155 = A. I. R. 1929 Pat. 343.

—*Public prosecutor represents Crown, not police—All evidence for or against accused must be let in.*

The duty of a Public Prosecutor is to represent not the police but the Crown and this duty should be discharged fairly and fearlessly and with a full sense of the responsibility attaching to his position. In a capital case it is the duty of the Crown to place before the Court all materials irrespective of the question as to

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whether they help the accused or go against him, the rule is not merely a technical one but founded on common-sense and humanity. (*Courtney-Terrell, C. J. and Fazl Ali, J.*) **KUNJA SUBUDHI v. EMPEROR.**

116 I. C. 770 = 8 Pat. 279 = 10 P. L. T. 549 = 30 Cr. L. J. 675 = 1929 Cr. C. 62 = 13 A. I. Cr. R. 143 = A. I. R. 1929 Pat. 275.

—*Changing ground.*

The prosecution cannot be permitted at the last moment without notice to the accused to change its ground. (*Dalal, J.*) **BHAN DEB v. EMPEROR.**

112 I. C. 588 = 51 All. 463 = 11 A. I. Cr. R. 213 = 29 Cr. L. J. 1084 = 1929 A. L. J. 90 = 10 L. R. A. Cr. 27 = A. I. R. 1928 All. 696.

—*Positive affirmative evidence of guilt—Prosecution should give.*

Undoubtedly the proof of the case against an accused must depend for its support not upon the absence or want of any explanation on the part of the accused himself, but upon the positive affirmative evidence of his guilt that is given by the Crown. (*Kinkhede, A.J.C.*) **MT. SHEVANTI v. EMPEROR.** 109 I. C. 497 = 29 Cr. L. J. 561 = 10 A. I. Cr. R. 358 = A. I. R. 1928 Nag. 257.

—*Basing case on partial admission.*

Case for prosecution must be proved by evidence of Crown witnesses and cannot be based on partial admission of accused in defence. (*Nanavutty, J.*) **RAMESHWAR v. EMPEROR.** 110 I. C. 795 = 5 O. W. N. 601 = 11 A. I. Cr. R. 41 = 29 Cr. L. J. 763 = A. I. R. 1928 Oudh 373.

—*Accused cutting jhalasi from area not included in his right—Onus on prosecution to prove that accused did not cut within his area.*

An area of 1100 bighas was attached and the accused cut *jhalasi* within that area. Prior to the date of cutting, the accused obtained delivery of possession of a portion of the attached area extending to about 345 bighas. The trial Court below assumed that, unless the petitioners proved that they cut from within the area of 345 bighas of which they got possession they must be considered to have committed theft and they were convicted of offences under Ss. 379 and 143, Penal Code.

*Held*, that it was for the prosecution to establish all the ingredients of the offence punishable under S. 379. The Crown ought to have shown that the petitioners were not cutting within that area of which they had obtained delivery of possession. (*Macpherson, J.*) **TULSI MAHTO v. EMPEROR.** 107 I. C. 529 = 29 Cr. L. J. 259 = 9 A. I. Cr. R. 543 = A. I. R. 1928 Pat. 249.

—*Not to suggest motives of accused.*

It is not the duty of the prosecution to suggest or to prove any motive on the part of the accused in committing an offence under Ss. 304 and 147. If the actual evidence as to the commission of the offence is believed, then no question of motive remains to be established. (*Nanavutty, J.*) **TILAK RAM v. EMPEROR.** 110 I. C. 800 = 5 O. W. N. 596 = 29 Cr. L. J. 768 = 11 A. I. Cr. R. 65.

—*Material witnesses withheld by prosecution—Sufficient to discredit.*

Where in case under S. 143, Penal Code there were four persons of the locality in the mob restraining and demonstrating and they were thus in a position to depose to the words uttered and conduct displayed by the mob, but these persons had been withheld and no reason had been given by the prosecution for not examining them.

*Held*, that this was sufficient to discredit the pro-

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secution version. (*Jwala Prasad, J.*) JAGI RAUT v. EMPEROR. 105 I. C. 234 = 9 P. L. T. 260 =

28 Cr. L. J. 906 = A. I. R. 1928 Pat. 98.

—*Accused tying cattle in municipal area—Proof as to ownership of area—Onus on prosecution.*

When an accused is charged for tying cattle on Municipal area, the burden is on the prosecution to prove that the area in question belonged to the Municipality. (*Banerji, J.*) MUNICIPAL BOARD, BENARES v. MAHADEO. 102 I. C. 784 = 8 L. R. A. Cr. 105 = 28 Cr. L. J. 608 = 8 A. I. Cr. R. 98 = A. I. R. 1927 All. 618.

—*Prosecution should not be allowed to change its case—Prosecution should not be allowed to file documents which defence relies on for discrediting them.*

It is not open to prosecution to put forward receipts and witnesses as genuine and then at the last moment, at the time of the argument, to repudiate them all and start a new case altogether. Court should see that prosecution puts forward a real case from the beginning and sticks to it up to the end. The prosecution should not be allowed to file documents which the defence has had a chance to file for itself for the purpose of discrediting them. It amounts to this that when an accused has put forward his defence in the committing Court it is open to the prosecution to call evidence in the Sessions Court to rebut and discredit the accused's defence, before it is even known whether or not the accused intends to put forward that defence in the Sessions Court. It is in effect permitting the prosecution to call evidence in rebuttal of the accused's defence, a practice wholly unauthorised and not admitted by the Criminal Procedure Code. (*Wallace and Mudhavan Nair J.J.*) BISWANATH DAS, *In re.* 100 I. C. 365 = 28 Cr. L. J. 285 = A. I. R. 1927 Mad. 533.

—The guilt of a person accused of a crime has to be established by the evidence for the prosecution. (*Broadway, J.*) EMPEROR v. SAIN DAS. 94 I. C. 257 = 8 L. L. J. 180 = 27 Cr. L. J. 593 = 27 P. L. R. 353 = A. I. R. 1926 Lah. 375.

—Weakness of defence cannot help prosecution which must prove guilt beyond reasonable doubt. (*Wazir Hasan and Neave, A. J. Cs.*) HIRA LAL v. KING EMPEROR. 84 I. C. 49 = 27 O. C. 188 = 26 Cr. L. J. 225 = A. I. R. 1925 Oudh 78.

—*All witnesses should be called—Exception—Unnecessary and untruthful witnesses*

All witnesses who prove their connection with the transaction, connected with the prosecution, should be called, unless the prosecution is under the *bona fide* belief that such witnesses would not speak the truth, but the Public Prosecutor is not bound to call as witnesses for the Crown any person whose evidence in his opinion is unnecessary. (1882) 8 Cal. 121, Appr. (1915) 42 Cal. 422 Dist. (1894) 15 All. 84; (1922) 49 Cal. 277, Foll. (*Odgers, J.*) DORAISWAMI UDAYAN v. EMPEROR. 75 I. C. 987 = 33 M. L. T. 213 = 1923 M. W. N. 782 = 25 Cr. L. J. 75 = A. I. R. 1924 Mad. 239 = 45 M. L. J. 846.

—*Weakness of defence evidence not sufficient to convict the accused.*

Because the defence evidence is all untrue, it cannot be assumed that the accused is a dishonest person, and therefore he had dishonest intention in receiving stolen property. It is the duty of the prosecution to establish by its own evidence that the accused is guilty. The weakness of the defence evidence is no ground for finding the accused guilty. (*Krishnam, J.*) RAMUDU IYER v. EMPEROR. 72 I. C. 538 = 24 Cr. L. J. 426 = 17 M. L. W. 370 = 32 M. L. T. 318 =

**CRIMINAL TRIAL—Evidence—Admissibility.**

A. I. R. 1923 Mad. 365 = 44 M. L. J. 243.

—Evidence.

Admissibility.

Appreciation of.

Approver.

Conduct.

Corroboration.

Credibility.

Doubtful.

Examination.

Expert evidence.

Failure to examine witness.

Intention.

Maps and plans.

Motives

Presumptions.

Procedure.

Quantum of.

Rejection of.

Reliability.

Statements.

Sufficiency of.

Value of.

Witnesses.

Miscellaneous.

—Evidence—Admissibility.

—*Incrimatory evidence found in search of accused's house.*

The Crown is entitled to rely upon any material evidence of an incriminatory character found in the house of an accused person as the result of house search. (*Young and Sen, J.J.*) EMPEROR v. NARBADA PRASAD. 121 I. C. 819 = 1930 Cr. C. 54 = 51 All. 864 = 31 P. L. J. 356 = A. I. R. 1930 All. 38.

—*Admitting inadmissible evidence—When trial vitiated.*

Misapprehension of a piece of evidence which is inadmissible but which has very little weight and admission of which causes no substantial injustice, does not vitiate the trial. (*Courtnay-Terrell, C. J. and Dhaule, J.*) SOHRAI SAO v. EMPEROR. 124 I. C. 836 = 9 Pat. 474 = 11 P. L. T. 148 = A. I. R. 1930 Pat. 247.

—*Witness can say he suspected accused—Not that others suspected him.*

Although evidence cannot be given that an accused person has been suspected by persons other than the witness of having committed a certain offence, there is no authority for the proposition that a witness cannot be allowed to state that he personally suspected the accused of having committed a certain offence. (*Ashworth, and King, J.J.*) EMPEROR v. KUMERA. 125 I. C. 19 = 31 Cr. L. J. 755 = 51 All. 275 = 1929 Cr. C. 346 = A. I. R. 1929 All. 650.

—*Expert opinion—Recorded in civil suit—If admissible in criminal trial.*

It is doubtful whether the opinion of an expert recorded for the purposes of a civil suit though proved in a criminal case is admissible at all at the latter trial. A. I. R. 1923 Lah. 622, Ref. (*Jai Lal, J.*) GANDAMAL v. EMPEROR. 110 I. C. 810 = 11 A. I. Cr. R. 5 = 29 Cr. L. J. 728 = A. I. R. 1928 Lah. 921.

—*Roznamcha report.*

Roznamcha reports, even if proved, will not be evidence of the facts mentioned in the reports which must be proved like other facts. (*Mohiuddin, A. J. C.*) EMPEROR v. RAGHUNATH. 107 I. C. 907 = 10 A. I. Cr. R. 2 = 29 Cr. L. J. 312 = A. I. R. 1928 Nag. 255.

—*Secret reports of officials not admissible.*

## CRIMINAL TRIAL—Evidence—Admissibility.

Secret reports of the Tahsildar and Naib Tahsildar under the orders of the Sub-divisional officer are not admissible as substantive evidence in a criminal trial. (*Banerji, J.*) *RAM CHAND v. EMPEROR.*

99 I. C. 123 = 8 L. R. A. Cr. 4 = 28 Cr. L. J. 91 = 7 A. I. Cr. R. 34 = A. I. R. 1927 All. 147.

—Police documents prepared in investigation—Not admissible even after formal proof.

Documents prepared by police during the course of investigation are not evidence and they do not become so after they have been formally proved by witnesses. A document which is not evidence does not become so by being formally proved and exhibited in the case. (*Agha Haidar, J.*) *YARU v. EMPEROR.*

99 I. C. 240 = 28 Cr. L. J. 112 = 7 A. I. Cr. R. 287 = A. I. R. 1927 Lah. 79.

—Evidence disbelieved as to one accused—Must be discarded as to co-accused.

The uncorroborated testimony of a witness which is disbelieved as to one accused should be discarded also as to the other accused whom he implicated. 3 L. L. J. 147, Foll. (*Kinkhede, A. J. C.*) *MT. YASHODI v. KING-EMPEROR.*

99 I. C. 855 = 28 Cr. L. J. 186 =

9 N. L. J. 194 = A. I. R. 1927 Nag. 43.

—The principle *falsus in uno falsus in omnibus* cannot be universally applied in India. (*Pullan, A. J. C.*) *PRAG v. KING-EMPEROR.*

82 I. C. 33 =

11 O. L. J. 693 = 25 Cr. L. J. 1169 =

A. I. R. 1925 Oudh 65.

—Written defamation—Original must be produced.

In case of written defamation the Court should insist on the production of the original should not easily admit certified copies. (*Odgers and Hughes, J.J.*) *K. BURKE v. TEW SKIPP.*

81 I. C. 129 =

18 M. L. W. 718 = 33 M. L. T. 168 =

1923 M. W. N. 913 = 25 Cr. L. J. 641 =

A. I. R. 1924 Mad. 340 = 45 M. L. J. 754.

—Prosecution case closed—Door closed to any further evidence against accused.

An accused is entitled to know what the evidence against him is before he is called upon for a defence at all, and the closing of the case for the prosecution is no mere form but with certain exceptions, closes the door to any further evidence against the accused. Further the prosecutor cannot re-open his case and make additions to it except such voluntary additions as the accused may make himself. The only thing that an accused person has to meet in a criminal trial is the case for the prosecution, and such additions thereto as he may have voluntarily added by his own statement and those of witnesses whom he calls in his defence. (*Walsh, J.*) *MAHADEO PRASAD v. KING-EMPEROR.*

76 I. C. 1025 = 25 Cr. L. J. 305 =

21 A. L. J. 179 = 45 All. 323 =

4 L. R. A. Cr. 57 = A. I. R. 1923 All. 322.

—Evidence—Appreciation of.

—Evidence must be tangible.

Cases ought to be decided upon tangible evidence, be it positive or be it circumstantial. The Court is not justified in convicting an accused upon facts which are not borne out by the record, which militate against the medical evidence and which are the result of nothing but speculation. (*Young and Sen, J.J.*) *MT. BAKH-TAWARI v. EMPEROR.*

120 I. C. 268 =

31 Cr. L. J. 37 = 1930 Cr. C. 61 =

A. I. R. 1930 All. 45.

—Altering evidence in Sessions so as to fit in with evidence at committal.

Where witnesses alter their statements in the Court of Session in order to make them fit in with the medical or other evidence which has been brought forward in the

## CRIMINAL TRIAL—Evidence—Corroboration.

Magistrate's Court, their statements must receive very careful scrutiny. (*Raza and Pullan, J.J.*) *DWARKA v. EMPEROR.*

6 O. W. N. 270 = 120 I. C. 820 =

4 Luck. 705 = 31 Cr. L. J. 181 =

A. I. R. 1929 Oudh 248.

—Alibi.

*Alibi* evidence should be scrutinized very carefully, for it is very easy to set up *alibi* and not always easy to prove it; it must be definitely proved in order to suffice for the rebuttal of a case made out by the prosecution. (*Phillips and Madhavan Nair, J.J.*) *PUBLIC PROSECUTOR v. CHIDAMBARAM.*

28 M. L. W. 187 =

10 A. I. Cr. R. 388 = 1 M. Cr. C. 159 =

29 Cr. L. J. 717 = 110 I. C. 461 =

A. I. R. 1928 Mad. 791 = 55 M. L. J. 231.

—Deposition different in Sessions Court—That before committing Court preferable.

Where the deposition of a witness before the committing Magistrate differs from the deposition at the Sessions the former is to be invariably preferred. (*Adami and Macpherson, J.J.*) *CHAMPA PASIN v. EMPEROR.*

9 A. I. Cr. R. 545 = 108 I. C. 81 =

29 Cr. L. J. 325 = A. I. R. 1928 Pat. 326.

—The evidence against each accused in a joint trial should be separately scrutinised. (*Krishnan, J.*) *SAMACHARI, In re.*

81 I. C. 310 =

18 M. L. W. 743 = 33 M. L. T. 182 =

25 Cr. L. J. 790 = A. I. R. 1924 Mad. 350 =

45 M. L. J. 728.

—Evidence—Approver.

—If discarded, must be discarded entirely.

If the evidence of an approver is discarded, it must be discarded as a whole and the defence cannot base arguments on it any more than the prosecution. (*Adami, J.*) *SHEO BARI v. EMPEROR.*

11 Pat. L. T. 520 = 127 I. C. 566 =

1930 Cr. C. 260 = A. I. R. 1930 Pat. 164.

—Evidence—Corroboration.

—Eye-witnesses inimical to accused corroboration essential.

Where the alleged eye witnesses are not on good terms with the accused or belong to opposite faction, it is not safe to rely on their uncorroborated testimony. (*Hilton, J.*) *BHARTU v. EMPEROR.*

30 P. L. R. 582 = 1930 Cr. C. 343 =

A. I. R. 1930 Lah. 311.

—Sugar not identifiable article—Sugar find—Corroborative value of.

Although sugar is not capable of identification, the find of a large quantity of sugar with the accused may yet be a corroboration of the prosecution story. (*Macpherson and Dhavle, J.J.*) *RAMSARUP SINGH v. EMPEROR.*

9 Pat. 606 = 1930 Cr. C. 1009 =

11 Pat. L. T. 867 = 128 I. C. 121 =

A. I. R. 1930 Pat. 513.

—Stabbing—Complaint's evidence—If should be corroborated.

The law does not say that when somebody has stabbed another that the stabbed person's evidence has got to be corroborated by other witnesses. Standing by itself the Court is entitled to take it and convict upon it. But this can only apply to witnesses who are undoubtedly telling the truth and have not shown themselves in their evidence at the trial to be persons who are capable of telling untruths. (*Beasley, C. J. and Cornish, J.*) *KUMARASAMI ASARI v. EMPEROR.*

1929 M. W. N. 587.

—Complainant brought over—Hostile witness—Facts elicited in cross-examination may be corroborated by third parties.

In all cases where the complainant, owing to undue

## CRIMINAL TRIAL—Evidence—Corroboration.

influence or corruption, goes back on his or her story of how the crime was committed or who committed the crime, the presiding judge should allow the complainant to be treated as a witness hostile to the prosecution and, if as a result of that cross-examination certain evidence emerges which supports the case for the Crown, the evidence of corroboration on the part of third parties would then be admissible in law. (*Cunliffe, J.*) **EMPEROR v. NGA HLAING.** 11 A. I. Cr. R. 317=

6 Rang. 481=29 C. L. J. 1042=112 I. C. 466=A. I. R. 1928 Rang. 295.

—Two sets of evidence each requiring corroboration—One cannot corroborate the other.

Where there are two sets of evidence, neither of which alone can be accepted, without corroboration, they cannot each in its turn be taken to corroborate the other and joined together so as to justify any Court in acting on such evidence. 27 Cal. 295, Foll. (*Das and Scroope, J.J.*) **DEVENDRA BHATTACHANDRYA v. EMPEROR.** 101 I. C. 881=28 Cr. L. J. 497=

8 P. L. T. 566=8 A. I. Cr. R. 151=A. I. R. 1927 Pat. 257.

—Enmity—Innocent persons implicated—Evidence requires corroboration.

Where admittedly there is enmity between the parties and the prosecution have implicated wholly innocent persons their evidence cannot be fully relied upon without some strong independent corroboration. The fact that the accused made an effort to concoct false evidence of an *alibi* does not go to prove that he committed the offence charged. (*Scott-Smith, J.*) **TABRI v. CROWN.** 6 L. L. J. 326=26 Cr. L. J. 393=

84 I. C. 937=A. I. R. 1925 Lah. 42.

—Evidence—Credibility.

—Evidence discredited on crucial point—Value regarding less important point.

Where the evidence of the witnesses stands discredited on the crucial point it cannot be relied on a less important point unless there is some strong independent corroborative evidence. (*Wallace and Jackson, J.J.*) **VISWANATHA AYYAR v. EMPEROR.** 1930 M. W. N. 723.

—Diffuse account given of incident—Habit of villagers.

"In a criminal trial nothing turns on the fact that the witnesses may not have given a photographically correct account of the exact details. For some reason best known to himself an Indian villager never says "there was general kicking and beating" but works out an analysis of fists and feet and right sides, and left sides, which is easily shown to be ridiculous, but which does not prove him to be telling lies; it is merely his habit of thought and speech". (*Jackson, J.*) **SHANMUGA KUDUMBAN, In re.** 1930 M. W. N. 74=

123 I. C. 43=31 Cr. L. J. 477.

—Questions impeaching character—Answer satisfactory—Witness not discredited.

A witness is not discredited, merely because the cross-examining counsel asked some questions impeaching his character, when the answers to those questions are satisfactory. (*Jwala, Prasad and James, J.J.*) **RAGHO PRASAD v. EMPEROR.** 118 I. C. 333=

30 Cr. L. J. 896=A. I. R. 1929 Pat. 180

—Failure to disclose deceased's death until asked by police—Evidence incredible.

Where a witness does not inform anyone, of what he saw until a Sub-Inspector of Police came on the scene, although in the meantime he had been in company with the Head Constable, had gone to the hospital with the deceased, was present when the inquest report was made, yet one word did he not say to any one until

## CRIMINAL TRIAL—Evidence—Doubtful.

some 15 days after the death of the deceased.

Held, that it will be very unsafe to accept the evidence of such a witness. (*Eforde, J.*) **KALA v. EMPEROR.** 95 I. C. 598=8 L. L. J. 186=

27 P. L. R. 719=27 Cr. L. J. 822.

—Witness—Credibility of a witness question for trial Court and not for the appellate Court.

The question of the credibility of a witness is eminently one for the Court of trial before whom the witness appears, and the appellate Court is not in an equally good position to decide the point. (*Wazir Hasan and Simpson, A. J. Cs.*) **BHULAN v. EMPEROR.** 91 I. C. 233=27 Cr. L. J. 57=

A. I. R. 1926 Oudh 245.

—Of oral evidence—High Court guided by trial Court.

The High Court must be guided as regards the credibility of oral evidence mainly by the Court that heard it. (*Simpson and Gokaran Nath Misra, A. J. Cs.*) **SHEO NARIAN SINGH v. KING-EMPEROR.** 89 I. C. 261=12 O. L. J. 429=26 Cr. L. J. 1317=

A. I. R. 1925 Oudh 715.

—Non-production of some prosecution witnesses—Credibility of those produced.

The mere fact of the non-production by prosecution of some of their witnesses cannot in any way affect the credibility of the witnesses that have been produced. (*Scott-Smith and Moti Sagar, J.J.*) **INDAR SINGH v. EMPEROR.** 73 I. C. 932=5 L. L. J. 524=

24 Cr. L. J. 708=A. I. R. 1924 Lah. 241.

—Evidence—Doubtful.

—Implicating accused only to exculpate themselves—Suspicious.

Where the witnesses in a murder case implicate the accused only when they are faced with the necessity of exculpating themselves their evidence is open to grave suspicion and no sufficient weight should be attached to such evidence. (*Scroope and Dhavle, J.J.*) **MANHU MAHTON v. EMPEROR.** 1930 Cr. C. 710=

A. I. R. 1930 Pat. 338.

—Doubt as to guilt—To be considered before and not after verdict.

The feeling of doubt as to the guilt of the accused is a matter to be considered by the tribunal before but not after the verdict. It has no place in the determination of the sentence after conviction. If the evidence is not strong enough to justify an irrevocable sentence the accused is entitled to acquittal, for law does not recognize the right of a judicial tribunal to give effect to more than one degree of doubt. (*Courtnay-Terrell, C. J. and Dhavle, J.*) **SOHRAI SAO v. EMPEROR.** 124 I. C. 836=11 P. L. T. 148=

31 Cr. L. J. 721=1930 Cr. C. 515=

9 Pat. 474=A. I. R. 1930 Pat. 247.

—Two seats of witnesses—Divergent statements—Benefit of doubt to accused.

When two sets of witnesses between whom there is not much to choose, make two divergent statements about one and the same incident, the matter becomes, to say the least, of it, doubtful and the benefit of doubt should be given to the accused. (*Agha Haidar, J.*) **KALU v. EMPEROR.** 106 I. C. 800=29 Cr. L. J. 208.

—Inference equivocal accused's explanation possible prosecution fails.

Where the inference suggested by what happened at the interview is equivocal and where the explanation put forward by the accused is reasonably possible; the theory of innocence cannot be said to have been sufficiently negated by the prosecution. (*MacLeod, C. J. and Shah, J.*) **EMPEROR v. AMIRUDDIN SALEBHAY.** 67 I. C. 818=24 Bom. L. R. 534=



## CRIMINAL TRIAL—Evidence—Examination.

23 Cr. L. J. 466=A. I. R. 1923 Bom. 44.

## —Evidence—Examination.

—*Untruthful witnesses—Prosecution not bound to examine—Usual practice—Defence must cross-examine at the right time.*

The prosecution is under no obligation to examine witnesses who it has reason to believe will not speak the truth. It is usual in such circumstances for the prosecution to tender such witnesses for cross-examination. The defence, however, is certainly entitled to claim that privilege but having omitted to do so they cannot be permitted to make capital of the fact that these witnesses were not cross-examined. 8 Cal. 121, held too widely stated. (*Graham and Lort Williams, J.J.*) NAYAN MANDAL v. EMPEROR. 125 I. C. 746=

34 C. W. N. 170=1930 Cr. C. 134=

31 Cr. L. J. 918=A. I. R. 1930 Cal. 134.

—*Right to examine witnesses—Refusal to procure their presence on the ground of inconvenience—Improper.*

In a Sessions case when the list of witnesses is filed before the Magistrate the witnesses named must be summoned and made to be present at the trial and if they are not present their presence should be secured by some means by the Crown. The examination of such a witness cannot be refused merely on the ground that it would be inconvenient to adjourn in order to secure the attendance of the witness. (*Suhrawardy and Costello, J.J.*) RAM MAMUD SARKAR v. EMPEROR

34 C. W. N. 1014=1931 Cr. C. 38=

A. I. R. 1931 Cal. 6.

—*Child of tender years raped—Unable to give relevant information—Should not be examined at all.*

Where the Court is of opinion that the child upon whom an offence under S. 376, I. P. C. is committed is unable to give relevant information in the matter by reason of tender years and consequent immaturity of judgment, it should not examine the child at all. 38 All. 49, Foll. 41 Cal. 406, Not Foll. (*Agha Haidar, J.*) GHULAM HUSSAIN v. EMPEROR. 127 I. C. 862=

31 P. L. R. 612=1930 Cr. C. 385=

A. I. R. 1930 Lah. 337.

—*Advocate attacking in cross-examination prosecutor imputing dishonourable conduct—Assurance of the existence of good grounds therefor should be demanded.*

Per *Courtney-Terrell, C. J.*—It is the duty of the tribunal if it has any suspicion when an advocate begins an attack upon a prosecutor or witness by way of so called "suggestions" involving dishonourable conduct to demand from the advocate an assurance that he has good grounds for making the suggestion. If the assurance is not received the cross-examination on those issues should be stopped promptly. If the assurance is given and if it should appear at the termination of the trial that no such ground has existed the tribunal should bring the conduct of the advocate to the notice of the High Court. (*Courtney-Terrell, C. J. and Chatterji, J.*) BANSLOCHAN LAL v. EMPEROR.

124 I. C. 396=31 Cr. L. J. 641=

1930 Cr. C. 278=10 P. L. T. 703=

9 Pat. 31=A. I. R. 1930 Pat. 195.

—*Witness not deposing against absent accused—Accused not wishing to examine that witness—Witness's examination in accused's absence—Trial not vitiated.*

Where a witness gave no evidence which was, or could be, used against an absent accused, and at a latter date that accused put in a statement that he did not wish to examine that witness, the examination of that witness in the absence of the accused did not vitiate the trial. (*Reilly, J.*) PUBLIC PROSECUTOR, MADRAS v.

## CRIMINAL TRIAL—Evidence—Failure to examine witness.

CHOKALINGA AMBALAM.

118 I. C. 274=

52 Mad. 355=29 M. L. W. 108=

1929 M. W. N. 602=2 M. Cr. C. 1=

30 Cr. L. J. 908=A. I. R. 1929 Mad. 201=

56 M. L. J. 216.

## —Evidence—Expert evidence.

—*Murder cases—Medical evidence must be given viva voce before the jury.*

In cases of murder or of a man-slaughter it is unreasonable to expect the jury to convict if a proper exposition and explanation of the medical evidence is not given *viva voce* by a doctor who can deal with the matter and satisfy the jury. The jury are quite entitled to be fully satisfied. Until one has gleaned all the facts that one can get from the medical report one is not really in a position to say what parts of the other evidence can be relied upon. Where the medical evidence was not given, the High Court refused to examine or order examination of the doctor under S. 428. (*Rankin, C. J. and Buckland, J.*) DEBENDRA NARAYAN v. EMPEROR. 119 I. C. 378=33 C. W. N. 632=

56 Cal. 566=50 C. L. J. 1=30 Cr. L. J. 1031=

A. I. R. 1929 Cal. 244.

—*Medical evidence—Opinion tending to two explanations—Not very important—Statement as to what he examined—More important than eye-witness's account.*

It cannot be laid down as a general proposition that medical evidence is of less value than the evidence of eye-witnesses. No doubt where the medical evidence is merely an opinion of an expert on a question which may admit of two explanations it is not always of first importance. But that is not correct when what the doctor has done is to lay before the Court certain definite facts. When the doctor states what he saw as to the contents of the stomach and the food regurgitated into the larynx it requires no expert to draw conclusions from those facts. The Judge himself can in such case draw those conclusions as well as the doctor as to the cause of death. (*Raza and Pullan, J.J.*) DWARKA v. EMPEROR.

120 I. C. 820=6 O. W. N. 270=4 Luck 705=

31 Cr. L. J. 181=A. I. R. 1929 Oudh 248.

—*Opinion recorded in a civil suit—Not substantive evidence.*

The opinion of an expert which is admissible against an accused is the opinion given by him at the trial. Opinion, given for the purposes of a previous suit is not substantive evidence and when the accused has not the opportunity to cross-examine the expert regarding that opinion, its evidential value is very little. It is doubtful whether the opinion of an expert recorded for the purposes of a civil suit though proved in a criminal case is admissible at all at the latter trial. A. I. R. 1923 Lah. 622, Ref. (*Jai Lal, J.*) GANDA MAL v. EMPEROR. 110 I. C. 810=11 A. I. Cr. R. 5=29 Cr. L. J. 778=

A. I. R. 1928 Lah. 921.

## —Evidence—Failure to examine witness.

—*Hostile witness—Present at Sessions defence failed to examine—If prosecutor bound to examine.*

A prosecution witness was examined in the Court of the Committing Magistrate but was not examined by the Public Prosecutor as a witness in the Sessions Court on the ground that the witness was hostile. The witness was, however, present and the defence did not avail itself of the opportunity of examining him.

*Held*, that the Public Prosecutor was not bound to produce any witness who was not expected to give true evidence. A. I. R. 1922 Lah. 1, Rel. on. (*Zafar Ali and Bhide, J.J.*) AMAR SINGH v. EMPEROR.

1930 Cr. C. 98=120 I. C. 674=31 Cr. L. J. 176=

A. I. R. 1930 Lah. 321

**CRIMINAL TRIAL—Evidence—Failure to examine witness.**

—*Murder trial—Material witness must be examined—Merely tendering him for cross-examination—Depreciated.*

In cases where any witness known to the prosecution is able to swear to facts very material to the case, the proper procedure to follow is to ask him to give evidence on oath as to the several facts known to him, which are relevant to the case, though other witnesses might have spoken to the same facts. Merely "tendering him for cross-examination" is not a practice which should be encouraged especially in murder cases as it would be very unfair to the accused. 10 Cal. 1070, Rel. on. (*Beasley, C. J. and Ananthakrishna Ayyar, J.*) *VEERA KORAVAN v. EMPEROR.* 126 I. C. 488 = 31 Cr. L. J. 1006 = 53 Mad. 69 = 30 M. L. W. 701 = 1929 M. W. N. 799 = 2 M. Cr. C. 310 = 1929 Cr. C. 685 = A. I. R. 1929 Mad. 906 = 58 M. L. J. 145.

**—Presumption.**

Failure of prosecution to examine a material witness justifies the inference that the witness, if examined, would have deposed against the prosecution. (*Shadi Lal, C. J.*) *TAJ MOHAMMAD v. EMPEROR.*

107 I. C. 100 = 29 P. L. R. 14 = 29 Cr. L. J. 212 = 9 A. I. Cr. R. 505 = A. I. R. 1928 Lah. 125.

**—Non-production of some prosecution witnesses—Credibility of others.**

The mere fact of the non-production by prosecution of some of their witnesses cannot in any way affect the credibility of the witnesses that have been produced. (*Scott-Smith and Moti Sagar, J.J.*) *INDAR SINGH v. EMPEROR.*

73 I. C. 932 = 5 L. L. J. 524 = 24 Cr. L. J. 708 = A. I. R. 1924 Lah. 241.

**—Evidence—Intention.****—Gathered from acts and surrounding circumstances.**

Intention of the culprits has to be gathered from their acts and all the surrounding circumstances. (*Jai Lal and Bhide, J.J.*) *GOPI CHAND v. EMPEROR.*

126 I. C. 573 = 11 Lah. 460 = 31 P. L. R. 797 = 31 Cr. L. J. 1071 = 1930 Cr. C. 603 = A. I. R. 1930 Lah. 491.

—While drunkenness is no excuse for an offence, no further intention can be ascribed to accused person on the ground that he was drunk than would be ordinarily ascribed to a person who is sober and therefore it must be taken that an accused, who is drunken, like others, intends only to cause the injury which he does cause. (*Harrison and Dalip Singh, J.J.*) *ZORA SINGH v. EMPEROR.* 120 I. C. 183 = 11 L. L. J. 44 = 31 Cr. L. J. 44 = 1929 Cr. C. 4 = A. I. R. 1929 Lah. 433.

**—Facts such as an ordinarily prudent man would infer guilty intent—Accused must rebut guilty intention.**

Case which involves a question of intention really rests upon the facts which are found. If those facts are such that a person of ordinary prudence and ability would come to the conclusion that they point to a guilty intent on the part of the accused it is for the accused to rebut that guilty intention; and if he does not so rebut it, the guilty intent is as much found against him as his physical acts. 37 All. 395, Foll. (*Boys, J.*) *MANNI v. EMPEROR.* 5 L. R. A. Cr. 127 = A. I. R. 1924 All. 764.

**—Evidence—Maps and plans.****—Maps should contain what the preparer himself sees.**

The person who makes a map for use in a criminal case ought not to put upon it anything more than what

**CRIMINAL TRIAL—Evidence—Motive.**

he sees himself. Particulars derived from witnesses examined on the spot should not be noted on the body of the map, but on a separate sheet of paper annexed to the map as an index thereto, the spots being marked, A, B, C, D, etc. If this course is not adopted, the map, although it may be prepared perfectly *bona fide*, may turn out to be misleading. (*Sanderson, C. J. and Chotzner, J.*) *ABINASH CHANDRA BOSE v. KING-EMPEROR.* 84 I. C. 654 = 52 Cal. 172 = 28 C. W. N. 995 = 26 Cr. L. J. 350 = A. I. R. 1924 Cal. 1029.

—*See also EMPEROR v. MOFIZEL PEADA.* (*Sanderson, C. J. and Panton, J.*) 89 I. C. 242 = 29 C. W. N. 842 = 26 Cr. L. J. 1298 = A. I. R. 1925 Cal. 909.

**—Evidence—Motive.****—Motive—No basis for conviction.**

The existence of a motive for the offence cannot form the basis of a conviction unless there is other evidence pointing to the guilt of the accused. (*Zafar Ali, J.*) *GHANSHAM DAS v. EMPEROR.* 125 I. C. 324 = 81 Punj. L. R. 348 = 1930 Cr. C. 593 = 31 Cr. L. J. 814 = A. I. R. 1930 Lah. 545.

**—Failure to prove adequate motive—No fatal defect in prosecution case.**

Where no sufficient motive for the assault on the deceased is shown the mere fact that the prosecution does not establish any additional motive for the assault cannot be taken as a fatal defect in the prosecution case. The accused may be the only surviving person knowing the cause of enmity with the deceased and the failure of the prosecution to elicit it is not a sufficient reason to disbelieve the eye-witnesses. (*Addison and Hilton, J.J.*) *SEWIA SINGH v. EMPEROR.* 126 I. C. 572 = 31 Cr. L. J. 1069 = 1930 Cr. C. 602 = A. I. R. 1930 Lah. 490.

**—Ignorance of law as motive.**

The Crown cannot impute ignorance of law as a motive for crime and the accused person must be given the benefit of the assumption that he knows the law. (*Jackson, J.*) *PUBLIC PROSECUTOR v. NAGARAJU.* 32 M. L. W. 285 = 59 M. L. J. 114.

**—Crime proved motive immaterial—Weak case—Not strengthened by motive.**

Per *Rupchand, A. J. C.*—It is well settled that on the one hand absence of ascertainable motive comes to nothing if the crime is proved to have been committed by other evidence, and on the other to eke out a weak case by way of motive apparently tending towards possible crime is a very unsatisfactory and dangerous process. (*Wild, A. J. C.* on difference between *Percival, J. C.* and *Rupchand, A. J. C.*) *MOHAMMAD YASIF v. EMPEROR.* 126 I. C. 449 = 31 Cr. L. J. 1026 = 1930 Cr. C. 865 = A. I. R. 1930 Sind 225.

**—Not necessary to prove.**

Per *Wild, A. J. C.*—It is not necessary for the prosecution to prove the motive though it is more satisfactory when the motive for the crime can be inferred. (*Wild, A. J. C.* on difference between *Percival, J. C.* and *Rupchand, A. J. C.*) *MOHAMMAD YASUF v. EMPEROR.* 126 I. C. 449 = 31 Cr. L. J. 1026 = 1930 Cr. C. 865 = A. I. R. 1930 Sind 225.

**—Facts clear—Motive irrelevant—If not clear, motive might serve to explain.**

If the facts are clear so far as the act complained of is concerned, the motive is irrelevant. If the facts are not clear, motive may explain what otherwise would be difficult of explanation. The want of motive for the commission of a crime and its being committed under circumstances which renders detection inevitable are in-

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portant points to be taken into consideration coupled with other evidence on record bearing on the question of insanity. (*C. C. Ghose and Jack, J.J.*) BAZLUR RAHMAN v. EMPEROR. 48 C. L. J. 307=

33 C. W. N. 136=30 Cr. L. J. 494=

115 I. C. 561=A. I. R. 1929 Cal. 1.

—Motive—When material—Judge to explain proof of motive to jury—Alternative motive propounded by Judge—Legality.

Where the facts are clear and the prosecution is unable to allege and prove a motive, the question of motive is of no particular significance. But where the facts are not clear and the prosecution sets out to prove a special motive and fails it is to that extent discredited and a Judge should mention that circumstances to the jury and not suggest an alternative motive for their consideration. (*Waller and Cornish, J.J.*) DOKAISWAMY PILLAY v. EMPEROR. 1929 M. W. N. 946.

—Need not prove motive.

It is not at all necessary for the prosecution, in order to establish a charge of crime, to prove a motive for it, much less the adequacy of that motive. (*Shadi Lal, C. J. and Agha Haidar, J.*) CHANDU v. EMPEROR. 29 Cr. L. J. 378=108 I. C. 370=A. I. R. 1928 Lah. 657.

—When important.

Where the broad features of the story for the prosecution as to the Act alleged to be committed by the accused may be true and manipulation in the personnel of the actors extremely easy to make and extremely difficult to refute the question of motive is of supreme importance. (*Wazir Hasan, J. C., Simpson and Akworth, A. J. Cs.*) SITLA BAKSH SINGH v. EMPEROR. 2 O. W. N. 931=27 Cr. L. J. 529=93 I. C. 1025=A. I. R. 1926 Oudh 120.

—Need not be proved.

It is unnecessary to prove motive when there is a clear evidence that a person has committed an offence. (*Scott-Smith and Martineau, J.J.*) MOHNA v. THE CROWN. 7 L. L. J. 59=26 Cr. L. J. 774=86 I. C. 406=A. I. R. 1925 Lah. 328.

—Evidence—Presumptions.

—Record of rights—Presumption as to possession—Lapse of time—Effect.

The presumption of correctness, which attaches to the finally published Record of Rights, relates only to possession at the time when the record is prepared; and, even, if such presumption can be made in a criminal trial, it is clear that where there has been an interval of 10 or 12 years between the preparation of the record and the occurrence of an offence in respect of dispute arising over possession of land, any presumption arising from the record is obviously of the weakest possible description. Indeed the probative value is practically nil since all sorts of changes may obviously take place in the course of 10 or 12 years. (*Graham and Lort Williams, J.J.*) NAYAN MANDAL v. EMPEROR. 125 I. C. 746=31 Cr. L. J. 918=34 C. W. N. 170=1930 Cr. C. 134=A. I. R. 1930 Cal. 134.

—Theft not proved—Obscure documents in accused's possession—Inference as to conspiracy—Propriety of.

Where no specific instance of theft or of receipt of stolen property is proved and the Court is asked as a result of several obscure documents found in possession of accused to infer that there has been conspiracy to commit theft, it is a dangerous thing to draw such an inference as to any such conspiracy among the accused without questioning them about the documents. 37 Cal. 467; Rel. on. (*Brown J.*) MAUNG BA CHIT v. EMPEROR. 122 I. C. 273=7 Rang. 821=

## CRIMINAL TRIAL—Evidence—Procedure.

31 Cr. L. J. 387=1930 Cr. C. 402=

A. I. R. 1930 Rang. 114.

—Defence not disclosed—Only alibi set up—Presumption as to guilt.

If neither in their examination before the Committing Magistrate, nor in that in the Sessions Court, accused disclose what their exact defence is to be, and they only enter on their defence of *alibi*, a certain presumption arises against them as to their guilt of offence. (*Findlay, J. C.*) RAMADHIN BRAHMIN v. EMPEROR.

112 I. C. 51=29 Cr. L. J. 963=

11 A. I. Cr. R. 302=A. I. R. 1929 Nag. 36.

—One accused for every injury—Theory unsound.

When a man receives three injuries only on the head it is most improbable that he was attacked by more than two persons. The tradition that there could be one accused person for every injury is unsound. (*Pullan, J.*) MOHAN v. EMPEROR.

1 L. C. 197=8 A. I. Cr. R. 314=28 Cr. L. J. 634=103 I. C. 58=A. I. R. 1927 Oudh 555.

—Accused concocting evidence to prove alibi—Presumption of guilt.

The fact that the accused made an effort to connect false evidence of an *alibi* does not go to prove that he committed the offence charged. (*Scott-Smith, J.*) TABRI v. CROWN. 6 L. L. J. 326=26 Cr. L. J. 393=84 I. C. 937=A. I. R. 1925 Lah. 42.

—Evidence—Procedure.

—Counter-case deposition of defence witnesses as prosecution witnesses—Filed by consent—If procedure irregular.

If in a trial Court the depositions given by defence witnesses, when examined as prosecution witnesses in the counter-case, are filed with the consent of both sides, and if these witnesses are called and examined in the presence of the accused and swear to the truth of their previous statements, which are then filed with their consent to save time, there is nothing illegal or irregular in such procedure. A. I. R. 1923 Mad. 32, Expl., A. I. R. 1927 Lah. 781; A. I. R. 1924 Lah. 104 and A. I. R. 1926 Bom. 231, Dist. (*Wallace and Jackson, J.J.*) KRISHNAYYA NAIDU v. EMPEROR.

53 Mad. 775=127 I. C. 289=31 Cr. L. J. 1191=

1930 M. W. N. 410=1930 Cr. C. 577=

A. I. R. 1930 Mad. 505=58 M. L. J. 547.

—Wrong date of hearing given—ex parte proceedings—Right to cross-examine subsequently—Refusal—Legality of.

Proceedings were instituted against a person under Cr. P. Code, S. 145. A copy of an order containing a wrong date of hearing was delivered to him. He attended on the date mentioned in the copy but the correct date was not even then given to him. When he subsequently appeared, after certain proceedings had taken place *ex parte*, he was not permitted to cross-examine the complainant and the witnesses examined the same day.

*Held*, that the trying Magistrate exercised a wrong discretion in not allowing the party to cross-examine the complainant and the witnesses. (*Percival, J. C. and Aston, A. J. C.*) MAJI v. EMPEROR.

120 I. C. 90=1930 Cr. C. 68=30 Cr. L. J. 1124=

A. I. R. 1930 Sind 52.

—Separate charges and trial—One judgment—Evidence in each relied in the other—Procedure irregular.

A and B who were differently charged were tried at two separate trials by one Magistrate. The evidence in the two cases was recorded separately but the Magistrate disposed of both the cases by writing one judgment and while discussing the guilt and innocence of the accused in each case, freely relied on the evidence which was

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led in the cross-case making it impossible to separate as against each accused the legal evidence against him from what had been improperly used as such.

*Held*, that the procedure adopted was irregular and the conviction based on the judgment of this kind was illegal. A. I. R. 1927 P. C. 26, Rel. on. (*Tek Chand, J.*) SHEO KARAN v. EMPEROR.

10 A. I. Cr. R. 497 = 29 Cr. L. J. 734 =  
110 I. C. 590 = A. I. R. 1928 Lah. 923.

—Evidence taken piecemeal—Witness knowing what the previous witness deposed—Procedure irregular.

When the evidence for the prosecution is recorded piecemeal, then there is every opportunity for each succeeding witness to know what the statement of the previous witness was and also on what lines the cross-examination of the witnesses was being conducted on behalf of the accused. Such a procedure is irregular' (*Jai Lal, J.*) SIRAJUD-DIN v. EMPEROR.

29 Cr. L. J. 200 = 106 I. C. 792 = 9 A. I. Cr. R. 423 =  
A. I. R. 1928 Lah. 152.

—Statement of medical witness describing injuries not recorded—Reference to exhibit containing same—Irregular.

Where, in an examination of medical witness, the Magistrate, instead of recording the statement describing the injuries on the person injured, recorded a brief statement to the effect that the witness had examined the injured person and that injuries found on his person and their nature were given in detail in a certain exhibit.

*Held*, that it amounted to giving evidence by reference and was not justified. (*Broadway and Jai Lal, J.J.*) BHAG SINGH v. EMPEROR. 26 P. L. R. 343 =  
28 Cr. L. J. 969 = 105 I. C. 681 =  
A. I. R. 1928 Lah. 69.

—Documents filed by accused—Brushing aside.

No Criminal Court is justified in brushing aside the documents to which the accused are parties. When the accused themselves file those documents in Court along with their statements. (*Devadoss, J.*) MD. SALIA ROWTHER v. EMPEROR.

112 I. C. 465 = 28 M. L. W. 509 =  
1928 M. W. N. 782 = 1 M. Cr. C. 295 =  
29 Cr. L. J. 1041 = 11 A. I. Cr. R. 359 =  
A. I. R. 1928 Mad. 1135 = 55 M. L. J. 624.

—Witness tending to be hostile—If court bound to call.

A Court cannot be bound to call a particular witness on behalf of the Court on the ground that the witness will be hostile and, that therefore, it is desirable to cross-examine him. (*Jwala Prasad, J.*) GALAI JHA v. EMPEROR.

107 I. C. 827 = 9 P. L. T. 344 =  
29 Cr. L. J. 299 = 10 A. I. Cr. R. 23 =  
A. I. R. 1928 Pat. 277.

—Allegations against Crown witness.

Crown witnesses must be given opportunities of denying any allegations against them which form a part of the defence. (*Kincaid, J. C. and Bayley, A. J. C.*) EMPEROR v. SARAN. 99 I. C. 98 = 21 S. L. R. 356 =  
7 A. I. Cr. R. 181 = 28 Cr. L. J. 66 =  
A. I. R. 1927 Sind 104.

—Documents referred as containing evidence of witness filed—Illegal.

Where a witness merely referred to certain documents in which he stated his evidence was to be found and the documents were put on the record as evidence.

*Held*, that the course was illegal. (*Broadway and Fforde, J.J.*) LAL SINGH v. EMPEROR.

91 I. C. 954 = 5 Lah. 396 = 27 Cr. L. J. 170 =  
A. I. R. 1925 Lah. 19.

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—Evidence—Quantum of.

—Many witnesses—Facts sufficiently corroborated—If every one else should be called.

Where there are many witnesses to corroborate certain facts, it is not necessary that the prosecution must summon everybody that has seen the occurrence. (*Dawson Miller and Foster, J.*) PARBHU DUSADH v. EMPEROR. 104 I. C. 708 = 28 Cr. L. J. 868 =  
A. I. R. 1928 Pat. 46.

—Number of defence witnesses—If court can put a limit to.

The Magistrate has no right arbitrarily to limit the number of witnesses to be produced by an accused in his defence, but under S. 257 he can refuse to summon a defence witness on the ground that the application for summoning is made for the purpose of vexation or delay or for defeating the ends of justice. (*Shadi Lal, C. J.*) YUSUF ALI v. EMPEROR. 93 I. C. 1039 =  
27 Cr. L. J. 543 = A. I. R. 1926 Lah. 454.

—Evidence—Reliability.

—Resiling from previous statements.

In a case of murder, the evidences of witnesses who have resiled from their previous statements should not be relied upon. (*Devadoss and Wallace, J.J.*) AYYAMPERUMAL v. EMPEROR. 91 I. C. 50 =  
27 Cr. L. J. 18 = 1925 M. W. N. 319 =  
22 M. L. W. 405 = A. I. R. 1925 Mad. 879.

—Vague hearsay statements.

In India, it is most dangerous to accept vague statements of hearsay information. Often what a man hears he believes that he saw it himself. (*Dalal, A. J. C.*) RAGHU DATTA v. EMPEROR. 74 I. C. 535 =  
24 Cr. L. J. 791 = A. I. R. 1924 Oudh 187.

—Evidence—Statements.

—Statements of witnesses in inquest report.

The Court is justified in refusing to allow the brief statements of witnesses incorporated in the inquest report to be read out to the assessors as there is no provision in the Code for doing so. (*Zafar Ali and Johnstone, J.J.*) BANTA SINGH v. EMPEROR.

122 I. C. 491 = 31 Cr. L. J. 444 = 1930 Cr. C. 561 =  
A. I. R. 1930 Lah. 457

—Dying declaration—Words of the deceased—If should be repeated.

To prove a dying declaration it is not necessary that the witness while giving evidence should repeat in his own words what the deceased had said; it is enough if he proves the record of that statement: A. I. R. 1926 Lah. 310, Foll. (*Tek Chand and Johnstone, J.J.*) KAPUR SINGH v. EMPEROR. 123 I. C. 120 =  
31 Cr. L. J. 475 = 31 P. L. R. 83 = 1930 Cr. C. 554 =  
A. I. R. 1930 Lah. 450.

—Statement of witness recorded in committing court—Substantial evidence in Sessions Court.

Evidence of the statement of a witness, recorded by the Committing Magistrate and transferred to the Sessions Court record under S. 288, Criminal P. C. can be accepted as substantive evidence by the Sessions Court. A. I. R. 1925 Lah. 452, Foll. (*Coldstream, J.*) ALA SINGH v. EMPEROR.

106 I. C. 585 = 9 A. I. Cr. R. 301 =  
29 Cr. L. J. 73 (Lah.).

—Unlawful assembly—Statements of members—Admissible to indicate intention.

Evidence of statement, made by members of an assembly, the promoters of which were charged with offences under S. 325 read with S. 149, I. P. C., of their determination to force their way through the police forms evidence of a part of the *res gestae* and is admissible to indicate that promoters' intention to ignore the police orders that had been communicated to sections of

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the crowd. (*Rutledge and Maing Gyi, J.J.*) MAUNG TOK v. EMPEROR. 90 I. C. 918 = 3 Rang. 352 = 26 Cr. L. J. 1922 = A. I. R. 1925 Rang. 354.

—Statement of police—Retracted before committing and Sessions Courts—Value of.

Where a prosecution witness did not stick before the committing Magistrate and in the Sessions Court to her former statement to the police made during the police investigation and said that she made the statement under Police threat, held, that it was not safe to rely on such retracted statement of this witness. (*Kinkhede, A. J. C.*) GANPAT v. KING EMPEROR.

77 I. C. 292 = 25 Cr. L. J. 356 = A. I. R. 1924 Nag. 281.

**—Evidence—Sufficiency of.**

—Prosecution evidence—Consistent mainly—Discrepant in details—No rebuttal—Evidence sufficient.

Discrepancies were found on matters of detail in the evidence tendered by witnesses for the prosecution, the evidence in the main being consistent. No evidence in rebuttal was tendered and it was contended that the prosecution story was unsupportable.

Held, that it was more natural than otherwise that such discrepancies should occur on account of the suddenness of the quarrel and the extremely short duration of the actual assault and that the evidence supported the prosecution story. (*Staples and Subedar, A. J. Cs.*) KISANDAS v. EMPEROR. 118 I. C. 473 = 1929 Cr. C. 529 = 30 Cr. L. J. 944 = A. I. R. 1929 Nag. 325.

—Corroboration by circumstantial evidence—Insufficient.

Corroboration by circumstantial evidence is not sufficient unless the circumstances constituting corroboration would, if believed to exist, themselves support a conviction. 38 Cal. 559 and 4 Cal. 483, Foll. (*Das and Scroope, J.J.*) DEVANDRA BHATTACHANDRYA v. EMPEROR. 101 I. C. 881 = 28 Cr. L. J. 497 = 8 P. L. T. 566 = 8 A. I. Cr. R. 151 = A. I. R. 1927 Pat. 257.

**—Plea of guilty.**

Independent evidence should be taken by Court notwithstanding accused's plea of guilty. (*Kennedy, J. C. and Raymond, A. J. C.*) EMPEROR v. KASIM WALAD MAHOMED SAFFER. 83 I. C. 881 = 17 S. L. R. 268 = 26 Cr. L. J. 177 = A. I. R. 1925 Sind 188

**—Evidence—Value of.**

—Policeman's testimony.

A policeman's testimony, like that of every other witness, must be judged on its own merits and should be accepted or rejected according to the circumstances disclosed in each particular case. (*Tek Chand, J.*) RAM SARAN DAS v. EMPEROR. 31 P. L. R. 688 = 1930 Cr. C. 988 = A. I. R. 1930 Lah. 892.

—Disinterestedness of witness—No ground for believing as true—Weight of evidence—How appraised.

It is an elementary principle in the administration of criminal justice that want of interest in the prosecution does not by itself stamp the evidence of a witness with truth. The weight to be attached to the testimony of a witness depends in a large measure upon various considerations, e. g., if on the face of it the evidence is so much in consonance with probabilities and consistent with other evidence, and generally so fits in with the material details of the case for the prosecution as to carry conviction of truth to a prudent mind. If these elements are wanting in the testimony of a witness, however independent he may be, his evidence is worthless and should not be relied on in the decision of criminal cases where persuasion of guilt must amount to a moral

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certainty. (*Subhedur, A. J. C.*) BAGESHWAR v. EMPEROR. 122 I. C. 434 = 31 Cr. L. J. 417 = 1930 Cr. C. 816 = A. I. R. 1930 Nag. 108.

—Genuineness of document—Previous evidence in civil suit of accused—Important evidence as to intention of conspiracy.

The accused in a case of forgery and conspiracy had previously given evidence in a civil Court as to the genuineness of the document.

Held, that though the statement could not be admitted as confession, the jury if independently satisfied that the documents are not genuine, the evidence is to be regarded as having high evidentiary value upon the question of intention whether or not they are in conspiracy. (*Rankin, C. J. and Buckland, J.*) AMBAR ALI v. EMPEROR. 123 I. C. 739 = 31 Cr. L. J. 564 = 1929 Cr. C. 194 = A. I. R. 1929 Cal. 539.

—Agent-provocateur.

The evidence of an agent provocateur is looked upon with suspicion and should be seldom relied upon in support of a conviction. (*Agha Haidar, J.*) HAZURA SINGH v. EMPEROR. 118 I. C. 544 = 11 L. L. J. 58 = 30 Cr. L. J. 941 = 30 P. L. R. 603 = 1929 Cr. C. 3 = A. I. R. 1929 Lah. 436.

—Attributed remarks.

No weight is to be attached to merely attributed remarks, the imputation generally being a mere usual device to supplement feeble evidence. (*Agha Haidar, J.*) HAZURA SINGH v. EMPEROR. 118 I. C. 544 = 11 L. L. J. 58 = 30 Cr. L. J. 941 = 30 P. L. R. 603 = 1929 Cr. C. 3 = A. I. R. 1929 Lah. 436.

—Grudge and motive to implicate.

Where there is apparent grudge against a party and there is motive in implicating him the evidence must be examined with caution. (*Courtney Terrel, C. J. and Rowland, J.*) RAMPAL DAS v. EMPEROR. 123 I. C. 75 = 31 Cr. L. J. 468 = 1929 Cr. C. 577 = A. I. R. 1929 Pat. 705.

—Evidence free from improbabilities or material contradictions.

Where the evidence brought against the accused is free from improbabilities or material contradictions and is given by witnesses of a kind who would naturally be called to give evidence, it is not proper to act on surmise to the disregard of clear evidence. (*Mears, C. J. and Mukerjee, J.*) KASHI RAM v. EMPEROR. 26 A. L. J. 139 = 9 A. I. Cr. R. 249 = 9 L. R. A. Cr. 30 = 29 Cr. L. J. 472 = 109 I. C. 120 = A. I. R. 1928 All. 280.

—Zaildars and Safaidposhes—Evidence of—Based on suspicions—Worthless.

Zaildars and Safaidposhes are not Police Officers. A. I. R. 1928 Lah. 49, Foll. But it is to their interest to give evidence on the police side; moreover where their evidence is based on suspicion of accused having committed an offence seven years back the evidence is worthless even under S. 110, Criminal, P. C. (*Addison, J.*) RAHMAN v. EMPEROR. 110 I. C. 674 = 10 A. I. Cr. R. 529 = 29 P. L. R. 539 = 29 Cr. L. J. 738.

—Evidence—Witnesses.

—Child's testimony.

There is no more dangerous witness than a young child. Any mistakes or discrepancies in their statements are ascribed to innocence or failure to understand and undue weight is often given to what is merely a well taught lesson. Children have good memories and no conscience. They are easily taught stories, and give in a world of make believe so that they often become

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convinced that they have really seen the imaginary incident which they have been taught to relate. (*Raza and Pullan, JJ.*) **MANNI v. EMPEROR** 127 I. C. 878 = 7 O. W. N. 736 = 1930 Cr. C. 946 = A. I. R. 1930 Oudh 406.

—*Contradictory statement of a witness if and when to be explained.*

There is no provision of law which requires that a witness should be given an opportunity to explain discrepancies in his evidence. But it is open to a witness if he wishes to do so to explain at the time when the deposition is read out to him. (*Sukrawardy and Graham, JJ.*) **KAMINI KUMAR v. EMPEROR**.

122 I. C. 209 = 31 Cr. L. J. 373 = 33 C. W. N. 664 = 1929 Cr. C. 26 = A. I. R. 1929 Cal. 390.

—*Important witness—Evidence must be procured.*

A Court should make every attempt to secure the evidence of persons whose evidence is extremely important for the case, either by procuring their attendance or by having their evidence taken on commission. (*Fforde, J.*) **HIRA SINGH v. EMPEROR** 99 I. C. 599 = 27 P. L. R. 501 = 28 Cr. L. J. 167.

—*Deaf witness—Refusal to examine—Effect.*

A Magistrate has no jurisdiction to refuse to examine a witness who is deaf but who is able to speak and write and such refusal, if materially prejudicial, vitiates the trial. (*Ghose and Cuming, JJ.*) **CANODA DASIA v. SRIMANTA GHOSH** 78 I. C. 784 = 24 Cr. L. J. 688 = A. I. R. 1924 Cal. 541.

**Evidence—Miscellaneous.**

—*Power of Courts.*

It is open to a Magistrate to rely on the evidence of any particular person, be he interested or disinterested. (*Cuming, J.*) **HARIPADO BAIPIA v. EMPEROR** 127 I. C. 553 = 34 C. W. N. 580 = 1930 Cr. C. 1206 = A. I. R. 1930 Cal. 645.

—*Refusal to be examined—Defamation—Illicit pregnancy attributed—Refusal to submit to medical examination—If evidence against the woman.*

It is well settled that in a defamation case based on an allegation that a woman has had illicit pregnancy she cannot be compelled to submit to a medical examination against her consent and her refusal to do so is not evidence against her. *Agnew v. Johnson*, 13 Cox. Cr. C. 625; and *Latter v. Braddels*, 50 L. J. Q. B. 448, Rel. on. (*Tek Chand, J.*) **NATHUMAL v. ABDUL HAQ** 123 I. C. 841 = 31 Cr. L. J. 584 = 12 L. L. J. 5 = 1930 Cr. C. 167 = A. I. R. 1930 Lah. 159.

—*Court's duty—Prosecution evidence vague—Supplementing by court by selections from accused's statement—Unwarranted.*

Per *Mukerji, J.*—If there be no sufficient evidence for the conviction or if from the vagueness of the prosecution evidence the Court is not prepared to act on it, it should not be open to the Court to supplement the prosecution evidence by selecting out of the statement of the accused person, passages which might corroborate his prosecution evidence and to reject those passages which go to exonerate the accused person. (*Mukerji and King, JJ.*) **BHOLA NATH v. EMPEROR** 113 I. C. 213 = 51 All. 313 = 26 A. L. J. 1334 = 10 L. R. A. Cr. 1 = 11 A. I. Cr. R. 49 = 30 Cr. L. J. 101 = A. I. R. 1929 All. 1.

—*Evidence of witness for one accused—Using against co-accused.*

The evidence of a 'defence witness' produced by one accused cannot be treated as 'prosecution evidence' against another accused.

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against other accused. (*Mukerji, J.*) **BAHORU v. EMPEROR** 87 I. C. 842 = 26 Cr. L. J. 1018 = A. I. R. 1925 All. 769.

—*Post-mortem Examination.*

In this country it is very rare indeed to find a dead body free from traces of putrefaction for more than 24 hours after death. (*Shadilal, C. J. and Le Rossignol, J.*) **KHERI v. THE CROWN** 3 L. L. J. 147 = 28 Cr. L. J. 185 = 99 I. C. 857.

—*Expunging the remarks.*

—*High Court will not expunge except in appeal preferred against decision.*

Remarks upon the evidence tendered before the court of trial are the proper subject of comment by that Court and such comments will not be varied or expunged by the High Court except by an appeal preferred against the decision based on the evidence. Thus the High Court will not revise the judgment of the lower Court to the extent of expunging the objectionable matter. 44 A. 401, Relied on. (*Krishnan Pandolai, J.*) **ANGA-MUTHU PILLAI v. EMPEROR** 1930 M. W. N. 791.

—*Unfounded remarks on a person not party or witness in the case no opportunity given to be heard—Must be expunged.*

A person, who was not a witness in the case and against whom no witness had deposed anything was condemned by the Magistrate in his judgment without giving him an opportunity of being heard, and the remarks were absolutely unfounded so far as the record went.

Held, that the remarks ought to be expunged from the record. A. I. R. 1925 Lah. 392, Rel. on. (*Addison, J.*) **MAHARAM v. EMPEROR** 112 I. C. 686 = 29 Cr. L. J. 1102 = A. I. R. 1929 Lah. 201.

—*First information.*

—*Chowkidar's report—Subsequent statement to police by inmate of the house—First information which is—Value of the statement.*

Where the chowkidar had made a report and a person who resided in the house where the offence was committed subsequently gave a statement to the police. Held that the chowkidar's report and not the statement of the witness constituted the first information report. The witnesses' statement could not be used by the Crown for any purpose and could only be used by the defence as a basis for cross-examination. (*Boys and Young, JJ.*) **ABDUL JALIL KHAN v. EMPEROR** 1930 A. L. J. 1105. 1930 Cr. C. 1002 = A. I. R. 1930 All. 746.

—*Not substantive evidence—Useful only to corroborate or contradict the evidence of the maker.*

It is settled law that a first information report is not substantive evidence. It can be used only to corroborate or contradict the deposition of the maker thereof at the trial. It is, however, admissible under S. 32 (1) Evidence Act, as the statement of a person (since deceased) relating to the circumstances of the transaction which resulted in his death. (*Tek Chand and Johnstone, JJ.*) **KAPURSINGH v. EMPEROR** 123 I. C. 120 = 31 Cr. L. J. 475 = 31 P. L. R. 83 = 1930 Cr. C. 554 = A. I. R. 1930 Lah. 450.

—*By itself not convincing.*

By itself a first information report can hardly be regarded as evidence of a convincing nature. (*Pullan, J.*) **WALI MOHAMMAD v. EMPEROR** 126 I. C. 511 = 31 Cr. L. J. 1025 = 1930 Cr. C. 569 = 7 O. W. N. 466 = A. I. R. 1930 Oudh 249.

—*Only corroborative impact.*



**CRIMINAL TRIAL—First information.**

A first information report cannot be used as primary evidence of any fact in dispute but may be treated as corroborative evidence of facts which have to be established in the case. (*Sen, J.*) *IMRAT v. EMPEROR.*

120 I. C. 199 = 11 L. R. A. Cr. 6 = 31 Cr. L. J. 7 =  
13 A. I. Cr. R. 56 = 1929 Cr. C. 644 =  
A. I. R. 1929 All. 916.

—Use of the first information report as if it were substantive evidence is illegal. (*Tek Chand, J.*) *SHEO KARAN v. EMPEROR.*

10 A. I. Cr. R. 497 =  
29 Cr. L. J. 734 = 110 I. C. 590 =  
A. I. R. 1928 Lah. 923.

—Absence of accused's name—No proof of his innocence.

First information Report is never *per se* the statement of a case for prosecution and absence of any accused's name and the first information report is not by itself a sufficient proof of his innocence. (*Johnstone, J.*) *RAM KISHEN v. EMPEROR.*

29 Cr. L. J. 835 =  
111 I. C. 387 = 11 A. I. Cr. R. 185 =  
A. I. R. 1928 Lah. 880.

—Accused's name not mentioned, though known to the maker—Effect.

The fact that though the informant in his first report tried his very best to describe the alleged accused, yet he did not mention a particular accused although in his evidence before the Court he says that he knew him before, makes the case against that accused at least doubtful. (*Agha Haidar, J.*) *BACHAN v. EMPEROR.*

28 Cr. L. J. 17 = 99 I. C. 49 =  
A. I. R. 1927 Lah. 149.

—Name of accused not mentioned—Informant not an eye witness—Does not favour accused.

The fact that the name of a particular accused was not mentioned in the first information report is not a circumstance in favour of the accused where the informant was not an eye-witness of the occurrence. (*Martineau and Campbell, J.*) *BAHADURAI v. EMPEROR.*

28 Cr. L. J. 45 = 99 I. C. 77 = 7 A. I. Cr. R. 220 =  
A. I. R. 1927 Lah. 63

—Statement that mob was passing by—Not first information of any offence committed later.

A statement by a person; stating that he saw a mob of men armed with lathis, garasas and swords going towards a certain place, made before any offence was committed and not giving any information of any offence having been committed is not a first information of any offence that subsequently committed by the mob. (*Adami, J.*) *ARJUN KURMI v. EMPEROR.*

99 I. C. 109 = 8 P. L. T. 166 = 28 Cr. L. J. 77 =  
A. I. R. 1927 Pat. 100.

—High Court.

—Magistrate's treatment of evidence—Lack of discrimination—High Court expressing want of confidence.

High Court did not accept finding that although that part of the evidence on which all the witnesses agree is false, other parts could be accepted as true where the manner in which the Magistrate treated the evidence did not impress High Court with confidence in his discrimination. (*Jwala Prasad and Jamis, J.J.*) *RAGHO PRASAD v. EMPEROR.*

118 I. C. 335 =

30 Cr. L. J. 896 = A. I. R. 1929 Pat. 180.

—Complaint by Munsiff—Not properly worded—Not objected to at commitment—If can be raised in High Court.

A complaint was made by a Munsiff under S. 476, Cr. P. Code, and on appeal from his order the District Judge holding that the order was otherwise good remanded the case directing the complaint to be properly worded. No objection was taken to this order by way of revision nor was any objection raised before the

**CRIMINAL TRIAL—Identification—Delay.**

Committing Magistrate on the ground that the complaint was not properly made.

Held, that as the order of the District Judge was not objected to by way of civil revision it became final and as the objection to the complaint was not raised at the time of commitment, it could not be raised now in the High Court. A. I. R. 1927 Cal. 284; 22 Cal. 176, Dist.; A. I. R. 1929 Cal. 195, Expl (*Subrawardiy and Graham, J.J.*) *MANENDRA NATH v. EMPEROR.*

124 I. C. 827 = 31 Cr. L. J. 750 = 49 C. L. J. 374 =  
1929 Cr. C. 54 = A. I. R. 1929 Cal. 428.

—Case resting on circumstantial evidence—High Court may go into facts.

As a rule it is not usual for the High Court to go into the facts of a case or to go behind the findings of fact arrived at by the Courts below, but in a case which depends wholly on circumstantial evidence the question whether the circumstances taken as a whole amount to conclusive proof of the guilt of the accused or not has often to be considered even by a Court of revision. (*Fazl Ali, J.*) *BASUDEO MANDAR v. EMPEROR.*

30 Cr. L. J. 835 = 117 I. C. 879 =  
A. I. R. 1929 Pat. 112.

—Jury trial—Power to interfere in jury trials.

The High Court is not entitled to interfere with the verdict of the jury in jury trials unless there has been a miscarriage of justice. (*Rankin, C. J. and C. C. Ghose, J.*) *AZIMUDDY v. EMPEROR.*

31 C. W. N. 410 = 101 I. C. 661 = 28 Cr. L. J. 485 =  
8 A. I. Cr. R. 134 = A. I. R. 1927 Cal. 398.

—Relief obtainable from Subordinate Court—High Court will not interfere.

The High Court will not ordinarily entertain an application for a relief which could equally be granted by a Subordinate Court until recourse has first been had to the Court. (*Daniels, J.*) *RAVI CHANDER v. SUNDER SINGH.*

87 I. C. 112 = 6 L. R. A. Cr. 87 =  
26 Cr. L. J. 960 = A. I. R. 1925 All. 640.

—Identification—As basis for Conviction.

—Identification by principal witness—Other eye-witnesses support—These knowing the name of the accused did not give it to Inspector—Identification insufficient.

Identification of the accused by the principal witness supported by the identification by other eye-witnesses, who knowing the identity and the name of the accused did not mention it to the Inspector and with regard to whom there is no evidence to suggest that they did not know the name of the accused, nor an attempt made to explain why they did not mention the name to the Inspector, is insufficient identification to base conviction upon unless the other evidence of the principal witness was such as corroboration or no corroboration, his evidence was of a kind to be implicitly accepted (*Courtney Terrell, C. J. and Dhaule, J.*) *GOPBIND GOPE v. EMPEROR.*

122 I. C. 541 = 31 Cr. L. J. 421 =

1929 Cr. C. 277 = A. I. R. 1929 Pat. 51.

—Identification tests not sufficient basis of conviction.

Identification tests are a from of evidence which is always to be taken with a considerable amount of caution and they are, as a rule, not quite sufficient to form the basis of a conviction, though they may perhaps add some weight to other evidence against an accused person. (*Percival, J. C. and Aston, A. J. C.*) *RAMZAN v. EMPEROR.*

1929 Cr. C. 317 = 115 I. C. 328 =

30 Cr. L. J. 456 = A. I. R. 1929 Sind 149.

—Identification—Delay.

—Delay is seriously prejudicial to the course of justice where identification is a material issue. (*Mullik, A. J. C. and Kora, J.*) *DEBANU RANT v. EMPEROR.*

**CRIMINAL TRIAL—Identification—Delay.**

104 I. C. 705 = 9 P. L. T. 217 = 28 Cr. L. J. 865 =  
9 A. I. Cr. R. 29 = A. I. R. 1928 Pat. 59.

**—Identification—Evidence of.**

*Witness identifying accused in parade but denying it at trial—Statement that he identified—Admissible.*

Where a witness picked out the accused at the identification parade held by the Magistrate, as two of the assailants, but stated in trial that they were shown to him before and that he did not see them amongst the persons who took part in the attack ;

*Held*, that though the value to be attached to his previous identification is of course very little, if any, the fact that he had said that he did identify them is, however, admissible. A. I. R. 1927 Oudh 369, Foll. (*Addison and Coldstream, J.J.*) NATHA v. EMPEROR.

108 I. C. 265 = 9 A. I. Cr. R. 571 =  
29 Cr. L. J. 366 = 9 L. W. N. 12 =  
A. I. R. 1928 Lah. 546.

*Identifier not recognizing accused while in Court—Evidence of identification weakened but admissible*

If it is proved that the victim of a certain dacoity was present at jail identification proceedings and there stated in the presence of a third party that he identified a certain person as having taken part in the dacoity, it is permissible to produce evidence in a subsequent case that he made such an identification even if he has failed to identify that person in Court. A. I. R. 1921 All. 215, Diss. from ; A. I. R. 1925 All. 223, Appr.

The question as to what weight is to be given to this evidence will be decided on the merits of each case. When a man has made an identification in jail proceedings and has been unable to repeat that identification in Court, his evidence of identification will be weakened but the evidence is admissible. (*Stuart, C.J. and Raza, J.*) RAM PRASAD v. EMPEROR. 106 I. C. 721 =  
2 Luck. 631 = 1 L. C. 339 = 8 A. I. Cr. R. 449 =  
29 Cr. L. J. 129 = A. I. R. 1927 Oudh 369.

*Witness not seen accused for long period—Failure to identify—No ground for discrediting his evidence.*

There is nothing surprising in a man's appearance altering in six years during his absence in another part of India and any person might be quite confident that a casual acquaintance had done a certain act on a particular day, but might still fail to pick that casual acquaintance (never having seen him in the interval) out of a crowd of other people six years later when asked to point him out, and therefore it is not of any great importance that such a man who has not seen the other for six years will fail to recognize him in a crowd of other persons. (*Campbell and Addison, J.J.*) LABHO SINGH v. EMPEROR.

95 I. C. 593 = 8 L. L. J. 194 =  
27 Cr. L. J. 817 = 27 P. L. R. 743 =  
A. I. R. 1926 Lah. 392

*Identifying witnesses not repeating in Court they did so—Statement of officers to that effect—Admissible.*

Where the witnesses themselves do not in all cases repeat in Court that they picked out certain men at an identification parade the statements of officers who conducted the parade are admissible to show that the witnesses had so picked out the men, and it is unnecessary for the witnesses to have told the officer who conducted the parade what part each man took in the riot. It is sufficient if it is shown that the witnesses knew what they were doing and understood that they were identifying the men who took part in the riot. A. I. R. 1922 Cal. 382, Foll. ; A. I. R. 1925 Lah. 19, Dist. (*Harrison and Jialal, J.J.*) PARTAP SINGH v. EMPEROR.

**CRIMINAL TRIAL—Identification—How to be carried.**

7 Lah. 91 = 27 Cr. L. J. 215 = 28 P. L. R. 222 =  
92 I. C. 167 = A. I. R. 1926 Lah. 310.

*Witnesses giving no description previous to identification—Evidence is unreliable.*

Where identification evidence is given, the evidence cannot be relied upon if the witness who identified the accused had not previously given some description of the persons which coincided with the actual facts. (*Zafar Ali, J.*) MAMLA DAD v. EMPEROR.

86 I. C. 69 = 26 Cr. L. J. 693 = 26 P. L. R. 40 =  
A. I. R. 1925 Lah. 426.

*Witness must have marked out accused in identification parade.*

Unless a witness identified the same person whom he had previously marked out in the identification parade in the jail, his evidence of identification given in Court should not be accepted. (*Scott-Smith, J.*) MAHNI v. EMPEROR. 25 Cr. L. J. 1272 = 82 I. C. 230 =  
A. I. R. 1925 Lah. 137.

*Identification parade—Evidence furnished by value of.*

The statement made by such a witness at an identification parade might be used to corroborate his evidence given in Court ; but otherwise, the evidence of identification furnished by an identification parade can only be hearsay except as to the simple fact that a witness was in a position to show that he knew a certain accused person by sight. (*Broadway and Fforde, J.J.*) LAL SINGH v. EMPEROR. 5 Lah. 396 =  
27 Cr. L. J. 170 = 90 I. C. 954 =  
A. I. R. 1925 Lah. 19.

*Identification in jail—Only corroborative value.*

Identification in jail is no substantive evidence. It may only be used as corroborative of identification made at the trial in the presence of the Judge. (*Wasir Hasan, A. J. C.*) SARJU SINGH v. EMPEROR.

88 I. C. 852 = 26 Cr. L. J. 1236 =  
A. I. R. 1925 Oudh 726.

*Note of identification—Must contain full particulars and must be proved by the magistrate.*

Where a note of test-identification is not proved by the Magistrate who held the identification and full particulars of the identification are not given by him the note is no evidence of the identification. (*Kulwant Sahay, J.*) BHAGAWAT JHA v. EMPEROR.

81 I. C. 45 = 6 P. L. T. 310 = 25 Cr. L. J. 557 =  
A. I. R. 1925 Pat. 158.

*Identification evidence—Unsafe basis for conviction.*

Identification evidence by itself is a very unsafe basis for conviction. A mistake due to confusion of ideas is quite possible and persons present at the time of the occurrence may mix up two situations in their mind and come to think that a face familiar elsewhere was seen by them during the occurrence. Such a mistake may be quite honest but has to be guarded against all the same. (*Daniels, J.C.*) DIN DAYAL v. EMPEROR.

10 O. L. J. 347 = 25 Cr. L. J. 1125 =  
81 I. C. 949 = A. I. R. 1924 Oudh 295.

*Identification—How to be carried.*

*Evidence subject to close and careful scrutiny—Facts to be taken into account in.*

The evidence as to identification ought in each case to be subjected to a close and careful scrutiny. It is an important factor whether all the persons identified were previously known to the witnesses or were perfectly strangers to them. The time of occurrence, the state of light and the opportunities which the witnesses had of identifying are material circumstances. The range and

**CRIMINAL TRIAL—Identification—How to be carried.**

the distance from which the witnesses say that they saw the accused should be determined. (*Sen, J.*) **MAN SINGH v. EMPEROR.**

121 I. C. 103 =  
11 L. R. A. Cr. 1 = 13 A. I. Cr. R. 52 =  
1929 Cr. C. 656 = 31 Cr. L. J. 206 =  
A. I. R. 1929 All. 928.

—*A case of very careful and honestly conducted identification in jail, illustrated.*

The practice adopted in the jail identification was that when a person had been arrested charged with complicity in the conspiracy, he was removed from the place of his arrest to a jail where he was in the custody of jail officials and not of police officials. After a certain period he was placed in a line which consisted partly of suspects, but mainly of persons who were not suspected of complicity in a crime. All these persons were dressed in a manner which would prevent witnesses from recognizing a suspect by peculiarities of costume. Witnesses to the offences were then called in one by one. The Magistrate deputed for the purpose was present at all identification proceedings. No two witnesses were allowed to communicate with one another. As each man completed his observation of the persons in the line he was put in a place where he could not communicate with anyone else. As far as possible persons were selected of the same class and position in life as the suspects. The suspects were permitted to change their places in the line from time to time. They were permitted to alter their personal appearances by changing their clothes or by shaving, or having their hair cut or in other manners. The Magistrate prepared a note embodying the results. These notes were proved in the case.

*Held*, that the identification proceedings were conducted most carefully and absolutely honestly and that every precaution was taken to prevent dishonest or careless identification. (*Stuart, C. J. and Raza, J.*) **RAM PRASAD v. EMPEROR.**

2 Luck. 631 =  
1 L. C. 339 = 106 I. C. 721 = 8 A. I. Cr. R. 449 =  
9 Cr. L. J. 129 = A. I. R. 1927 Oudh 369.

—*Identification must be immediately after arrest.*  
In no dacoity case, a court would convict a person who was not identified in the jail or before a proper authority, immediately after the arrest, simply on the strength of identification conducted in the Court of the Committing Magistrate or the Sessions Judge. Where the safeguard of an earlier identification is non-existent the court is bound to insist on something being said by a prosecution witness to indicate why and how he happens to remember the faces long after the event. (*Mukerji, J.*) **EMPEROR v. KISHEN LAL.**

85 I. C. 245 = 22 A. L. J. 501 =  
5 L. R. A. Cr. 177 = 26 Cr. L. J. 501 =  
A. I. R. 1924 All. 645.

—*Identification parades—Witness must stand the test of shuffling in the arrangement.*

Identification parades do require the most careful scrutiny, because if a witness has, before the parade, seen the person that he is going to identify, it does not matter in what order you put this person for such a witness will no doubt identify that man. (*Schwabe, C. J. and Wallace, J.*) **NAUNI KUDUMBAN v. EMPEROR.**

76 I. C. 289 = 18 M. L. W. 482 =  
1923 M. W. N. 695 = 25 Cr. L. J. 145 =  
A. I. R. 1924 Mad. 232 = 45 M. L. J. 406.

—*Identification—Principles of.*

—*Identification varies according to power of observation—Evidence of identification—Admissibility—Failure to identify subsequently—Effect.*

The power to identify varies according to the power of observation and observation may be based upon small

**CRIMINAL TRIAL—Identification—Reliability.**

minutiae which a witness cannot describe himself or explain. It is impossible to lay down any useful principles as to the exact amount of identification which is required in any particular case. The Court will consider the value of the evidence of identification against each accused, and satisfy itself as to whether the man is or is not guilty. A. I. R. 1928 Oudh 430, Ref. The evidence which goes to prove that a person has identified another person as having taken part in a particular offence either in jail identification proceedings or elsewhere is admissible though the value of such evidence is weakened perceptibly as a general rule by failure to identify subsequently in Court. A. I. R. 1927 Oudh 598, Ref. (*Raza and Nanavutti, J.J.*) **BACHCHU v. EMPEROR.**

7 O. W. N. 862 = 1930 Cr. C. 1079 =  
A. I. R. 1930 Oudh 455.

—*Power to identify varies according to the power of observation of the witness.*

It is impossible to lay down any useful principles as to the exact amount of identification which is required in any particular case. The Court will consider the value of the evidence of identification against each accused, and satisfy itself as to whether the man is or is not guilty. The power to identify varies according to the power of observation and the observation may be based upon small minutiae which a witness cannot describe himself or explain. It has no necessary connexion with education or mental attainments. An illiterate villager may be and frequently is much more observant than an educated man. (*Stuart and Raza, J.J.*) **KHILAWAN v. EMPEROR.**

5 O. W. N. 760 =  
29 Cr. L. J. 1009 = 112 I. C. 337 =  
11 A. I. Cr. R. 273 = A. I. R. 1928 Oudh 430.

—*Identification evidence—Mere picking out not enough—Evidence as to how the witness came to pick out a particular person and the details of the part that the accused took in the crime are necessary.*

The mere fact that witness is able to pick out an accused person from amongst a crowd does not prove that he has identified that accused person as having taken part in the crime which is being investigated. It might merely mean that the witness happens to know that accused person. The principal evidence of identification is the evidence of a witness given in Court as to how and under what circumstance he came to pick out a particular accused person and the details of the part which that accused took in the crime in question. (*Broadway and Fforde, J.J.*) **LAL SINGH v. EMPEROR.**

5 Lah. 396 = 27 Cr. L. J. 170 = 90 I. C. 954 =  
A. I. R. 1925 Lah. 19.

—*Identification—Record.*

—*Parade conducted by magistrate—Must be deposed as oral evidence.*

It is not correct procedure to have the Magistrate who conducted the identification of parade simply depose to a memo. which he prepared at the time. The summary of the result of the identification should be given ordinarily as part of the oral evidence in the case. (*Dalip Singh, J.*) **AHMAN v. EMPEROR.**

27 Cr. L. J. 555 =  
93 I. C. 1051 = A. I. R. 1926 Lah. 378.

—*Identification—Reliability.*

—*Identified in jail, but not in trial—Value of.*

Although an identification by a witness in jail who fails to point him out in the trial Court is not necessarily worthless, it is not evidence on which very great reliance can be placed. (*Boys and Young, J.J.*) **ABDUL JALIL KHAN v. EMPEROR.**

1930 A. L. J. 1105 =  
1930 Cr. C. 1002 = A. I. R. 1930 All. 746.

—*Identification marks told to the witness before identifying—Useless.*

Where an accused has been admitted to have been

**CRIMINAL TRIAL—Identification—Reliability.**

identified by a witness after being told the identification marks of the accused by the police before he was required to identify him in jail, such an identification cannot be considered in proving the guilt of the accused. (*Shadi Lal, C. J. and Coldstream, J.*) SULLAH v. EMPEROR. 29 P. L. R. 388 = 10 L. L. J. 311 = 10 A. I. Cr. R. 508 = 29 Cr. L. J. 697 = 110 I. C. 329 = A. I. R. 1928 Lah. 724.

—*Identification at night in dacoity and like occurrences.*

Identifications made at night during the occurrence, such as dacoity, when blows are struck and the people are terrorised, are generally of very little value. (*Suhrawardy and Cammiade, J.J.*) EMPEROR v. IRJAN. 46 C. L. J. 241 = 9 A. I. Cr. R. 20 = 28 Cr. L. J. 874 = 104 I. C. 714 = A. I. R. 1927 Cal. 820.

—*Number of accused—Conflicting in first information and the complaint—Identification untrustworthy.*

Where the complainant made conflicting statements with regard to the number of accused in the first information report and his complaint.

*Held*, that his evidence with regard to the identification of the accused persons could not be believed specially when the first information report was lodged with much delay and the delay was not explained. (*Abdul Raoof, J.*) HASHMAT HUSSAIN v. EMPEROR. 92 I. C. 209 = 7 L. L. J. 96 = 27 Cr. L. J. 225.

—*Dark night.*

Identification of accused not previously known on a dark night has no value. (*Addison, J.*) MANGAL SINGH v. EMPEROR. 93 I. C. 892 = 27 Cr. L. J. 492 (Lah.).

—*Irregular procedure.*

—*Security proceedings against two persons—No joint trial—Evidence against both—Using it against one—Procedure irregular.*

L and B were given notice under S. 112, Cr. P. Code, to show cause as to why they were not to be bound down with bonds and securities. There was no joint trial nor was there any intention of having a joint trial. The Magistrate recorded the evidence against both in one case and then proceeded to consider it as evidence in the case against B.

*Held*, that the procedure in recording the evidence was illegal. B's case was never tried at all and the orders passed against him under S. 118, Cr. P. Code, and S. 7, Habitual Offenders Act could be set aside. (*Dalip Singh, J.*) LILU v. EMPEROR. 127 I. C. 861 = 1930 Cr. C. 393 = A. I. R. 1930 Lah. 345.

—*Conviction set aside—Re-trial must be ordered—Re-trial when unnecessary.*

Where a conviction is set aside on the ground of material irregularity of procedure, a retrial should ordinarily be ordered. But where the complainant's story is so grotesque that it is on the face of it improbable, and the accused has already served out more than half the sentence, retrial should not be ordered if the trial is vitiated by material irregularity prejudicing his case. 3 Pat. L. W. 224, Rel. on. (*Subhedar, A. J.C.*) GIRPHARI v. EMPEROR. 124 I. C. 619 = 31 Cr. L. J. 705 = 1930 Cr. C. 831 = A. I. R. 1930 Nag. 255.

—*Wrong section mentioned in summons—Accused apprised of correct Section before trial—No material irregularity.*

Where in the summons by mistake a wrong section is mentioned as the provision of law under which the accused was prosecuted, but where the Magistrate told the accused when he appeared in answer to the summons, the correct section under which he was being prosecuted, the accused is aware of the case he has to meet and there is no such material irregularity as to

**CRIMINAL TRIAL—Irregular procedure.**

justify the quashing of conviction. (*Shadi Lal, C. J.*) MUHAMMAD SADIQ v. DELHI ELECTRIC SUPPLY AND TRACTION CO. 116 I. C. 889 =

30 Cr. L. J. 702 = 13 A. I. Cr. R. 115 = 1929 Cr. C. 601 = A. I. R. 1929 Lah. 867.

—*Offence non cognizable—Complaint instead of charge-sheet filed—Irregularity not material.*

The police after making investigation of a non-cognizable offence filed a complaint to the Magistrate instead of submitting the charge-sheet.

*Held*, that although the course followed by the police was irregular, there was no material irregularity. 17 Bom. L. R. 69, Dist. (*Curguenen, J.*) PONNUSWAMI UDAYAR v. EMPEROR. 115 I. C. 481 = 28 M. L. W. 769 = 2 M. Cr. C. 39 = 30 Cr. L. J. 469 = 12 A. I. Cr. R. 299 = A. I. R. 1929 Mad. 115.

—*Breach of express provision of law—Illegality.*

Disobedience to an express provision of law as to the mode of trial is not a mere irregularity but an illegality. 25 Mad. 61, Foll. (*Dalal, J.*) SEWAK v. EMPEROR. 113 I. C. 7 = 26 A. L. J. 623 = 9 A. I. Cr. R. 531 = 9 L. R. A. Cr. 80 = 30 Cr. L. J. 214 = A. I. R. 1928 All. 417.

—*Change for two offences—Witnesses same—Evidence let in one case—Copies of the evidence recorded in the other—Procedure illegal.*

A person was charged with two offences namely, under S. 307, I. P. Code, and under S. 20, Indian Arms Act. The witnesses in the two cases were more or less the same. The trying Magistrate recorded the evidence of the witnesses in the case under S. 307 and copies of the evidence of these witnesses were placed on the record of the case under S. 20, Arms Act, except the case of one witness who did not appear in the case under S. 307.

*Held*, that the procedure was illegal and the trial was vitiated. The general rule in the case of criminal trials is that there should be a separate trial with respect to each distinct offence. The object evidently is that the attention of the trial Court should be directed to the evidence relating to the charge under inquiry and irrelevant matter should be excluded. This object is not achieved but defeated by placing on the record mere copies of the statements of witnesses recorded during the course of a trial relating to another charge. A. I. R. 1924 Lah. 104, Rel. on. (*Bhide, J.*) MOHAMMAD KHAN v. EMPEROR. 109 I. C. 345 = 9 L. L. J. 329 = 29 Cr. L. J. 521 = A. I. R. 1928 Lah. 34.

—*Local inquiry by magistrate—Not to understand evidence but to obtain information—Procedure irregular and ultra vires.*

From the judgment of a Magistrate it appeared that he used the local enquiry made in the case not for the purpose of understanding the evidence only but for the purpose of obtaining information which did not appear from the evidence of the witnesses. There were other matters in the judgment which clearly showed that in a sense the Magistrate made himself a witness in the case. *Held*, that the procedure was quite irregular and in adopting it the Magistrate went beyond the powers granted to him by the Cr. P. Code. (*Macpherson and Wort, J.J.*) EMPEROR v. FAKIRA MAHANTI. 110 I. C. 112 = 10 A. I. Cr. R. 455 = 29 Cr. L. J. 656 = 10 P. L. T. 279 = A. I. R. 1928 Pat. 567.

—*Serious defect in trial—Consent does not cure.*

No serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused. (*Lord Phillimore, V. M.*) ABDUL RAHMAN v. KING EMPEROR. 100 I. C. 227 = 5 Bang. 33 = 54 I. A. 96 = 25 A. L. J. 117 = 31 C. W. N. 271 = 1927 M. W. N. 103 =

## CRIMINAL TRIAL—Irregular procedure.

38 M. L. T. 64=4 O. W. N. 283=  
8 P. L. T. 155=28 Cr. L. J. 259=6 Bur. L. J. 65=  
29 Bom. L. R. 813=45 C. L. J. 441=  
7 A. I. Cr. R. 362=A. I. R. 1927 P. C. 44=  
52 M. L. J. 585 (P. C.).

—Oath of complainant—Accepted by accused's father—Decision illegal.

Decision of a criminal case on the statement on special oath by complainant and accepted by accused's father, who was no party to the case, was held illegal. (*Banerji, J.*) TIRLOKI NATH v. EMPEROR. 100 I. C. 381=

7 A. I. Cr. R. 194=8 L. R. A. Cr. 22=  
28 Cr. L. J. 301=A. I. R. 1927 All. 742.

—Murder—Principal offenders allowed to remain untried—Trial against accused playing minor part proceeded with—Procedure should be condemned.

The improper procedure of the Sessions Court of allowing the principal accused to remain untried while a charge of murder is proceeded with against those who are supposed to have played a minor part in the crime should be condemned. There is no reason why all the accused should not be tried together at one trial. Even if some of them are principal offenders and the others accomplices, S. 239, Cl. (b), Cr. P. Code, permits them all to be tried together in one trial. (*Spencer, O. C. J.*) SAGIAMUTHU PADAYACHI, *In re*.

93 I. C. 42=50 Mad. 274=27 Cr. L. J. 394=  
A. I. R. 1926 Mad. 638.

—Sanction—Trial held without sanction—Not to be validated by adding a charge requiring no sanction.

Where a Court holds a trial of an offence requiring sanction of the Local Government, the trial is without jurisdiction and the proceedings cannot be validated by subsequently adding charges which require no sanction. (*Robinson, C. J. and Godfrey, J.*) ABDUL RAHMAN v. EMPEROR.

89 I. C. 305=26 Cr. L. J. 1329=  
3 Rang. 95=A. I. R. 1925 Rang. 296.

—Separate trials—Common witness not examined in each case but their evidence read over—No prejudice caused—Trial is not invalidated.

Several cases were tried separately but the evidence of such witnesses as were common to all the cases was not recorded separately in all the cases. It was only read out to them and admitted by them to be correct. This procedure was followed with the consent of the counsel for the accused. It was, however, clear that no prejudice was caused for the accused. *Held*, that the procedure adopted was irregular, but it did not affect the validity of the trial as no prejudice was caused. 10 Cal. 405; 8 P. R. 1915 Cr., Ref.; 9 P. R. 1912 Cr., Dist. (*Scott-Smith, J.*) NARAIN SINGH v. EMPEROR.

72 I. C. 527=24 Cr. L. J. 415=  
A. I. R. 1924 Lah. 228.

—Joint trial.

—Abettor discharged as unidentified—Further in inquiry against him directed in revision—Trial of others had proceeded apace—Abettor could be tried separately.

A complaint was filed against five persons under S. 325, Penal Code, the 1st being included as an abettor. Accused 1 was discharged on the ground of not being identified and charge was framed against the other four accused. On revision further inquiry was directed which was to give further opportunity to the prosecution witness to identify accused 1. Meanwhile proceedings against the other four accused had proceeded and prosecution witnesses had been cross-examined after the charge.

*Held*, that though ordinarily the correct course is to try an abettor with the primary offender, yet in this particular instance the proceedings had reached such a stage that a joint trial could not be ordered. A. I. R.

## CRIMINAL TRIAL—Judgment.

1926 Mad. 638, Ref. (*Curgenven, J.*) SUBBAYYA PILLAI v. SETHA IYER. 122 I. C. 786=2 M. Cr. C. 212=  
1929 M. W. N. 796=30 M. L. W. 736=  
1930 Cr. C. 9=31 Cr. L. J. 457=  
A. I. R. 1930 Mad. 102=57 M. L. J. 754.

—The legality of the joint trial depends upon the accusation and not on the trial. A. I. R. 1922 Cal. 107 Rel. on. (*Cuming and Lort Williams, JJs.*) KALI KUMAR v. NAWABALI. 116 I. C. 369=

30 Cr. L. J. 619=13 A. I. Cr. R. 4=  
A. I. R. 1929 Cal. 160.

—Joint complicity or which undoubtedly is guilty must be proved.

Where two or more persons are jointly charged with any offence, either the joint complicity of all must be proved, or it must be left in no doubt which out of two or more actually committed the offence. (*Zafar Ali and Coldstream, JJs.*) MAHOMED ALI v. EMPEROR.

112 I. C. 212=10 L. L. J. 525=  
29 Cr. L. J. 996=A. I. R. 1929 Lah. 61.

—Separate appeals by the same accused—Joint trial—Validity of.

There were two separate cases in each of which the accused was convicted by the trial Court. An appeal was brought in each case. The appellate Court tried the two appeals together as one case and he allowed one of the appeals and dismissed the other.

*Held*, that the procedure followed was bad. (*Rankin, C. J. and Buckland, J.*) DOAT ALI v. EMPEROR.

109 I. C. 240=47 C. L. J. 211=32 C. W. N. 328=  
29 Cr. L. J. 512=A. I. R. 1928 Cal. 230.

—Legality depends upon accusation—Conspiracy cases—Joint trial valid.

The legality of the joint trial depends on the accusation, and not on the result of the trial, and the discretion of the Court to try accused persons separately is not improperly exercised by holding a joint trial in conspiracy cases. A. I. R. 1922 Cal. 107, Foll. (*Robinson, C. J. and Godfrey, J.*) ABDUR RAHMAN v. EMPEROR.

89 I. C. 305=26 Cr. L. J. 1329=3 Rang. 95=  
A. I. R. 1925 Rang. 296.

—Judgment.

—Confusion and wrong view of facts—Judgment vitiated.

A judgment in a criminal appeal, which is vitiated by a confusion of ideas, by a wrong view of facts and by a too cursory dismissal of the defence evidence, cannot be upheld in revision. (*Wallace, J.*) NOGI REDDY v. EMPEROR.

120 I. C. 69=50 Cr. L. J. 1160=  
1930 Cr. C. 495=3 M. Cr. C. 18=  
A. I. R. 1930 Mad. 443.

—Judgment copy of Bench of Magistrates—All Magistrates should sign.

Where a copy of the judgment of a Bench of Magistrates is applied for it is necessary that the copy should contain the signatures of all the Magistrates, and not that of the presiding Magistrate alone. (*Sundaram Chetty, J.*) BRAHMIAH v. EMPEROR.

1930 M. W. N. 787=32 M. L. W. 280=  
1930 Cr. C. 1123=A. I. R. 1930 Mad. 867=  
59 M. L. J. 674.

—Full name should be signed.

Signing a judgment does not mean initialling, but means the writing of the full name of the Magistrate or the judge. (*Sundaram Chetty, J.*) BRAHMIAH v. EMPEROR. 1930 M. W. N. 787=32 M. L. W. 280=

1930 Cr. C. 1123=A. I. R. 1930 Mad. 867=

59 M. L. J. 674.

—Political, racial, social, or personal grounds should not influence Judge's mind.

It will be an evil day for the administration of justice

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if political considerations are to influence the judicial mind of the Judge which should be free from all taint of bias on political, racial, social or personal grounds. (*Suhrawardy and Duval, J.J.*) *EMPEROR v. G. C. WILSON.*  
 96 I. C. 270 = 30 C. W. N. 693 =  
 43 C. L. J. 537 = 27 Cr. L. J. 926 =  
 A. I. R. 1926 Cal. 895.

—Using knowledge of one case in another—Accused different—Irregular.

A Magistrate trying a security case as well as an assault case used his knowledge of the one in delivering judgment in the other while the accused was not the same in both cases.

*Held*, that the judgment was wholly irregular. (*Walsh, J.*) *DIN DAYAL v. EMPEROR.*  
 87 I. C. 577 =  
 23 A. L. J. 300 = 26 Cr. L. J. 981 =  
 A. I. R. 1925 All. 443.

—Appellant unaware of transfer—Appeal dismissed for default—Magistrate considered judgment and record—Subsequent appearance of pleader—Judgment signed prior to appearance—No ground to be heard.

Petitioner stated in his petition that he was not aware that his appeal was transferred and on the date, the Court to which the appeal had been transferred called out the case and dismissed and on petitioner's pleader's coming to know of this, he asked the Court to hear him in support of the appeal but was refused. Judgment of the Appellate Court was to the effect that the appellant was absent and unrepresented; that he had seen through the judgment and the whole record and the petition of appeal and could see no substance in any of the grounds of appeal. *Held*, if this judgment was signed by the Magistrate before the pleader appeared, the Magistrate could not have done anything in the matter. (*Ross, J.*) *KABIR SHAH v. EMPEROR.*  
 85 I. C. 35 =  
 1923 P. H. C. C. 237 = 1 Pat. L. R. Cr. 174 =  
 26 Cr. L. J. 419 = A. I. R. 1923 Pat. 297.

—Local inquiry.

—Persons questioned—Evidence not recorded—Not allowable.

The practice of questioning persons without recording their evidence and without allowing the other side an opportunity for cross-examination in a local inquiry cannot be permitted but must be sternly discouraged, and the defect is not made up by subsequently calling one out of the many witnesses. (*Marten and Madgavkar, J.J.*) *MANGRU FEKU, In re.*  
 98 I. C. 185 =  
 28 Bom. L. R. 302 = 27 Cr. L. J. 1289 =  
 A. I. R. 1926 Bom. 245.

—Local inspection.

—Inquiries from spectators are irregular. (*Tek Chand, J.*) *UDHO RAM v. EMPEROR.*  
 122 I. C. 95 = 31 Cr. L. J. 346 = 10 Lah. 790 =  
 31 P. L. R. 39 = A. I. R. 1929 Lah. 120.

—Using knowledge derived from—Accused not given opportunity to cross-examine or explain—Material irregularity.

If a Magistrate makes use of knowledge derived from a local inspection without affording the accused an opportunity to cross-examine or to explain the points against him, he acts with material irregularity sufficient to vitiate the trial. 2 P. L. T. 455, Foll. (*Iqbal Ahmad, J.*) *TIKHA v. NANAK.*  
 100 I. C. 371 =  
 49 All. 475 = 25 A. L. J. 377 = 28 Cr. L. J. 291 =  
 7 A. I. Cr. E. 391 = A. I. R. 1927 All. 350.

—Parties and pleaders present—Purpose, to understand evidence already given—Procedure legitimate.

The Magistrate viewed the locus in quo at the request of both parties and in presence of pleaders who were representing the respective parties. The Magistrate made and used inspection solely for the purpose of enab-

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ing him to understand the evidence which had been already given.

*Held*, it was legitimate for him to do so, and there was no ground for suspecting that the judgment was influenced by the local inspection. (*Sanderson, C. J. and Panton, J.*) *AZIZ MANDAL v. GIRISH CHANDRA CHOUDHURY.*  
 68 I. C. 38 = 23 Cr. L. J. 502 =  
 A. I. R. 1923 Cal. 320.

—For testing the witnesses—Legal.

It is open to a Magistrate to use the evidence of his own eyes, *i. e.*, the local inspection to test the truth of what the witnesses have deposed to. 2 Weir Cr. 728, Foll. (*Ayling and Odgers, J.J.*) *THACHROTH HYD-ROSS, In re.*  
 75 I. C. 695 = 18 M. L. W. 113 =  
 1923 M. W. N. 860 = 25 Cr. L. J. 7 =  
 A. I. R. 1923 Mad. 694 = 45 M. L. J. 279.

—Opinion in prior trial.

—Accittal of offence charged—Found guilty of another offence—Further trial—Opinion in previous trial—No weight to be given.

Where a person is acquitted of the offence of which he is charged but the Court finds him guilty of another offence and puts him on trial for that other offence, as it could not convict him of that offence in that trial, the opinion of that Court in prior trial cannot be allowed any weight in the subsequent trial. (*Boys and Young, J.J.*) *EMPEROR v. KANHAIYA.*  
 124 I. C. 553 =  
 31 Cr. L. J. 716 = 1930 Cr. C. 701 =  
 A. I. R. 1930 All. 481.

—Pardon.

—Grounds for forfeiture—Onus on prosecution.

When a conditional pardon has been tendered and accepted there must be good faith on both sides. It is for the Crown to prove that the pardon was forfeited. Where the evidence given by the accused person to whom a pardon had been granted differed from the confession but it appeared that the alterations did not materially affect the result of the case and it further appeared that nearly five months had elapsed between the date of confession and the date, on which the evidence was given.

*Held*, that the prosecution had not discharged the burden of proving that the pardon was forfeited. (*Waller and Reilly, J.J.*) *SOLIYAN v. EMPEROR.*  
 1930 M. W. N. 773.

—Powers of Court.

—A civil Court has no jurisdiction to restrain a party by an injunction from pursuing her remedy, under S. 488, Cr. P. Code, in a criminal Court. (*Panchridge, J.*) *KRISHNA GOBINDA CHATTERJI v. KISH-ORIBALA DEBI.*  
 1930 Cr. C. 1153 =  
 A. I. R. 1930 Cal. 753.

—Court taking thumb-mark of accused for comparison—Not objectionable.

There is no objection in law to the taking of the accused's thumb-mark, if the Judge thinks it relevant at any time and a conviction based on a comparison of the thumb-mark of the accused person with the thumb mark on the document in question in the suit is no objectionable. The question of identity of the thumb mark is a question of fact to be decided by evidence a any other question of fact. A. I. R. 1922, Pat. 73 Diss. from. (*Schwabe, C. J. and Waller, J.*) *PUBLIC PROSECUTOR v. KANDASAMI THEVAN.*  
 98 I. C. 99 =  
 50 Mad. 462 = 27 Cr. L. J. 1251 = 27 M. L. W. 184 =  
 A. I. R. 1927 Mad. 696 = 53 M. L. J. 597.

—Party applying for copy of order—Magistrate cannot compel him to pay for, and take copies also of order not applied for.

It is for the litigant, and not for the Magistrate, to decide what copies he should have, in order to move



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the superior Court and the Magistrate has no jurisdiction to thrust upon a party copies which he does not want and to make him pay for them. *Was* a party applies for the copy of a particular order the Magistrate cannot force him to pay for and take copies of other orders also. (*Shadi Lal, C. J.*) **AMAR SINGH v. SADHU SINGH.** 86 I.C. 709=6 Lah. 396=7 L. L. J. 241=26 P. L. R. 273=26 Cr. L. J. 853=

A. I. R. 1925 Lah. 361.

**Groundless application—Refusal.**

Every Magistrate possesses the inherent power of refusing an application which he finds to be groundless. (*Zafar Ali, J.*) **SHAMAS-UD-DIN v. RAM DAYAL SINGH.** 76 I. C. 25=25 Cr. L. J. 89=

A. I. R. 1924 Lah. 630.

**Compelling party to produce certain witnesses.**

A Magistrate is not empowered to order that a party should produce a certain witness and that in default, the party shall lose his case. (*Shadi Lal, C. J.*) **SANTA SINGH v. EMPEROR.** 76 I. C. 18=25 Cr. L. J. 82=

A. I. R. 1924 Lah. 617.

**Magistrates authority to act under S. 144—Record should show.**

It is desirable that the record should show, in clear and unmistakable terms, the authority under which a Magistrate, taking action under S. 144, Cr. P. Code professes to act. (*May Oung, J.*) **U THUDAMA WARA v. KING-EMPEROR.** 74 I. C. 65=2 Bur. L. J. 22=

1 Rang. 49=24 Cr. L. J. 737=

A. I. R. 1923 Rang. 146.

**Practice.****Charges relied upon by accused not put to the complainant on the box.**

It is the practice of the Allahabad High Court in appeal to give little or no weight to the allegations or charges of a defendant or accused if they ought to have been put to the plaintiff or complainant or his witnesses and have not been so put. A plaintiff or complainant has an absolute right to know exactly the allegations or charges upon which the opposite side are going to rely, and they must be put to him or to his appropriate witnesses clearly specifically and with the utmost plainness, so that he may have an opportunity of admitting them wholly or in part, or denying them wholly or in part, and of calling witnesses to rebut such allegations or charges as he denies. (*Mears, C. J. and Kendall, J.*) **EMPEROR v. JHABBAR MAL.** 115 I. C. 872=

30 Cr. L. J. 530=10 A. I. Cr. R. 101=

9 L. R. A. Cr. 90=26 A. L. J. 196=

A. I. R. 1928 All. 222.

**Presumption of innocence.****Evidence absent—Case resting on two alternative theories—Theory inconsistent with innocence should not be accepted.**

Where the essentials of the case for the prosecution fail and the Court has to rest the case for conviction not upon evidence, direct or circumstantial, but upon one of two alternative theories, and where one of the said theories is consistent with innocence and the other inconsistent there is no justification for accepting the theory which is inconsistent with such innocence. Such a course is contrary to the fundamental principles of British justice. (*Sen, J.*) **KUMAR PRASAD v. KING-EMPEROR.** 102 I. C. 899=28 Cr. L. J. 611=

8 P. L. T. 656=8 A. I. Cr. R. 297=

A. I. R. 1927 Pat. 292.

**No prima facie made out—Accused entitled to presumption of innocence—If made out he must explain.**

If no *prima facie* case has been made against the accused it is open to the accused to rely safely on the presumption of innocence or on the infirmity of the

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evidence for the prosecution. But when a *prima facie* case is made out and the presumption of innocence is displaced, then the force of suspicious circumstances is augmented whenever the party attempts no explanation of facts which he may reasonably be presumed to be able and interested to explain. (*Kincaid, J. C. and Aston, A. J. C.*) **BAHADUR WALAD RANO KHASKHELI v. EMPEROR.** 88 I. C. 7=19 S. L. R. 71=

26 Cr. L. J. 1063=A. I. R. 1925 Sind 289.

**Presumption of innocence—Not affected by accused's conduct in proceedings.**

In a criminal case an accused person is not to be judged by how he pleads or fails to plead in the proceedings the precise and pedantic requirements of civil procedure. There is no such language as pleading in a criminal Court. The subsequent conduct or statement of an accused person may affect his credibility. It cannot destroy his right assuming him to be an innocent person until his guilt has been established without any reasonable doubt. (*Walsh, J.*) **UMED SINGH v. EMPEROR.** 77 I. C. 183=46 All. 64=

21 A. L. J. 765=4 L. R. A. Cr. 221=

25 Cr. L. J. 327=A. I. R. 1924 All. 299.

—When the action of the accused is open to two constructions, one criminal and the other honest the Appellate Court should not assume that it was criminal. (*Spencer, J.*) **NARAYANA, In re.** 82 I. C. 149=

20 M. L. W. 239=25 Cr. L. J. 1221=

A. I. R. 1924 Mad. 816.

**Private prosecution.****Engaging counsel.**

In a criminal case started at the instance of private persons the persons may engage a counsel to represent their view of the case where there is no representation on behalf of the Crown. (*Mukerji, J.*) **TUFAIL AH-MAD v. EMPEROR.** 86 I. C. 222=23 A. L. J. 5=

6 L. R. A. Cr. 53=26 Cr. L. J. 734=

A. I. R. 1925 All. 301.

**Privy Council.****Not a Court of criminal appeal.**

The Privy Council does not sit as a Court of criminal appeal. To allow criminal proceedings to be reviewed by it there must have been substantial and grave injustice done. *Dillet's case* (1887) 12 A. C. 459, Foll. (*Viscount Dunedin.*) **BENJAMIN KNOWLES v. EMPEROR.** 124 I. C. 578=31 Cr. L. J. 701=

34 C. W. N. 599=1930 Cr. C. 884=

A. I. R. 1930 P. C. 201=59 M. L. J. 127 (P.C.).

**No substantial injustice—No departure from requirements of natural justice—Privy Council does not interfere.**

Lordships of the Privy Council do not act in criminal matters as a Court of Criminal Appeal and are not concerned to regulate procedure of Courts in India or to criticise what is mere matter of procedure and in the complete absence of any substantial injustice or in the complete absence of anything that outrages what is due to natural justice in criminal cases Privy Council does not interfere. (*Viscount Sumner.*) **ATTA MOHAM-MAD v. EMPEROR.** 122 I. C. 17=

7 O. W. N. 299=1930 Cr. C. 193=

31 M. L. W. 306=31 P. L. R. 150=

32 Bom. L. R. 529=34 C. W. N. 565=

3 M. Cr. C. 85=31 Cr. L. J. 378=

11 Lah. 192=57 I. A. 71=51 C. L. J. 455=

A. I. R. 1930 P. C. 57=58 M. L. J. 363 (P.C.).

**Procedure—Abuse of process.****Detention of property belonging to a person not a party to criminal proceedings not justified.**

Where in a case of a criminal breach of trust in res-

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pect of a motor car which had been sold by the accused to a third person the Magistrate made an order directing the car to be detained in Court until further orders.

*Held*, that as regards the purchaser there was a gross abuse of the process of a Criminal Court by utilising criminal proceedings, to which he was not a party, for the detention of property which he had bought and of which he was in possession whether or not the seller had a right to sell it to him. But the purchaser was asked to give an undertaking in writing to the High Court to produce the car whenever called upon to do so either by the High Court or by the Court of the Chief Presidency Magistrate until the proceedings before him had terminated and upon the purchaser giving security in the sum of rupees ten thousand by his own bond and by one surety to the satisfaction of the Chief Presidency Magistrate, the car in question would be returned to him. (*Buckland and Cuming, J.J.*) **KEDAR NATH DEY v. MOHAMED SIDDIK.** 73 I. C. 807 = 24 Cr. L. J. 695 = A. I. R. 1924 Cal. 455.

**—Procedure—Adjournment.****—Adjournment to search for evidence—Not proper.**

Cases may arise where evidence is difficult to procure and numerous and lengthy adjournments must be granted, but when once the case is ready for hearing adjournment should not be made in order to search for evidence, the existence of which is entirely problematical. The Court prosecutor came to Court intending to base his case upon the evidence of the witnesses called. These witnesses for the prosecution denied that the accused committed the offence for which he was tried. There was no intimation that further evidence was forthcoming but the prosecutor informed the Court that he would file list of additional witnesses later.

*Held*, that adjournment should not be made in the case and accused should not be kept under shadow of a charge. (*Otter, J.*) **AH PHONE v. EMPEROR.**

121 I. C. 773 = 31 Cr. L. J. 296 = 1930 Cr. C. 183 = 7 Bang. 592 = A. I. R. 1930 Rang. 76.

**—Non-appearance of complainant—Notice of adjournment not served—If deemed 'absent.'**

Complainant, not appearing in the Court owing to non-service of notice, and ignorance of the postponed date of hearing, cannot be said to be absent within the meaning of S. 247, Cr. P. Code, and the order passed against him cannot be said to be an order of acquittal. (*Madhavan Nair and Reilly, J.J.*) **NUNE PANAKALU v. SUBBA RAO.** 113 I. C. 625 =

1928 M. W. N. 801 = 1 M. Cr. C. 328 = 52 Mad. 695 = 30 M. L. W. 624 = 11 A. I. Cr. R. 556 = 30 Cr. L. J. 191 = A. I. R. 1928 Mad. 1158 = 57 M. L. J. 331.

**—No pending case should ever be postponed without a date being fixed.** (*Daniels, J.*) **KEWAL RAM v. EMPEROR.** 7 L. R. A. Cr. 101 =

27 Cr. L. J. 560 = 93 I. C. 1056 = A. I. R. 1926 All. 421.

**—Notice necessary.**

An amendment in criminal proceedings without notice to the party affected does not bind the party. (*Greaves and Panton, J.J.*) **JANAKI NATH KUNDU PAL v. MONMOHAN DE.** 81 I. C. 162 = 25 Cr. L. J. 674 = A. I. R. 1925 Cal. 263.

**—Prolonged proceedings—To be avoided—The strain—Material on the question of sentence.**

However guilty an accused person may be, it is most undesirable that he should be subjected to the strain and anxiety of prolonged proceedings unless it is absolutely unavoidable. The length of the proceedings

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is material on the question of sentence. The strain, anxiety and mental suffering to which the accused must have been subject during long time is a matter which may legitimately be taken into consideration in passing sentence. (*Sanderson, C. J. and Richardson, J.*) **P. E. BILLINGHURST v. EMPEROR.** 82 I. C. 545 = 25 Cr. L. J. 1313 = 27 C. W. N. 821 = A. I. R. 1924 Cal. 18.

**—Procedure—Charge.**

**—Charge, framing of—Court whether can go outside charge.**

Per *Wallace, J.*—In a criminal trial the accused has to defend himself on the charge framed against him and on no other and the Court cannot speculate as to what all parties understood. (*Wallace, Madhavan Nair, Jackson, Anantakrishna Aiyar and Eddy, J.J.*) **C. K. N. SUNDARESA IYER v. EMPEROR.**

1930 M. W. N. 249 (F. B.).

**—More aggravated offence found—Further charge—Necessity.**

It is the duty of a Magistrate to see what offence has been committed, if any, and if an offence more aggravated than the one complained of is discovered, it is no less his duty to charge the accused with the more aggravated offence. (*Johnstone, J.*) **MANGALSEN v. EMPEROR.** 118 I. C. 653 = 1929 Cr. C. 566 = 30 Cr. L. J. 957 = A. I. R. 1929 Lah. 838.

**—Material facts to be stated in charge and proved**

**—Unessential allegations need not be proved—Charge good or bad to be determined at the beginning of the trial.**

In order to convict a man of an offence, all the material facts which constitute the offence, and which are necessary to enable the parties to 'avail themselves of the verdict and judgment, should the same charge be again brought forward, must be stated upon the indictment, and all these requisite allegations must be satisfied in evidence, and proved as laid. But allegations not essential to such purpose which might be entirely omitted without affecting the charge against the person and without detriment to the indictment are considered as mere surplage and may be disregarded in evidence. The indictment may be good or bad, but it cannot depend upon the facts which will ultimately be found by the jury and it must be good or bad at the beginning of the trial. A. I. R. 1922 Cal. 107, Rel on. An accused was tried jointly with another on (1) a charge of conspiracy to cheat a certain company. He was also singly tried at the same time, (2) for cheating the same company in respect of certain certified report of daily work, and (3) for dishonestly using as genuine the document stated above. The charges on (2) and (3) contained the following words: "in pursuance of the conspiracy in the first charge mentioned." The jury found the accused not guilty on the charge of conspiracy but found him guilty of the other two charges. It was contended that in view of the verdict of not guilty on the charge of conspiracy the conviction on the other charges would not stand.

*Held*, that the only function of the words "in pursuance of the conspiracy in the first charge mentioned" was to make it plain that counts (2) and (3) had no reference to independent offences or to a different subject-matter than the first count and there was no objection to the jury convicting under counts (2) and (3) although they acquitted on the first. (*Rankin, C. J. and Chotner, J.*) **SATYA NARAIN v. EMPEROR.**

55 Cal. 858 = 32 C. W. N. 319 =

29 Cr. L. J. 1022 = 112 I. C. 350 =

A. I. R. 1928 Cal. 675.

**—Misfinders.**

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Where there is a misjoinder of four charges the illegality of trial is not cured by the Judge striking out one charge when the trial is practically over. (*Adison, J.*) FITZMAURICE v. EMPEROR. 27 Cr. L. J. 793 = 95 I.C. 393 = A.I.R. 1926 Lah. 193.

—*Minimising offences—When accused can object.*

The rule against minimising offences is only intended to cover cases where a Court secures a jurisdiction thereby which it would otherwise not have and thereby prejudices the accused. Where the accused was tried and convicted under Penal Code, S. 182 he could not object that his case really fell under S. 211. (*Boys, J.*) GANGA SAHAI v. EMPEROR. 83 I. C. 692 = 5 L. R. A. Cr. 124 = 26 Cr. L. J. 132 = A. I. R. 1924 All. 763.

—*Charge to be explained clearly to accused—Kidnapping—Points to be explained.*

When a question whether there was kidnapping either with or without persuasion, and a question as to how long the kidnapping has continued, and as to whether at some stage a fresh kidnapping has been carried out, and whether there was a previous conspiracy or conduct amounting to abetment, or whether, there was no kidnapping or share in the kidnapping at all but merely a confidence trick undertaken to cheat a person, it is more than ever the duty of the Judge even though counsel may be engaged to clear the ground, and to be quite sure that each accused or his counsel clearly understand what case they have to meet. (*Walsh, J.*) JODHA SINGH v. EMPEROR. 81 I. C. 80 = 25 Cr. L. J. 592 = 4 L. R. All. (Cr.) 83 = A. I. R. 1923 All. 285.

—*Procedure—Duty of police.*

—*Free fight about possession of plot—Police must challan prosecution party also.*

When there is a dispute as to the possession of the plot and a fight takes place with regard to that, it is the duty of the police to charge-sheet the prosecution party also for rioting. (*Devadoss and Waller, J.J.*) *In re JOGALI BHUIGO NAIKS.*

27 Cr. L. J. 1198 = 97 I. C. 958 = A. I. R. 1927 Mad. 97.

—*Procedure—General and special law.*

—*Abkari and Opium Acts—Applicability of Cr. P. Code—Complaint by private persons—If allowed.*

For complaints under the Abkari Act or under the Opium Act (1 of 1878), the ordinary Cr. P. Code, is not applicable but the procedure contained in those Acts is to be strictly followed; and as complaints by private persons are not provided for by the procedure in those Acts, they must be treated as not properly instituted. A. I. R. 1923 Mad. 339 and 25 M. L. J. 577 Rel. on. (*Odgers, J.*) L. FERNANDO v. A. FERNANDO. 52 Mad. 613 = 2 M. Cr. C. 168 = 30 M. L. W. 112 = 1929 M. W. N. 507 = 119 I. C. 174 = 30 Cr. L. J. 1011 = 1929 Cr. C. 78 = A. I. R. 1929 Mad. 604 = 57 M. L. J. 214.

—*Procedure—Irrelevant matters.*

—*Matters irrelevant to charge should be eliminated.*

An important principle of Criminal law is that the guilt should not only be proved beyond any reasonable doubt but that it should be proved strictly in accordance with law. The accused is on his trial in respect of a particular charge and to import matters into the trial not relevant to that charge is equivalent to trying him as to matters on which he has no opportunity to defend himself. A. I. R. 1925 Oudh 1 Ref. (*Wazir Hasan, A.J.C.*) BISHAMBHAR NATH v. EMPEROR. 87 I. C. 962 = 26 Cr. L. J. 1042 = A. I. R. 1925 Oudh 676.

**CRIMINAL TRIAL—Procedure—Option of prosecution.**

—*Procedure—Jurisdiction.*

—*Executive and judicial powers combined—Knowledge as executive officer if deprives jurisdiction.*

So long as executive and judicial powers are combined in the same officer, he cannot but have extra-judicial information about men of importance and position in his sub-division and their characters. Merely by reason of such knowledge an administrative officer cannot be deprived of jurisdiction as Magistrate. (*Dalal, J.*) BAQRIDU v. EMPEROR. 125 I. C. 32 = 31 Cr. L. J. 764 = 1930 Cr. C. 739 = A. I. R. 1930 All. 495.

—*Trial for lesser offence—Absence of jurisdiction—If void.*

Where the offence complained of was one under S. 430, I.P.C. but the Bench tried the accused for a lesser offence under S. 426, I. P. C. and it appeared that they had jurisdiction to try the former and not the latter offence.

*Held*, that the proceeding was not void. 24 M. 675 and 27 M. L. J. 594 Foll. (*Sundaram Chetty, J.*) PICHIA KUDUMBAN v. SERVAIKARA THEVAN. 1930 M. W. N. 770.

—*Trial without jurisdiction—If amounts to acquittal.*

It is clearly illogical that a verdict of acquittal should be recorded as the ultimate result of a trial in respect of which it has not been finally determined that it was held before a Court of competent jurisdiction. (*Mears, C. J. and Pigott, J.*) EMPEROR v. HAR PRASAD BHARGAVA. 77 I. C. 961 = 21 A. L. J. 42 = 45 All. 226 = 4 L. R. A. Cr. 19 = 25 Cr. L. J. 497 = A. I. R. 1923 All. 91.

—*Procedure—Long delay.*

—*Interval of three years between filing of complaint and trial—Procedure is defective, though not illegal.*

On the 23rd March, 1920, the Food Inspector of the Corporation of Calcutta filed a complaint in the Court of the Municipal Magistrate against a person, who, it was complained, had committed the offence of having sold adulterated *ghee* on the 4th February 1920. The Magistrate ordered summons to issue for the 17th April 1920. On that date the petitioners appeared by pleader and the Magistrate passed an order directing that proceedings be stayed for six weeks as the Food Inspector was on leave. On the record no further order appeared until 29th November 1922. On that date the Food Inspector prayed for the revival of the case and the Magistrate directed the record to be put up. On the 16th December 1922, the Magistrate passed the following order: "Case revived. Issue fresh summons for 13th January, 1923".

*Held*, that the procedure which results in such a long delay is defective though not illegal and such a procedure cannot be justified even by long prevalence. 24 C. W. N. 467 Dist. (*Newbould and Sukhwardy, J.J.*) SHERMULL v. CORPORATION OF CALCUTTA. 77 I. C. 892 = 25 Cr. L. J. 492 = A. I. R. 1923 Cal 725.

—*Procedure—Objection to trial.*

—*Objection to mode of trial—When to be raised.*

The trial by jury of an offence which is triable with the help of assessors is not necessarily invalid. The objection to the trial, if any, should be raised in the trial Court and not in appeal. (*Sundaram Chetty, J.*) KARUPPA THEVAN v. EMPEROR. 1930 M. W. N. 776.

—*Procedure—Option of prosecution.*

—*Trial—Offences punishable under two provisions*

**CRIMINAL TRIAL—Procedure—Option of prosecution.**

*of law—Prosecution may choose any one.*

An offence may fall and may be punishable under two separate provisions of the law, and in the absence of an express prohibition to the contrary it is open to the prosecution to choose the law under which the offender should be prosecuted. (*Jai Lal, J.*) **RAMCHAND GURWALA v. KING-EMPEROR.**

27 Cr. L. J. 1383 = 98 I. C. 599 =  
A. I. R. 1926 Lah. 385.

**—Procedure—Parties.**

*—Motion by Crown—Made by official or demi-official letter—If valid.*

In Criminal cases the Crown is as much a party before the Court as the accused person. Any motion therefore that has to be made before the Court should be through the Government Pleader and not by an official, or 'demi-official' letter by one officer to another. (*Mukherji, J.*) **BHAGWAN DAS v. EMPEROR.**

84 I. C. 719 = 22 A. L. J. 1103 = 26 Cr. L. J. 367 =  
A. I. R. 1925 All. 218.

**Procedure—Pleadings.**

*—The rules of pleadings in civil suits do not apply to criminal trials.* (*Kulwant Sahay and Scroope, JJ.*) **GAFFAR BUKSH KHAN v. EMPEROR.**

8 A. I. Cr. R. 4 = 8 P. L. T. 393 = 28 Cr. L. J. 411 =  
101 I. C. 187 = A. I. R. 1927 Pat. 408

**—Procedure—Powers of Court.**

*—Compulsion of witness.*

Court cannot compel a witness, e. g., the investigating officer, to refer to the diary; 8 Cal. 154, Foll. (*Findlay, O. J. C.*) **SHAIK DILWAR v. EMPEROR.**

95 I. C. 277 = 27 C. L. J. 757 (Nag.).

*—Whether offences form part of same transaction*  
*—Question one of fact—Admissions of accused on that point—If may be received.*

The question whether certain offences specified in different charges were or were not so connected together, that it might fairly be said that they had been committed in the same transaction, is after all substantially one of fact, and admissions on a question of fact which go to determine whether there should be a joint trial, made by accused persons may undoubtedly be received and acted upon by a trial Court. (*Piggott and Walsh, JJ.*) **GAYAN SINGH v. EMPEROR.**

83 I. C. 509 =  
26 Cr. L. J. 29 = A. I. R. 1923 All. 277.

**—Procedure—Practice.**

*—Explanation to High Court—Suggestions by magistrate—Not entitled to make.*

The trying Magistrate is not entitled to make any suggestion or representation in the explanation which he may submit to the High Court of anything which is not founded on the record before him. The Magistrate is not the prosecutor: He must hold the scales evenly. (*C. C. Ghose and Pearson, JJ.*) **MANI KRISHNASEN v. EMPEROR.**

34 C. W. N. 256 = 127 I. C. 672 =  
1930 Cr. J. 643 = A. I. R. 1930 Cal. 379.

*—Counsel engaged by complainant at late stage—Practice condemned.*

It is ordinarily undesirable that any counsel should be brought in to assist the Public Prosecutor at a very late stage even if he acts entirely under the control of the Public Prosecutor. But there might arise special circumstances which would justify such a course. (*Reilly, J.*) **VAZ v. EMPEROR.**

1930 M. W. N. 769.

*—Mode of leading evidence.*

*Held*, that in a criminal trial evidence must be so led as to make a consecutive narrative. (*Jackson, J.*) **In re SHANMUGA KUDUMBAN.**

1930 M. W. N. 74 =  
123 I. C. 43 = 31 Cr. L. J. 477.

**CRIMINAL TRIAL—Procedure—Practice.**

*—Petty case must be finished in a single hearing.*

In a petty criminal case both parties should appear on the first day of hearing ready for the completion of the entire trial at a single hearing. (*Courtney-Terrill, C. J. and James, J.*) **NARAYAN MAHARANA v. EMPEROR.**

125 I. C. 134 = 31 Cr. L. J. 789 =  
1930 Cr. C. 509 = 9 Pat. 113 = A. I. R. 1930 Pat. 241.

*—Murder case—Criminal sessions of the Rangoon High Court—Shorthand note of charge to jury deprecated.*

The existing practice of taking a shorthand note of the charge of the learned Judge presiding at the Criminal Sessions of the Rangoon High Court only in cases of murder strongly deprecated. In cases where an appeal lies or where an application is made to the Government Advocate for a fiat, it is essential that there should be an official record of the charge that the learned Judge delivered to the jury. 28 C. W. N. 170 at 174 and 28 C. W. N. 251 Ref. (*Page, C. J. and Doyle, J.*) **U BA THEIN v. THE EMPEROR.**

8 Rang. 372 = 127 I. C. 730 = 1930 Cr. C. 117? =  
A. I. R. 1930 Rang. 351

*—Practice to be followed in committal proceedings.*

Per *Percival, J. C.*—In committal proceedings the Magistrate has only to find out whether there is a *prima facie* case for committal or not, and the committal proceedings should not be treated too much like a final trial; nor it is necessary for the Magistrate to write out a judgment on the question whether the case is true or false. (*Percival, J. C. and Barlee, A. J. C.*) **NURKHAN v. EMPEROR.**

120 I. C. 520 =

31 Cr. L. J. 117 = 24 S. L. R. 96 = 1930 Cr. C. 282 =  
A. I. R. 1930 Sind 99.

*—Preference to committal proceedings.*

Per *Percival, J. C.*—Preference should be given to committal proceedings over other cases, especially so in murder cases. (*Percival, J. C. and Barlee, A. J. C.*) **NURKHAN v. EMPEROR.**

120 I. C. 520 =

31 Cr. L. J. 117 = 24 S. L. R. 96 = 1930 Cr. C. 282 =  
A. I. R. 1930 Sind 99.

*—Sending back to jail released convict.*

According to the general practice of the Lahore High Court a convict is not sent back to jail by increasing his sentence after he has undergone the sentence and released. (*Zafar Ali, J.*) **EMPEROR v. SADAR DIN.**

112 I. C. 769 = 30 Cr. L. J. 2 =

11 A. I. Cr. R. 577 = A. I. R. 1929 Lah. 194.

*—Party fight—Practice of implicating relatives in the offence.*

Where there is a party fight it is the conventional practice to include in the list of offenders all the adult members of a family and their connections by marriage. (*Waller and Cornish, JJ.*) **SUBBIAH THEVAN v. EMPEROR.**

1929 M. W. N. 789.

*—Cr. P. C., S. 526—Complaint injurious to communal feelings—European Magistrate should try.*

Where the complaint was by Mussalmans accusing a Hindu of doing acts in a Mussalman graveyard, with intent to injure their feelings.

*Held*, that the complaint should, if possible, be tried by a European Magistrate. (*Skemp, J.*) **HARI KISHEN v. ALLAH BUKSH.**

102 I. C. 556 =

28 Cr. L. J. 588 = 8 A. I. Cr. R. 260 =

A. I. R. 1927 Lah. 520.

*—Notes of arguments—Admissibility.*

It is open to a Magistrate not to accept notes of arguments of the pleader for the accused, but if they are accepted by him, they should form part of his record, and should not be destroyed till the time for challenging his order in a higher Court had expired. (*Rupchand Bilaram, A. J. C.*) **M. H. CROWDER v. L. A. MOR-**

## CRIMINAL TRIAL—Procedure—Practice.

RISON.

21 S. L. R. 293=27 Cr. L. J. 711=  
94 I. C. 903=A. I. R. 1926 Sind 194.

—*Conspiracy—Joint trial—All must be acquitted or convicted—If separate trial each may be dealt with according to his offence.*

The rule of English Law is that where two persons are indicted for conspiring together and they are tried together both must be acquitted or both convicted. But where *A* is tried alone for conspiring with *B* he can be legally convicted though *B* is subsequently tried for the same offence and acquitted. (*Suhrawardy and Mukerji, J.J.*) I. G. SINGLETON v. EMPEROR.

86 I. C. 38=41 C. L. J. 87=29 C. W. N. 260=  
26 Cr. L. J. 662=A. I. R. 1925 Cal. 501.

—*Prosecution evidence not over—Directing accused to be ready with witnesses—Order improper.*

An order to the accused before prosecution witnesses are examined, that he must be ready with his witnesses for the defence on a certain date, is an improper order. (*Lindsay, J.*) KESHAB DEO v. EMPEROR.

81 I. C. 715=4 L. R. A. Cr. 124=25 Cr. L. J. 1003=  
A. I. R. 1924 All. 320.

—*Procedure—Proceedings.*

—*Trial for murder—Procedure must be strictly followed.*

It is imperative in cases where accused is being tried for his life that the provisions of the law should be strictly adhered to and that the accused should not have any manner of grievance with regard to the procedure adopted at the trial. (*C. C. Ghose and Graham, J.J.*) EMPEROR v. RAJAB ALI FAKIR. 46 C. L. J. 31=31 C. W. N. 881=103 I. C. 790=8 A. I. Cr. R. 316=28 Cr. L. J. 742=A. I. R. 1927 Cal. 631.

—*Revival of proceeding in pending proceeding.*

An application or order for revival can only be made on the supposition that the case is over and not pending. (*Newbould and Mukerji, J.J.*) RASH BEHARI KARURY v. CORPORATION OF CALCUTTA.

26 Cr. L. J. 1050=87 I. C. 970=  
A. I. R. 1926 Cal. 102.

—*Substantial justice not sufficient—Legal forms must be conformed to.*

"In a criminal proceeding the question is not alone whether substantial justice has been done according to law. All proceedings in *Poenam* are *Strictissimi Juris*. (*Wazir Hasan, A. J. C.*) MANNA LAL v. KING-EMPEROR.

75 I. C. 753=27 O. C. 40=  
25 Cr. L. J. 49=A. I. R. 1925 Oudh 1

—*Procedure—Prosecution*

—*Prosecution should be conducted fairly.*

Prosecution should be conducted fairly and squarely and no ground should be given to the accused for a complaint. (*C. C. Ghose and Duval, J.J.*) BATASI MONI DASSI v. EMPEROR.

53 Cal. 706=  
30 C. W. N. 854=27 Cr. L. J. 1329=98 I. C. 401=  
A. I. R. 1926 Cal. 1163.

—*Procedure—Right of being heard.*

—*Right of counsel to be effectually heard right to be heard last—Infringement—Mere irregularity.*

The right of counsel in criminal matters is not only that they shall be heard, but that they shall be given an opportunity of being effectually heard. Where counsel on behalf of his client has the right of being heard last (where the accused has not called any evidence on his behalf) in the matter, counsel is entitled to an opportunity to be so heard. If an accused is heard in such a case the mere fact that he was not heard last is not an illegality which would vitiate the trial but is merely an irregularity to which provisions of S. 537, Cr. P. Code, would apply. (*Mirza and Patkar, J.J.*) VINAYAK v. EMPEROR

12 A. I. Cr. R. 73=30 Cr. L. J. 185=

## CRIMINAL TRIAL—Procedure—Prosecution.

53 Bom. 119=113 I. C. 612=30 Bom. L. R. 1530=  
A. I. R. 1928 Bom. 557.

—*Procedure—Search.*

—*Search warrants—Conditions must be strictly adhered to.*

Search warrants are always open to very serious objections and very great particularity is justly required by law in cases where they are authorised before the privacy of a man's premises is allowed to be invaded by the minister of the law. (*C. C. Ghose and Chotzner, J.J.*) WALVEKAR v. EMPEROR. 53 Cal. 718=30 C. W. N. 713=27 Cr. L. J. 920=96 I. C. 264=A. I. R. 1926 Cal. 966.

—*Procedure—Summary trial.*

—*Record must establish necessary ingredients of offence.*

The fact found by the Magistrate in a summary trial must clearly show that the offence had been committed and that his record, however meagre, ought to be sufficient to establish the necessary ingredients of the offence of which the accused has been found guilty. 7 P. R. 1887 Cr. and 5 P. R. 1889 Cr. Rel. on. (*Tek Chand, J.*) DIN MUHAMMAD v. EMPEROR. 111 I. C. 461=10 Lah. 231=29 P. L. R. 647=29 Cr. L. J. 877=11 A. I. Cr. R. 137=A. I. R. 1929 Lah. 378.

—*Procedure—Surety.*

—*For production before police—Void.*

A surety bond for the production of any person before the police taken by the Police Officer is void *ab initio*. (*Martineau, J.*) HAMID ALI v. EMPEROR. 25 Cr. L. J. 712=81 I. C. 200=A. I. R. 1925 Lah. 152.

—*Procedure—Travelling allowance.*

—*Travelling allowance of witness—Amount should be specified.*

A Court ordering a party to deposit the travelling allowance of a witness should state the amount of the travelling allowance to be deposited. (*Kulwant Sahay, J.*) GOURI SHANKAR v. THE COLLECTOR OF MUZAFFERPUR. 87 I. C. 421=6 P. L. T. 215=3 Pat. L. R. Cr. 127=26 Cr. L. J. 965=A. I. R. 1925 Pat. 553.

—*Procedure—Warrant case.*

—*Warrant case—Altering section to convict without framing charge—Illegal.*

When once trial has begun according to the provisions relating to warrant cases, it is not open to the Magistrate to alter the section and to convict the accused without framing a charge. (*Kendall, J.*) GOBIND v. EMPEROR. 8 L. R. A. Cr. 29=28 Cr. L. J. 227=99 I. C. 1027=7 A. I. Cr. R. 202=A. I. R. 1927 All. 270.

—*Prosecution.*

—*Person making report to police—Shown as complainant—Who is prosecutor.*

Where a person has made a report of an offence to police against another, and has been shown as complainant in the Magistrate's judgment in that case, it was he who, for all practical purposes, prosecuted the accused. A. I. R. 1926 P. C. 46, Foll. (*Rava, J.*) GAJRAJ v. CHANDRIKA PRASAD. 114 I. C. 501=5 O. W. N. 1039.

—*Institution, what is.*

Institution of a criminal proceeding is the laying of an information before the Magistrate and as soon as the Magistrate receives the complaint that is done. (*Kinkhedr, A. J. C.*) RAMJIWAN MARWADI v. LAHINI. 10 N. L. J. 21=104 I. C. 103=9 A. I. Cr. R. 2=28 Cr. L. J. 780=A. I. R. 1927 Nag. 202

## CRIMINAL TRIAL

## —Reference to third Judge.

—*Strong reasons for differing must be present.*

Per *Wild, A. J. C.*—Where a case is referred to a third Judge on difference, he should not differ from the other two unless there is a mistake of law, or some fact which tells in favour of the accused has escaped notice, or in short unless there are strong grounds for so doing. 46 I. C. 593, Rel. on. (*Wild, A. J. C.* on difference between *Percival, J. C.* and *Rupchand, A. J. C.*) MOHAMMAD YUSUF v. EMPEROR. 126 I. C. 449 = 31 Cr. L. J. 1026 = 1930 Cr. C. 865 = A. I. R. 1930 Sind 225.

## —Re-trial.

—*Another view of case may be taken—Retrial not justified.*

Where the trial Magistrate after coming to the conclusion that the prosecution story is doubtful, discharges the accused, the mere circumstance that another view may be taken of the case than that which the trial Magistrate takes would not justify a retrial (*Addison, J.*) MT. MUBRAK JAN v. MT. RAHAT JAN.

31 P. L. R. 729 = 1930 Cr. C. 691 = A. I. R. 1930 Lah. 543.

—*De novo trial by another Magistrate—Ground for.*

The trial Magistrate committed an illegality vitiating the trial. Further many of the witnesses both of the prosecution as also of the accused were examined after the illegality happened. The Magistrate had considered all the evidence and expressed his opinion on it.

*Held*, that it would be proper to order a *de novo* trial by another Magistrate. (*Mirza and Patkar, J.J.*) EMPEROR v. LAKSHMAN RAM SHET.

121 I. C. 588 = 31 Cr. L. J. 309 = 53 Bom. 578 = 31 Bom. L. R. 593 = 1929 Cr. C. 130 = A. I. R. 1929 Bom. 309.

—*De novo trial—When justified.*

Where the finding of trial Court is vitiated by erroneous assumptions and unwarranted conjectures, then the case is fit to be heard *de novo*. (*Tek Chand, J.*) NARAIN DAS v. BELI RAM. 106 I. C. 862 (Lah.).

—*Unsatisfactory reasons for rejecting prosecution evidence—No ground for.*

The ground that the reasons given by the trying Magistrate in rejecting the prosecution evidence are open to objection is not sufficient for ordering a retrial. (*Sulaiman, J.*) EMPEROR v. BRAHMADIN.

8 L. B. A. Cr. 138 = 8 A. I. Cr. R. 335 = 28 Cr. L. J. 946 = 105 I. C. 658 = 26 A. L. J. 76 = A. I. R. 1927 All. 727.

—*Trial by jury in High Court—Jury sworn, charges read out before one Judge—Judge falling ill*

—*Trial need not commence de novo before successor.*

Where after the swearing in of the Jury and reading out of the charges to the jury in a trial before the High Court another Judge was appointed in place of the presiding Judge who fell ill, the trial need not commence *de novo* but can proceed further before the new Judge. (*Fawcett, J.*) EMPEROR v. DARABJI PESTONJI.

101 I. C. 178 = 29 Bom. L. R. 204 = 28 Cr. L. J. 402 = 8 A. I. Cr. R. 29 = A. I. R. 1927 Bom. 161.

—*Re-trial ordered by High Court—No Court mentioned—Question left to discretion of Court having power to direct the trial.*

If an order for re-trial is made by the High Court and it is not stated in the order whether the re-trial is to be held by the same Magistrate or by some other Magistrate, then it should not be presumed that it was the intention of the High Court to direct that the re-trial should be held by the same Magistrate. Under

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these circumstances the matter is left entirely in the discretion of the Magistrate who has got to appoint the Court by which the case is to be tried. (*Rankin and Mukerji, J.J.*) BALI RAM KALWAR v. SITA RAM KALWAR. 30 C. W. N. 1002 = 27 Cr. L. J. 1188 = 97 I. C. 948 = A. I. R. 1926 Cal. 1173.

—*Re-trial order after quashing conviction—Retrial to another Magistrate advisable.*

Where accused have once been convicted and the conviction is upset by superior Court and re-trial ordered, unless it is impossible to get a Magistrate other than the one who has already convicted the accused or unless there be circumstances which would necessitate the trial of the same case before the same Magistrate over again, it is desirable that the trial should not be held before the same Magistrate. (*Rankin and Mukerji, J.J.*) BALI RAM KALWAR v. SITARAM KALWAR.

30 C. W. N. 1002 = 27 Cr. L. J. 1188 = 97 I. C. 948 = A. I. R. 1926 Cal. 1173.

—*No reasonable probability of conviction—Retrial improper.*

Retrial should not be ordered unless there is a reasonable probability of the accused being convicted on the evidence known to be available against them. (*Spencer, J.*) SOGIAMUTHU PADAYACHI. *In re.*

50 Mad. 274 = 27 Cr. L. J. 394 = 93 I. C. 42 = A. I. R. 1926 Mad. 638.

—*Acquittal—Remanding on amended charge—Undesirable.*

It would be undesirable to remit a case for retrial on an amended charge after acquitting the accused on the original charge owing to the Court holding the prosecution evidence to be false because it would mean the re-entertaining of the evidence of the same witnesses by the lower Court. (*Boys, J.*) CHEDA SINGH v. EMPEROR.

5 L. B. A. Cr. 133 = 25 Cr. L. J. 1292 = A. I. R. 1924 All. 766.

—*Acquittal set aside—If High Court could direct retrial.*

When the order of acquittal by the Lower Court is set aside for non-compliance with the mandatory provisions of Section 342, it is not within the province of the High Court to determine whether the accused should be retried. (*Suhrawardy and Graham, J.J.*) REMEMBRANCE OF LEGAL AFFAIRS, BENGAL v. SATISH CHANDRA ROY.

83 I. C. 495 = 51 Cal. 924 = 39 C. L. J. 411 = 26 Cr. L. J. 15 = A. I. R. 1924 Cal. 975.

—*Perfunctory cross-examination of prosecution witness—Good ground.*

Where cross-examination of prosecution witnesses was perfunctory, owing to Counsel's inaptitude and facts were not ascertained before the sentence for an offence under S. 302 read with S. 34 was determined.

*Held*, that re-trial should be ordered. (*Mookerjee, Richardson, C.C. Ghose, Cuming and Page, J.J.*) EMPEROR v. BARENDRA KUMAR GHOSH.

81 I. C. 353 = 28 C. W. N. 170 = 38 C. L. J. 411 = 25 Cr. L. J. 817 = A. I. R. 1924 Cal. 257 (F.B.).

—*Review.*

—*Must come before the Judge who passed the decision.*

There is no practice that a Judge of the High Court cannot review his judgment or decision. But the application for review must come before the Judge who passed the decision which is to be reviewed. The application by counsel for review in such a case should ask that the application be put before the Judge who decided the matter. It is contrary to all propriety that he should put in an application for review as if it could be



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heard by another Judge (*Ashworth, J.*) SRIPAT NARAIN SINGH *v.* GAHBAR RAI.

106 I. C. 680 = 29 Cr. L. J. 88 = 25 A. L. J. 1010 =  
8 A. I. Cr. R. 337 = 8 L. R. A. Cr. 135 =  
A. I. R. 1927 All. 724.

**—Revision.**

—Subordinate Court—Whether can revise its decision—Procedure in such cases.

No subordinate court can sit in revision upon its own record and decide whether upon a certain view of the facts, its proceedings should be treated as null. If it is thought that a mistake has been committed the matter must be referred to the High Court. (*Wallace and Jackson, J.J.*) EKAMBAKA MUDALI *v.* ALLAMMAL.

53 Mad. 870 = 1930 M.W.N. 409 =  
32 M. L. W. 152 = 1930 Cr. C. 1055 =  
A. I. R. 1930 Mad. 1001 = 59 M. L. J. 708.

—Findings of fact—No interference with exception.

It is only rarely and in exceptional circumstances that the Sind Judicial Commissioner's Court interferes in revision with findings of fact of the lower appellate Court and only in cases when the findings are supported by no legal evidence or are so manifestly erroneous as to have resulted in a miscarriage of justice. (*Rupchand, Bilaram and Tyabji A.J.Cs.*) RHICKACHAND *v.* EMPEROR. 21 S. L. R. 130 = 27 Cr. L. J. 1276 = 98 I. C. 124 = A. I. R. 1927 Sind 54

—Findings of fact accepted.

It is the settled practice of the Sind J. C.'s Court that in dealing with revision applications the Court accepts findings of the lower appellate Court as correct unless such findings are based on no legal evidence or are manifestly erroneous. (*Kincaid, J. C. and Rupchand Bilaram, A.J.Cs.*) EMPEROR *v.* LUKMAN.

21 S. L. R. 107 = 27 Cr. L. J. 1233 = 98 I. C. 49 =  
A.I.R. 1927 Sind 39

—Sentence.

Continuing.

Enhancement of.

Extent of.

Extenuating circumstances.

Factors for decision of.

Fine.

Nature of.

Offence under the penal enactment.

Recording reasons for.

Reduction of.

Miscellaneous.

—Sentence—Continuing.

—Sentence of daily fine is illegal.

Imposing a daily fine so long as disobedience continues is incorrect. (*Banerji, J.*) HUSAIN *v.* NOTIFIED AREA, MAHOBA, DIST. HAMIDPUR.

49 All. 245 = 25 A. L. J. 93 = 7 L. R. A. Cr. 182 =  
27 Cr. L. J. 1120 = 97 I. C. 432 =  
A. I. R. 1927 All. 131.

—Order that non-compliance will involve continuing fine of certain sum per diem—Illegal and undesirable.

An order convicting the accused under Ss. 185 and 307 of the U. P. Municipalities Act concluded with the words "Failure to comply with the order will as from December 1st involve a continuing fine of Rs. 2 per diem.

*Held*, that if this was to be treated as an order imposing such a fine it was illegal and if it was to be treated as a warning it was unnecessary and undesirable to specify the amount which could only be decided when a second prosecution had been successful. (*Stuart, J.*) RAMZAN *v.* MUNICIPAL BOARD OF BENARES.

**CRIMINAL TRIAL—Sentence—Extent of.**

6 L. R. A. Cr. 112 = 26 Cr. L. J. 1135 =  
88 I. C. 367 = A. I. R. 1926 All. 204.

—Sentence of fine in futuro illegal.

The sentence directing the accused to pay a fine in futuro is illegal. 13 P. R. 1903; 16 Mad. 230; 24 All. 309; 22 Bom. 766, 8. P. R. 1916; 27 Cal. 565 and 40 All. 569, Foll. (*Broadway, J.*) AISHA *v.* CROWN. 7 Lah. 168 = 8 L. J. 80 = 27 Cr. L. J. 465 = 27 P. L. R. 188 = 93 I. C. 689 =

A. I. R. 1926 Lah. 248.

—Daily fine for future offence illegal.

It is not permissible in law to enforce a daily fine in anticipation of a commission of an offence. (*Kulwant Sahay, J.*) PANCHAM SAO *v.* EMPEROR.

82 I. C. 717 = 6 P. L. T. 204 = 25 Cr. L. J. 1357 =  
A. I. R. 1925 Pat. 322.

—Continuing fine until accused complies—Illegal.

Since no person can be punished for a thing he has not done but may possibly do in the future or is even likely to do it in future a daily fine until the accused complies with the order passed against him is illegal. (*Hallifax, A. J. C.*) BARURAO *v.* MUNICIPAL COMMITTEE. 72 I. C. 78 = 24 Cr. L. J. 318 =

A. I. R. 1924 Nag. 66.

—Sentence—Enhancement of.

—High Court's interference—Only when the lower Court's sentence is grossly inadequate.

The High Court will not ordinarily enhance the sentence merely on the ground that if it were seised of the trial of the accused, it would have awarded a longer sentence of imprisonment than that awarded by the Magistrate, but it will interfere only where the sentence awarded by the trial Court is grossly inadequate. 7 P. R. 1889 (Cr.); 9 A. I. Cr. R. 504 and A.I.R. 1928 Lah. 926, Ref. (*Jai Lal, J.*) EMPEROR *v.* DHANA LAL.

11 A. I. Cr. R. 15 = 29 Cr. L. J. 764 =  
110 I. C. 796 = A. I. R. 1928 Lah. 951.

—Sentence served out by accused—High Court on reference can impose additional imprisonment.

The High Court on reference or revision can pass a substantive period of imprisonment even though the accused has served the sentence of imprisonment actually passed on him by the lower Court. 1 Lah. 453, Dist. (*Marien and Madgavkar, J.J.*) EMPEROR *v.* SHANKAR NARAYAN.

28 Bom. L. R. 300 =  
27 Cr. L. J. 557 = 93 I. C. 1053 =

A. I. R. 1926 Bom. 256.

—Sentence—Extent of.

—Respect of law undermined—Duty of Court to hold scales even—Excessive and vindictive sentences undermine the respect for law even further.

Where the accused, a respectable woman of sixty, felt it her duty to dissuade people from drinking, a sentence of rigorous imprisonment for four months and a fine of Rs. 100 and in default of one month's rigorous imprisonment is excessive, and might even be criticised as vindictive. It is necessary at all time, and not least when respect for the law is being undermined, that, whatever the attitude of the politics of any party, the Court should in all respects scrupulously hold the scales even, observe the correct procedure and that they should not by such sentences themselves still further undermine this respect for the law. Such sentences defeat their own object and usually produce an effect contrary to what perhaps they are intended to do (*Madgavkar and Barlee, J.J.*) EMPEROR *v.* SAKINABAI BUDUR- UDDIN LUKMANI.

32 Bom. L. R. 1506 =  
1931 Cr. C. 78 = A. I. R. 1931 Bom. 70.

—First offenders of immature age—Imprisonment not proper.

To send a youth aged 17 years, who is a first offender,

**CRIMINAL TRIAL—Sentence—Extent of.**

and commits the offence of criminal breach of trust being prompted by another person, to jail is to put him in the way of becoming a hardened criminal in association in jail with other criminals. The subordinate Courts should, therefore, ordinarily avoid passing sentences of imprisonment for short terms specially on first offenders of immature age. (*Jai Lal, J.*) **TIRATH RAM v. EMPEROR.** 126 I. C. 578 =

31 Cr. L. J. 1076 = 31 P. L. R. 660 =

1930 Cr. C. 452 = A. I. R. 1930 Lah. 424.

—*Appeal against acquittal—Capital sentence—Not to be passed—Exceptions.*

Ordinarily the Courts refrain from passing a capital sentence on a person who is convicted on an appeal against his acquittal, but where the accused was a party to an attack of a particularly ferocious nature and acted in a high-handed manner and with unusual cruelty in assaulting the opposite party consisting of the deceased and the latter have not been proved to have given any provocation, he may be sentenced to death. (*Jai Lal and Abdul Qadir, JJ.*) **NIAMAT KHAN v. EMPEROR.** 31 P. L. R. 411 = 127 I. C. 850 = 1930 Cr. C. 469 =

A. I. R. 1930 Lah. 409.

—Where there is one offence punishable with two different provisions of law, one punishment only can be lawfully imposed. (*Fforde and Addison, JJ.*) **BHAGAT SINGH v. EMPEROR.** 121 I. C. 726 =

31 P. L. R. 73 = 31 Cr. L. J. 290 = 1930 Cr. C. 293 =

A. I. R. 1930 Lah. 266.

—*Who gave the fatal blow not known—Capital sentence—If may be passed.*

It should not be a practice to assume that where the particular person cannot be found to be guilty of the fatal blow the capital sentence should not be inflicted. (*Boys and Banerji, JJ.*) **PARSHADI v. EMPEROR.** 116 I. C. 19 = 1929 A. I. J. 244 =

10 L. R. A. Cr. 47 = 11 A. I. Cr. R. 299 =

30 Cr. L. J. 559 = A. I. R. 1929 All. 160.

—*Penalty may not follow conviction.*

There is no law that says a penalty must always follow a conviction. The maximum penalty for each breach of the law is fixed by it, but there is no minimum, except in a few special cases. (*Hallifax, A.J.C.*) **SITARAM KUNBI v. EMPEROR.** 24 N. L. R. 110 =

11 N. L. J. 46 = 10 A. I. Cr. R. 215 =

29 Cr. L. J. 506 = 109 I. C. 234 =

A. I. R. 1928 Nag. 188.

—*Imprisonment for several periods at intervals—Illegal.*

It is not competent for a Magistrate to award by an order imprisonment for several periods with interval between each period. (*Harrison, J.*) **RUR SINGH v. EMPEROR.** 28 Cr. L. J. 23 = 99 I. C. 55 =

7 A. I. Cr. R. 196 = A. I. R. 1927 Lah. 62.

—*Sentence does not depend on the section.*

The extent of the proper sentence does not depend entirely or even mainly on the section under which the sentence has to be passed. That has to be decided on the circumstances of the offence. (*Hallifax, A. J. C.*) **EMPEROR v. AKOSH KUNBI.** 97 I. C. 1053 =

27 Cr. L. J. 1229 = A. I. R. 1927 Nag. 49.

—*Offence, but for chance, would have been more serious—Maximum punishment called for.*

Where it was only a chance that an unlawful assembly of Mahomedans did not come across any Hindu to beat, but if they had the opportunity they would have beaten and perhaps killed any Hindu coming across them.

*Held*, that these circumstances called for a maximum punishment. (*King, J.*) **WAJIDALI v. KING.** 4 O. W. N. 240 = 28 Cr. L. J. 337 =

**CRIMINAL TRIAL—Sentence—Extenuating circumstances.**

100 I. C. 817 = 7 A. I. Cr. R. 567 =

A. I. R. 1927 Oudh 151.

—*Disproportionate punishment.*

A sentence of ten years' imprisonment is wholly disproportionate to any possible aspect of the crime from a moral point of view provided that that part of their misconduct, namely the setting of fire, is reasonably included in and taken to aggravate the general lawless conduct of which the accused have been convicted under Ss. 147 and 325. (*Walsh, Ag. C. J. and Ryves, J.*) **KHANJAN v. EMPEROR.** 82 I. C. 54 =

5 L. R. A. Cr. 140 = 25 Cr. L. J. 1190 =

A. I. R. 1924 All. 781.

—*Setting fire.*

Setting fire to a thatch must be seriously viewed. (*Walsh, Ag. C. J. and Ryves, J.*) **KHANJAN v. EMPEROR.** 82 I. C. 54 = 5 L. R. A. Cr. 140 =

25 Cr. L. J. 1190 = A. I. R. 1924 All. 781.

—*No two punishments for the same act.*

Where either of the two offences under two different acts was constituted by the same acts, the offender could not be punished for both. (*Zafar Ali, J.*) **BAHADUR SINGH v. THE CROWN.** 76 I. C. 689 =

25 Cr. L. J. 225 = A. I. R. 1923 Lah. 342.

—*Sentence—Extenuating circumstances.*

—*Sudden quarrel—Blow in the heat of passion.*

The fact that the quarrel which ends in the deceased getting a fatal hurt, was a sudden one, arising in a heat of passion, is a mitigating circumstance in favour of the accused and his sentence should be reduced. (*Hilton, J.*) **BHARTU v. EMPEROR.** 30 P. L. R. 582 =

1930 Cr. C. 343 = A. I. R. 1930 Lah. 311.

—*Conviction based on circumstantial evidence no reason for lesser sentence.*

In a case of murder the mere fact that the conviction is based on circumstantial evidence is no reason why a lesser sentence should be passed. If the case, though depending on circumstantial evidence, is perfectly clear and conclusive and excludes all other reasonable hypotheses except the guilt of the accused, death sentence can be passed. 76 I. C. 97, not Foll. A. I. R. 1921 Mad. 423; A. I. R. 1929 Sind 179, Rel. on. 7 S. L. R. 109, A. I. R. 1921 Sind 145 and A. I. R. 1925 Sind 289. Ref. (*Wild, A. J. C.*), on difference between *Percival J. C. and Rupchand, A. J. C.*) **MOHAMAD YUSUF v. EMPEROR.** 126 I. C. 449 = 31 Cr. L. J. 1026 =

1930 Cr. C. 865 = A. I. R. 1930 Sind 225.

—*Committing murder to absolve himself from punishment for another offence committed—If and when lesser sentence can be passed.*

Per *Percival, J. C.* and *Wild, A. J. C.*—Where an accused commits one criminal offence, it is no palliation of his guilt that to absolve himself from punishment he commits another and more grievous offence, namely, murder.

Per *Rupchand, A. J. C.*—It is not improper to inflict a lesser sentence where there are circumstances demanding the exercise of such discretion as for instance the absence of strong motive coupled with the possibility of the murder having been committed without pre-meditation and under temporary derangement of the mind due to the fear of being prosecuted and convicted for a criminal offence. But the exercise of such discretionary power under S. 302, Penal Code, in any particular case must depend on its own facts considered in the light of various circumstances, such as the magnitude of the mischief which the crime has a tendency to produce, the effect of the punishment in preventing similar crimes, the motive or inducement to the crime, aggravating or instigating circumstances, and the like. When

**CRIMINAL TRIAL—Sentence—Extenuating circumstances.**

murder is committed for lust or for rape perhaps it is necessary to take the life of the murderer not so much as to prevent him from committing similar offences but to serve as a deterrent to others for committing similar offences. Again when a crime of a particular character is rampant in any locality, extreme penalty of law is necessary to serve as a deterrent. (*Wild, A.J.C.*, on difference between *Percival, J.C.* and *Rupchand, A.J.C.*) **MOHAMAD YUSUF v. EMPEROR.** 1930 Cr. C. 865 = 126 I.C. 449 = 31 Cr. L. J. 1026 = A. I. R. 1930 Sind 225.

—*Mere youth—If ground for not passing capital sentence.*

The mere youth of the accused is not a sufficient ground for not awarding the capital sentence in the case of an offence of murder in the absence of any extenuating circumstance. (*Fforde and Tek Chand, J.J.*) **GEHNU v. EMPEROR.** 120 I.C. 276 = 31 Cr. L. J. 81 = A. I. R. 1930 Lah. 50.

—*Respectability—Not being hardened litigant—If grounds for mitigation.*

Although in rare and extreme cases a Court may be justified in evading the statute, still accused being a respectable man or not a hardened litigant, are not circumstances of extenuation. (*Jackson, J.*) **KUNHI RANA v. EMPEROR.** 1929 M. W. N. 114 = 29 M.L.W. 673 = 2 M. Cr. C. 75 = 30 Cr. L. J. 247 = 114 I. C. 234 = 12 A. I. Cr. R. 215 = A. I. R. 1929 Mad. 226 = 56 M. L. J. 550.

—*Honourable motive.*

Where an offence is committed the fact that it was committed with honourable motive is an extenuating circumstance. (*Adami and Sroope, J.J.*) **REKHA RAI v. EMPEROR.** 6 Pat. 471 = 28 Cr. L. J. 820 = 104 I. C. 436 = A.I.R. 1928 Pat. 159.

—*Provocation by gross outrage of religious feeling.*

Where the accused were smarting with indignation against the outrages upon their sacred places and suffering from a gross outrage on their religious feeling every allowance should be made for their feelings. A comparative leniency in sentencing should be shown but at the same time they must be punished adequately. (*Stuart, C.J.*) **DOULT v. KING-EMPEROR.** 2 Luck. 264 = 3 O.W.N. Sup. 304 = 99 I. C. 238 = 28 Cr. L. J. 110 = A. I. R. 1927 Oudh 70.

—*Sentence—Factors for decision of.*

—*Should be proportionate to nature and gravity of crime.*

It is an elementary proposition in criminal jurisprudence that sentence in each case should be proportionate to the nature and gravity of the crime, and a Magistrate cannot claim a right to inflict a particular sentence in a particular case because he had done so in hundred other cases—some of which were more serious—without any regard to nature of facts, upon which each and every case has to be decided. (*Young and Sen, J.J.*) **EMPEROR v. MAIKU.** 124 I.C. 46 = 31 Cr. L. J. 631 = 1930 Cr. C. 447 = A.I.R. 1930 All. 279.

—*False defence of enmity aggravates offence and affects question of sentence.*

In a great majority of cases, the plea used in defence is the stereotyped plea of enmity. The plea is characterised by a wanton disregard of truth and in spite of laborious attempts, no malice is established between the accused and the Crown witnesses including the complainant. It ought to be generally known that a false defence of this character has a tendency to aggravate the offence and is a factor which may affect the question of sentence. (*Young and Sen, J.J.*) **EMPEROR v. RINDESEHWARI SINGH.** 124 I. C. 45 =

**CRIMINAL TRIAL—Sentence—Factors for decision of.**

31 Cr. L. J. 630 = 1930 Cr. C. 445 = A. I. R. 1930 All. 277.

—*False allegation in defence against respectable person aggravates original offence.*

False allegation against innocent and respectable persons of criminal conspiracy to bring false charges, when used as defence, aggravate greatly the original offence. This type of defence is much too common in India and it ought to be recognized that where a defence of this character is obviously false, that fact ought to be taken into consideration in awarding punishment. (*Young and Sen, J.J.*) **EMPEROR v. NARBADA PRASAD.** 121 I. C. 819 = 1930 Cr. C. 54 = 51 All. 864 = 31 Cr. L. J. 356 = A. I. R. 1930 All. 38.

—*Measure of punishment varies with circumstances.*

The principal object of punishment is the prevention of crime and the measure of punishment must consequently vary from time to time according to the prevalence of a particular form of crime and other circumstances. (*Tapp, J.*) **OM PARKASH v. EMPEROR.** 127 I. C. 209 = 31 Cr. L. J. 1182 = 1930 Cr. C. 911 = A. I. R. 1930 Lah. 867.

—*Sentence—Discretion of trial court—Interference in appeal.*

In matters of sentence a large discretion must be left to the trial judge who has seen the accused and knows the effect which imprisonment is likely to have upon them individually and who also knows the criminality of his district and what deterrent sentence is necessary. (*Jackson, J.*) **SHANMUGA KUDUMBAN v. EMPEROR.** 1930 M. W. N. 74 = 123 I. C. 43 = 31 Cr. L. J. 477.

—*Concoction imputed to prosecution—Found baseless offence is aggravated.*

Per *Courtney-Terrell, C.J.*—In a clear case where an advocate on the direct instructions of his client argues that the prosecution story is an entire concoction on the part of the police and no evidence whatever elucidated in cross-examination or offered by examination-in-chief is ever produced in support of this argument, the Court should take this into account as a circumstance of aggravation in awarding the sentence. Where such suggestion is made by the legal practitioner without reasonable cause the legal practitioner is guilty of grossest professional misconduct. (*Courtney-Terrell, C.J. and Chatterji, J.*) **BANS-LOCHAN LAL v. EMPEROR.** 124 I.C. 396 = 31 Cr. L. J. 641 = 1930 Cr. C. 278 = 10 P. L. T. 703 = 9 Pat. 31 = A. I. R. 1930 Pat. 195.

—*Punishment to be awarded according to the circumstances of each case.*

When the legislature has laid down a maximum punishment for an offence or a series of offences, it is the duty of the trial Court to apportion punishment in each case after considering all the circumstances having a bearing upon it, and not to shirk its responsibility by imposing the maximum penalty upon every offender. (*Shadi Lal, C.J.*) **KEHR SINGH v. EMPEROR.** 112 I. C. 783 = 10 Lah. 524 = 30 Cr. L. J. 15 = 30 P. L. B. 638 = 11 A. I. Cr. R. 553 = A. I. R. 1929 Lah. 29.

—*Previous convictions influencing quantum of sentence—Propriety.*

There is no reason why previous convictions should not be used by the Court in exercising its discretion in regard to the quantum of the sentence even in cases where it is not intended or possible to exceed the limits fixed by the Penal Code. (*Wallace, J.*) **SUBAN SAHIB v. EMPEROR.** 52 Mad. 358 = 29 M. L. W. 194 = 2 M. Cr. C. 65 = 1929 M. W. N. 393 = 115 I. C. 483 =

**CRIMINAL TRIAL—Sentence—Factors for decision of.**

30 Cr. L. J. 471 = 12 A. I. Cr. E. 256 =  
A.I.R. 1929 Mad. 306 = 56 M.L.J. 595

**—Principles indicated.**

*Iqbal Ahmad, J.*—The sentence passed on a convicted person should not be such as to be open to the criticism that it is an unmitigated exhibition of superior force unredeemed by a tinge of judicial balance.

*Walsh, J.*—The question of punishment depends on two considerations: firstly, the public importance of the offence and the deterrent effect of the punishment; secondly, the deserts of the particular offender. (*Mears, C.J., Walsh and Iqbal Ahmad, J.J.*) EMPEROR v. BADAN SINGH, 30 Cr. L. J. 933 = 118 I.C. 577 = A. I. R. 1928 All. 150.

**—Punishment should be the least that will prevent repetition of crime by offender and will deter others.**

The causing of merely retributive harm, whether by the community or the individual, is itself a crime. Punishment is in itself an evil, justified only by its prevention of greater evil, that is, by its effects in deterring the offender from a repetition of the offence and in deterring others, by his example, from the commission of it. In each case also it must obviously be the least that will produce both these effects. (*Hallifax, A.J.C.*) MT. NANHI GOUD v. EMPEROR. 101 I.C. 669 = 28 Cr. L. J. 493 = 8 A. I. Cr. R. 139 = A. I. R. 1927 Nag. 221.

**—Killing from desire to kill and killing to do away with resistance to robbery—No difference in gravity.**

The distinction in gravity between the act of a man who shoots because he desires to kill another and a man who shoots to kill because he desires that another man should not interfere with his committing the robbery is too fine to form the basis for a difference in the sentence and there is nothing to make the robbery of inoffensive people, such robbery being accompanied by murder, appreciably excused by the fact that the perpetrators desired funds for the purpose of conducting a revolutionary propaganda. (*Stuart, C.J. and Raza, J.*) RAM PRASAD v. EMPEROR, 2 Luck. 631 = 1 L. C. 339 = 8 A. I. Cr. R. 449 = 106 I.C. 721 = 29 Cr. L. J. 129 = A. I. R. 1927 Oudh 369.

**—High position—Good service to Government—No grounds for reduction—Loss of reputation and old age—May be considered.**

A man is not entitled to get off with a small sentence merely because he is a person of high position and one who has done good service for the Government in the past. When such a man falls in this manner everybody looks to see whether it is not true that there is one law for the rich and another for the poor, and a Court cannot lightly reduce the sentence in such a case to one far below that which should have been awarded to an ignorant and poverty-stricken offender who had in the same way fallen a victim to temptation. On the other hand, the facts that the accused suffers in the loss of his reputation and of his position, a much greater punishment than would be represented by rigorous imprisonment for one year to a common man, and at an old age detention in jail under sentence of rigorous imprisonment in the hot weather is even for a short time a very severe punishment, should be considered. (*Pullan, J.*) RABUL AHMAD v. EMPEROR. 1 L. C. 220 = 103 I.C. 797 = 28 Cr. L. J. 749 = 8 A. I. Cr. E. 424 = A. I. R. 1927 Oudh 319.

**—Inadmissible evidence or extraneous circumstances should not influence Court.**

In the matter of awarding sentences, Magistrates should not take into consideration inadmissible evidence.

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nor should they form their opinion on extraneous circumstances. (*C. C. Ghose and Dwai, J.J.*) BATASI MONI DASSI v. EMPEROR. 53 Cal. 706 =

30 C. W. N. 854 = 27 Cr. L. J. 1329 = 98 I. C. 401 = A. I. R. 1926 Cal 1163.

**—Escape from custody after conviction.**

Escape from custody after conviction is not a matter which could influence a Court in arriving at the amount of punishment to be inflicted. (*Fforde, J.*) ISHAR SINGH v. EMPEROR. 27 Cr. L. J. 944 = 96 I. C. 400 = A. I. R. 1926 Lah. 617.

**—Plea of guilty—Enhancement not proper.**

Where "plea of guilty" by accused persons is considered, from the habits of Indian criminals, as due to hope, reasonable or otherwise, of leniency of punishment; it is not proper to enhance the punishment as it might attach suspicion of perfidy to the judiciary. (*Kennedy, J. C. and Raymond, A. J. C.*) KING-EMPEROR v. KASIM WALAD MOHAMED SAFFER. 83 I. C. 881 = 17 S. L. R. 268 =

26 Cr. L. J. 177 = A. I. R. 1925 Sind 188.

**—Service to Crown—Ground for lenience.**

Where the accused has rendered service to Crown, in giving evidence against some members of his gang which evidence resulted in their conviction, his conviction was altered from one of death to that of transportation for life. (*Piggott, Lindsay and Sulaiman, J.J.*) SARDARA v. EMPEROR. 81 I. C. 604 = 22 A. L. J. 85 =

5 L. R. A. Cr. 25 = 46 All. 236 =

25 Cr. L. J. 956 = A. I. R. 1924 All. 220 (F.B.).

**—Penalty for acting mala fide—Technical offences—Vindictive imposition—Improper.**

Penalties must be provided and penalty sections must be used for bad cases where the individual has been contumacious and has palpably acted mala fide. But the penalty is only intended in *terrorem* and not to be used vindictively for technical offences. (*Walsh J.*) NIHAL MUHAMMAD v. EMPEROR. 85 I. C. 41 =

21 A. L. J. 774 = 4 L. R. A. Cr. 226 =

26 Cr. L. J. 425 = A. I. R. 1924 All. 200.

**—Sentence—Fine.****—Ability to pay no ground for maximum fine.**

The maximum sentence whether of fine or of imprisonment, provided for by law, represents the sentence to be inflicted in extreme cases. Because a man may easily pay a fine is no ground for ordering him to pay the maximum fine fixed by law, if the nature of the offence committed by him is not of the most serious character, having regard to the description of the offence itself. (*Mukerji and Niamatullah, J.J.*) GANGA SAGAR v. EMPEROR. 120 I. C. 435 =

1930 A. L. J. 26 = 31 Cr. L. J. 88 =

1929 Cr. C. 647 = A. I. R. 1929 All. 919.

**—Man of small means—Heavy fine improper.**

Where an accused does not appear to be a man of large means, and the greatest sufferers will be the women and children of the family a very heavy fine may not be inflicted. (*Mullick, Ag. C. J. and Wort, J.*) DHANU RAUT v. EMPEROR. 9 P. L. T. 217 =

28 Cr. L. J. 865 = 104 I.C. 705 = 9 A. I. Cr. R. 29 = A. I. R. 1928 Pat. 59.

**—Sentence—Nature of.****—Trivial offence—Prosecution started by malice—Nominal penalty.**

Where the offence is utterly trivial and the prosecution is inspired by motives other than pursuits of justice and the Magistrate is convinced of the commission of offence from evidence on record, Magistrate should give effect to his opinion by convicting the accused and imposing a purely nominal penalty. (*Courtney-Ferrell, C. J. and James, J.*) NARAYAN MAHARANA v. EM-

**CRIMINAL TRIAL—Sentence—Nature of.**

PEROR. 125 I. C. 134 = 31 Cr. L. J. 789 =  
9 Pat. 113 = 11 P. L. T. 772 = 1930 Cr. C. 509 =  
A. I. R. 1930 Pat. 241.

—*Deliberate defiance of law—Deterrent sentence justified.*

A deterrent sentence is justified where a large body of men has deliberately set out to defy the law and the leaders have been proceeded against. (*Macpherson, J.*)  
JAIGI URAON v. EMPEROR. 119 I. C. 887 =  
30 Cr. L. J. 1100 = 1929 Cr. C. 254 =  
A. I. R. 1929 Pat. 502.

—*Counterfeiting coins—Deterrent sentence called for.*

Offences connected with counterfeit coins are detected with great difficulty and call for a deterrent sentence. (*Shadr Lal, C. J.*)  
EMPEROR v. SARDARA SINGH.  
28 Cr. L. J. 305 = 100 I. C. 529 =  
A. I. R. 1927 Lah. 220.

—*Fear of stirring communal disturbances—No ground for passing deterrent sentences.*

It is no doubt dangerous to do anything which may lead to communal disturbances; but this fact would not justify a Court in passing deterrent sentences and ignoring the facts standing in favour of the accused. (*Kulwant Sahay, J.*)  
ANANT PRASHAD RAY v. EMPEROR.  
98 I. C. 594 = 27 Cr. L. J. 1378 =  
8 P. L. T. 204.

—*Excise offences—Illicit traffic in drugs—Fine is not sufficiently deterrent—Substantive sentence should be inflicted.*

Where there have been several cases of persons living on the border line of foreign territory and importing excisable articles into British territory, it is desirable that as far as possible substantive sentence of imprisonment should be inflicted to prevent their recurrence. In the case of crimes such as illicit traffic in drugs, where the offender may make great profits by breach of the law, the payment of the fine is apt to be considered merely in the nature of a tax which is not deterrent at all. (*Rupchand Bilaram and Tyabji, A. J. Cs.*)  
EMPEROR v. MUSTABI. 20 S. L. R. 70 = 94 I. C. 409 =  
27 Cr. L. J. 633 = A. I. R. 1926 Sind. 193.

—*Concurrent sentences.*

The phrase "I pass sentence under S. 326/148" or whatever the sections may be must be interpreted to mean that the Magistrate intended to pass concurrent sentences. (*Daniels, J.*)  
SHOHAN ABIR v. EMPEROR.  
81 I. C. 640 = 22 A. L. J. 263 = 5 L. R. A. Cr. 88 =  
25 Cr. L. J. 992 = A. I. R. 1924 All. 492.

—*Even with previous convictions—Sentence must fit the crime.*

Court should exercise discretion in making the penalty fit the crime. The practice of committing petty offenders to the Sessions Court after three or four convictions should cease. Even if such offenders are committed there is no necessity for the Sessions Judge to inflict a vindictive sentence. (*Macleod, C. J. and Shah, J.*)  
KING EMPEROR v. GALA MANA.  
26 Bom. L. R. 434 = 26 Cr. L. J. 759 = 86 I. C. 343 =  
A. I. R. 1924 Bom. 453.

—*Where the girl kidnapped was not imposed upon, Held the sentence of 7 years was too severe. (Dahal, J. C.)*  
IDU v. EMPEROR. 27 O. C. 32 =  
25 Cr. L. J. 913 = 81 I. C. 529 =  
A. I. R. 1924 Oudh 335.

—*Sentence.*

—*Offence under the penal enactments—Punishment for one or the other only.*

Where an act is punishable both under the Penal Code as well as some other penal enactment the offender can be punished under one or the other, but not under

**CRIMINAL TRIAL—Sessions Cases.**

both the penal enactments. (*Krishna Pandalai, J.*)  
VEERASWAMI NAICKEN, *In re.* 1930 M. W. N. 529.  
—*Sentence—Recording reasons for.*

—*Maximum sentence must record reasons.*

When Court inflicts the maximum sentence provided by the law for an offence, it should record its reasons for doing so. (*Campbell, J.*)  
HARNAM SINGH v. EMPEROR. 26 P. L. R. 788 = 27 Cr. L. J. 186 =  
91 I. C. 1002 = A. I. R. 1926 Lah. 239.

—*Sentence—Reduction of.*

—*Merely exceeding rights of private defence—Sentence reduced.*

In view of the fact that the accused also was injured and of the possibility that he merely exceeded the right of private defence, his sentence was reduced. (*Campbell, J.*)  
MALA SINGH v. THE CROWN.  
5 L. L. J. 121 = A. I. R. 1924 Lah. 61.

—*Sentence—Uniformity.*

—*Impossible to maintain.*

The principle of uniformity in convictions and punishments cannot be maintained in all cases where there are two trials—one original and the other supplementary—one batch of prisoners being tried by one Judge and one jury and the other batch by a different Judge and different jury. (*Walmsley and Suhrawardy, J.J.*)  
MOFEEZ-UDDI v. EMPEROR. 72 I. C. 65 =  
24 Cr. L. J. 305 = A. I. R. 1924 Cal. 435.

—*Sentence—Miscellaneous.*

—*Admitting to bail—Mention in the order that sentence is suspended is not illegal.*

When an appellate Court or a Court hearing a revision admits the appellant or the applicant to bail or orders that a fine should not be paid till the disposal of the case, he thereby orders the suspension of the sentence and therefore mention in the order that the sentence is suspended does not render the order bad. (*Mukerji, J.*)  
BHAGWAN DAS v. EMPEROR.  
22 A. L. J. 1103 = 26 Cr. L. J. 367 = 84 I. C. 719 =  
A. I. R. 1925 All. 218.

—*Sessions Cases.*

—*Magistrate recording confession—Opinion as to demeanour or guilty conscience—Not admissible in Sessions trial.*

In a Sessions trial the opinions of the Magistrate who recorded the confession as to his impressions about the demeanour of the accused, that it showed that he had done something wrong or seen something wrong being done, that he was suffering from guilty conscience are not admissible. (*Stuart, C. J. and Raza, J.*)  
NAWAR v. EMPEROR. 6 O. W. N. 545 = 118 I. C. 757 =  
30 Cr. L. J. 967 = 1929 Cr. C. 220 =  
A. I. R. 1929 Oudh 381.

—*Attempted murder—Sessions Judge should try.*

Cases of attempted murder which vary greatly in gravity should ordinarily be tried by a Sessions Judge and not by Assistant Sessions Judges. (*Raza and Pullan, J.J.*)  
EMPEROR v. GHURA. 6 O. W. N. 43 =  
115 I. C. 846 = 30 Cr. L. J. 544 =  
12 A. I. Cr. R. 359 = A. I. R. 1929 Oudh 150.

—*Withdrawal of charges triable by Sessions—Commitment in respect of charges triable by Magistrate—Need not be set aside.*

After the accused have been committed to the Sessions—a perfectly good commitment—the fact that graver charges triable by the Sessions have been withdrawn is no reason at all why the commitment order should be set aside in respect of the charges triable by a Magistrate and the accused's right to a trial by jury should be taken away from them without their consent. (*Rankin and Duval, J.J.*)  
EMPEROR v. MONMOTHA NATH.  
31 O. W. N. 144 = 28 Cr. L. J. 141 =

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7 A. I. Cr. R. 463=99 I. C. 349=  
A. I. R. 1927 Cal. 199.

—*New theory not justified.*

A Sessions Judge is not justified in evolving a new theory as to the offence different from the case put forward either by the prosecution or by the defence. (*Tekchand, J.*) HARPHUL v. EMPEROR.

28 P. L. R. 215=7 A. I. Cr. R. 429=101 I. C. 181=  
25 Cr. L. J. 405=A. I. R. 1927 Lah. 728.

—*Conviction by Magistrate—High Court set aside and directed commitment to sessions—If the whole proceedings should be re-opened.*

Where the accused was first tried by a Magistrate and on a reference by the S. J. the High Court set aside the conviction and sentence and directed that the accused be committed to Sessions; and the Magistrate—the successor of the original Magistrate—then opened a new proceeding and took all the evidence again, ending up by writing a committal order of over four pages of typescript.

*Held*, that all this was quite unnecessary. All that he should have done was to re-open the original proceedings, frame a fresh charge and explain it to the accused, require him to give in his list of witnesses for Sessions, examine (if he thought fit) any of those witnesses who had not already been examined, and then write a short formal order of committal as under the orders of the High Court. (*Carr, J.*) NGA MYAING v. EMPEROR

88 I. C. 274=26 Cr. L. J. 1106=2 Rang. 447=  
A. I. R. 1925 Rang. 82.

—*Record by short-hand writers should be full.*

Per *Mookerjee and Page, JJ.*—Full and accurate short-hand notes of the proceedings at the Sessions trial on the lines indicated in S. 16 of the Criminal Appeal Act should be recorded, (*Mookerjee, Richardson, C. C. Ghosh, Cuning and Page, JJ.*) EMPEROR v. BAREN DKA KUMAR GHOSE.

81 I. C. 353=  
28 C. W. N. 170=38 C. L. J. 411=25 Cr. L. J. 817=  
A. I. R. 1924 Cal. 257 (F.B.)

—*Stay pending civil proceedings—Grounds for.*

—*Civil Court finding document a forgery—Prosecution—Appeal in the civil case—If ground for stay of prosecution.*

Where a civil Court finds a document to be forged and criminal prosecution is started against the party with reference to the forged document, the mere fact that an appeal has been preferred in the civil case which may possibly reverse the finding of the trial Court, is no ground for staying prosecution. (*Wort, J.*) BHAGIRATH BHAGAT v. RAM NARAIN SAHU.

120 I. C. 45=30 Cr. L. J. 1144=1930 Cr. C. 277=  
A. I. R. 1930 Pat. 194.

—*Subject-matter same in civil and criminal Court—Stay of proceedings by the criminal Court—Wise exercise of discretion.*

Where the subject-matter of a criminal proceeding and a civil suit is the same the Magistrate shall have exercised a wise discretion if he of his own motion, stays the proceedings in his Court pending the decision of the civil Court even if at the time the complainant presented his complaint in Court, the matter was not pending before a civil Court. 33 P. R. Cr. 1910, Foll. (*Shadi Lal, C. J.*) PHUMAN SINGH v. EMPEROR.

106 I. C. 463=9 A. I. Cr. R. 325=  
29 Cr. L. J. 47.

—*Prosecution due to spite—Ground for stay.*

That a prosecution is not launched in public interest is no ground for quashing proceedings but is ground for staying them pending Civil proceedings between the parties. (*Venkatayubba Rao, J.*) RAMANATHAN CHETTIAR v. SEIVARAMA SUBRAMANIAM AYAR.

## CRIMINAL TRIAL—Stay pending civil proceedings of—Refusal.

81 I. C. 785=47 Mad. 722=20 M. L. W. 234=  
35 M. L. T. 77=1924 M. W. N. 556=  
25 Cr. L. J. 1009=A. I. R. 1925 Mad. 89=  
47 M. L. J. 373.

—*Stay pending civil proceedings of—Principles.*

—*A rule of prudence, not of law.*

The rule that ordinarily criminal proceeding should not be started when the same question is involved in a pending civil litigation is not a rule of law but a rule dictated by prudence and its application must depend on the merits of each case. (*Jas Lal, J.*) LORIND SINGH v. EMPEROR.

126 I. C. 523=31 Cr. L. J. 1053=  
1930 Cr. C. 893=A. I. R. 1930 Lah. 802.

—*Stay of criminal trial pending civil suit is discretionary.*

There is no invariable rule as regards the staying of criminal proceedings (under S. 82, Registration Act) pending the issue in a civil suit. This is a matter for the discretion of the trial Court and in Criminal Revision High Court cannot interfere with the order unless the Court has in exercise of its jurisdiction acted in a manner which is unjust. A. I. R. 1927 Mad. 798, Foll.; 1 P. L. T. 697, Ref. (*Wort, J.*) HIRDAY NARAIN SINGH v. EMPEROR.

10 P. L. T. 889=  
30 Cr. L. J. 1101=119 I. C. 888=1929 Cr. C. 252=  
A. I. R. 1929 Pat. 500.

—*Pending civil suit as regards same question—Stay should not be ordered except on special grounds.*

The High Court in the exercise of its function of superintendence should avoid staying proceedings in a criminal case except on special grounds merely because the same question is in issue in a civil suit. (*Jackson, J.*) GNANASIGAMANI NADAR v. VEDAMUTHU

25 M. L. W. 52=1927 M. W. N. 54=  
38 M. L. T. 80=99 I. C. 853=  
28 Cr. L. J. 181=7 A. I. Cr. R. 321=  
A. I. R. 1927 Mad. 308=52 M. L. J. 80.

—*Rioting—Trial should not be stayed until civil suit on title is disposed of.*

It is undesirable that the trial of a case of rioting should remain stayed and undisposed of till the Civil Court has pronounced on the question of title. (*Spencer, J.*) NAMBA PILLAI v. SUDALAIMUTHU.

76 I. C. 872=25 Cr. L. J. 280=17 M. L. W. 570=  
32 M. L. T. 191=1923 M. W. N. 276=  
A. I. R. 1923 Mad. 595=44 M. L. J. 642.

—*Stay pending civil proceedings of—Refusal.*

—*Documents tampered with after filing them in civil litigation—Criminal trial may not be stayed.*

Where documents were tampered with after they were filed in the Court there is no reason why criminal prosecution should be stayed till the decision of the civil suit in which they were filed. (*Jai Lal, J.*) LORIND SINGH v. EMPEROR.

126 I. C. 523=  
31 Cr. L. J. 1053=1930 Cr. C. 893=  
A. I. R. 1930 Lah. 802.

—*Civil litigation on same matter—Criminal prosecution should not invariably be stayed.*

There is no invariable rule that a criminal proceeding should be stayed pending the result of civil litigation which deals with the same matter. It must be assumed that each Court must be allowed to proceed with the business on its file without any intervention of this kind. (*Wort, J.*) BHAGIRATH BHAGAT v. RAM NARAIN SAHU.

120 I. C. 45=30 Cr. L. J. 1144=  
1930 Cr. C. 277=A. I. R. 1930 Pat. 194.

—*Criminal proceedings pending civil suit—Parties and issues same—Crown prosecution—Stay not proper.*

An accused applied for stay of Criminal proceedings pending decision in a civil suit on substantially the same



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issues and between substantially the same parties.

*Held*, that in the case of a crown prosecution with the Crown a party, whose interest and rights are not those of a private prosecutor, but of public justice, proceedings in a Criminal Court could not be stayed pending decision in the civil suit. 13 C. W. N. 398; 23 Cal. 610; 30 Bom. L. R. 962; 24 C. W. N. 418; 2 Weir 415; 38 Cal. 106; A. I. R. 1922 Lah. 424; 5 C. W. N. 44; 30 Mad. 226; 5 C. L. J. 233; A. I. R. 1921 All. 365, Cons. (*Pearson and Mallik, J.J.*) **GOPAL CHANDRA v. SURESH CHANDRA.**

121 I. C. 308 = 57 Cal. 558 = 33 C. W. N. 969 = 31 Cr. L. J. 211 = 1929 Cr. C. 202 = A. I. R. 1929 Cal. 563.

—*Criminal Court cannot stay proceedings.*

Criminal Court has no power after it is seized with a case to stay proceedings. The proper course is to grant postponement from time to time. A. I. R. 1927 Mad. 851, Rel. on. (*Wild, J. C. and Aston, A. J. C.*) **RAM-CHAND v. EMPEROR.**

115 I. C. 313 = 23 S. L. R. 225 = 30 Cr. L. J. 399 = 1929 Cr. C. 106 = A. I. R. 1929 Sind 115.

—*Stay pending civil proceeding of—When feasible*

Criminal Court should stay its hand when a civil suit about the same dispute is pending. (*Jai Lal, J.*) **MANIRAM v. EMPEROR.**

12 L. L. J. 87 = 1930 Cr. C. 808 = A. I. R. 1930 Lah. 664.

—*Pending suit might throw light on the Criminal Case—Stay proper.*

Where the decision of the civil suit, which was instituted by the complainant himself against the accused about three months before he brought the criminal case, was likely to throw considerable light upon the dispute in the criminal case, the proceedings of the criminal Court were stayed. (*Shadi Lal, C. J.*) **P. F. LINTON v. EMPEROR.**

100 I. C. 710 = 28 P. L. R. 103 = 7 A. I. Cr. E. 565 = 28 Cr. L. J. 326 = A. I. R. 1927 Lah. 744.

—*Subject-matter same—Criminal case should be stayed.*

Where the subject-matter of both a criminal case and a civil suit pending in another Court is the same, the criminal case should be stayed. (*Addison, J.*) **BISH-AMBAR DAS v. EMPEROR.**

97 I. C. 426 = 27 Cr. L. J. 1114 = A. I. R. 1927 Lah. 17.

—*Prejudice to the accused if stay not granted.*

The real principle to be looked at in deciding an application for staying proceedings in a criminal case pending the disposal of a connected civil case is whether the accused is likely to be prejudiced if the criminal proceedings are not stayed until the disposal of connected civil suit, and if there is a likelihood of such prejudice being caused, the proceedings should be stayed. 19 C. W. N. 125 and 16 Cr. L. J. 637, Ref. (*Findlay, O. J. C.*) **MADHAO BHAGWANT DESHMUKH v. EMPEROR.**

93 I. C. 118 = A. I. R. 1926 Nag. 315.

—*Civil suit filed before the complaint—Matter in issue same—Stay proper.*

Where the matter to be decided in a criminal case is identical with an issue which has to be decided in a Civil Court between the parties which was instituted prior to the complaint in the criminal case,

*Held*, stay should be ordered. (*Adami, J.*) **BANAM-BAR CHHOTRA v. NATA BEHRA.**

84 I. C. 350 = 2 Pat. L. R. C. 201 = 6 P. L. T. 348 = 26 Cr. L. J. 286 = A. I. R. 1925 Pat. 193.

—*Civil litigation plea of title and attempt to get possession—Stay may be granted—Plea of possession on date of trespass—Stay unnecessary.*

**CRIMINAL TRIAL—Transfer.**

A Criminal Court has power to stay criminal proceedings before it, until disposal of civil litigation between the parties respecting the same subject-matter; but if the defence is that accused was in possession on the date of Criminal trespass no stay need be made; but where only title and attempt to get possession are pleaded stay should be ordered. (*Wallace, J.*) **PEKIASWAMI MUTHIRYAN.** 20 M. L. W. 544 = 1924 M. W. N. 762 = 35 M. L. T. 99 = A. I. R. 1924 Mad. 888.

—*Suspicious.*

—*Mere suspicion—No ground for conviction.*

Suspicion cannot take the place of legal evidence and proof and on the strength of mere suspicion an accused cannot be convicted. (*Shadi Lal, C. J. and Agha Haidar, J.*) **EMPEROR v. SOOPI.** 120 I. C. 539 = 1930 Cr. C. 100 = 31 Cr. L. J. 141 = 31 P. L. R. 391 = A. I. R. 1930 Lah. 84.

—*Suspicious and circumstantial appearances—Must be explained.*

Per *Rupchand, A. J. C.*—As a general rule to which however exceptions undoubtedly genuine from time to time occur, it is reasonable to expect that an innocent party can explain suspicious or circumstantial appearances connected with his person, dress or conduct that the desire of self-preservation if not a regard for truth will profit him to do so and that whenever a party attempts no explanation of facts which he may reasonably be presumed to be able and interested to explain or attempt to account for them by false representation, the force of suspicious circumstances proved against him is thereby augmented. (*Wild, A. J. C.* on difference between *Percival, J. C. and Rupchand, A. J. C.*) **MOHAMMAD YASUF v. EMPEROR.**

126 I. C. 449 = 31 Cr. L. J. 1026 = 1930 Cr. C. 865 = A. I. R. 1930 Sind 225.

—*Cr. P. Code, S. 154—First information report not containing names of prosecution witnesses—Prosecution story not necessarily suspicious.*

The mere fact that in the first information report the names of the witnesses, who ultimately support the prosecution, are not given, is not a matter which would throw suspicion upon the story for the prosecution. (*Shadilal, C. J. and Agha Haidar, J.*) **CHANDU v. EMPEROR.**

108 I. C. 370 = 29 Cr. L. J. 378 = A. I. R. 1928 Lah. 657.

—*Suspicion, however plausible, can never be a substitute for proof.* (*Shadi Lal, C. J. and Agha Haidar, J.*) **DULA SINGH v. EMPEROR.**

109 I. C. 209 = 9 Lah. 531 = 10 A. I. Cr. E. 235 = 29 Cr. L. J. 481 = 10 L. L. J. 408 = 29 P. L. R. 629 = A. I. R. 1928 Lah. 272.

—*Police investigation tainted with fabrication prosecution evidence unreliable.*

When a Police investigation with respect to any particular accused person is tainted, a Court will have great hesitation in believing the prosecution evidence as it is very difficult to know where an Investigating Officer who has been detected in fabricating false evidence will stop in such fabrication. (*Dalal, J. C.*) **HASNU KHAN v. EMPEROR.**

89 I. C. 241 = 26 Cr. L. J. 1297 = A. I. R. 1926 Oudh 26.

—*Suspicion cannot be a substitute for proof.* (*Shadi Lal, C. J. and Zafar Ali, J.*) **SURAT SINGH v. THE CROWN.**

83 I. C. 508 = 26 Cr. L. J. 28 = A. I. R. 1923 Lah. 42.

—*Transfer.*

—*Frivolous and vexatious applications for—Powers to penalise.*

Where successive frivolous and vexatious applications for transfer are resorted to as a means of preventing ends of justice being attained, the High Court ought

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exercise its inherent power under S. 561-A. Further conduct of this type can amount to contempt of Court which can be punished in various ways. There is also another remedy. The High Court may direct a complainant who resorts to such application for transfer to lodge a certain sum, say Rs. 1,000 as security for the costs occasioned by his opponent by these repeated adjournments and applications in respect of them. (*Marten, C. J., Mirza and Broomfield, J.J.*) SHAM-DASANI, *In re*. 54 Bom. 553 = 32 Bom. L. R. 1123 = 1930 Cr. C. 1065 = A. I. R. 1930 Bom. 477 (F. B.).

—*Use of strong language by Court—Ground for belief in unfairness.*

Use of strong language by Court is never calculated to satisfy the litigant public before it. An officer is some times bound to feel strongly on particular occasions, but as soon as he expresses himself strongly, he gives himself away and if he raises, by his language, an apprehension in the mind of a party that the Officer is prejudiced the officer has only himself to thank. Besides a calm state of mind is absolutely essential for the disposal of all cases whether civil or criminal. (*Mukerji, J.*) MUHAMMAD AKBAR *v.* EMPEROR.

85 I. C. 378 = 47 All. 288 = 23 A. L. J. 133 = 6 L. R. A. Cr. 57 = 26 Cr. L. J. 538 = A. I. R. 1925 All. 283.

—*Complainant closely associated with Magistrate's brother in electioneering work—Magistrate himself assisted his brother apprehension of injustice reasonable.*

In regard to a petition to transfer a case from one Magistrate to another the question to be considered is whether it is possible from the accused's point of view, to say that his apprehension is not reasonable.

Where it was alleged that the complainant was closely associated with the Magistrate's brother in electioneering work and the Magistrate himself was assisting his brother in electioneering. *Held*, that under the circumstances the accused's apprehension of unconscious injustice was not unreasonable, *held* further that no slur was thereby cast on the Magistrate. (*Sanderson, C. J. and Cuming, J.*) PULIN BEHARI DAY *v.* ASHUTOSH GHOSE. 81 I. C. 560 =

39 C. L. J. 330 = 25 Cr. L. J. 944 = A. I. R. 1924 Cal. 981.

—**Trial by jury.**

—*Hostile witness—Judge should explain to jury about the unreliable nature of his evidence and ask them to reject it—Omission to do so is misdirection.*

The evidence of a hostile witness cannot in part be relied upon and the rest of it discarded or rejected. When a witness in declared hostile so that leave to cross-examine is granted to the party calling him, it is necessary that the Judge should explain what the position is, that then arises, namely, that by asking for leave to cross examine the witness, the party calling him admits that he is not a witness of truth and one whose evidence is not entitled to credit, who is prepared to make one statement on oath at one time and another at another time and that the evidence of such witness should be rejected and left out of account in the minds of the jury. It is a rule which leans in favour of the accused and as such ought not to be departed from lightly. The Judge should tell the jury to reject the evidence of such witness altogether and his omission to do so amounts to misdirection. A. I. R. 1923 Cal. 463; *Alexander v. Gibson*, 2 Camp. 556, Ref. (*C. C. Ghose and Pearson, J.J.*) PANCHANAN GOGAI *v.* EMPEROR. 127 I. C. 270 = 31 Cr. L. J. 1207 = 57 Cal. 1266 = 51 C. L. J. 203 = 34 C. W. N. 526 = 1930 Cr. C. 356 = A. I. R. 1930 Cal. 276.

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—*Absence of material witness for prosecution—Omission of Judge to direct jury as to inference—Misdirection.*

There should be a substantive direction on the part of the trial judge as to the view of the prosecution which the jury is entitled to adopt if they are not satisfied with the explanation offered for the absence of a witness material for the prosecution case. The omission of the trial Judge to direct the jury as to the inference they are entitled to draw in such a case is a non direction amounting to misdirection, sufficient to set aside a conviction. (*Jack and Panckridge J.J.*) SHAIKH NABAB ALI *v.* EMPEROR. 34 C. W. N. 1151 = 1930 Cr. C. 1108 = A. I. R. 1930 Cal. 708.

—*Address on the main and salient features of the prosecution and defence cases sufficient.*

The Judge is not bound to address himself in every particular and in every detail to every suggestion put forward by the defence. It is the duty of the Judge fairly and candidly to point out the main and salient features of the case from the point of view of the prosecution and of the defence respectively. And in doing so he is entitled to take into consideration the speeches made upon both sides by the Crown and by the prisoner's counsel in considering his presentation of the evidence to the jury. 1 Pat. L. J. 317, Foll. (*Macpherson and Dhawle, J.J.*) RAMSARUP SINGH *v.* EMPEROR.

128 I. C. 121 = 11 Pat. L. T. 867 = 9 Pat. 606 = 1930 Cr. C. 1009 = A. I. R. 1930 Pat. 513.

—*Approver's evidence.*

How far to believe the approver is essentially a matter for the jury. (*Macpherson and Dhawle, J.J.*) RAMSARUP SINGH *v.* EMPEROR.

128 I. C. 121 = 11 Pat. L. T. 867 = 9 Pat. 606 = 1930 Cr. C. 1009 = A. I. R. 1930 Pat. 513.

—*Confession—Judge to decide if it was voluntary—The jury if it was true or false—Infringement of the rule is misdirection.*

In a trial by Judge and jury it is for the Judge to determine whether the confession is voluntary and for the jury to determine whether it is true or false. It is not open to the Judge to ask the jury to determine whether it is voluntary or not even though that is a question of fact.

In a trial for an offence under S. 395, Penal Code, only evidence against the accused was his own confession which was subsequently retracted. In his direction to the jury the Judge observed. "I have admitted the confession in evidence and have provisionally answered the question if it was voluntarily made. It is for you to determine whether the confession is true or not. You will have to consider circumstances in which it was made. You will also have to consider the suggestions and allegations made against the accused. You must remember that when an accused alleges that he made a confession under inducement and threat from persons in authority the *onus* is upon him to prove the allegations. It is not of course possible to prove such allegations even if they were true".

*Held*, that the conclusion from the direction was that they were called upon to determine whether the confession was voluntarily made or not and so the Judge was guilty of serious error of law.

*Held* further, that the Judge had committed a serious error in directing the jury that the burden of proving threat or inducement was on him and it was impossible to prove such allegation.

*Held*, that since the confession was the only evidence against the accused, the directions have been serious misdirections which were fatal for trial. (*Cuming and*

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*S. K. Ghose, J.J.*) **KHIKO MONDAL v. EMPEROR.**  
 125 I. C. 730 = 57 Cal. 649 = 31 Cr. L. J. 909 =  
 33 C. W. N. 1112 = 1929 Cr. C. 362 =  
 A. I. R. 1929 Cal. 726.

—*Omission to direct jury—Not cured by calling counsel's attention to it in summing up.*

Per *C. C. Ghose, J.*—A grave omission to direct the jury on a vital point cannot be made good merely by calling counsel's attention to it at the termination of the summing up. *Jack, J., contra; R. v. Wilet, (1922) 16 Cr. App. Rep. 146, Rel. on. (Rankin, C.J., C. C. Ghose, Suhrawardy, Mukherji and Jack, J.J.) PADAM PRA-SHAD v. EMPEROR.* 119 I. C. 193 =

50 C. L. J. 106 = 33 C. W. N. 1121 =  
 30 Cr. L. J. 993 = 1929 Cr. C. 228 =  
 A. I. R. 1929 Cal. 617 (F. B.).

—*Verdict of jury is generally upheld if reasonable.*

It is not the practice of the Lucknow Chief Court to interfere with a jury verdict if it is in any way a reasonable verdict, but if the verdict is both unreasonable and perverse it must be set aside (*Stuart, C.J. and Raza, J.*) **MD. HADI HUSAIN v. EMPEROR.**

112 I. C. 103 = 3 Luck. 494 = 11 A. I. Cr. R. 226 =  
 50 C. W. N. 281 = 29 Cr. L. J. 983 =  
 A. I. R. 1928 Oudh 277.

—*Setting aside verdict.*

Verdict of jury will not be set aside unless failure of justice has been caused. (*Rankin, C. J. and C. C. Ghose, J.*) **HAJI AYUB v. EMPEROR**

103 I. C. 545 = 54 Cal. 539 = 8 A. I. Cr. R. 309 =  
 28 Cr. L. J. 689 = A. I. R. 1927 Cal. 680.

—*Duty of jurors.*

The jury are not entitled to discuss the case which is being tried before them, or to talk to persons connected with the accused before them. (*C. C. Ghose and Cam-made, J.J.*) **BHUBAN CHANDRA PRODHAN v. KING-EMPEROR.**

104 I. C. 111 = 31 C. W. N. 828 =  
 8 A. I. Cr. R. 319 = 28 Cr. L. J. 783 =  
 A. I. R. 1927 Cal. 628.

—*Re-summoning of discharged jury.*

It would require very strong circumstances indeed to pass an order for the re-summoning of a jury that have been discharged and have been at large for a long time. (*Rankin and Duval, J.J.*) **EMPEROR v. MONMOTHA NATH.**

99 I. C. 349 = 31 C. W. N. 144 =  
 28 Cr. L. J. 141 = 7 A. I. Cr. R. 463 =  
 A. I. R. 1927 Cal. 199.

—*Judge should avoid miscarriage of justice.*

In introducing evidence in a trial with the aid of a jury the judge must be very careful in order to avoid miscarriage of justice. (*N. R. Chatterjee and B. B. Ghose, J.J.*) **KERAMAT MANDAL v. EMPEROR.**

92 I. C. 453 = 42 C. L. J. 528 = 27 Cr. L. J. 277 =  
 A. I. R. 1926 Cal. 147.

—*Evidence fully oral—Jury the most competent to judge the value of.*

Where a case rests entirely on oral evidence, those who saw the witnesses and heard them *i.e.*, the jury are the most competent to judge as to the value of what was said by the witnesses and therefore effect should be given to their verdict. (*Walmsley and Mukherji, J.J.*) **EMPEROR v. FARATULLA MANDAL.**

86 I. C. 53 =  
 40 C. L. J. 592 = 26 Cr. L. J. 677 =  
 A. I. R. 1925 Cal. 394.

—*Trial by jury is substantive right—Commitment prior to Code of 1923—Trial after it came into force—Right not lost.*

The right of trial by a jury vested in the accused by the Code of Criminal Procedure of 1898, is a substantive

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right and not a mere matter of procedure and therefore where the commitment was made prior to the coming into force of the new Code of 1923, but the trial in the Sessions Court was held after its coming into force.

*Held*, that the accused's right of trial by jury was not lost. (*Scott Smith and Zafar Ali, J.J.*) **EMPEROR v. FIIZMAUKICE.**

93 I. C. 149 = 6 Lah. 262 =  
 26 P. L. R. 415 = 27 Cr. L. J. 421 =  
 A. I. R. 1925 Lah. 446.

—*Verdict of the jury—Conclusive view.*

The personal view of the Judge is the ultimate view that is to prevail until law makes the verdict of the Jury or the opinion of the Assessors final and conclusive. (*Walsh and Ryves, J.J.*) **LAKHAN v. EM- PEROR.**

84 I. C. 548 = 5 L. R. A. Cr. 101 =  
 26 Cr. L. J. 324 = A. I. R. 1924 All. 511.

—*Verdict—Repugnancy.*

Mere repugnancy in the verdict of a jury is not by itself sufficient to ensure the quashing of a conviction. (*Newbould and B. B. Ghose, J.J.*) **UMADASI DASI v. EMPEROR.**

83 I. C. 491 = 52 Cal. 112 =  
 40 C. L. J. 143 = 28 C. W. N. 1046 =  
 26 Cr. L. J. 11 = A. I. R. 1924 Cal. 1031.

—*Vitiating the trial.*

—*Improper exclusion of evidence—Ambiguous recording of evidence—Trial is bad*

Where evidence was improperly excluded; the evidence recorded was ambiguous in places and the Magistrate, although the identity of the thing stolen, was in doubt, did not have it produced for identification by the various witnesses.

*Held*, that the whole trial was bad. (*Findlay, J. C.*) **ZIBA v. EMPEROR.**

28 Cr. L. J. 949 =  
 105 I. C. 661 = A. I. R. 1927 Nag. 404.

—*Wrongful admission of evidence.*

The wrongful admission of evidence is not such a mistake in point of law as to vitiate the subsequent proceedings. (*Martin and Madgavkar, J.J.*) **KUTU- BUDDIN KHAN v. EMPEROR.**

28 Bom. L. R. 281 =  
 93 I. C. 881 = 27 Cr. L. J. 481 =  
 A. I. R. 1926 Bom. 238.

—*Inadmissible evidence admitted—Accused pre- judged—Trial vitiated.*

Where evidence of bad character, complicity in other crimes, confessional statements made to the Police and pure hearsay evidence which on the face of it deserved to be excluded were admitted.

*Held*, that the admission of such evidence could not, but have resulted in prejudice to the accused and a verdict based on such inadmissible evidence can never be upheld. (*Walmsley and Mukerji, J.J.*) **SHEIKH ABDUL v. EMPEROR.**

85 I. C. 830 =  
 26 Cr. L. J. 606 = A. I. R. 1925 Cal. 887

—*Calling accused's pleader as prosecution witness in the middle of case reprehensible—Trial vitiated whether accused prejudiced or not.*

If the prosecution wants to call the counsel for the defence as a witness on its side sufficient notice ought to be given to the accused to engage a competent counsel. It is very reprehensible to call a counsel who is actually defending an accused person as a prosecution witness, in the course of the proceeding. Such a course not only affects the proper conduct of the defence, but it gives a handle to the prosecution to prevent a counsel who is well acquainted with the facts of the case from conducting the defence. (*Devadoss, J.*) **MANNARGAN v. EMPEROR.**

91 I. C. 65 =  
 27 Cr. L. J. 33 = 1925 M. W. N. 702 =  
 A. I. R. 1925 Mad. 1153 = 49 M. L. J. 95.

**CRIMINAL TRIAL—Vitiating the trial.**

—*Essential details disbelieved—Story reconstructed by Court—Conviction based on—Bad.*

Where the prosecution cannot be believed in its essential details conviction cannot be based upon a part of the story of the prosecution. Where the greater portion of the prosecution evidence is disbelieved, a Court cannot reconstruct a story and convict the accused on the story wholly inconsistent with that told by witnesses. (*Foster, J.*) *JOHARMAL MARWARI v. THE KING-EMPEROR.* 81 I. C. 212 = 5 P. L. T. 635 = 25 Cr. L. J. 724 = A. I. R. 1924 Pat. 813.

—*Evidence of previous conviction prior to entering upon defence trial vitiated.*

The trial is vitiated by the admission of the evidence of previous conviction prior to the accused's entering upon his defence. Where it was clear that the Magistrate was influenced by his knowledge of bad character of the petitioner.

*Held* (Per *May Oung, J.*)—It is not perhaps easy to keep the mind entirely free from prejudice when the record and the police papers show that the prisoner in the dock is an ex convict. But the provisions of S. 310 of the Code of Criminal Procedure, whereby in Sessions trials, all knowledge of previous conviction is rightly withheld from jurors and assessors until after the accused has either pleaded, or been found guilty, indicate the importance of the complete exclusion of such knowledge when weighing the evidence as to the truth or otherwise of the main charge. The principle underlying the legal provision may also be seen in S 54 of the Indian Evidence Act under which a previous conviction is declared inadmissible against an accused person, except where evidence of bad character is relevant. 1923 Cal. 707 Dist. (*May Oung, J.*) *MAUNG E. GYI v. EMPEROR.* 1 Rang. 520 = 25 Cr. L. J. 618 = 81 I. C. 106 = A. I. R. 1924 Rang. 91.

**—Withdrawal.**

—*Non-compoundable complaint — Withdrawal without cause shown—Validity of.*

It is not necessarily unlawful to agree to withdraw a criminal complaint of a non compoundable offence because it may have been withdrawn because the complainant had very little chance to succeed in establishing his case. Where a complaint, made under Ss. 379 and 323, I. P. C. was withdrawn but no cause was shown as to why the complaint, so far as it was under S. 379, was withdrawn, the withdrawal cannot be said to be unlawful because it may have been withdrawn because the complaint under S. 379 was, in the circumstances, not likely to succeed. (*Ashworth, J.*) *SANHO KANDA v. MT. JHINKA KUER.* 116 I. C. 749 = A. I. R. 1929 All. 456.

—*Magistrate cannot refer petition for withdrawal by complainant to Superintendent of Police.*

The judicial officer charged with the duty of determining judicially matters which come before him must decide the petition for withdrawal of complaint. He should not refer it to the Superintendent of Police to determine whether the offences should be allowed to be compounded and the case withdrawn or not. (*C. C. Ghose and Draval, J.J.*) *AZIZUR RAHMAN v. EMPEROR.* 43 C. L. J. 214 = 27 Cr. L. J. 545 = 93 I. C. 1041 = A. I. R. 1926 Cal. 590.

—*Dropping proceedings—Discretion of the crown and not of the High Court.*

It is for the Crown to consider whether the case is a fit one in which the proceedings should be allowed to go on, or whether it is proper to drop the proceedings. It is not competent for the High Court to quash the

**CRIMINAL TRIAL—Miscellaneous.**

proceedings on the ground that the original complaint was made by the accused long ago and the accused is harassed thereby. (*Ross and Kulwant Sahay, J.J.*) *MOHAMMAD YASIN v. EMPEROR.* 5 Pat. 452 = 7 P. L. T. 383 = 27 Cr. L. J. 849 = 95 I. C. 929 = A. I. R. 1926 Pat. 302.

**—Miscellaneous.**

—*Special leave to appeal.*

Special leave for appeal cannot be granted under Privy Council Act (1884) in a criminal case. *Nadan v. King*, (1926) A. C. 482, Fol'. (*The Lord Chancellor.*) *CHUNG CHUCK v. REX.* 123 I. C. 731 = 1930 Cr. C. 1171 = A. I. R. 1930 P. C. 291 (P.C.).

—*Compelling accused to produce absconding co-accused—Improper.*

It is not the duty of the accused person to produce his absconding co-accused persons before the Court, and a Court of justice is not justified in exercising any pressure upon an accused person before it with the object of coercing him to produce persons who are fugitives from justice. (*Agha Haidar, J.*) *FAKIR MOHAMMAD v. EMPEROR.* 1930 Cr. C. 1049 = A. I. R. 1930 Lah. 953.

—*Use of police diaries.*

In a criminal trial the Court should not make use of Police diaries. (*Fforde and Addison, J.J.*) *BASANT SINGH v. EMPEROR.* 122 I. C. 568 = 31 Cr. L. J. 442 = 31 P. L. R. 185 = 1930 Cr. C. 596 = A. I. R. 1930 Lah. 484.

—*Motor accident cases—Must be tried within a week.*

The case of an accident to a motor car due to the negligent and reckless driving of another motor car ought to be tried within a week. (*Rankin, C. J. and Patterson, J.*) *SIRAJUDDIN KUZI v. SERGEANT H. JENNER.* 124 I. C. 70 = 31 Cr. L. J. 614 = 1929 Cr. C. 520 = A. I. R. 1929 Cal. 776.

—*Sanction to prosecute three persons—High Court complained against two—Magistrate directing complaint against a third person—If justified.*

In a criminal prosecution a certain document produced in the defence was alleged to be the subject-matter of forgery within the meaning of the Penal Code. Thereupon the complainant in the case applied to the Magistrate to make a complaint against three persons. The Magistrate refused and in appeal the High Court made a complaint against two persons, which came on for hearing before another Magistrate who directed the Public Prosecutor to make an application to the Court which had tried the case for a complaint against a third person under Ss. 193, 465, 471 and 109, I. P. C.

*Held*, that under the circumstances the complaint against the third person was justified in public interest. (*Rankin, C. J. and Buckland, J.*) *SUJAUDDIN v. EMPEROR.* 119 I. C. 381 = 33 C. W. N. 343 = 30 Cr. L. J. 1034 = A. I. R. 1929 Cal. 242.

—*Prosecution and counter prosecution in succession by parties—Improper to continue.*

There is no such invariable rule that justice must ultimately be done. Cases occur where a matter is left in doubt and real justice is not done. It is inadvisable that in following such a will-o'-the-wisp as absolute justice parties should be put to enormous expense and the time of Courts should be wasted. On the motion of *A, B* was prosecuted under S. 477-A, Penal Code and was acquitted by the Magistrate upon whose complaint *A* was tried for perjury. The Magistrate holding the enquiry came to the conclusion that *A* was not guilty and

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he was acquitted. Thereupon *A* applied that *B* should be tried for perjury.

*Held*, that such cycle of cases should be stopped and it was improper to continue such criminal prosecutions. Revision No. 232 of 1917. Rel. on. (*Dalal, J.*) DEBI DATT TEWARI *v.* EMPEROR.

110 I. C. 816 = 26 A. L. J. 1327 =  
9 L. R. A. Cr. 137 = 10 A. I. Cr. R. 442 =  
29 Cr. L. J. 784 = A. I. R. 1928 All. 548.

—*Consent—If validates.*

Neither request nor consent to an illegal act can make it legal. (*Darwood, J.*) ABDUL GAFFOOR *v.* GOVIND PRASAD.

117 I. C. 241 =  
30 Cr. L. J. 736 = A. I. R. 1928 Rang. 284.

—*Mandatory provisions.*

Even in cases of mandatory provisions their application must vary according to the circumstances of the case. (*Dalal, J.*) KALICHARAN SHARMA *v.* EMPEROR.

104 I. C. 225 = 8 A. I. Cr. R. 204 =  
8 L. R. A. Cr. 124 = 25 A. L. J. 846 =  
28 Cr. L. J. 785 = A. I. R. 1927 All. 654.

—*Civil suit by accused as regards same subject-matter not ordinarily questionable.*

If the law allows a legal process, it should not be condemned as unjust. Where an accused chooses to file a civil suit during the pendency of the criminal action against him, he should not be denied that rights. His action only becomes questionable when he tries by virtue of the suit to set up other rights to which he is not entitled. (*Jackson, J.*) GNANASIGAMANI NADAR *v.* VEDAMUTHU NADAR.

99 I. C. 853 =  
25 M. L. W. 52 = 1927 M. W. N. 54 =  
38 M. L. T. 80 = 28 Cr. L. J. 181 =  
7 A. I. Cr. R. 321 = A. I. R. 1927 Mad. 308 =  
52 M. L. J. 80.

—The mere fact that there is a civil liability does not necessarily absolve one from criminal liability. (*Sulaiman, J.*) INDAR SINGH *v.* EMPEROR.

92 I. C. 585 = 48 All. 288 = 7 L. R. A. Cr. 34 =  
24 A. L. J. 270 = 27 Cr. L. J. 297 =  
A. I. R. 1926 All. 302.

—*Record of statement—Not signed by maker—Presumption as to correctness.*

Where the statement by a party that he has closed his case bears no signature of the party, the statement is not recorded in accordance with law and there is no presumption of its correctness. (*Harrison, J.*) MT. BHOLAN *v.* MATU.

97 I. C. 47 =  
27 Cr. L. J. 1071 = A. I. R. 1926 Lah. 656.

—*Delay—Case dropped long ago—Resurrection by complainant if to be allowed.*

A complainant who allows a long period to elapse before resurrecting a case under S. 408, I. P. C. cannot possibly be allowed to re-agitate the matter on the ground that his feelings have been outraged by the action taken by the accused, and that as a sort of retaliation he should be so allowed. (*Harrison, J.*) HARKISHAN LAL *v.* KHUSHABI RAM.

96 I. C. 388 = 27 Cr. L. J. 932 =  
A. I. R. 1926 Lah. 213.

—*Successor in Court is same Court as his predecessor.*

A successor in a Court is the same Court as his predecessor in that Court. It therefore necessarily follows that the predecessor who has departed to another Court can no longer be held to be a presiding officer of the first Court. (*Boys, J.*) EMPEROR *v.* BALNEO PRASAD.

82 I. C. 285 = 22 A. L. J. 772 =

**CRIMINAL TRIBES ACT (1924), S. 23—Applicability.**

5 L. R. A. Cr. 121 = 25 Cr. L. J. 1277 =  
46 All. 851 = A. I. R. 1924 All. 770.

—*Delay—Conviction set aside on Habeas corpus—Fresh prosecution on different charge—Delay unexplained—If maintainable.*

Where an accused was summarily convicted by a Magistrate having no jurisdiction on 6th September 1921 under S. 149 I. P. C., and the conviction was subsequently set aside by the High Court on *habeas corpus* proceedings on 30th August 1922 and the Government decided on 8th December 1922 to prosecute the same accused under S. 121 I. P. C., but the Sessions Judge acquitted him of the charge under S. 121.

*Held*, (i) that there was delay which could not be understood; and (ii) that the accused should not be further pursued even under a new charge. (*Odgers and Wallace, J.J.*) PUBLIC PROSECUTOR *v.* PEEDI-KAKKAL MUHAMMAD.

84 I. C. 547 =  
20 M. L. W. 98 = 1924 M. W. N. 548 =  
26 Cr. L. J. 323 = A. I. R. 1924 Mad. 768.

—*Police recording evidence in investigation must attach papers to diary.*

The paper upon which the statement of a person examined by a Police Officer in investigation is written should be attached to the Police diary proper which should contain a narrative of events. (*Kotwal and Prideaux, A. J. C.*) LAXMAN NAMDEO *v.* EMPEROR.

76 I. C. 237 = 25 Cr. L. J. 141 =  
A. I. R. 1924 Nag. 33.

**CRIMINAL TRIBES ACT (VI OF 1924).****—S. 22—Failure to report.**

—*Registered member reporting departure to chaukidar of his village but not reporting his arrival to chaukidar of village of arrival—Offence punishable with six months can be tried summarily.*

*B*, who was a registered member of a criminal tribe left his house on the 22nd November 1927 and reported to the chaukidar of the village that he was going to the village of Audiar, and was likely to stay there for the night. *B* did not report his arrival at the village of Audiar, if he did at all arrive there. The trying Magistrate tried *B* summarily and convicted him. On appeal the Sessions Judge acquitted *B* on the sole ground that the offence could not be tried summarily.

*Held*, that the offence, which *B* did commit, is the omission to comply with Cl. (b) of Division (c) of R. 8 framed by the Local Government and is punishable with the maximum sentence of six months' rigorous imprisonment and was triable summarily by a Magistrate. (*Mukerji and King, J.J.*) EMPEROR *v.* BEHARI BHAR.

113 I. C. 730 = 30 Cr. L. J. 214 =  
50 All. 718 = A. I. R. 1928 All. 719.

**—S. 23—Applicability.**

—*Conviction under S. 23—Misnomer—Two Previous convictions—Not necessary they must have been under the Act.*

Section 23 does not lay down any substantive offence and it is therefore inaccurate to speak of a conviction under that section. All that it provides is minimum sentences in certain contingencies unless there are special reasons to the contrary. In the second place, this section does not require that the two previous convictions should have been convictions "under S. 23, Criminal Tribes Act". It only requires that the member of a criminal tribe should have been previously convicted of any of the offences in the Penal Code specified in Sch. I, of the Act and should be again convicted of the same or of any other such offence.

**CRIMINAL TRIBES ACT (1924), S. 23—Applicability.**

The accused, a registered member of a criminal tribe, was first convicted under S. 457 of Penal Code and sentenced to fifteen stripes. Second time he was again convicted under S. 456 read with S. 75, of the Penal Code and sentenced to eighteen months' rigorous imprisonment. Third time he was found guilty of an offence under S. 457 of the Penal Code.

*Held*, that as S. 23, Criminal Tribes Act, was applicable, the accused could be punished with transportation for life, but as the subject matter of the last offence was only a bundle of paddy, a sentence of seven years' rigorous imprisonment would meet the ends of justice. (*Sulaiman, J.*) **HARJAN v. EMPEROR.**

116 I. C. 750 = 30 Cr. L. J. 653 =  
26 A. L. J. 727 = 9 L. R. A. Cr. 86 =  
10 A. I. Cr. R. 3 = A. I. R. 1928 All. 551.

—Second and 3rd convictions must be after tribe is declared to be criminal or after registration.

What S. 23 (1) (b) means is that both the second and third convictions should be after the tribe to which the accused belongs had been declared a criminal tribe or after the accused is registered a member of the Criminal tribe. Cr. Apps. 318 and 367 of 1925. Foll. : Cr. Ref. No. 17 of 1924. Not Foll. (*Wallace and Madhavan Nair, JJ.*) **MAYANDI THEVAN v. KING-EMPEROR.**

50 Mad. 474 = 98 I. C. 477 =  
24 M. L. W. 543 = 1926 M. W. N. 823 =  
27 Cr. L. J. 1357 = A. I. R. 1926 Mad. 1165 =  
51 M. L. J. 495.

—Second conviction can be only after registration.

The proviso to S. 23, indicates that all convictions before the coming into force of the Criminal Tribes Act (III of 1911), shall count as one and not more than one, and the second conviction is to be reckoned on the basis that the accused at the time of this second conviction, must be a member of a criminal tribe, that is, that the second conviction must be, after registration of the accused as such member. (*Wallace and Madhavan Nair, JJ.*) **S. KUSUNGADU, In re.**

86 I. C. 715 = 21 M. L. W. 37 = 26 Cr. L. J. 859 =  
A. I. R. 1925 Mad. 466.

**—S. 23—Duty of Court.**

—Previous convictions under S. 457, 380 or 441. *J. P. C.—Favourable view to be taken.*

Where accused's previous convictions were under Ss. 457 and 380 or 441, I. P. C.,

*Held*, that the view most favourable to the accused should be taken and for purposes of enhanced punishment, the previous convictions should be assumed to be under S. 411 and therefore the Criminal Tribes Act, S. 23 (1) (b) did not apply. (*Wallace, J.*) **PENNA GANGI EGADU v. EMPEROR.**

105 I. C. 464 =  
28 Cr. L. J. 944 = A. I. R. 1927 Mad. 973.

**—S. 23—Reasons for reducing or enhancement.**

—Seriousness of offence no ground youth, age, illness, sex or interval between then and last coming out of prison—Good grounds for reduction.

In considering either the enhancement or reduction of sentence the mere fact that an offence is not of a serious nature cannot form a special reason. It must be something apart from the nature of the offence such as youth, age, illness or sex and the interval of time which has lapsed between the accused person coming out of prison after serving the last sentence and the commission of the offence. Where therefore a period of about eight years had lapsed between serving the last punishment and commission of offence, the punishment was reduced from transportation to seven years. A. I. R. 1926 Mad. 1165, Ref. (*Brasely, C. J. and Cornish, J.*) **KARUPPA TEVAN v. EMPEROR.**

122 I. C. 655 =

**CRIMINAL TRIBES ACT (1924), S. 25—Refusal to return to settlement.**

31 Cr. L. J. 454 = 30 M. L. W. 710 =  
2 M. Cr. C. 305 = 1929 Cr. C. 609 = 53 Mad. 80 =  
A. I. R. 1929 Mad. 841 = 57 M. L. J. 743.

—Offence not serious—No ground for reduction—Youth, age, illness or sex—Good reasons.

The mere fact that the offence is not of a very serious nature cannot form a special reason for reducing the sentence. Such special reasons must be something apart from the nature of the offence, such as youth or age or illness or sex. (*Wallace and Madhavan Nair, JJ.*) **MAYANDI THEVAN v. KING-EMPEROR.**

98 I. C. 477 = 50 Mad. 474 = 24 M. L. W. 543 =  
1926 M. W. N. 823 = 27 Cr. L. J. 1357 =  
A. I. R. 1926 Mad. 1165 = 51 M. L. J. 495.

**—S. 24—Offence under.**

—Accused found near a pond with scissors and match box—Conviction under S. 24 (b) is not tenable.

Where all the evidence against the accused was that he was found near a pond and that he had a pair of scissors and a box of matches,

*Held*, that this did not in any way amount to an offence under S. 24 (b). (*Devadoss, J.*) **HITCHALUGADU v. EMPEROR.**

108 I. C. 901 = 1928 M. W. N. 71 =  
27 M. L. W. 734 = 29 Cr. L. J. 453 =  
10 A. I. Cr. R. 56 = 1 M. Cr. C. 31 =  
A. I. R. 1928 Mad. 479 = 54 M. L. J. 444.

**—S. 25—Refusal to return to settlement**

—Rule 17—A registered member discharged on probation—Probation cancelled for misconduct and member recalled to the Settlement—Refusal to go—S. 25 can be used—Special order of local Govt.—Not necessary.

The accused was registered as a member of a criminal tribe and was kept in the Sholapur Settlement. Subsequently he was released on probation and allowed to go to Bombay and his roll-call was cancelled. During the period of probation the Criminal Tribes Settlement Officer ordered accused's probation to be cancelled for misconduct, and the accused was ordered to be returned to the Sholapur Settlement. This order was communicated to the accused, but he refused to go to Sholapur and was arrested, and was asked to go or restrict himself to the Sholapur Settlement.

*Held* (per *Patkar J.*)—That the Settlement Officer had power under R. 17 (1) (a) to pass the order and the accused was properly dealt with under S. 25 of the Criminal Tribes Act.

Per *Baker, J.*—If the Criminal Tribes Settlement Officer cancels the order of probation on which a member of a criminal tribe is discharged, special orders of the Local Government for his return to the settlement are not necessary. (*Patkar and Baker, JJ.*) **MALHARI LAXMAN v. EMPEROR.**

100 I. C. 1050 =  
51 Bom. 409 = 29 Bom. L.R. 186 = 28 Cr. L. J. 394 =  
7 A. I. Cr. R. 517 = A. I. R. 1927 Bom. 159

**CROSS COMPLAINTS.**

See CRIMINAL TRIAL.

**CROWN—Charter Act.**

See (1) CR. P. CODE, Ss. 256 257.

(2) EVIDENCE ACT, Ss. 137 to 161.

**CRUELTY. See RESTITUTION OF CONJUGAL RIGHTS.****CULPABLE HOMICIDE. See PENAL CODE, Ss. 299-304.****CUMULATIVE SENTENCE.**

See (1) CR. P. CODE, S. 35.

(2) PENAL CODE, S. 71.



**DACOITY**

—See PENAL CODE, Ss. 395 & 396.

**DANCING GIRL**

See (1) HINDU LAW.

(2) PENAL CODE, Ss. 372, 373.

**DEADLY WEAPON**—See PENAL CODE, S. 148.

**DEAF AND DUMB.**

See (1) CRIMINAL P. C., S. 341.

(2) EVIDENCE ACT, S. 119.

(3) HINDU LAW.

**DEFAMATION.**

See (1) PENAL CODE, Ss. 499-500.

(2) TORT-DEFAMATION.

**DEFENCE OF INDIA (Criminal Law Amendment) ACT (4 of 1915).**

—Commandeering order.

—Contract—Commandeering order—Goods ordered by Government under—Contract is not ordinary commercial contract.

In the case of commandeering order there can be no ordinary commercial contract for sale and purchase, because one of the parties may be unwilling to surrender his goods and yet may be compelled under the commandeering order to do so. He has no option once the order has been made and issued. He is bound to place his goods at the disposal of Government when called upon to do so. The only right he has is that if he does not accept the price offered by Government he can have it settled by arbitration. The arbitrator's order is final. (*Chotzner, J.*). **KESSORAM PODDAR AND CO. v. SECRETARY OF STATE.** 107 I. C. 360=54 Cal. 969=A. I. R. 1928 Cal. 74.

—Rules under—Chalan by Police.

—Offence under R. 25 (1)—Police making chalan under District Magistrate's order—Chalan may be treated as complaint.

Chalan by the Police are only possible in cases cognizable by them. But where a District Magistrate directs the Superintendent of Police to make an inquiry, complete the case and send it up for trial and in due course a subordinate Police Officer puts up a chalan, the chalan may be treated as a complaint. 26 Bom. 150 (F. B.), *Foll.* 16 P. R. 1890 Cr.; 28 P. R. 1888 Cr.; 2 P. R. 1892 Cr.; 8 P. R. 1892 Cr.; 20 P. R. 1894 Cr. and 37 Cal. 467, *Ref.* (*Broadway, J.*). **KHUSHAL SINGH v. EMPEROR.** 67 I. C. 337=86 P. L. R. 1922=A. I. R. 1921 Lah. 345.

—S. 5—Procedure.

—Section 360 applies to proceedings before Commissioners under Defence of India Act. (*Shadi Lal, C. J.*). **TAJ MOHAMMAD v. EMPEROR.** 107 I. C. 100=29 P. L. R. 14=29 Cr. L. J. 212=9 A. I. Cr. R. 505=A. I. R. 1928 Lah. 125.

**DETENTION IN CUSTODY.**

See (1) CR. P. C., S. 344.

(2) CRIMINAL TRIAL.

**DETENTION OF ACCUSED BY POLICE.**

See (1) CR. P. C., S. 344.

(2) CRIMINAL TRIAL.

**DISAFFECTION.**

See PENAL CODE, S. 124-A.

**DISAPPEARANCE.**

See EVIDENCE ACT, Ss. 107 AND 108.

**DISCHARGE.**

See (1) CRIMINAL TRIAL.

(2) CR. P. CODE, Ss. 209, 254.

(3) EVIDENCE ACT, Ss. 102, 103 AND 114.

**DISCHARGE OF ACCUSED.**

See CR. P. C., S. 253.

**DISHONEST INTENTION.**

See (1) EVIDENCE.

(2) EVIDENCE ACT, Ss. 14 AND 15.

**ELECTRICITY ACT: (1910). S. 12—Absence of permission.**

**DISHONESTY.**

See PENAL CODE.

**DISMISSAL OF COMPLAINT**—See CR. P. C., Ss. 203 & 247.

**DISPOSAL.**

See PENAL CODE, S. 372.

—Of Dead Body.

See PENAL CODE, S. 318.

—Of Property.

See CR. P. C., S. 517.

**DISPUTE AS TO POSSESSION OF IMMOVABLE PROPERTY.**

See CR. P. C., Ss. 144-147.

**DISQUALIFICATION OF MAGISTRATE.**

See PENAL CODE, Ss. 526-528.

**DISTINCT OFFENCES.**

See CR. P. C., Ss. 35, 233.

—Magistrate—Revision by.

See CR. P. C., S. 433.

**DRUGS.**

See BOMBAY ABKARI ACT.

**DYING DECLARATION.**

See (1) CR. P. CODE, S. 164.

(2) EVIDENCE ACT, Ss. 32 AND 13.

**EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT (2 E. B. & A. of 1907).**

—S. 2—Scope of power.

—Under the Eastern Bengal and Assam Disorderly Houses Act the owner or occupier of disorderly houses may be ordered to discontinue the use of a house as a disorderly house but not to vacate it. An order imposing daily fine on prostitutes for non-compliance with an order to vacate their houses is therefore not competent under Ss. 2 and 3 and is *ultra vires*. (*Cuming, J.*). **KUSAM BAI-S-TAMI v. EMPEROR.** A. I. R. 1930 Cal. 638.

—S. 3—Procedure.

—Proceedings under S. 3 of the Act, (2 E. B. and A. of 1907) are not governed by CR. P. Code. It is not necessary for the Magistrate to act only on legal evidence and he need not administer oath. But before passing an order he must satisfy himself that the house is used as described in S. 2, Cls. (a), (b) or (c) and he may do this in any way that does not violate the ordinary rules of fairness and propriety, but before he can pass an order under S. 3 he must not only be satisfied that the houses are used as brothels but he must further find an additional fact to bring it within the provisions of Cls. (a), (b) or (c). When the cases of a large number of houses are jointly considered, though it is not necessary to draw up separate proceedings and hold separate enquiries, yet in deciding the question whether annoyance was caused, the Magistrate should apply his mind to the case of each house separately. (*Newbould and B. B. Ghose, JJ.*). **RAMA PADA v. BASANTA BAISHNABI.** 91 I. C. 881=30 C. W. N. 91=27 Cr. L. J. 145=A. I. R. 1926 Cal. 307.

**ELECTRICITY ACT (9 of 1910).**

—S. 12—Absence of permission.

—No interference by High Court.

A post was erected on the land of a person. Permission from the District Magistrate for erecting it was obtained not before erecting but after institution of suit by the owner of land. Lower Court dismissed the suit.

*Held*, that High Court would not interfere with the decision. (*Jai Lal, J.*). **JIT SINGH v. GUJRANWALA ELECTRIC SUPPLY CO., LTD.**

114 I. C. 692=A. I. R. 1929 Lah. 226.

**ELECTRICITY Act (1910), S. 12—Powers of District Magistrate.****—S. 12—Powers of District Magistrate.**

—There is no law authorizing the District Magistrate to grant permission to an electric company to lay electric line over the land of a person. (*Jai Lal, J.*). **JIT SINGH v. GUJRANWALA ELECTRIC SUPPLY CO., LTD.** 114 I.C. 692= A.I.R. 1929 Lah. 226.

**—S. 12—Right to object.****—Principle.**

The ordinary rule of law is that whoever owns the site is the owner of everything upto the sky and down to the centre of the earth, and such owner can, therefore, object to the laying of electric wire on his land although the line may be laid more than 30 feet above land. (*Jai Lal, J.*). **JIT SINGH v. GUJRANWALA ELECTRIC SUPPLY CO., LTD.** 114 I.C. 692= A.I.R. 1929 Lah. 226.

**—S. 14—Costs of removal.**

—The defendants were a corporation who had obtained a license under the Indian Electricity Act, (Act 9 of 1910) and as licensees under the Act had put up an aerial line, etc., on a certain street within the Municipal District of the Municipality of Karachi, the plaintiffs. The Municipality having arranged with the North Western Railway Co., that the latter should effect an overbridge, the aerial line and poles had to be shifted from their position. The plaintiffs' suit was for declaration that the cost of removal should be borne by defendants.

*Held*, that S. 14 of the Electricity Act applied and not the Bombay District Municipal Act and that plaintiffs must bear the cost of removal. (*Tyabji, A.J.C.*). **MUNICIPALITY OF KARACHI v. KARACHI ELECTRIC SUPPLY CORPORATION, LTD.** 95 I.C. 226= A.I.R. 1926 Sind 115.

**—S. 22—Failure to supply.****—Good cause for action.**

There is nothing in the Indian Electricity Act which bars, either expressly or impliedly, a suit for damages against licensee for failure to supply energy on proper requisition. (*Campbell, J.*). **MUNICIPAL COMMITTEE, AMRITSAR v. SHANKAR DAS.** 97 I.C. 537= A.I.R. 1926 Lah. 349.

**—S. 22—Substituted connection.****—Procedure.**

Before a consumer can be supplied electric power from a new connection in substitution of an old one he must put in a fresh requisition in writing under paras. 4 and 5 of Cl. 6 of the Schedule to the Indian Electricity Act. (*Shah, Ag. C. J. and Fawcett, J.*). **BHAGYANJI SONKLESWAR v. AHMEDABAD ELECTRICITY CO., LTD.** 85 I.G. 186= 49 Bom. 182= 26 Bom. L. R. 1206= A.I.R. 1925 Bom. 120.

**—S. 37—Removal of seals.****—What amounts to.**

The evidence for the prosecution showed that when the officials of a licensee company visited the premises of the accused the seals which the company had affixed to the meter placed upon the premises of the accused had been removed.

*Held*, that the accused must be held responsible for removing these seals and that his conviction under R. 106 read with S. 37 (4) was justified. (*Shadi Lal, C.J.*). **MAHOMED SADIQ v. DELHI ELECTRIC SUPPLY TRACTION CO.** 116 I.C. 889= 30 Cr. L.J. 702= 13 A.I. Cr. R. 115= 1929 Cr. C. 601= A.I.R. 1929 Lah. 867.

**—S. 50—'Person aggrieved.'**

—A licensee-company is a person aggrieved within the meaning of S. 50. (*Shadi Lal, C.J.*).

**EVIDENCE—Admissibility—Objection—When should be taken.**

**MUHAMMAD SADIQ v. DELHI ELECTRIC SUPPLY & TRACTION CO.** 116 I.C. 889= 30 Cr. L.J. 702= 13 A.I. Cr. R. 115= 1929 Cr. C. 601= A.I.R. 1929 Lah. 867.

**—Sch. Cl. 6, prov. (2)—Discontinuance of supply.—Conditions.**

A part of the electric apparatus namely the seals of the cut-out were not in good order and condition. As a result of this defect there had been a leakage of energy.

*Held*, such a state of things must certainly be deemed to be "likely to affect injuriously the use of energy by the licensee or by other persons," and accordingly the electric company were entitled upon discovering this condition of things, to discontinue the electric supply.

Where a main fuse was burnt out, in other words, where the cut-out became defective,

*Held*, the company was entitled to discontinue the supply of energy to the consumer. (*Scott-Smith and Ffords, J.J.*). **KARORI MAL v. E. T. LIGHTING CO., LTD.** 75 I.C. 456= 4 Lah. 182= 6 L.L.J. 86= A.I.R. 1924 Lah. 142.

**EMBEZZLEMENT.**

See PENAL CODE, S. 4.

**ENHANCEMENT—Of Rent.****—Of Sentence.**

See CR. P. CODE, SS. 417, 439.

**ENHANCING—Sentence.**

See PENAL CODE, S. 75.

**ENTICING AWAY MARRIED WOMAN.**

See PENAL CODE, SS. 497-498.

**ESCAPE FROM LAWFUL CUSTODY.**

See PENAL CODE, SS. 223-226.

**EUROPEAN BRITISH SUBJECT.**

See CR. P. CODE, SS. 523-A TO 523-D, 29-A AND 34-A.

**EVIDENCE.****—Admissibility—Irrelevant facts.****—Trial of other persons for same offence.**

Where accused were being tried for having taken part in a certain dacoity, the fact that certain other persons were previously tried for complicity in that dacoity and acquitted is absolutely irrelevant and immaterial. (*Stuart, C. J. and Raza, J.*). **RAM PRASAD v. EMPEROR.** 106 I.C. 721= 2 Luck. 631= 1 L.C. 339= 8 A.I. Cr. R. 449= A.I.R. 1927 Oudh 369.

**—Evidence to contradict possible evidence of opponent.**

There is no provision of law which makes evidence, contradicting possible evidence of a possible defence witness, admissible against the accused. (*Suhrawardy and Panton, J.J.*). **BHAGIRATHI CHOWDHRY v. EMPEROR.** 92 I.C. 174= 30 C.W.N. 142= 27 Cr. L.J. 222= A.I.R. 1926 Cal. 550.

**—Admissibility—Matter found in illegal search.**

—If a search warrant is illegal, then what is found as a result of that search can be put in evidence in a criminal case. 85 All. 558, *Rel. on*. (*Marten and Madgavkar, J.J.*). **EMPEROR v. ABAS-BHAI.** 93 I.C. 967= 50 Bom. 344= 28 Bom. L.R. 272= 27 Cr. L.J. 503= A.I.R. 1926 Bom. 195.

**—Admissibility—Objection—When should be taken.**

—Questions regarding the admissibility of evidence should ordinarily be raised at the time when such evidence is tendered. (*Mears, C.J. and*

**EVIDENCE—Admissibility—Record.**

*Piggott, J.*. EMPEROR v. HAR PRASAD BHAR-GAVA. 77 I. C. 961=21 A. L. J. 42=45 All. 226=4 L. R. A. Cr. 19=25 Cr. L. J. 497=A. I. R. 1923 All. 91.

**—Admissibility—Record.**

—*Cr. P. Code, S. 110—Proceedings.*

In a trial for an offence under S. 396 of the Penal Code, the result of proceedings taken against the accused under S. 110 of the Cr. P. Code is not admissible. (*Walmsley and Huda, J.J.*). ASIMUDDIN v. EMPEROR. 59 I. C. 204=22 Cr. L. J. 60=32 C. L. J. 89.

**—Admissibility—Statements.**

—*Accused in custody.*

In an excise case statements of the accused taken after the accused were taken to the excise barracks and while they were in custody, were held to be not voluntary statements and hence inadmissible. (*C. C. Ghose and Duval, J.J.*). BATASI MONI DASSI v. EMPEROR. 98 I. C. 401=53 Cal. 706=30 C. W. N. 854=27 Cr. L. J. 1329=A. I. R. 1926 Cal. 1163.

—*Persons not examined.*

Statements made by persons, who have not been examined in Court about the absence of the accused, when search was made for accused, are inadmissible. (*Newbould and B. B. Ghose, J.J.*). KERAMAT MONDAL v. EMPEROR. 92 I. C. 439=42 C. L. J. 524=27 Cr. L. J. 263=A. I. R. 1926 Cal. 320.

—*Witness in judgment.*

The statement of a witness abstracted in a judgment can be made use of only in one of two ways either under S. 145 of the Evidence Act to contradict the witness or as an admission under S. 21. It cannot be used in lieu of the original statement itself. (*Beasley, C.J. and Curgenven, J.*). SARADAMBA v. PATTABHIRAMAYYA. 1930 M. W. N. 601.

—*Witness before Coroner.*

At the trial of the accused in the Court of Sessions a statement made by a witness in a proceeding before the Coroner is admissible in evidence. (*Madgavkar, J.*). EMPEROR v. RAGHOO GANPAT. 97 I. C. 37=28 Bom. L. R. 775=27 Cr. L. J. 1061=A. I. R. 1926 Bom. 404.

—*Conflicting testimony.*

Statement made by a witness at the trial should be altogether rejected when it is in hopeless conflict with his previous statements. (*Martineau and Zafar Ali, J.J.*). RAM KARAN v. EMPEROR. 92 I. C. 577=7 L. L. J. 371=26 P. L. R. 659=27 Cr. L. J. 289=A. I. R. 1925 Lah. 483.

—*Police file—Thanedar's statement in other case.*

In order to prove an alleged theft of an account book in a Civil Court from the plaintiff's house the police file and a copy of the statement made by the Thanedar in other case are inadmissible. (*Wilberforce, J.*). BARU v. SUKHA SINGH. 69 I. C. 1008=4 L. L. J. 418=A. I. R. 1921 Lah. 332.

**—Appreciation of—Appellate Court.**

In every case that comes before an appellate Court the lower Court has the advantage of seeing and hearing the witnesses and the appellate Court has not, but it cannot be said that an appellate Court can never hope to make a diagnosis as to the truth of the case as good as that made by the lower Court. No doubt it is an advantage to see and hear the witnesses, but it is an advantage which may be counter-acted and more than counter-acted by the greater experience and knowledge of the appellate Court. (*Pullan, J.*). GURCHARAN v. EMPEROR. 103 I. C. 416=1 L. C. 190=8 A. I. Cr. R. 379=28 Cr. L. J. 688=A. I. R. 1927 Oudh 611.

**EVIDENCE—Appreciation of—Witnesses.****—Appreciation of—Findings.**

—*Credibility.*

The lower Court is the proper and, in general, the final Judge of the credibility of evidence. (*Curgenven, J.*). M. KANNIAPPAN v. KULLAM-MAL. 1930 Cr. C. 83=1929 M. W. N. 696=2 M. Cr. C. 275=A. I. R. 1930 Mad. 194.

**—Appreciation of—Injury.**

—*External marks.*

The absence of any external mark of injury is not necessarily destructive of the case that the injury was caused by a brick. It is possible that a blow in the abdomen is less likely to leave a mark than one on a less elastic and resilient part of the anatomy. (*Mullick and Kulwant Sahay, J.J.*). RAMJIT AHIR v. EMPEROR. 74 I. C. 705=2 Pat. 309=1 Pat. L. R. Cr. 236=24 Cr. L. J. 801=A. I. R. 1923 Pat. 413.

**—Appreciation of—Maxim.**

—*Per Halliford, A. J. C.*—The maxim *falsus in uno falsus in omnibus* is entirely false. (*Halliford, Pridoux and Kotwal, A. J. Cs.*). SAKRU v. EMPEROR. 65 I. C. 561=23 Cr. L. J. 129=A. I. R. 1922 Nag. 146.

**—Appreciation of—Oral evidence.**

—*Alibi in criminal case.*

Where witnesses for the accused deposed that they met the accused Ghulam Ali and Fazal Illahi at Sangla about 10 A.M. on the 12th of July and this oral evidence was unsupported by any documentary evidence and the witnesses were not persons who would remember the date precisely,

Held, such evidence as that is easily obtainable in this country. (*Le Rossignol and Zafar Ali, J.J.*). JALAL v. KING-EMPEROR. 81 I. C. 347=25 Cr. L. J. 811=A. I. R. 1923 Lah. 232.

**—Appreciation of—Reliability.**

—*Vernacular record.*

Generally in cases where evidence is given by a witness in his own language, the vernacular record is always treated as more reliable and entitled to greater weight, though this maxim could not always be safely applied in cases where a Magistrate who is taking down the evidence simultaneously in English understands the language as well as his reader. (*Abdul Qadir, J.*). SADHU SINGH v. KING-EMPEROR. 73 I. C. 513=24 Cr. L. J. 625=A. I. R. 1923 Lah. 167.

—*Confession—Delay.*

When the story of confession was not told by the witness until after a fortnight of the occurrence, the evidence is unreliable. (*Coutts and Adams, J.J.*). NIRU BHAGAT v. EMPEROR. 71 I. C. 219=1 Pat. 630=4 P. L. T. 76=24 Cr. L. J. 91=A. I. R. 1922 Pat. 582.

**—Appreciation of—Witnesses.**

—*Interested.*

Where the brother of the witness in question brought a complaint for causing hurt against the first cousin of the accused a year before,

Held, that this was not a sufficient reason for disbelieving the evidence of the witness. (*Scott-Smith and Martineau, J.J.*). DILIP SINGH v. EMPEROR. 86 I. C. 341=7 L. L. J. 44=26 Cr. L. J. 757=A. I. R. 1925 Lah. 318.

—*Medical opinion—Eye-witness—Value of.*

Where there is the testimony of a considerable body of trustworthy witnesses of good position and undoubted respectability who were able to observe facts and draw inferences therefrom, who acted not in secrecy but with the utmost publicity in the midst of a large assembly and who had no intelligible motive to engage in a conspiracy for setting

**EVIDENCE—Appreciation of—Miscellaneous.**

up a false testamentary instrument, the opinion of medical man as to what should have been the probable state of the testator should not outweigh and prevail over the testimony of such eye-witnesses. (*Mookerjee and Chotzner, J.J.*). SARADINDU NATH RAI CHAUDURI v. SUDHIR CHANDRA DAS.

69 I.C. 43=50 Cal. 100=35 C.L.J. 569=  
A.I.R. 1923 Cal. 116.

**—Appreciation of—Miscellaneous.**

—Per *Hallifax, A.J.C.*—There is no distinction between what a prudent man would believe out of Court and what a Judge may believe. (*Hallifax, Prideaux and Kotval, A.J.Cs.*). SAPKU v. EMPEROR.

65 I.C. 561=23 Cr. L.J. 129=  
A.I.R. 1922 Nag. 146.

**—Circumstantial evidence.**

—The ordinary rule in a case of circumstantial evidence is that, in order to justify a conviction, it should be incompatible with any reasonable hypothesis than that of the accused's guilt. (*Fawcett and Mirza, J.J.*). EMPEROR v. ISMAIL KHA-DIESAB.

108 I.C. 501=52 Bom. 385=  
30 Bom. L.R. 330=10 A.I.Cr.R. 118=  
29 Cr. L.J. 403=A.I.R. 1928 Bom. 130.

—When conclusive—Incompatibility with innocence.

In order to infer guilt from the circumstantial evidence it must be shown that the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. (*Tek Chand, J.*). PRITCHARD v. EMPEROR.

112 I.C. 830=30 Cr. L.J. 18=11 A.I. Cr. R. 405=  
A. I. R. 1928 Lah. 382

—When sufficient for conviction.

Circumstantial evidence to convict a person requires a high degree of probability, that is sufficiently high that a prudent man, considering all the facts and realizing that the life or liberty of the accused person depends upon the decision, feels justified in holding that the accused committed the crime. 32 P.R. 1916 Cr., *Foll.* (*Addison and Coldstream, J.J.*). DINA v. EMPEROR.

109 I.C. 912=29 Cr. L.J. 640=10 A.I. Cr. R. 350.

—Exhaustiveness—Probability.

Though circumstantial evidence must be exhaustive, that does not mean that every incident short of the actual commission of the offence must be proved by positive evidence but that what is required is so high a degree of probability that a prudent man would feel justified in holding that the accused committed the crime. 32 P.R. 1916 Cr., *Appl.* (*Campbell and Addison, J.J.*). BUTA SINGH v. EMPEROR.

97 I.C. 752=7 Lah. 396=  
27 Cr. L.J. 1168=27 P.L.R. 447=  
A.I.R. 1926 Lah. 582.

—The minutes of a meeting are *prima facie* evidence of what happened at the meeting. (*Shah Ag. C. J. and Fawcett, J.*). PARASURAM DUTTA RAM v. TATA INDUSTRIAL BANK LTD.

90 I.C. 580=26 Bom. L. R. 987=  
A.I.R. 1925 Bom. 49.

—Redness of eyes—Bhang smoker.

The redness in the eyes of a person may be due to several causes and in the absence of evidence it cannot be held that the person merely on that account is an habitual smoker of bhang. (*Gokaran Nath, A.J.C.*). BAHADUR DUBE v. KING-EMPEROR.

89 I.C. 145=12 O.L.J. 388=26 Cr. L.J. 1281=  
A.I.R. 1925 Oudh 480.

—When conclusive.

If an accused person is to be convicted on circumstantial evidence the circumstances must be

**EVIDENCE—Credibility.**

such as to exclude all reasonable probability of his innocence. (*Scott-Smith and Abdul Raoof, J.J.*). MD. YAB v. EMPEROR.

81 I.C. 533=  
4 Lah. L.J. 235=25 Cr. L.J. 939=  
A.I.R. 1922 Lah. 263.

—The fundamental rule by which circumstantial evidence is estimated is that in order to justify the inference of guilt the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any reasonable hypothesis other than that of his guilt. It is safer to follow the rule that "the fouler the crime the clearer and the plainer the proof ought to be." (*Jwala Prasad and Sultan Ahmed, J.J.*). RAGHUNANDAN KOERI v. EMPEROR.

59 I.C. 888=  
22 Cr. L.J. 154=1 Pat. L.T. 684.

**—Corroboration.**

—Police surveillance—Statement under.

No reliance should ordinarily be placed on the uncorroborated testimony of a criminal who has undergone a sentence of imprisonment and is under police surveillance especially when he is produced by Police under whose supervision he is. (*Shadi Lal, C.J. and Jafar Ali, J.*). NAWAB v. THE CROWN.

89 I.C. 311=7 L.L.J. 219=  
26 P.L.R. 518=26 Cr. L.J. 1335=  
A.I.R. 1925 Lah. 397.

**—Credibility.**

—Trial Judge's opinion.

At all times considerable weight should be attached to the opinion of the Judge who heard the witnesses as to their relative credibility. When the record does not show that the witnesses on either side have been materially discredited or greatly shaken in cross-examination, it is the duty of the Judge to decide which side is telling the truth. When the Judge has tried the case with marked care and intelligence, his opinion as to credibility of the witnesses should ordinarily be accepted. (*Stuart, C. J. and Gokaran Nath Misra, J.*). MUKTA PRASAD v. EMPEROR.

94 I.C. 193=  
27 Cr. L.J. 577=13 O.L.J. 69.

—Changing sides.

A witness who has changed sides and has made statements in favour of both the prosecution and the accused is an unreliable witness and neither of his statements can be believed. (*Wazir Hasan, A.J.C.*). SAEJU SINGH v. EMPEROR.

88 I.C. 852=26 Cr. L. J. 1236=  
A.I.R. 1925 Oudh 726.

—Denomination.

Credibility of witnesses or jurors must not be judged from their denomination. 11 C.W.N. 1085, *Foll.* (*Mookerjee and Chatterjee, J.J.*). MAMFRU CHOWDHURY v. EMPEROR.

81 I.C. 264=51 Cal. 418=38 C.L.J. 397=  
25 Cr. L.J. 776=A.I.R. 1924 Cal. 323.

—Delay in disclosure.

Where a witness keeps quiet for many days after the occurrence and comes forward after the police had made a discovery he is not reliable. (*Shadi Lal, C. J. and Zafar Ali, J.*). RULLIA RAM v. THE CROWN.

84 I.C. 321=5 L.L.J. 325=  
26 Cr. L.J. 257=A.I.R. 1923 Lah. 438.

—Person acquitted in prior case.

In estimating the value of the evidence given by a witness, the elementary principle must not be overlooked that where there has been an acquittal, the acquittal is conclusive and it would be a very dangerous principle to adopt to regard a judgment of not guilty as 'not fully establishing the innocence of the person to whom it relates. (*Mookerjee*

**EVIDENCE—Criminal Trial.**

*and Buckland, J.J.*). SAROJINI DASSI v. HARI DAS GHOSE. 66 I.C. 774=49 Cal. 235=34 C.L.J. 373=26 C.W.N. 113=A.I.R. 1922 Cal. 12.

**—Criminal Trial.**

**—Examination of witnesses—Obligation of prosecution—Right of cross-examination by defence.**

The prosecution is under no obligation to examine witnesses who it has reason to believe will not speak the truth. It is usual in such circumstances for the prosecution to tender such witnesses for cross-examination. The defence, however, is certainly entitled to claim that privilege but having omitted to do so they cannot be permitted to make capital of the fact that these witnesses were not cross-examined. 8 Cal. 121, *held too widely stated.* (*Graham and Lort Williams, J.J.*). NAYAN MANDAL v. EMPEROR. 34 C.W.N. 170=1930 Gr. C. 134=A.I.R. 1930 Cal. 134.

**—Retraction.**

In a case of murder, the evidences of witnesses who have resiled from their previous statements should not be relied upon. (*Devadoss and Wallace, J.J.*). AYYAMPERUMAL PILLAI v. EMPEROR. 91 I.C. 50=27 Gr.L.J. 18=1925 M.W.N. 319=22 M.L.W. 405=A.I.R. 1925 Mad. 879.

**—Immaterial discrepancies in.**

Where the reason for the acquittal of the accused by the learned Sessions Judge was certain inconsistencies and improbabilities in the evidence of the prosecution story and the difficulty of finding any explanation justifying the rejection of the *alibi*.

It was *held*, that if the prosecution is to be rejected in substance there must be some other explanation of the facts that actually occurred. Failing any such explanation it is not permissible to reject the prosecution evidence owing to immaterial discrepancies or improbabilities. (*Lyle and Ashworth, A. J. Cs.*). EMPEROR v. NAROTAM. 74 I.C. 434=10 O.L.J. 68=24 Gr. L. J. 770=A. I. R. 1923 Oudh 217.

**—Partial credibility.**

Evidence of a witness, if held to be unreliable in respect of one accused cannot be held to be reliable in respect to other accused. (*Shadi Lal, C. J. and Le Rossignol, J.*). KHERI v. THE CROWN. 99 I. C. 857=3 L.L.J. 147=28 Gr. L. J. 185.

**—Nature of offence—Quantum of evidence.**

The fouler the crime, the clearer and plainer the proof ought to be, though it cannot be laid down as a proposition of law that the quantum or value of evidence must be proportionate to the enormity of the crime or the consequences which may follow from convictions. (*Jwala Prasad and Sultan Ahmad, J.J.*). RAGHUNANDAN KOERI v. EMPEROR. 59 I.C. 858=22 Gr. L. J. 154=1 P. L. T. 684.

**—Documents—Proof of.****—Production by accused.**

A document produced by the accused in support of his own defence need not be formally proved by prosecution as against the party producing it. (*Kinkhede, A. J. C.*). MOHAMAD IBRAHIM v. EMPEROR. 112 I.C. 902=30 Gr. L.J. 38=11 A.I.Cr.R. 526=A.I.R. 1929 Nag. 43.

**—Duty of Court.**

**—Admissibility—Summary decision—Doubtful cases—Procedure.**

Matters tendered in evidence by the prosecution affecting case, must be dealt with summarily and instantly by the Judge at the trial when they are tendered. Judges, in a Court of appeal, are apt

**EVIDENCE—Expert evidence**

sometimes to attach weight to the opinion of the assessors, and although their opinion does not have any legal effect, the Judge ought to guard very carefully against allowing a discussion in Court, of the reading of a document in Court, in the presence of the assessors injurious to the accused, when it is by law inadmissible. The benefit of a reasonable doubt ought to be given from the Bench, even to the admission of evidence particularly documentary evidence, during the trial, and when the Judge is unable to make up his mind about admissibility, the proper course for him is, either to direct the prosecution to keep back the documents until he has an opportunity of looking into the law, or to reject them altogether. No Judge in a doubtful case of admissibility ought to allow the evidence first to be given, and then in his judgment give a decision about their admissibility. Doubtful or inadmissible documents ought not to be admitted in criminal trials. (*Walsh and Sulaiman, J.J.*). LAIGAM SINGH v. EMPEROR. 86 I.C. 817=26 Cr. L.J. 881=6 L.R.A. Cr. 73=A.I.R. 1925 All. 405.

**—Guilt or innocence—Decision on—Not soundness of plea.**

Even the entire omission of an available true and complete defence and the substitution for it of unsustainable falsehoods are so closely in accordance with the common, indeed almost universal course of human conduct that it cannot be inferred from such a defence that the guilt of the accused is likely. It is the duty of a Magistrate to find out whether an accused person is guilty or innocent; not merely to decide whether the pleas he chooses to put forward are sound or not. (*Hallifax, A.J.C.*). DOMAR SINGH v. EMPEROR. 66 I.C. 1001=23 Cr. L.J. 345=A.I.R. 1922 Nag. 87.

**—Exclusion of.****—Caste people—Voluntary evidence.**

Defence evidence should not be rejected on the ground that the witnesses were the caste-fellows of the accused or that they had come forward at the trial voluntarily without being summoned. 43 All. 186; A.I.R. 1923 All. 85 and 22 O.C. 375, *Rel. on.* (*Gokaran Nath, A.J.C.*). KEWAL KISHORE v. KING EMPEROR. 89 I. C. 147=12 O.L.J. 413=26 Gr.L.J. 1283=29 O.C. 44=A.I.R. 1925 Oudh 473.

**—Brahmins accused.**

Where the only ground which the lower Court gave for disbelieving witnesses was that accused were Brahmins, that the deceased was a woman and that the witnesses did not consider the death of a mere woman of any importance compared with the lives of Brahmins who were accused of her murder,

It was, *held*, the mere facts that the accused are Brahmins is not a sufficient reason for rejecting the evidence of witnesses who are *prima facie* reliable. (*Scott-Smith and Moti Sagar, J.J.*). SHEO RAM v. THE CROWN. 75 I.C. 733=6 L.L.J. 486=25 Gr. L.J. 45=A.I.R. 1923 Lah. 436.

**—Expert evidence.**

**—Statement in different trial—Admissibility of.**  
The prosecution is not entitled to put in evidence statements made by a medical expert in some other trial in the absence of the accused. He ought to be examined orally like any other witness before the Magistrate and in the presence of the accused. Such statements if placed on record must be ignored. (*Efforde, J.*). SARDARA v. EMPEROR. 94 I.C. 139=26 Punj. L.R. 80=27 Gr. L.J. 571.

**EVIDENCE—Expert evidence.****—Consent to intercourse.**

The mere presence of semen on the loin cloth of the woman is not sufficient to prove that she was a consenting party, especially in the absence of any spermatozoa in the vagina. (*Shadi Lal, C. J. and Lumsden, J.*). GHULAM HUSSAIN v. EMPEROR. 6 L.L.J. 474=A.I.R. 1925 Lah. 94.

**—Identification.****—Identification proceedings.**

There is no section of the Evidence Act, which makes the identification proceedings evidence at all. (*Banerji, J.*). BINDESHRI v. EMPEROR. 98 I.C. 478=7 L.R.A. Gr. 170=27 Cr. L.J. 1358=A.I.R. 1927 All. 163.

**—Indian women.**

Indian women can identify their own articles of jewellery even if they are of a common pattern. (*Scott-Smith and Ffords, J.J.*). ACHPAL v. EMPEROR. 89 I.C. 449=26 Cr.L.J. 1361=A.I.R. 1926 Lah. 132.

**—When unreliable.**

An identification made of a man, who is said to have been wearing a beard at the time of offence and whose beard is concealed or absent at the time of identification, is by no means convincing, and when it stands alone, must be regarded as an unstable piece of evidence. (*Walsh and Sulaiman, J.J.*). LAIGAM SINGH v. EMPEROR. 86 I.C. 817=26 Cr. L.J. 881=6 L.R.A. Cr. 73=A.I.R. 1925 All. 476.

**—Outsiders with accused—Legality of Procedure.**

Where owing to the scarcity of other under-trial prisoners in jail outsiders were brought in and placed in the line with the accused.

It was held, that the procedure was no doubt unusual, but in the peculiar circumstances of the case it was justified. (*Daniels and Neave, J.J.*). ABDUL WAHAB v. EMPEROR. 95 I.C. 756=47 All. 39=27 Cr. L.J. 836=5 L.R.A. Cr. 193=A.I.R. 1925 All. 223.

**—After long time—Value of.**

Evidence of identification of persons previously unknown after a number of months that certain persons took part in an attack is unreliable, unless there was a regular identification parade in which the witnesses picked out those persons from among others, especially where it is not stated that such persons bear any distinguishing marks by which they can be recognised. (*Martineau, J.*). MAKHAN SINGH v. THE CROWN. 88 I.C. 61=6 L.L.J. 320=26 Cr.L.J. 445=A.I.R. 1924 Lah. 722.

**—After questions put by Court—Value of.**

Where it appeared that it was only in answer to questions put by the Court that witness deposed to his being able to identify accused.

It was held, the danger of accepting such a testimony is apparent, since witness had ample opportunity to see the accused during the committal proceedings. (*Broadway, J.*). REHMAN v. THE CROWN. 83 I.C. 499=26 Cr. L.J. 19=5 L.L.J. 477=A.I.R. 1923 Lah. 662.

**—Circumstantial evidence.**

Accused robbed three passengers in the female compartment causing them injuries one of whom received a grievous hurt, and then jumped out of the train, and was found lying by the roadside as he broke his leg while jumping, having in possession some of the ornaments robbed while more valuable things were taken away by his companion.

Held, the guilt of the accused is perfectly made out. The offence was committed in the morning and the offenders were in the compartment for some

**EVIDENCE—Value of.**

time taking off ornaments from the person of the victims and causing them injuries, and there is nothing unlikely in their having been able to identify him. (*Abdul Qadir, J.*). SARIDAGAR v. KING EMPEROR. A.I.R. 1923 Lah. 169.

**—Onus.****—Forgery.**

Where a certain document filed by one party is alleged to be a forgery, the Court is not bound to enquire into the details but the party alleging that it is a forgery must *prima facie* make out a case of forgery before asking the Court to reject the document as a forgery. (*Coutts and Das, J.J.*). LACHMI NARAIN AGARWALA v. MUKHRAM MARWARI. 72 I.C. 971=24 Cr. L.J. 507=A.I.R. 1923 Pat. 31.

**—Opinions.****—Admissibility of.**

Only what the witness actually saw and heard as to what a mob was doing and saying is admissible to prove the nature of the assembly; his opinion and impressions that the assembly appeared to be unlawful are not admissible. (*Jwala Prasad, J.*). JOGI RANT v. EMPEROR. 105 I.C. 234=28 Cr.L.J. 906=9 P.L.T. 260=A.I.R. 1928 Pat. 98.

**—Presumption.****—Stolen property.**

The fact that a person is found in possession of stolen property shortly after the theft raises the presumption that he took part in the theft. (*Adami and Seroope, J.J.*). KHATIR JAMA KHAN v. EMPEROR. 123 I.C. 393=31 Cr. L.J. 492.

**—Sufficiency.****—Omission to examine—When material.**

Where A was a tenant of a house, and B, a guest in his house complained to Magistrate of nuisance and A was not examined as a witness,

Held, that omission to examine A as witness was not material. (*Shah, Ag. C. J. and Crump, J.*). BOMBAY MUNICIPALITY v. L. R. MALLANDAINE. 84 I.C. 854=48 Bom. 241=25 Bom. L.R. 1321=26 Cr. L.J. 374=A.I.R. 1924 Bom. 241.

**—Suspicion.****—Positive testimony.**

Positive testimony should not be rejected on mere suspicion. (*Mookerjee and Buckland, J.J.*). BEPIN KRISHNA RAY v. JOGESHWAR RAY. 66 I.C. 345=34 Cr.L.J. 256=26 C.W.N. 36=A.I.R. 1921 Cal. 730.

**—Trial.****—Charge of fraud—Cross-examination of person charged.**

A person who is charged with fraud should, when he is examined in Court, be cross-examined in regard to it and his explanation taken into consideration. (*Fawcett and Madgavkar, J.J.*). D. DHARMAPPA v. P. VENKAPPA. 91 I.C. 426=27 Bom.L.R. 1318=A.I.R. 1926 Bom. 33.

**—No opportunity to cross-examine.**

Acting on evidence without giving opportunity to cross-examination is illegal. (*Jwala Prasad and Coutts, J.J.*). MOTI SINGH v. DEANUKDHARI SINGH. 73 I.C. 339=24 Cr. L.J. 595=A.I.R. 1923 Pat. 53.

**—Value of.****—Cumulative effect.**

Though each of the facts inconclusive, their cumulative value may establish the guilt and exclude other possibilities. (*Harrison and Dalip Singh, J.J.*). ABDULLAH v. EMPEROR. 95 I.C. 311=27 Cr.L.J. 775.



**EVIDENCE—Value of.***Retracted statement.*

Evidence of a witness who retracted his statement in the cross-examination cannot be relied upon for convicting an accused person unless there are very strong reasons to suppose that the second statement in the cross-examination is absolutely false. (*Abdul Raoof, J.*). *SHAH ALINE v. CROWN*.

84 I.C. 1052=6 L.L.J. 280=

26 Cr. L.J. 412=A.I.R. 1925 Lah. 44.

*Anonymous letter.*

An anonymous letter is no evidence of its contents. (*Devadoss and Wallace, J.J.*). *AYYAMPERU-MAL PILLAI v. EMPEROR*.

91 I.C. 50=

27 Cr. L.J. 18=1925 M. W. N. 319=

22 M. L. W. 405=A. I. R. 1925 Mad. 879.

*Evidence—No cross-examination.*

In the absence of cross-examination evidence is of little value. 17 C.W.N. 280, *Foll.* (*Wazir Hasan, A.J.C.*). *SARJU SINGH v. EMPEROR*. 88 I.C. 852=

26 Cr. L.J. 1236=A.I.R. 1925 Oudh 726.

**EVIDENCE—Value of.***Evidence disbelieved in essentials.*

Where the prosecution cannot be believed in its essential details, conviction cannot be based upon a part of the story of the prosecution. Where the greater portion of the prosecution evidence is disbelieved, a Court cannot reconstruct a story and convict the accused on the story wholly inconsistent with that told by witnesses. (*Foster, J.*). *JOHARMAL MARWARI v. KING-EMPEROR*.

81 I.C. 212=5 P.L.T. 635=25 Cr. L.J. 724=A.I.R. 1924 Pat. 813.

*Delayed information.*

When a witness admits that he disclosed his knowledge of a crime to the police at a very late date and gives no explanation of this delay, his evidence is of no value. (*Shadi Lal, C. J. and Le Rossignol, J.*). *KHERI v. THE CROWN*.

99 I. C. 857=3 L. L.J. 147=28 Cr. L. J. 183.

# THE INDIAN EVIDENCE ACT

(ACT I OF 1872)

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**EVIDENCE ACT (1872)—Scope.****EVIDENCE ACT (I OF 1872).****—Scope.**

—The intention of the Legislature in using the words "in civil proceedings" in S. 196 (7) was to make the statement admissible against the person examined unconditionally so far as civil proceedings are concerned and in criminal proceedings subject to the provisions of S. 132, Evidence Act. S. 196, Companies Act was not intended in any way to override the provisions of the Indian Evidence Act. (*Jai Lal, J.*). **RAMCHAND GURWALA v. KING-EMPEROR.** 93 I.C. 599=27 Cr. L.J. 1383=

A.I.R. 1926 Lah. 385.

**—Applicability of Cr. P. Code.**

• The Evidence Act is a separate statute dealing with an important branch of law, and its provisions are independent of the rules of procedure contained in the Criminal Procedure Code and must have full scope unless it is clearly proved that they have been repealed or altered by another statute. (*Shadi Lal, C.J. and Addison, J.*). **RANNUN v. KING-EMPEROR.** 94 I.C. 901=7 Lah. 84=27 Cr. L.J. 709=

27 P.L.R. 583=A.I.R. 1926 Lah. 83.

**—S. 3—"Proved."****—Meaning of.**

When, after considering all the matters before it, if a Court believes a certain thing exists it cannot say that the thing is not proved. (*Hallifax and Kotwal, A.J. Cs.*). **MANGAL GAUDA v. EMPEROR.** 81 I.C. 901=25 Cr. L.J. 1077=A.I.R. 1925 Nag. 37.

**—S. 8—Depositions.**

—Cr. P. Code, S. 360—Non-compliance with S. 360 does not make record entirely inadmissible in evidence—Evidence Act, Ss. 5 and 80—Evidence Act, S. 91.

The provisions of S. 360 are mandatory. But non-compliance does not legally result in the total inadmissibility of the record of evidence and in the absence of any definite provision of law entailing inadmissibility, each case of non-compliance must be considered by the Court on its own merits and the document which purports to be the record can be admitted, but without the presumption laid down in S. 80 of the Evidence Act, and, therefore, open to question by the defence and appraisal by the Court.

The law itself does not expressly lay down that the least failure to comply with the provisions of Section 360 renders the whole document inadmissible. Where therefore there has been an attempt by the presiding officer to comply with its provisions and to secure the accuracy of the record of evidence the provisions of S. 80 do not lead to complete exclusion of the document, and the Court is bound to admit under S. 5 but it is open to each side to adduce evidence as to its faithfulness or otherwise and as to the degree of presumption under S. 80 and the weight to be attached to it. 46 Cal. 895, *Foll. (Madgavkar, A.J.C.)*. **PITOMAL v. EMPEROR.** 86 I.C. 33=16 S.L.R. 255=

26 Cr. L.J. 637.

**—S. 5—Relevant evidence—Murder trial.**

—In the trial for the murder of a particular person the case against the accused under trial, should be determined on evidence which is relevant and admissible under the Act and on the strength of evidence which the Court may consider necessary to record and appreciate with reference to two entirely different murders committed by the accused. (*Shah and Crump, J.J.*). **GANGARAM v. EMPEROR.** 62 I.C. 545=22 Bom. L.R. 1274=

22 Cr. L.J. 529.

**EVIDENCE ACT (1872), S. 6—Statements of members—Unlawful assembly.****—S. 6—False complaint.**

—Where the offence under trial is filing a false complaint, what happened at the subsequent Police investigation of the complaint forms no part of the *res gestae*. (*Wallace and Madhavan Nair, J.J.*). **VENKATASUBBIAH v. EMPEROR.**

86 I.C. 209=26 Cr. L.J. 721=48 Mad. 640=

21 M.L.W. 190=1925 M.W.N. 68=

A.I.R. 1925 Mad. 579=48 M.L.J. 195.

**—S. 6—Irrelevant evidence.****—Applicability.**

A certain witness stated that he had seen three women, who were sleeping in the same bari as the complainant and his wife that night, searching something at dusk,

*Held*, that as the alleged search that evening was not part of the same transaction as the abduction at night, S. 6 could not make it admissible and as the women were neither parties to the case nor agents to any party, S. 8 was inapplicable, S. 9 was also inapplicable. (*Newbould and B. B. Ghose, J.J.*). **FAZARUDDIN v. EMPEROR.**

90 I.C. 433=42 C.L.J. 111=26 Cr. L.J. 1553=

A.I.R. 1926 Cal. 105.

**—S. 6—What is Res gestae.**

—Where the woman raped made a statement to her relative shortly after and committed suicide about three days after the occurrence.

*Held*, that the statement was not admissible under S. 6. (*Wallace and Jackson, J.J.*). **KAPPINIAH v. EMPEROR.** (1930) M.W.N. 702.

**—After occurrence.**

What a witness tells at the time of the occurrence in respect of the occurrence itself is *res gestae* under S. 6. But a statement with regard to an event which took place a year ago would not be part of *res gestae*. (*Cuming and Mukerji, J.J.*). **KHJIRUDDIN v. EMPEROR.** 92 I.C. 442=

53 Cal. 372=42 C.L.J. 504=27 Cr. L.J. 266=

A.I.R. 1926 Cal. 139.

**—S. 6—Statements after transaction.**

—Where the statement of the girl to her mother does not form part of the transaction, *viz.*, the raping of the girl, or occur during it, but is made after the transaction is over, when the perpetrator had gone away and the girl came away from the scene of occurrence to her mother's house, the statement is not relevant under S. 6. (*Cuming and Lort-Williams, J.J.*). **SREEHARI SWARNAKAR v. EMPEROR.** 50 C.L.J. 524=1930 Cr. C. 132=

A.I.R. 1930 Cal. 132.

—In absence of definite and reliable evidence that the outrage upon a girl in an offence under S. 376, I.P.C. and her statement of the occurrence to her father constitute together *res gestae* much value cannot be attached to the statement even if it is held to be admissible. (*Agha Haidar, J.*). **GHULAM HUSSAIN v. EMPEROR.** A.I.R. 1930 Lah. 337.

**—S. 6—Statements of members—Unlawful assembly.**

—Evidence of statements, made by members of an assembly the promoters of which were charged with offences under S. 325 read with S. 149, I.P.C., of their determination to force their way through the police forms evidence of a part of the *res gestae* and is admissible to indicate that the promoters' intention to ignore the police orders had been communicated to sections of the crowd. (*Rutledge and Maung Gyi, J.J.*). **MAUNG TOK v. EMPEROR.**

90 I.C. 918=3 Rang. 352=26 Cr. L.J. 1622=

A.I.R. 1925 Rang. 385.

**EVIDENCE ACT (1872), S. 8—Conduct and character.**

—S. 8—Conduct and character.

—*Criminal tendency—Acts which formed basis of prior charge—Relevancy.*

It is not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue. *Makin v. Attorney-General for New South Wales*, (1894) A. C. 57, *Foll.*

Evidence of defalcations both prior or subsequent whether such defalcations formed the basis of another charge on which the accused may have been acquitted or not are admissible in evidence to prove guilty intent as also to anticipate the defence of the non-existence of such intent. (*Kinnaird, J.C. and Rupchand Bilaram, A.J.C.*). **EMPEROR v. STEWART.** 97 I.C. 1041=

21 S.L.R. 53=27 Cr.L.J. 1217=  
A.I.R. 1927 Sind 28.

—S. 8—Hearsay evidence.

—*Relevancy.*

The answers given by the child in reply to mother's queries could not be admitted in evidence by letting in the mother's statement and that to hold otherwise would be admitting hearsay evidence. (*Shadi Lal, C.J. and Agha Haidar, J.*). **EMPEROR v. SOOPI.** 120 I.C. 539=

1930 Cr. C. 100=31 Cr. L.J. 141=31 P.L.R. 391=  
A.I.R. 1930 Lah. 84.

—S. 8—Motive.

—*Value of.*

Motive for a crime, while it is always a satisfactory circumstance of corroboration when there is convincing evidence to prove the guilt of an accused person, can never supply the want of reliable evidence, direct or circumstantial, of the commission of the crime with which he is charged. (*Shadi Lal, C. J. and Addison, J.*). **RONNUN v. KING-EMPEROR.** 94 I. C. 901=

7 Lah. 84=27 Cr. L. J. 703=27 P. L. R. 583=  
A. I. R. 1926 Lah. 88.

—*What is.*

In a trial for the murder of a particular person, the prosecution should not show, that on two previous occasions the accused under trial had committed murders but had falsely charged and got convicted some others as murderers. The fact that the previous murders have been committed by the accused does not constitute a motive or preparation under S. 8.

Per *Crump, J.*—A motive is that which moves a man to do a particular act. Whether the belief which produces the state of mind is true or false, the motive remains the same and the truth or falsity, of the belief is not really in question. (*Shah and Crump, J.J.*). **GANGARAM v. EMPEROR.** 62 I.C. 545=22 Cr. L. J. 529=22 Bom. L.R. 1274.

—S. 8—Statement after transaction.

—*Rape.*

Where the statement of the girl to her mother does not form part of the transaction, *viz.*, the raping of the girl, or occur during it, but is made after this transaction is over, when the perpetrator had gone away and the girl came away from the scene of occurrence to her mother's house, the statement

**EVIDENCE ACT (1872), S. 8—Subsequent conduct.**

is not relevant under S. 6. (*Cuming and Lort-Williams, J.J.*). **SREEHARI SWARNAKAR v. EMPEROR.**

50 C.L.J. 524=1930 Cr. C. 132=  
A.I.R. 1930 Cal. 132.

—*Robbery and assault.*

A statement made by the deceased immediately after the robbery regarding the robbery and also regarding the assault committed in the course of the robbery, is admissible showing conduct, though the person who made it cannot be called to depose to it on oath. (*Mullick, Ag.C.J. and Wort, J.*). **LALJI DUSADH v. EMPEROR.** 106 I. C. 698=

6 Pat. 747=9 A.I.Cr.R. 373=29 Cr. L. J. 106=  
A.I.R. 1928 Pat. 162.

—S. 8—Statements before Magistrate.

—*Confession proceedings.*

Where an accused person was sent up before a Magistrate under S. 164, Criminal P. C., to have his confession, recorded and he gave the police to understand that he would make a confession, but, instead of making a confession he made a statement, though he was told that it was open to him to say that he would make no statement, *Held*, that the statement was admissible as evidence of conduct. (*Mullick, Ag.C.J. and Wort, J.*).

**LALJI DUSADH v. EMPEROR.** 106 I.C. 698=  
6 Pat. 747=9 A.I.Cr.R. 379=29 Cr.L.J. 106=  
A. I. R. 1928 Pat. 162.

—S. 8—Subsequent conduct.

—*Value of.*

Different persons are differently constituted and that some accused even though innocent deliberately abscond rather than face the ordeal of a criminal trial and that some other innocent accused do equally foolish things such as make a false admission of guilt or pay off the amount said to have been stolen or embezzled in the vain hope that they may escape a criminal prosecution or get off with a light punishment. Such subsequent conduct cannot dispense with the positive proof of the guilt of the accused, the burden of which lies upon the prosecution. When once the Crown has established the guilt of the accused by the evidence of prosecution witnesses then such subsequent conduct may be utilized as furnishing further proof of the correctness of the conclusion as to the guilt of the accused drawn from the evidence of the prosecution witnesses; by itself, however, it can furnish no legitimate proof of the guilt of the accused. (*Nanavutty, J.*). **CHANDRIKA PRASAD v. EMPEROR.** 7 O.W.N. 564=

A.I.R. 1930 Oudh 324.

—*Approver.*

The mere fact of an accused person having taken the Magistrate to a particular spot and pointed out the several places, where the various incidents narrated by the approver took place, is not admissible as evidence of conduct nor is it of any value in determining his guilt. (*Tek Chand, J.*). **BAGEL SINGH v. EMPEROR.** 121 I. C. 497=

1929 Cr. C. 426=31 Cr. L. J. 269=  
A.I.R. 1929 Lah. 794.

—*Raped girl.*

If the raped girl went to her relatives straight after the occurrence and complained on her own initiative about her rape, her conduct would have a direct bearing upon and connection with the occurrence, but if she only answered questions put to her, her statement would be mere hearsay. (*Foster, J.*). **EMPEROR v. PHAGUNIA BHUTAN.**

89 I.C. 1043=26 Cr.L.J. 1475=  
A. I. R. 1926 Pat. 58.

**EVIDENCE ACT (1872), S. 8—Subsequent conduct.****—Murder case.**

The fact that the accused pointed out the place, where the weapon was found as being the place at which it was concealed, and the fact that shortly after the crime he was in a very agitated state and made a statement which led to his being asked to show the spot where the weapon used in the commission of the murder was concealed are evidence of conduct under S. 8 of the Evidence Act, which render highly probable, the oral evidence in the case and indicate that the accused was the murderer. (*Spencer, O.C.J. and Reilly, J.*). SEMALAI GOUNDAN, *In re.* 86 I.C. 664=26 Cr.L.J. 840=21 M. L. W. 199=A.I.R. 1925 Mad. 574.

**—Rape case.**

Where a tender girl was alleged to have been raped, a statement made by her stating that she was raped, and uttered immediately after the rape, crying and weeping, is admissible as explaining her act of crying, under S. 8 and by way of corroboration under S. 157. (*Kimkhede, A.J.C.*). SOOSALAI BANIA v. EMPEROR. 82 I.C. 142=25 Cr.L.J. 1214=A.I.R. 1925 Nag. 74.

**—S. 9—Absconding of accused.**

—If after the commission of a crime a person whose name is mentioned as a participator in the crime absconds, his conduct implies that he is concerned in the crime. Anything therefore which tends to explain his conduct and furnishes motive other than a guilty conscience is relevant under S. 9. (*Shah and Crump, J.J.*). GANGARAM v. EMPEROR. 62 I.C. 545=22 Cr.L.J. 523=22 Bom. L.R. 1274.

**—S. 9—Conspiracy.**

—Evidence of previous association—Several persons charged of conspiracy—Evidence to show previous association for criminal purposes with approver is admissible to corroborate approver under S. 9 and (or) S. 11 as regards his statement regarding conspiracy.

Where several persons are charged with committing or conspiring to commit a particular dacoity and evidence is tendered to show that prior to the dacoity the accused were closely and intimately associating with the approver and the object of the association was commission of theft and other discreditable acts,

Held, that as far as the evidence of close association with the approver is concerned corroborating the approver's statement that a conspiracy existed, it is admissible under S. 9 and (or) S. 11 of the Act. (*K. Kemp, J.*). EMPEROR v. WAHIDUDDIN HAMIDUDDIN (No. 1). 32 Bom. L.R. 324=A.I.R. 1930 Bom. 157.

**—Conduct of alleged conspirator.**

Where a person is alleged to be also one of the conspirators but who has not expressly been implicated in the case as a conspirator with the accused, his conduct is evidence only under S. 9 and not under S. 10. (*Fawcett and Madgavkar, J.J.*). EMPEROR v. ABDUL. 91 I.C. 680=49 Bom. 878=27 Bom. L.R. 1373=27 Cr.L.J. 114=A.I.R. 1926 Bom. 71.

**—S. 9—Copy of document.****—Admissibility of.**

Where the prosecution, when trying a person for sedition, brought a copy of a letter written by him and found in his possession which was alleged to have been sent by him along with the objected writing and it was contended on behalf of the accused that it is necessary for the prosecution to prove that such a letter was sent before this document can be admitted,

**EVIDENCE ACT (1872), S. 10—Confession by approver.**

Held, that (1) the copy of the letter was relevant to show the accused's intention and could be admitted as evidence; and (2) it is not necessary for the prosecution to prove that such a letter was sent before the copy could be admitted as evidence. (*Fawcett, J.*). EMPEROR v. PHILLIP SPRATT (No. 2). 108 I.C. 32=30 Bom. L.R. 314=29 Cr.L.J. 322=A.I.R. 1928 Bom. 77.

**—S. 9—Identification.****—Out of Court—Value of.**

The evidence that a person has identified another person as having taken part in a particular offence either in jail identification proceedings or elsewhere is admissible though the value of such evidence is weakened perceptibly as a general rule by failure to identify subsequently in Court. A.I.R. 1927 Oudh 869, *Foll.*; A.I.R. 1921 All. 215 and A.I.R. 1927 All. 168, *Ref.* (*Stuart, C.J.*). PARBHU v. EMPEROR. 104 I.C. 626=4 O.W.N. 803=28 Cr.L.J. 850=A.I.R. 1927 Oudh 598.

**—Independent evidence.**

In order to rely on the evidence of persons who identified the accused in jail but failed to do so in Court, the fact of the jail identification must be stated in the witness's evidence. An identification in jail is in essence a statement by the witness, "I saw this man who is now before me taking part in the offence". That statement can be used to corroborate his evidence given in Court. If the witness says in his evidence: "A number of persons were shown to me at the jail and from among them I pointed out those persons whom I had seen taking part in the offence", it is permissible under S. 9 to call independent evidence, such as that of the Magistrate who conducted the identification, to prove the identity of the persons whom the witness picked out at the jail, even though the witness himself may not correctly remember who they were. (*Daniels, J.C.*). CHUTKAN v. EMPEROR. 90 I.C. 444=26 O.C. 258=26 Cr.L.J. 1564=A.I.R. 1926 Oudh 36.

**—Magistrate's evidence—Corroborative value.**

For a Magistrate or other officer to come into Court and depose that a particular witness in his presence identified one of the accused as having taken part in the dacoity is nothing more than hearsay evidence but the Magistrate's evidence will be strictly relevant under the provisions of the Evidence Act to corroborate the evidence of a witness saying that he identified certain persons at the jail and that the persons whom he there identified were persons whom he had seen taking part in the dacoity. 19 A. L. J. 947, *Ref.* (*Daniels and Neave, J.J.*). ABDUL WAHAB v. EMPEROR. 95 I. C. 756=47 All. 39=27 Cr. L. J. 836=5 L. R. A. Cr. 193=A.I.R. 1925 All. 223.

**—S. 9—Scope.**

Ss. 9 and 11 read along with S. 21 of the Evidence Act amply justify a Court in admitting into evidence all previous statements made by the accused which have a bearing on the question of his guilt and whether the previous statement is made to a police officer or to an officer or to a third party is immaterial if the statement is relevant to the fact in issue. These sections are not controlled by the Cr. P. Code. (*Mullick and Thornhill, J.J.*). MADAN GURU v. EMPEROR. 73 I. C. 963=24 Cr. L. J. 723=4 Pat. L. T. 381.

**—S. 10—Confession by approver.**

—Admission of an approver that he accepted a sum after the dacoity is not a circumstance

**EVIDENCE ACT (1872), S. 10—Confession of co-accused.**

incriminating him that he committed the dacoity. (*Newbould and B. B. Ghose, J.J.*). IBRAHIM, 88 I.C. 458=42 C. L. J. 436=In re.

26 Cr. L. J. 1146=A.I.R. 1926 Cal. 374.

**—S. 10—Confession of co-accused.**

A confession of a co-accused implicating himself and others is admissible in evidence against all the accused under S. 10. It can also be taken into consideration against them under the provisions of S. 30. (*Stuart, C. J. and Raza, J.*). RAM PRASAD v. EMPEROR. 106 I.C. 721=

2 Luck. 631=1 L.C. 339=8 A.I. Cr. R. 443=A.I.R. 1927 Oudh 369.

**—S. 10—Connection with acts.**

Connexion has to be established with the conspiracy and not with the separate acts of different conspirators which are the overt acts of the different individuals in proof of the conspiracy. (*Dalal, J. C.*). BISHAMBHAR NATH TANDON v. EMPEROR. 90 I.C. 706=26 Cr. L. J. 1602=

2 O. W. N. 760=A.I.R. 1926 Oudh 161.

**—S. 10—Object and applicability.****—Cipher Code—Inference.**

The object of S. 10 is merely to ensure that one person shall not be made responsible for the acts or deeds of another until some bond in the nature of agency has been established between them and the acts, words, or writing of another which it is proposed to attribute vicariously to the person charged must be in furtherance of the common design and after such design was entertained.

In a trial of several accused for sedition an exercise book containing a Cipher Code was put in evidence.

*Held*, that the Cipher Code book was not to be treated as 'the act, word or deed of a particular individual, but the fact that it existed the fact that it set forth the names and addresses of a substantial number of persons charged the fact that it was in a peculiar form such as is not likely to be found in any Code intended to be used for lawful purposes, and many internal indications such as grouping of the names and the use of words and names having a revolutionary significance all gave rise to a probability, amounting almost to certainty that the persons named in the Code were associated for some unlawful purposes whose interests demanded that it should be kept secret and in absence of evidence that the persons named in it were associated for some legitimate purposes to be kept secret for some legitimate reason, the Cipher Code was in itself a good ground for supposing that the persons named had conspired to commit an offence and any other acts or writings of individual conspirators in furtherance of the common design became admissible under S. 10. (*Courtney-Terrell, C.J., Kulwant Sahay and Macpherson, J.J.*). INDRA CHANDRA v. EMPEROR. 116 I.C. 756=30 Cr. L.J. 846=11 P.L.T. 45=

13 A.I. Cr. R. 80=A.I.R. 1929 Pat. 143 (F.B.).

**—S. 10—Previous conduct.****—Offence under S. 222, Penal Code.**

The accused who was a warder in the jail was being tried under S. 222, Penal Code in respect of intentionally aiding the prisoners under sentence of death in attempting to escape from confinement in jail. He procured saw blades and loosened the rivets of the grates. Previously he was seen by some witness warders conversing and carrying on negotiations with certain fellow-caste-men of the convicts. A constable who was called in as witness and had exhorted the convicts while under

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trial, deposed that after the death sentence was pronounced and the convicts were brought out one of the convicts called out to his fellowman and told him to give the accused Rs. 100. The request was repeated twice.

*Held*, that the evidence of the constable was admissible under the circumstances under S. 10. (*Hilton, J.*). MAULA BAKSH v. EMPEROR.

119 I.C. 762=30 Cr. L.J. 1103=1929 Cr. C. 190=A.I.R. 1929 Lah. 631.

**—S. 10—Scope.**

Section 10 renders admissible in cases of conspiracy much evidence which is not otherwise ordinarily admissible under the Indian law. The provisions of the section are wider than those of English law. (*Stuart, C.J. and Raza, J.*). RAM PRASAD v. EMPEROR. 106 I.C. 721=

2 Luck. 631=1 L.C. 339=8 A.I. Cr. R. 443=A.I.R. 1927 Oudh 369.

**—S. 10—Scope and effect.**

*Existence of conspiracy and joining therein—Proof of, necessary.*

Section 10 of the Evidence Act means this: if two persons conspire together to commit an offence, each is regarded as being the agent of another and just as the principal is liable for the acts of the agent, so each conspirator is liable for what is done by his fellow conspirator in furtherance of the common intention which they had both entertained. First, you must find, that there was a conspiracy and, secondly, that the person to whom the doctrine is to apply should have joined the conspiracy before they can be made liable for anything said or done by others. (*Crump, J.*). EMPEROR v. SHAFI AHMAD. 31 Bom. L.R. 515.

**—S. 10—Statements in furtherance.****—Conspiracy case.**

If *prima facie* evidence of the existence of a conspiracy is given and accepted the evidence of statements made by any one of the conspirators in furtherance of the common object is admissible against all. (*Coutts-Trotter, C.J.*). LILARAM GANGANMULL, In re. 81 I.C. 817=20 M.L.W. 202=

25 Cr. L.J. 1041=A.I.R. 1924 Mad. 805.

**—S. 11—Admissibility.****—Principles—Evidence of previous acts.**

The admissibility of a particular evidence under S. 11 in each case must depend on how near is the connexion of the facts sought to be proved with facts in issue to what degree do they render facts in issue, probable or improbable, when taken with other facts in the case and to what extent would the admission of the evidence be inconsistent with principles enunciated elsewhere in the Act.

Where A was charged with entering into a conspiracy to bring false evidence against B and C and all the previous acts of which evidence was to be given were acts in which he acted against B or C, or both,

*Held*, that such evidence was admissible under S. 11 but not under Ss. 10 and 15; *Reg. v. Planningen and Higgin*, 15 Cox. C. C. 408 and other cases *Ref. (Mya Bu and Brown, J.J.)*. HTIN GYAW v. EMPEROR. 109 I.C. 491=6 Rang. 6=

29 Cr. L.J. 555=10 A.I. Cr. R. 249=A.I.R. 1928 Rang. 118

**—S. 11—Former judgment.****—Case under S. 153-A, I. P. C.—Procedure.**

During the prosecution of an author of a book under S. 153-A, I.P.C. the book was proscribed by an order of Government under the Criminal P. C.,

**EVIDENCE ACT (1872) S. 11—Former Judgment.**

(amended 1926) S. 99-A on the ground that the book contained matter the publication of which is punishable under S. 153-A, I. P. C. The author applied under S. 99-B and his application was dismissed by a bench of the High Court. Thereupon the trial Magistrate without recording any defence evidence or allowing further cross-examination of prosecution witnesses convicted the accused,

*Held*, that the conviction was legal and the judgment of the Bench of the High Court was admissible under Ss. 11 and 13, Evidence Act. (*Dalal, J.*). KALI CHARAN SHARMA v. EMPEROR.

104 I.C. 225=8 A.I. Cr. R. 204=  
8 L. R. A. Cr. 124=25 A.L.J. 845=  
28 Cr. L.J. 785=A.I.R. 1927 All. 654.

**—Admissibility—Case under S. 401, I. P. C.**

When offence charged against an accused is that of belonging to a gang of thieves, a former judgment more than 25 years old and convicting him of dacoity is admissible in evidence, though the former judgment is useful only for the purpose of proving that the accused is a person of criminal tendencies to commit theft who may be a member of the alleged gang. The judgment by no means goes to show that he had any habit of committing theft in the period under consideration. 14 Bom. L.R. 373 and 38 Cal. 408, *Foll.* (*Marten and Fawcett, JJ.*). MOTIRAM HARI v. EMPEROR.

89 I.C. 527=  
26 Bom. L.R. 1223=26 Cr. L.J. 1391=  
A.I.R. 1925 Bom. 195.

**—S. 11—Hindu Muslim riot.****—Previous attempt to convert—Admissibility of.**

When the charges against the accused are of dacoity and rioting, evidence that on the day after the occurrence, the accused who was a Mussalman wanted another, a Hindu, to embrace Islam and threatened to beat him if he did not, is wholly irrelevant to either of the charges and should not be admitted notwithstanding that the riots in which was involved were due to Hindu-Muslim dissensions. (*Newbould and Mukherjee, JJ.*). DARGAHI v. EMPEROR.

88 I.C. 733=  
52 Cal. 439=26 Cr. L. J. 1213=  
A.I.R. 1925 Cal. 831.

**—S. 13—Miscellaneous.****—Evidence of collateral facts—Principles explained.**

It is settled law that under neither of Ss. 14 and 15 can the evidence on facts similar to but not part of the same transaction as the main fact be received for the purpose of proving the occurrence of the main fact, which must be established by evidence directly bearing on it. But when the existence of that fact has been so established and a question arises as to the state of mind of the person who did it, or whether the act in question was done accidentally or with a particular knowledge or intention, evidence of similar acts may, under certain conditions, be admitted. Section 14 is wholly inapplicable to a case where the state of mind or feeling of the accused is not a fact in issue or a relevant fact, and the guilt or innocence depends on proof of actual facts. 6 Cal. 655; 42 Cal. 957; 47 Cal. 671 (F.B.); 12 P.R. 1913 Cr. and *Reg v. Richardson*, 8 Cox. 448, *Rel. on*.

Where the accused was charged under S. 409, Penal Code, for embezzling three specific sums.

*Held*, that evidence of collateral offences in respect of other sums was not admissible. (*Tele Chand, J.*). PRITCHARD v. EMPEROR. 112 I.C. 850=  
30 Cr. L.J. 18=11 A.I. Cr. R. 405=  
A.I.R. 1928 Lah. 382.

**EVIDENCE ACT (1872) S. 14—Previous offences.****—S. 14—Counterfeiting coins.**

—Counterfeit coins and instruments found in the house of accused in two districts—Trial in one district—Evidence of such possession in another district admissible. (*Miller, C.J. and Adami, J.*). MISIR GOSAIN v. EMPEROR. 61 I.C. 647=  
22 Cr. L.J. 407=3 U.P.L.R. (Pat.) 50.

**—S. 14—Former deposition.**

—The accused in a case of forgery and conspiracy had previously given evidence in a Civil Court as to the genuineness of the document,

*Held*, that though the statement could not be admitted as confession, the jury if independently satisfied that the documents are not genuine, the evidence is to be regarded as having high evidentiary value upon the question of intention whether or not they are in conspiracy. (*Rankin, C. J. and Buckland, J.*). AMBER ALI v. EMPEROR.

1929 Cr. C. 194=A.I.R. 1929 Cal. 539.

**—S. 14—Former judgment.****—Admissibility for showing criminal tendencies to commit offences.**

When offence charged against an accused is that of belonging to a gang of thieves, a former judgment more than 25 years old and convicting him of dacoity is admissible in evidence, though the former judgment is useful only for the purpose of proving that the accused is a person of criminal tendencies to commit theft who may be a member of the alleged gang. The judgment by no means goes to show that he had any habit of committing theft in the period under consideration. 14 Bom. L. R. 373 and 38 Cal. 408, *Foll.* (*Marten and Fawcett, JJ.*). MOTIRAM HARI v. EMPEROR.

89 I.C. 527=26 Bom. L.R. 1223=26 Cr. L.J. 1391=  
A.I.R. 1925 Bom. 195.

**—S. 14—Former speech.**

—Prosecution based on speech—Previous speech, though made about six months before, is admissible as evidence of intention of speaker if both speeches form part of series of speeches topic on one. (*Tapp, J.*). OM PARKASH v. EMPEROR. A.I.R. 1930 Lah. 867.

**—S. 14—Intention.****—Proof of.**

Intention has to be proved like any other fact and may of course be deduced from the conduct of the parties. (*Broadway, J.*). HAZARA SINGH v. EMPEROR.

99 I.C. 121=8 L.L.J. 512=  
27 P.L.R. 867=28 Cr. L.J. 89.

**—S. 14—Previous conviction.**

—Previous conviction—Evidence of, not admissible to show state of mind. But amounts to an evidence of bad character and not admissible under S. 54. 27 Cal. 139; 1 C. W. N. 146, *Foll.* (*Jwala Prasad and Sultan Ahmad, JJ.*). TEKA AHIR v. EMPEROR. 60 I. C. 331=  
22 Cr. L.J. 219=5 Pat. L.J. 706.

**—S. 14—Previous offences.**

—Where the evidence of previous conviction or the evidence that a man has been bound over under the preventive sections can be considered only as evidence of character it must be excluded, but where such evidence is admissible *abunde*, it should not be excluded. Where the accused is charged under S. 400, I.P.C., such evidence is admissible, not as evidence of character but as evidence to prove habit and association. (*Rara and Nanavutty, JJ.*). BACHCHU v. EMPEROR.

A.I.R. 1930 Oudh 454.



**EVIDENCE ACT (1872) S. 14—Similar Acts.**

—*Case of cheating—Previous act of fraud is inadmissible.*

Cheating is a case in which the question of guilt or innocence of the accused depends upon proof of actual facts and not upon the state of the accused's mind. Therefore the evidence as to any previous act of fraud is not admissible under any provision of the law. (*Mukerji, J.*). GOKUL KHATIC v. EMPEROR. 86 I.C. 970=26 Cr. L.J. 906=29 C.W.N. 433=A.I.R. 1925 Cal. 674.

**—S. 14—Similar Acts.**

—*Rash driving of motor car—Evidence regarding similar occurrence previously—Admissibility.*

Where in a prosecution under S. 304-A, I.P.C., it was sought to be proved that the accused had taken part in a similar occurrence just previously by which as a result of the rash driving of his motor car certain persons were injured,

*Held*, that evidence regarding the previous occurrence was not relevant either under S. 14 or under S. 15 of the Evidence Act.

Per *Waller, J.*—The accused is charged with rashness but the prosecution is not entitled to prove that he was rash generally or in relation to another occurrence. Rashness can be proved with reference to the particular occurrence alone. (*Waller and Ananthakrishna Iyer, J.J.*). COLLETT v. EMPEROR. 1929 M.W.N. 335.

**—S. 14—Statements after offence.**

—A statement by an accused person immediately after the occurrence of an offence is relevant as showing his state of mind but a repetition of what some other persons said to the accused, by the accused, is not relevant and it has to be proved by direct evidence of the person who heard it. (*Broadway and Campbell, J.J.*). KAKAR SINGH v. THE CROWN. 81 C. 717=25 Cr. L. J. 1005=6 L. L. J. 575=A. I. R. 1924 Lah. 733.

**—S. 14—Statements of co-accused.**

—Statements implicating co-accused but not incriminating maker are not admissible in evidence —Parts of such statements are admissible against maker as indicating knowledge on his part. (*Aston, A. J. C.*). WAHID BUX BHUTO v. EMPEROR. 120 I. C. 81=30 Cr. L. J. 1121=1929 Cr. C. 678=A. I. R. 1929 Sind 250.

**—S. 14—Writings.**

—*Seditious trial—Prior writings relevant on the question of intention.*

Primarily, anything that an accused tried under S. 124-A, I. P. C., has written is, if it comes within the general words of S. 14, relevant and admissible. At the same time, of course, the writing should be within a reasonable time of the particular occurrence, *i. e.*, the particular article or other document, in respect of which he is being charged. (*Fawcett, J.*). EMPEROR v. PHILLIP SPARTT (No. 3). 108 I.C. 30=30 Bom. L. R. 315=9 A. I. Cr. R. 429=29 Cr. L. J. 320=A.I.R. 1928 Bom. 78.

**—S. 15—Similar Acts.**

—*Criminal misappropriation in 1925—Evidence adduced of similar acts in common link done in 1942—Evidence is admissible.*

Accused were prosecuted for misappropriation by defalcation of accounts made in 1925 and 1926. Evidence was adduced by the prosecution of similar acts done by the accused before 1925.

*Held*, that the evidence was admissible under S. 15 to rebut the probable plea of mistake or in-

**EVIDENCE ACT (1872)—S.17 General statement.**

nocent condition of the mind of the accused, the evidence being that of a system in which there was a common link between the acts of 1924 and those of 1925. 6 Cal. 655 and 42 Cal. 957, *Ref.*, (*Johnstone J.*). RAMKRISHAN v. EMPEROR. 111 I. C. 387=29 Cr. L. J. 835=11 A. I. Cr. R. 185=A.I.R. 1928 Lah. 880.

—Evidence of similar acts is admissible to show intention. (*Fawcett and Madgavkar, J.J.*). EMPEROR v. HARJIVAN VALJI. 98 I.C. 407=50 Bom. 174=28 Bom.L.R. 115=27 Cr.L.J. 1335=A.I.R. 1926 Bom. 231.

—*Dacoity—Accused's plea of innocent or accidental presence at the spot—Evidence of previous armed raids admissible.*

Where the accused who were charged under S. 389, I.P.C., plead that their presence in company and armed at a spot was accidental and innocent, it is open to the prosecution to rebut this theory, and to produce evidence that in the same locality raids have taken place in which one of the gang had been concerned. In the case of actual dacoity the prosecution is bound to prove the accused's commission of all the acts which constitute the offence. Section 15 of the Evidence Act admits the production of any evidence which would determine the construction to be placed upon acts which in themselves might or might not be the preparation for dacoity and evidence that one or more members of the gang had been concerned in previous and similar offences committed at the same place is admissible in evidence for the purpose. (*Pigon, J.*). KHAWAJA HASAN v. EMPEROR. 71 I.C. 360=24 Cr.L.J. 136.

**—S. 17—Admission—What is.**

—*Vague admission is no admission.*

In answer to the question put to the accused as to whether three packets of cocaine were recovered from him he replied that three packets were recovered from him, but he went on to say that they were handed to him by a man named Babu and that the accused did not know what these packets actually contained,

*Held*, that his statement does not amount to an admission that he had cocaine in his possession. (*Sulaiman, J.*). WALI MUHAMMAD v. KING EMPEROR. 83 I.C. 904=21 A.L.J. 869=5 L. R. A. Cr. 9=26 Cr. L.J. 200=A. I. R. 1924 All. 198.

**—S. 17—Former deposition.**

—Evidence given by an accused on his own behalf in extradition proceedings is an admission by an accused person and is, therefore, *prima facie* admissible in evidence under S. 21; and it is, therefore, for the accused to show why it should not be so admitted. No particular formality is required to enable an admission by an accused person to go in as an admission. (*Percival, A.J.C.*). EMPEROR v. E.C.D. WHEELER. 112 I.C. 50=22 S.L.R. 458=29 Cr.L.J. 962=A.I.R. 1929 Sind 15.

**—S. 17—General statement.**

—*Particulars of admission not given—Admission is valueless.*

A general statement by a witness that a number of persons admitted having committed a crime, is valueless without some indication as to which of the persons made the admission in question, with some particulars of what was actually said. (*Abdul Raoof and Efforde, J.J.*). SAJJAN SINGH v. CROWN. 90 I.C. 145=7 L.L.J. 289=6 Lah. 437=26 P.L.R. 601=26 Cr. L.J. 1489=A. I. R. 1925 Lah. 418.



**EVIDENCE ACT (1872), S. 18—By party.****—S. 18—By party.**

—Statement of accused on oath at a Coroner's inquest is admissible at his trial. (*Fawcett, J.*). **EMPEROR v. RAMNATH MAHABIR.**

93 I. C. 690=50 Bom. 111=  
28 Bom. L.R. 111=27 Cr. L.J. 466=  
A.I.R. 1926 Bom. 151.

**—S. 21—Admission and confession.****—Distinction.**

Admission is usually applied to a civil transaction, and to those matters in criminal cases which do not involve a criminal intent. While the term confession is usually used in criminal Court as denoting an acknowledgment of guilt. Admission in a civil suit that a document is genuine cannot in the forgery case be regarded as confession at all. 37 Cal. 467, *Ref.* (*Rankin, C.J. and Buckland, J.*). **AMBAR ALI v. EMPEROR.**

1929 Cr. C. 194=A.I.R. 1929 Cal. 539.

**—S. 21—Admission by pleader.**

—*Criminal case—Pleader's admission is binding on the party.*

A pleader has authority to admit certain fact so as to dispense with the necessity of further proof in a criminal case at the appellate stage: 3 Bom. L.R. 467, *Foll.*; 2 Bom. L.R. 751, *Dist.* (*Fawcett and Mirza, J.J.*). **BANSILAL GANGARAM VANI v. EMPEROR.** 112 I.C. 110=11 A.I. Cr. R. 243=29 Cr. L.J. 990=52 Bom. 686=30 Bom. L.R. 646=A.I.R. 1928 Bom. 241.

**—S. 21—Oral confession.**

—Oral confession to Magistrate is relevant and may be proved by testimony of the Magistrate. 21 P.R. 1881 (Cr.); 52 P.R. 1887 (Cr.); 11 P.R. 1918 (Cr); A.I.R. 1925 Lah. 557; A. I. R. 1922 Mad. 40, *Foll.*; *Opinion of Shah, J.* in 21 Bom. L.R. 1065 and A.I.R. 1922 Cal. 342, *Diss. from.* (*Tek Chand, J.*). **BHAGEL SINGH v. EMPEROR.** 121 I.C. 497=

1929 Cr. C. 426=  
31 Cr. L.J. 269 A.I.R. 1929 Lah. 793.

**—S. 24.**

Acceptance in part.  
Approver.  
Confession in custody.  
Duty of Court.  
Exhibitory value of.  
Free confession.  
Inducement.  
Person in authority.  
Proof of.  
Retracted.  
Scope.  
Value of confession.  
What is confession.  
Miscellaneous.

**—S. 24—Acceptance in part.**

—*Confession not full—Court can reject portions that are false and deduce guilt.*

Where the confession is anything but a full confession, the Court is at liberty to use the confession as it stands and derive a deduction of the guilt of the man who made it even while rejecting portions of it which are false. (*Stuart, C.J. and Rasa, J.*). **MATA DIN v. EMPEROR.**

123 I. C. 886=31 Cr. L.J. 575=  
6 O.W.N. 1017=A.I.R. 1930 Oudh 113.

—When a confession is given in evidence, the whole of it must be given. But it cannot be said that if the Courts believe the confession it must also accept the circumstances alleged by the accused

**EVIDENCE ACT (1872), S. 24—Approver.**

in extenuation, however improbable may be the Court can believe that part of it which tells against the accused and reject that part which tells in his favour. (*Waller and Reilly, J.J.*). **LAKSHMAYYA v. EMPEROR.** 1930 M.W.N. 785.

—*Criminal Trial—Confession must be considered as a whole.*

If accused is to be convicted on his confession, it must be taken as a whole and it would be unsafe to use the part against him and discredit the part in his favour. 39 Cal. 855 and 21 Cal. 955, *Foll.* (*Kumaraswami Sastri, J.*). **T. R. SRINIVASA ROW v. EMPEROR.** 109 I.C. 605=27 M.L.W. 318=

1928 M.W.N. 161=9 A.I. Cr. R. 493=  
29 Cr. L.J. 589=1 Mad. Cr. C. 113=  
A.I.R. 1928 Mad. 493=54 M.L.J. 607.

—*Confession must be read as a whole—Exception.*

A confession or statement of an accused person must be read and accepted as a whole unless there is evidence to contradict any portion thereof in which case such portion may be rejected. (*Jai Lal and Dalip Singh, J.J.*). **WARYAM SINGH v. EMPEROR.** 99 I.C. 71=28 Cr. L.J. 39=

A.I.R. 1926 Lah. 554.

—*Confession must be accepted as a whole.*

Where the only evidence against the accused is his confessional statement, the Court must accept the whole of the confessional statement. (*Devadoss and Wallace, J.J.*). **KATIRI, In re.** 88 I.C. 455=26 Cr. L.J. 1143=A.I.R. 1925 Mad. 1069.

**—S. 24—Approver.**

—*Approver's confessional statement induced as a result of undue pressure—S. 24 does not exclude such statement made under Criminal P. C., S. 339 (2).*

An approver's disclosure is in its very nature always the result of an inducement or promise, namely, the inducement to confess upon a promise of pardon; but should it appear that it was extorted as the result of undue duress, such as threats or violence, to that extent the provisions of S. 24 would be applicable and the confessional statement would have to be ruled out of evidence. Such a statement is not excluded from evidence by S. 24, Evidence Act: 5 A.L.J. 691, *Foll.* (*Fforde and Jai Lal, J.J.*). **RAM NATH v. EMPEROR.**

108 I. C. 514=9 Lah. 608=10 A.I. Cr. R. 76=  
29 Cr. L. J. 413=29 P. L. R. 165=  
A.I.R. 1928 Lah. 320.

—Approver tried on the basis of his statement  
—Statement retracted must be corroborated by other evidence. (*Fforde and Jai Lal, J.J.*). **RAM NATH v. EMPEROR.** 108 I. C. 514=

9 Lah. 608=10 A. I. Cr. R. 76=  
29 Cr. L. J. 413=29 P. L. R. 165=  
A. I. R. 1928 Lah. 320.

—The hope of being made an approver does not show that the confession is not voluntary. (*Adami and Bucknill, J.J.*). **NILMADHAB CHAUDHURY v. EMPEROR.** 96 I. C. 509=7 A.I. Cr. R. 75=

5 Pat. 171=27 Cr. L.J. 957=A.I.R. 1926 Pat. 279.

—*Inducement by police officer—Tender of pardon—Statement made by approver.*

The accused made a confession in which he implicated three persons in an offence of murder. At the trial of the three persons the accused was granted a conditional pardon and examined as a witness for the prosecution. The three persons were acquitted and the accused was tried for the offence of murder.

*Held*, the confession made by the accused in the first murder trial was inadmissible in evidence.

**EVIDENCE ACT (1872), S. 24—Confession in custody.**

against him under S. 24 of the Evidence Act. The statements made by the accused in the first murder trial as a witness under a tender of pardon are admissible for they were removed from the operation of S. 24 by virtue of S. 339, Cl. (2) of the Cr. P. Code. The statements made by the accused in the trial of the Police officer concerned in the investigation of the case could be admitted in evidence against him on his own trial for murder. (*Heaton, A.C.J., Shah and Hayward, J.J.*). **EMPEROR v. CUNNA.** 59 I. G. 324=22 Cr. L. J. 68=22 Bom. L.R. 1247.

**—S. 24—Confession in custody.**

Statements of accused in *Exoisc* case in custody and after their removal to *Exoisc* barracks were held inadmissible. (*C. C. Ghose and Duval, J.J.*). **BAITASI MONI DASSI v. EMPEROR.**

98 I.C. 401=53 Cal. 706=30 C.W.N. 854=27 Cr.L.J. 1329=A.I.R. 1926 Cal. 1163.

Accused in police custody—Presumption that his confession is induced is not correct.

The mere fact of a person being in custody cannot be a good basis for a presumption that any confession he may make is caused by an inducement, threat or promise having reference to the charge against him, proceeding from some police officer and sufficient to make him believe that he would be benefited in the trial by making it. (*Hallifax and Kinkhede, A.J.Cs.*). **DADI LODHI v. EMPEROR.** 95 I.C. 89=27 Cr.L.J. 731=A.I.R. 1926 Nag. 368.

**—S. 24—Duty of Court.**

Case entirely resting on confession—Manner in which confession obtained uncertain—Accused should get benefit of doubt. (*Broadway and Agha Haidar, J.J.*). **RAHMAN v. EMPEROR.**

119 I.C. 420=1930 Cr.C. 104=30 Cr.L.J. 1080=A.I.R. 1930 Lah. 88.

Admissibility of confession must be decided before contents of confession are looked at.

When the admissibility of a confession depends upon a conclusion as to the truth about conflicting evidence antecedent to the making of the confession and tending to show that it is liable to rejection under S. 24, the trial Judge must make up his mind upon this issue, and decide the question of admissibility before relying upon the contents of the confession. (*Walsh and Sulaiman, J.J.*). **FATEH CHAND v. EMPEROR.** 86 I.C. 1001=26 Cr. L. J. 937=6 L. R. A. Gr. 89=A. I. R. 1925 All. 606.

Doubt as to—Admissibility—Court should lean in favour of accused.

In a case of doubt on the question of admissibility of evidence when it is of such vital importance to the prisoners as their own confessions one should not hold them as admissible unless one is affirmatively satisfied as to their relevancy. *R. v. Warringham*, 2 Den. C. C. 447-n, (1851) *Foll.* (*Mukerji, J.*). **EMPEROR v. PAUCKKARI DUTT.**

86 I. C. 414=52 Cal. 67=29 C. W. N. 300=26 Cr. L. J. 782=A.I.R. 1925 Cal. 587.

**—Three-fold function.**

In scrutinising a case from the point of view of S. 24, the Court will have to perform a three-fold function. It will have, as a Court, to determine the sufficiency of the inducement, threat, or promise as affording certain grounds; it will have again to clothe itself with the mentality of the accused to see whether the grounds would appear to the accused reasonable for a supposition that is

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mentioned in the section; lastly, it will have to judge, as a Court, if the confession appears to have been caused in consequence of the inducement, threat or promise: [52 Cal. 67, *Rel.*]. There is no rule of law which compels a Court to raise an inference of improper inducement from the mere fact that a confession is retracted. (*Broadway and Addison, J.J.*). **PARTAB SINGH v. EMPEROR.**

93 I. C. 978=7 L. L. J. 482=6 Lah. 415=27 Cr. L. J. 514=A. I. R. 1925 Lah. 605.

**—S. 24—Evidentiary value of.**

Although the evidence of admission of guilt to villagers is sufficient to justify the conviction, still the evidence that such an admission was made must be closely scrutinized like all other evidence which is used to prove a case of murder. **A.I.R. 1928 Oudh 393 and A.I.R. 1929 Oudh 187, *Ref.* (*Raza and Pullan, J.J.*). **TAULE v. EMPEROR.****

117 I.C. 737=6 O.W.N. 309=30 Cr. L.J. 829=1929 C. Cr. 14=A. I. R. 1929 Oudh 272.

Extra-judicial confession is of great importance.

No doubt the extra-judicial confession is of great importance but it must be a true extra-judicial confession and not one fabricated in order to provide additional evidence for what rightly or wrongly the investigation officer considers to be a weak case. (*Raza and Pullan, J.J.*). **TAULE v. EMPEROR.**

117 I.C. 737=6 O.W.N. 309=30 Cr. L.J. 829=1929 Cr. C. 14=A. I. R. 1929 Oudh 272.

Extra judicial confessions are not entitled to any weight—To base conviction on such a confession is not safe.

Apart from the question whether or not extra-judicial confessions are inadmissible in evidence, they are not of such a nature as entitle them to any weight, because it is impossible to ascertain the exact words used by the person. To base a conviction on such a confession is not safe: 14 P. R. 1911 (Cr.), *Rel. on.* (*Broadway and Agha Haidar, J.J.*). **DEO RAJ v. EMPEROR.**

111 I.C. 449=29 P.L.R. 486=29 Cr. L.J. 865=A. I. R. 1928 Lah. 858.

Confession before villagers who are trustworthy witnesses may be as strong evidence against accused as confession before Magistrate and requires no corroboration. (*Stuart, C. J. and Raza, J.*). **EMPEROR v. BADAL.** 112 I.C. 897=5 O.W.N. 698=30 Cr. L.J. 33=11 A.I.Gr. R. 520=A.I.R. 1928 Oudh 393.

All the parts of a confession are not entitled to equal weight—Some may be believed while others rejected.

After the entire statement of a prisoner has been given in evidence, any part of it may be contradicted by the prosecution if they choose to do so, and then the whole testimony is left open for consideration precisely as in other cases where one part of the evidence contradicts another. Even without such contradiction it is not supposed that all the parts of a confession are entitled to equal credit. If sufficient grounds exist the part that charges the prisoner may be believed, while that which is in his favour may be rejected: 40 Cal. 878, *Foll.* (*Stuart C. J. and Raza, J.*). **NIRBHAY NATH v. EMPEROR.** 98 I. C. 178=1 Luck. 417=29 O. C. 369=13 O. L. J. 809=3 O. W. N. 800=27 Cr. L. J. 1282=A. I. R. 1928 Oudh 618.

**—S. 24—Free confession.**

Confession, when not in police custody, to respectable person and not obtained as a result of duress is admissible and sufficient to convict the

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confessor. (*Stuart, C. J. and Ryan, J.*). **SHEO BALAK v. EMPEROR.** 91 I. C. 232 = 30 W. N. 301 = 28 Cr. L. J. 104 = 7 A. I. Cr. R. 233.

—*Threats made but not influencing accused—Confession is admissible.*

Where threats are made to the accused but the accused makes the statements deliberately, *i.e.*, uninfluenced by the threats, S. 24 does not apply. 25 Bom. 168, *Foll.* (*Crump, J.*). **EMPEROR v. ANANDRAO GANGARAM.** 89 I. C. 1046 = 27 Bom. L. R. 1034 = 49 Bom. 642 = 26 Cr. L. J. 1478 = A. I. R. 1925 Bom. 523.

**—S. 24—Inducement.**

—Accused making confession to witness—Judge rejecting it thinking that accused made it under belief that it would be to his advantage—Confession is not invalid and should not be rejected. (*Coutts-Trotter, C. J. and Walsh, J.*). **PUBLIC PROSECUTOR v. CHANDAY A SHETTY.** 2 M. Cr. C. 56 = A. I. R. 1929 Mad. 92.

—*Village Panch telling that truth has come out and the accused had better say what he knew—Confession was held inadmissible.*

Whether any threat or inducement was offered or not in a particular case is a question of fact and has to be decided with reference to the circumstances of that case and that it is not safe to make any generalisations merely on the ground that certain set of words used in a particular case or particular cases have been held to be in the nature of an inducement.

Where a village Panch told the accused that the truth had come out, that the villagers were being worried about the affair and he had better say what he knew and the accused thereupon made a confession,

*Held*, that there was velled threat as well as inducement and the confession was inadmissible: 9 Bom. H. C. 358; *R. v. Thomas*, (1834) 6 C. & P. 335; *R. v. Felon*, 7 Q. B. D. 147 and *R. v. Thompson*, 2 Q. B. D. 12, *Rel. on*; A. I. R. 1923 C. 458, *Foll.* (*Courtney-Terrell, C. J. and Fazl Ali, J.*). **KUNJA SUBUDHI v. EMPEROR.** 116 I. C. 770 = 3 Pat. 289 = 10 P. L. T. 549 = 30 Cr. L. J. 675 = 1923 Cr. G. 62 = 13 A. I. Cr. R. 143 = A. I. R. 1929 Pat. 275.

—*Confession should not be accepted, when evidence does not show that it was not caused by inducement.*

Where the Court is not satisfied on evidence that the confession made by the accused was not caused by any inducement, threat or promise proceeding from any person in authority, the confession should not be accepted. (*Barlee, J. C. and Kalumal, A. J. C.*). **EMPEROR v. PANJAL.** 1929 Cr. G. 539 = A. I. R. 1929 Sind 245.

—*Statement of accused before a Magistrate: "I want to make a clean breast of everything for the reason that if I serve the Government in any way, the Government may take pity on me" was held not in itself inadmissible.*

In order to make a confession inadmissible there must be something from which it should be inferred that the inducement or promise was given to the accused by some person who had authority to give it. It is not enough for the accused to entertain a hope, which may turn out to be an idle hope, that in consequence of his giving certain information, he would be rewarded by the Government, it must be shown that the hope was directly inspired by some one who had authority to make the promise.

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Where an accused in making a confession to a Magistrate said: "I want to make a clean breast of everything for the reason that if I serve the Government in any way, the Government may take pity on me,"

*Held*, that this was not in itself sufficient to render the confession inadmissible having regard to the provisions of S. 24. (*Cholmer and Gregory, J. J.*). **SAMUDDIN v. EMPEROR.** 109 I. C. 225 = 32 C. W. N. 616 = 10 A. I. Cr. R. 223 = 29 Cr. L. J. 437 = A. I. R. 1928 Cal. 500.

—*Mukhia of a village, confessed to—Confessor volunteering to make the statement—There is no inducement.*

Where, although the Mukhia, the person confessed to, is undoubtedly by a man in authority, and would appear to a villager as a person who was able, or likely to be able, to promise a pardon or some other inducement, the confessor volunteered to make the statement if he could get some assurance from the Mukhia that he, the Mukhia, would do his best to help him,

*Held*, that it is not an inducement proceeding from the person in authority within the meaning of the section so as to make the confession either inadmissible or irrelevant. (*Walsh and Pullan, J. J.*). **EMPEROR v. MT. HAR PIARI.** 97 I. C. 44 = 41 All. 57 = 24 A. L. J. 958 = 27 Cr. L. J. 1068 = 7 L. R. A. Cr. 135 = A. I. R. 1923 All. 737.

—*Pressure by police inducing accused to suppose that he would get a temporal benefit—Confession is irrelevant.*

If the pressure exercised by a police officer in extorting confession from an accused is sufficient to give the accused grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature, the confession would not only be weak in value, but wholly irrelevant under S. 24. (*Sulaiman, J.*). **DIP SINGH v. EMPEROR.** 91 I. C. 834 = 7 L. R. A. Cr. 1 = 27 Cr. L. J. 158 = A. I. R. 1926 All. 246.

—*Person in authority telling accused that if he gives true account he will be pardoned—Accused's confession is irrelevant, unless the inducement has ceased to operate.*

If a man is told by a person in authority that if he gives a true account of the matter he will be pardoned, that is a continuing offer, the thread of which continues unbroken until it is accepted by the confession which completes the bargain, unless there is some circumstance which breaks it so as to show that the inducement no longer operates, and that the person confessing has no longer any hope of gaining anything from the authorities by making confession. (*Walsh and Sulaiman, J. J.*). **FATEH CHAND v. EMPEROR.** 86 I. C. 1001 = 26 Cr. L. J. 937 = 6 L. R. A. Cr. 89 = A. I. R. 1925 All. 606.

—*Moral exhortation by direct superior of accused is not objectionable.*

If a person who is suspected of an offence is examined by a person in direct authority over him and if it is only in consequence of an inducement by way of benefit or a threat that the person under suspicion makes self-incriminating statements such as, broadly speaking, not receivable in evidence because they are not in law regarded as strictly of a voluntary nature but as having been perhaps induced in the one case by a false hope and in the other by fear. On the other hand a merely moral

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exhortation to tell the truth is in no way objectionable. (*Bucknill and Kulwant Sahay, JJ.*). **EMPEROR v. AKHILESHWAR PRASAD.** 89 I.C. 961=4 Pat. 646=26 Cr. L.J. 1441=A.I.R. 1925 Pat. 772.

—*Promise to consider the prayer for being taken as approver—Confession is inadmissible.*

Where accused is told by a person in authority that if he makes a voluntary confession which is considered to be full and true, his prayer for being made an approver will receive due consideration,

*Held*, the confession made under such circumstances is inadmissible. (*Walsh and Kanhaiya Lal, JJ.*). **TARA v. KING-EMPEROR.** 74 I.C. 829=45 All. 633=21 A.L.J. 585=24 Cr. L.J. 785=A.I.R. 1924 All. 72.

—*Confession—Fear encouraged by Police officer—Offer of pardon—Statements are inadmissible.*

A confession made by an accused person under fear, encouraged by a police officer in a subtle way in the hours that elapsed before the accused reached the Magistrate, is inadmissible in evidence. Accused made an incriminating statement before a Magistrate and was sent to jail. An application for bail was refused at the instance of the Police. The accused was suddenly released on nominal bail and thereafter he made himself useful to the Police by pointing out various places and in other ways. Subsequently he made a second statement before the Magistrate more detailed than the first, much in the fashion of an approver's statement.

*Held*, that under such circumstances it was difficult to believe that the accused was not given to understand that a pardon was going to be offered to him. The second statement by the accused was inadmissible in evidence. A confession made by an accused person on an inducement by a Police Officer that he would be offered a pardon is admissible in evidence. The evidence of an accomplice, if suspicious, requires corroboration. (*Walmsley and Sham-sul Huda, JJ.*). **EMPEROR v. ANANT KUMAR BANERJEE.** 60 I.C. 417=22 Cr. L.J. 225=32 C.L.J. 204.

**—S. 24—Person in authority.**

—*Co-villager exercising no influence or authority is not "person in authority."*

It would be doing violence to the terms of S. 24, to hold that a co-villager who does not exercise any influence or authority in the village is a person in authority, although the accused might have thought him to be such a person: A.I.R. 1923 Cal. 458; 11 C.W.N. 904 and A.I.R. 1922 Lah. 263, *Rel. on.* (*Rankin, C.J. and C.O. Ghose, J.*). **EMPEROR v. KUTUB BUX.** 57 C. 488=A.I.R. 1930 Cal. 633.

—*Inamkhor is no person in authority.*

An Inamkhor, who is in a position inferior to that of an ilaqdar cannot be treated as a person in authority. (*Shadi Lal, C.J. and Agha Haidar, J.*). **GULAM MD. v. EMPEROR.** 114 I.C. 719=30 P. L. R. 269=30 Cr. L. J. 375=1929 Cr. C. 102=A.I.R. 1929 Lah. 558.

—Where the monigar took the accused aside and asked him not to cry but to speak the truth,

*Held*, that the statement made under those circumstances was not induced by any threat or promise and that it was admissible in evidence.

*Quere* whether the monigar was a person in authority within the meaning of S. 24. (*Waller and Cornish, JJ.*). **KUTTIAPPA CHETTY v. EMPEROR.** 1929 M. W. N. 791.

—*Ziladar serving under a great estate is person in authority.*

A Ziladar serving under a great estate (such as that of Kapurthala) is a person in authority and

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if such a person holds out inducement to the accused, the admissions made to him would not be admissible: A. I. R. 1926 All. 787, *Rel. on.* (*Raza and Pullan, JJ.*). **TAULE v. EMPEROR.**

117 I. C. 737=6 O. W. N. 309=30 Cr. L. J. 829=1929 Cr. C. 14=A. I. R. 1929 Oudh 272.

—A village Panch is a person in authority, A.I.R. 1923 Cal. 458 and 20 C. W. N. 572. *Rel. on.* (*Courtney Terrell, C. J. and Fazl Ali, J.*). **KUNJA SUBUDHI v. EMPEROR.**

116 I. C. 770=8 Pat. 289=10 P. L. T. 549=30 Cr. L. J. 675=1929 Cr. C. 62=13 A. I. C. R. 143=A. I. R. 1929 Pat. 275.

—*Third party sent by police to induce accused.*

Where a third person was sent by police to make the accused confess by an inducement that he would be dealt with leniently if he confessed,

*Held*, that the inducement proceeded from a person in authority. (*Addison and Coldstream, JJ.*). **BALAGI v. EMPEROR.** 112 I.C. 347=9 Lah. 671=29 Cr. L.J. 1019=11 A.I. Cr. R. 284=A.I.R. 1923 Lah. 476.

—*Zamindar of the village who was also a Magistrate.*

Where a confession was made to the Zamindar of the village who was also a Magistrate and was regarded as an important person in the village having authority in the matter,

*Held*, the Zamindar must be regarded as a person in authority within S. 24. (*Das and Scroove, JJ.*). **DEVENDRA BHATTACHANDRYA v. EMPEROR.**

104 I. C. 881=28 Cr. L.J. 497=3 P.L.T. 566=8 A.I. Cr. R. 181=A.I.R. 1927 Pat. 257.

—A Vakil's clerk is not a person in authority within S. 24. (*Daniels, J.C.*). **KING EMPEROR v. RAM AVADH.** 88 I.C. 514=12 O.L.J. 495=2 O.W.N. 398=26 Cr. L.J. 1154=A.I.R. 1925 Oudh 597.

—*Whether includes village headman—Accused speaking truth of her own accord—No proof of inducement—Admissibility of confession.*

Where the accused made the confession apparently out of remorse and under an overwhelming impulse to speak the truth and it did not appear that the village headman to whom the statement had been made had told her that if she would tell the truth, she would be let off,

*Held*, that though the headman was a person in authority within the meaning of the section there was no inducement proved which vitiated the confession, and that it was consequently admissible. (*Stuart, C. J. and Raza, J.*). **MT. UM RAI v. EMPEROR.** 6 O.W.N. 947.

—*Panchayatdars are not persons in authority.*

Panchayatdars are not persons in authority within the meaning of S. 24. Considering the nature of the functions of panchayatdars they are practically private detectives helping the police in finding out the criminals. They cannot be treated as men having any authority over the accused. (*Krishnan and Wallace, JJ.*). **MULIMAYANDI THEVAN v. EMPEROR.** 76 I.C. 829=

18 M.L.W. 886=25 Cr. L.J. 269=A.I.R. 1924 Mad. 230=45 M.L.J. 845.

**—S. 24—Proof of.**

—*Extra-judicial confession.*

The duty of the Court before which an extra-judicial confession, not incorporated in a document, is relied upon is to scrutinise the whole of the material before it, and then to decide whether

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there is sufficient evidence to prove the confession. A mere general statement to the effect that the prisoner had confessed, is too uncertain a foundation to sustain a finding against him and the Trial Court ought to ascertain as far as possible the very words spoken by an accused who is said to have confessed. There may however be cases in which the evidence gives the substance, though not the actual words of the statement made by the accused and if that evidence is reliable there is no rule of law which precludes the Court from holding, that the confession has been proved: 10 B.L.R. 322, *Ref. (Shadi Lal, C. J. and Ffords, J.)*. **NUR ALI v. THE CROWN.** 81 I.C. 530=5 Lah. 140=6 L. L. J. 208=25 Cr. L. J. 914=A.I.R. 1924 Lah. 498.

**—S. 24—Retracted confession—Admissibility.**

*Confession duly recorded after taking all precautions—Retraction without sufficient explanation as to how the accused came to make the confession, does not make it inadmissible.*

Where an accused makes a confession after all the precautions necessary have been taken by the Magistrate recording the confession, the mere fact that the confession has been retracted will not make it inadmissible unless the accused gives any sufficient reason as to how he came to make the confession.

A man of sound mind and full age, who makes a statement in ordinary simple language, must be bound by the language of the statement and by its ordinary plain meaning. A. I. R. 1925 All. 627 (F. B.), *Foll. (Stuart, C. J. and Raza, J.)*. **RAJ BAHADUR SINGH v. EMPEROR.** 98 I.C. 106=3 O.W.N. 818=27 Cr. L.J. 1253=A. I. R. 1927 Oudh 17.

**—S. 24—Retracted confession—Conviction on.**

*Person making confession may be convicted when Court thinks that it is voluntary and true.*

There is nothing in law to prevent a Court from convicting a person upon a confession which has been subsequently retracted, provided that the Court is convinced that the statement is voluntary and true. If there be anything from the barest suspicion to positive evidence that the confession has been obtained by threat, persuasion, etc., such confession has of course to be discarded. But where a confession is made by a person who is *sui juris* before a Magistrate in an atmosphere untainted by the influence of the police or by any other influence and there are no suspicious features about it there is no reason why the statement should not be accepted. (Young and Sen, J.J.). **MT. KHUBAN v. EMPEROR.** 120 I.C. 287=31 Cr. L.J. 26=1930 Cr. C. 45=A.I.R. 1930 All. 29.

**—Rule of Practice.**

It is a rule of practice not to rely on a retracted confession unless it is corroborated by some evidence to show that the confession is true. As a matter of law it cannot be laid down that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence, and a prisoner may be convicted on his own confession without any corroborative evidence and even when a confession has been retracted, if the jury believe that the confession contains a true account of the prisoner's connexion with the crime. (Rankin, C.J. and C. C. Ghose, J.). **EMPEROR v. KUTUB BUX.** 57 Cal. 488=A.I.R. 1930 Cal. 633.

*Retracted confession made voluntarily is sufficient to warrant conviction.*

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A confession made voluntarily without any pressure having been brought to bear upon the accused, is sufficient to warrant the conviction of the accused even although such confession may subsequently be retracted. (Broadway and Agha Haidar, J.J.). **RAHMAN v. EMPEROR.** 119 I.C. 420=1930 Cr. C. 104=30 Cr. L.J. 1080=A.I.R. 1930 Lah. 83.

—Where the confession was retracted but on the evidence there was no possible doubt as to the truth of the confession,

*Held*, that the confession could be the basis of a conviction. (Waller and Cornish, J.J.). **KUTTI-APPA CHETTY v. EMPEROR.** 1929 M.W.N. 791.

*Detailed and voluntary confession subsequent retraction—Parts not found to be true—Sufficient for conviction.*

Confession made by an adult man who understood what he was doing, though retracted, is sufficient for the conviction of the person making it, even although certain parts of it are not found to be true, provided that there was a detailed confession and it was made voluntarily and in spite of the fact that he was explained the consequences of making it. (Stuart, C.J. and Raza, J.). **NAWAB v. EMPEROR.** 118 I.C. 757=6 O.W.N. 845=30 Cr. L.J. 967=1929 Cr. C. 220=A.I.R. 1929 Oudh 381.

*Conviction may be based on retracted confession though it must be dealt with caution.*

A retracted extra judicial confession can in law be a sufficient basis to support a conviction. Though utmost caution must be used in dealing with retracted confessions, there is no rule that they are not by themselves legal evidence sufficient to justify a conviction: A.I.R. 1921 Sind 129, *Foll. (Rupchand and Barley, A.J.Cs.)*. **SANWALDAS v. EMPEROR.** 1923 Cr. C. 682=A.I.R. 1929 Sind 253.

—Accused retracting his confession—Court believing it to be true and voluntarily made—Conviction on such retracted confession although uncorroborated by independent evidence is not illegal. (Zafar Ali and Coldstream, J.J.). **MAJHI v. EMPEROR.** 104 I.C. 247=28 Cr. L. J. 807=A.I.R. 1927 Lah. 682.

*Conviction based on that confession alone is not illegal.*

A conviction based alone on a retracted confession of the accused himself is not bad where the trial Court is satisfied that the confession was made voluntarily and that the accused was under no inducement or threat at the time when he made the confession, that he was informed clearly that if he confessed he would not get a pardon and he stated that he quite understood all these circumstances; that he wished to make his statement voluntarily and that he had no idea that he would get a pardon. A. I. R. 1925 All. 627 (F. B.); A.I.R. 1926 Oudh 622 and A.I.R. 1927 Oudh 17, *Foll. (Stuart, C.J. and Raza, J.)*. **MAHIPAT SINGH v. EMPEROR.** 103 I.C. 800=1 L.C. 223=8 A.I. Cr. R. 416=28 Cr. L.J. 752=A.I.R. 1927 Oudh 597.

*Retracted confession may be used against person making it as well as against his co-accused—Retracted confession may form basis of conviction as against person making it, and no corroboration is necessary—Weight to be given to such confession depends upon circumstances.*

A retracted confession may be used as evidence, not only against the person making it, but as against persons tried jointly with the confessing



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accused for the same offence. As against the person making it, a retracted confession may form the basis of a conviction, even without any corroborative evidence. From the point of view of legality alone the fact that a confession has been retracted is immaterial. The weight to be given to such confessions both as against the person making it and the persons being tried jointly with him is another question and must depend on the circumstances of each case. In deciding whether a retracted confession is to be admitted in evidence, it is doubtless necessary to examine, not only the statement made by the prisoner as to how he came to make the confession, but all the circumstances of the case. (*Broadway and Addison, JJ.*). PARTAP SINGH v. EMPEROR. 93 I.C. 978=

6 Lah. 415=7 L.L.J. 482=27 Cr.L.J. 514=  
A.I.R. 1925 Lah. 605.

**—Legality of.**

It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. The weight to be given to it must depend on the circumstances under which the confession was given and retracted including the reasons given for retracting. There is no statutory bar to a conviction on such evidence, but a confession must not be regarded in the same light as an admission in a civil Court.

A retracted confession may be impugned on the ground it was not made voluntarily or was not true. (*Pipon, J.C.*). MOTI RAM v. EMPEROR.

75 I.C. 152=24 Cr.L.J. 904.

**—S. 24—Retracted confession—Corroboration.**

—A confession, although retracted at the very first possible moment, is sufficient to warrant conviction if corroborated by the production of articles for which the accused can offer no explanation. (*Broadway and Agha Haider, JJ.*). ARJAN SINGH v. EMPEROR.

119 I.C. 325=30 P.L.R. 646=  
30 Cr.L.J. 1046=11 Lah. 106=  
A.I.R. 1930 Lah. 257.

**—Absence of—Conviction cannot be based on such confession.**

The weight to be given to a retracted confession must depend upon the circumstances under which the confession was originally made and the circumstances under which it was attracted, including the reasons given by the prisoner for its retraction. Unless the confession is corroborated in material particulars by credible independent evidence, or unless the character of the confession and the circumstances under which it was taken indicate its truth it would be unsafe to rely on it.

The accused was appointed approver in a case of murder. He made several confessional statements implicating himself and the other accused in the murder. But at the Sessions trial he unreservedly retracted his previous statements as approver and that he knew nothing of the murder and that he was tutored by the police into making those statements which were false. The conditional pardon granted to him was withdrawn and he was put on his trial on the previous charge of murder. There was no evidence to corroborate his confession and further the various confessional statements made by him were wanting in those natural details which one would ordinarily expect in a free and voluntary confession. The statements also contradicted one another on several important points,

**EVIDENCE ACT (1872), S. 24—Retracted confession—Value of.**

*Held*, that there was not sufficient evidence to justify his conviction: 31 Mad. 88; 13 C.P.L.R. 107; 20 All. 133; 15 Bom. 452; 22 Cal. 50; A.I.R. 1925 Cal. 587 and 53 I.C. 929. *Rel. on.* (*Windlay, J.C., and Subhedar, A.J.C.*). SHEIKH SHAFI v. EMPEROR. 124 I.C. 459=

A.I.R. 1930 Nag. 259.

—There is no absolute rule that a retracted confession requires corroboration. If the Court is satisfied that a confession was, in the first instance, voluntarily made, the fact that it has on second thought, been retracted is of little significance. (*Waller and Reilly, JJ.*). LAKSHMAYYA v. EMPEROR. 1930 M.W.N. 785.

—*Criminal P. C., S. 164—Corroboration is not necessary in every retracted confession.*

That a confession, having been retracted, cannot be acted upon without material corroboration, is not an absolute rule. If the reasons given by an accused person for having made a confession, which he subsequently withdraws, are, on the face of them false, it is not apparent why that confession should not be acted on, as it stands and without any further corroboration. (*Waller and Cornish, JJ.*). KESAVA PILLAI v. EMPEROR. 1929 Cr.C. 485= 30 M.L.W. 642=2 M. Cr. C. 298= 1929 M.W.N. 901=A.I.R. 1929 Mad. 837= 57 M.L.J. 681.

—*In the absence of corroboration in material particulars conviction is not safe.*

It is not illegal to base a conviction even on the retracted confession of an accused person: but in the absence of corroboration in material particulars, it is not safe to convict on a confession, unless from the peculiar circumstances in which it was made and judging from the reasons, alleged or apparent, of the retraction, there remains a high degree of certainty that the confession, notwithstanding its having been resiled from, is genuine: 80 P. R. 1914 Cr., *Foll.* (*Bhade, J.*). PATA SINGH v. EMPEROR. 107 I. C. 614=29 Cr.L.J. 267= 9 A.I.Cr.R. 527=A.I.R. 1928 Lah. 329.

—Where confessions do not stand uncorroborated, and the accused are unable to explain away their confessions though retracted, the confessions alone are sufficient for conviction: A.I.R. 1926 Oudh 622, *Foll.* (*Stuart, C.J. and Raza, J.*). SITAI v. EMPEROR. 114 I. C. 123= 5 O. W. N. 968=30 Cr. L. J. 228= 12 A. I. Cr. R. 229.

—Conviction based on a retracted confession which was voluntary and was sufficiently corroborated is legal. (*Fforde, J.*). IQBAL KHAN v. EMPEROR. 103 I. C. 112=28 Cr. L. J. 656= A. I. R. 1927 Lah. 780.

—*No proper corroboration—Accused should be acquitted.*

Where the whole case rested on the confession of the accused, which was retracted and there was no corroboration of the confession, but there were many suspicious circumstances about it,

*Held*, that there was by itself no evidence sufficient to base a conviction. (*Adami and Scroope, JJ.*). KARU v. GWALER. 101 I. C. 479=

8 P. L. T. 555=8 A.I.Cr.R. 92= 28 Cr. L. J. 447=A.I.R. 1927 Pat. 429.

**—S. 24—Retracted confession—Value of.**

—Confession of a co-accused, though subsequently retracted is admissible in evidence against his co-accused: A. I. R. 1929 Oudh 167, *Foll.* (*Agha Haider, J.*). SARDARA v. EMPEROR.

A. I. R. 1930 Lah. 687.



**EVIDENCE ACT (1872), S. 24—Retracted confession—Value of.**

—It is a rule of practice not to rely on a retracted confession unless it is corroborated by some evidence to show that the confession is true. But as a matter of law it cannot be laid down that a confession made and subsequently retracted by a prisoner cannot be accepted without independent corroborative evidence and a prisoner may be convicted on his own confession without any corroborative evidence. (*Rankin, C. J. and C. C. Ghose, J.*). **EMPEROR v. KUTUB, BUX.** 57 Cal. 488=

**A.I.R. 1930 Cal. 633.**

—The mere fact of the retraction of a confession is not in itself sufficient to make it appear that it was unlawfully induced but will be a corroboration of the approver's statement. (*Addison and Dalip Singh, J.J.*). **RAHMAT v. EMPEROR.**

113 I. C. 65=11 L. L. J. 5=30 Cr. L. J. 49.

—Accused's confession retracted on first opportunity—Confession due probably to promise of pardon and not corroborated by independent evidence—No motive for offence committed established by prosecution—Only evidence against accused being he was last seen in company of victim—Confession is inadmissible in evidence and accused cannot be convicted on the remaining evidence. (*Zafar Ali and Coldstream, J.J.*). **MATHI v. EMPEROR.** 104 I. C. 247=28 Cr. L. J. 807=

**A.I.R. 1927 Lah. 682.**

—Retracting confession—will not necessarily indicate invalidity or illegality—probative force depends on circumstances.

The mere fact that a confession is retracted will not raise an inference that it was obtained by improper inducement, threat or promise. Such a conclusion can only be arrived at from the evidence on the record or from the surrounding circumstances and not upon surmise or conjecture: **A. I. R. 1925 Lah. 605, Foll.**

The fact that a confession has been retracted is immaterial as regards the legality of the admission of the confession as evidence against the person who made it. But the weight to be attached to a retracted confession depends upon the circumstances of each particular case: **A. I. R. 1925 Lah. 605, Foll.**

As regards the person making it a retracted confession may without corroboration form the basis of a conviction and though corroboration may be necessary as regards co-accused, it is not necessary that this corroborative evidence should by itself be sufficient to support a conviction: 30 P. R. Cr. 1914 and 29 All. 484, *Foll.* (*Abdul Raouf and Addison, J.J.*). **MOHAR SINGH v. EMPEROR.**

96 I. C. 647=27 P. L. R. 387=27 Cr. L. J. 983.

—Retracted confession is effective against the accused.

When the accused in full possession of his faculties makes admissions of guilt to various persons, they are not ineffective only because they are subsequently retracted: **A. I. R. 1925 All. 627 (F. B.), Rel. on.** (*Stuart, C. J. and Raza, J.*). **EMPEROR v. MT. RAJ KATI.** 98 I. C. 250=1 Luck. 577=

3 O. W. N. 813=27 Cr. L. J. 1306=

29 O. C. 396=7 A. I. Cr. R. 283=

**A.I.R. 1926 Oudh 622.**

—Retracted confession carries little weight.

Per *Shah, J.*—A retracted confession carries much less weight than one which has been adhered to.

Per *Crump, J.*—A confession is after all an evidence in so far as it bears upon the crime into which the Court is at the time enquiring and circumstances corroborating the confession in material points

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**EVIDENCE ACT (1872), S. 24—Scope.**

are themselves equally material. (*Shah and Crump, J.J.*) **GANGARAM v. EMPEROR.**

62 I. C. 545=22 Cr. L. J. 629=22 Bom. L. R. 1274.

—S. 24—Scope.

—For rejecting confession positive proof of threat etc., is not necessary.

Per *Mukerji, J.*—The language of S. 24 will show that to reject a confession it is not necessary that there should be positive proof to establish that the confession has been obtained by use of threat, persuasions, etc. Anything from a barest suspicion to positive evidence would be enough for a confession being discarded. The weight, therefore, that has to be attached to a confession, in the view of the legislature, is small. **A.I.R. 1925 Cal. 587, Foll.** (*Mears, C. J., Mukerji and Banerji, J.J.*). **RAGHA v. EMPEROR.** 89 I. C. 903=

23 A. L. J. 821=26 Cr. L. J. 1431=

6 L. R. A. Cr. 161=A.I.R. 1925 All. 627 (F. B.).

—Voluntary nature is test of admissibility—Factors to determine—Mentality of accused—Sufficiency of inducement and its relation with confession as cause and effect—Proof of inducement is not necessary.

The test of admissibility of a confession is its voluntary nature and not its falsity or truth. To determine the voluntary nature or otherwise of a confession, the mentality of the accused is to be judged rather than that of the person in authority. Not merely actual words but words accompanied by acts or conduct as well on the part of the person in authority which may be construed by the accused person, situated as he then is, as amounting to an inducement, threat or promise, will have to be taken into account. A perfectly innocent expression, coupled with acts or conduct on the part of the person in authority, together with the surrounding circumstances may amount to inducement threat or promise. In scrutinising a case from the point of view of S. 24 of the Evidence Act the Court will have to perform a three-fold function, (1) to determine the sufficiency of the inducement, threat or promise, (2) the mentality of the accused, and (3) whether the confession appears to have been caused in consequence of the inducement, threat or promise. The section does not require positive proof (as defined in S. 8 of the Act) of improper inducement to justify the rejection of the confession, the word "appears" indicating a lesser degree of probability than would be necessary if "proof" had been required. (*Mukerji, J.*). **EMPEROR v. PANCHKARI DUTT.** 86 I. C. 414=52 Cal. 67=29 C. W. N. 300=

26 Cr. L. J. 782=A.I.R. 1925 Cal. 587.

—S. 24 will override S. 27 when they conflict.

A statement though admissible under S. 27 should be excluded if under S. 24 the accused at the time of making the statement was under the influence of the village Magistrate's promise to save him from punishment. (*Spencer, Off. C. J. and Reilly, J.*). **SEMA LAI GOUNDAN, In re.**

86 I. C. 664=26 Cr. L. J. 840=21 M. L. W. 199=

**A.I.R. 1925 Mad. 574.**

—Criminal P. C., S. 337—No analogy exists between approver's statement and confession of accused.

Necessarily in every case where an accused is made an approver it must be ascertained whether he is willing to tell the truth or not. No analogy exists between the case of a confession obtained from an accused person by any inducement and the case of an approver. If it were so, practically all approvers' evidence would be inadmissible. (*Baker, J. C.*). **ISMAIL PANJU v. KING-EMPEROR.** 88 I. C. 283=

26 Cr. L. J. 1115=A. I. R. 1925 Nag. 337:

**EVIDENCE ACT (1872), S. 24—Value of confession.****—S. 24—Value of confession.**

—The mere fact that there was a race for pardon does not detract from the value of the confession, if that race for pardon does not appear to have been caused by an inducement or promise held out by one in authority. (*Addison and Dalip Singh, JJ.*). **RAHMAT v. EMPEROR.** 113 I.C. 65=

11 Lah. L.J. 5=30 Cr. L.J. 43.

—A man of sound mind and full age, who makes a statement in ordinary simple language, must be bound by the language of the statement and by its ordinary plain meaning. If the statement is believed by the Court to be true, and if the Court is satisfied that there was nothing of the nature referred to in S. 24 of the Evidence Act, no improper conduct of any body but that the man of his own notion made a confession, and if that confession can legally be receivable in evidence and is corroborated, the plain simple meaning of the words used by him must have their full and proper significance, and the act spoken should be given its legal consequence. (*Mears, C.J., Mukerji and Banerji, JJ.*). **RAGHA v. EMPEROR.**

89 I.C. 903=23 A.L.J. 821=26 Cr.L.J. 1431=6 L.R.A.Gr. 161=A.I.R. 1925 All. 627 (F.B.).

—A confession in its normal state, is an entirely suspicious article. A retracted confession is worse. The Court should not lose sight of the fact that assuming that a prisoner had been induced to confess he will not unlikely assure the Magistrate that his confession was volunteer knowing that he will leave the Magistrate's presence in the custody of the police and remain in their custody for many days to come. (8 B.H.C.R. 126, *Ref.*). The use to be made of a confession is really a matter of prudence rather than law. 19 Bom. 728, *Foll.* (*Mears, C.J., Mukerji and Banerji, JJ.*). **RAGHA v. EMPEROR.**

89 I.C. 903=23 A.L.J. 821=26 Cr.L.J. 1431=6 L.R.A.Gr. 161=A.I.R. 1925 All. 627 (F.B.).

—*Stolen articles recovered from accused and other named by him—Confession if rendered untrue because accused minimised his share in offence.*

Where a person confessed he had taken part in a dacoity and named his associates and the Police recovered stolen articles from the house of the person making the confession and from the persons named by him,

*Held*, that the confession was not rendered untrue merely because the person making the statement minimised his share in the dacoity. (*Raza and Pullan, JJ.*). **AUTAR v. EMPEROR.**

7 O.W.N. 456.

**—S. 24—What is confession.****—Definition.**

A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime. (*Young and Sen, JJ.*). **MT. KHUBAN v. EMPEROR.**

120 I.C. 257=31 Cr. L.J. 26=1930 Cr. C. 45=A.I.R. 1930 All. 29.

—Admissions by party in case in which charge is baseless and prosecution is carried only to harass party are not voluntary and therefore not binding. (*Tek Chand and Agha Haidar, JJ.*). **SECY. OF STATE v. G. T. SARIN & CO.**

120 I.C. 615=A.I.R. 1930 Lah. 364.

—*Oral confession—Accused not shown to know language in which questions put but in answer making signs—Conduct—Held did not amount to confession.*

Where an accused, not shown to have understood English, is asked in broken English as to whether

**EVIDENCE ACT (1872), S. 24—What is confession.**

he was responsible for the act and he nods his head and salams in reply, the conduct does not amount to confession. It is impossible to determine what the accused understood to be the meaning of remarks addressed to him as to his complicity in the crime and without being satisfied that the accused exactly understood the meaning and the import of the question addressed to him, the signs made by him, standing by themselves are meaningless. He might have completely misunderstood what was sought to be conveyed to him and have thus made the signs which were intended to be in answer to something which was entirely different from what his questioners were anxious to put him and therefore confession remains unproved and so is no confession. (*Shadi Lal, C.J. and Agha Haidar, J.*). **EMPEROR v. SOOPI.**

120 I.C. 539=1930 Cr.C. 100=31 Cr.L.J. 141=31 P.L.R. 391=A.I.R. 1930 Lah. 84.

—*Confession after being warned—Accused is bound down by language of confession.*

When a man of sound mind and full age makes a confessional statement in ordinary simple language after he has been warned, he must be bound by the language of the statement and by its ordinary plain meaning: A.I.R. 1927 Oudh 17, *Foll.* (*Raza and Nanavutty, JJ.*). **HAZARI v. EMPEROR.**

7 O.W.N. 527=A.I.R. 1930 Oudh 353.

—Where an accused charged under S. 380 was asked whether he had stolen the mare and he was arrested while riding it and the accused said "yes": *Held*, that the answer did not amount to a confession. (*Tek Chand, J.*). **HASNI v. EMPEROR.**

103 I.C. 847=28 Cr.L.J. 767=A.I.R. 1927 Lah. 650.

—*Exculpatory statement made to Magistrate is not confession.*

The statement made by the accused to the Magistrate by way of confession but of self-exculpatory nature is not really a confession. (*Newbould and B. B. Ghose, JJ.*). **KERAMAT MONDAL v. EMPEROR.**

92 I.C. 439=42 C.L.J. 524=27 Cr.L.J. 263=A.I.R. 1926 Cal. 320.

—Any statement by a person which would suggest an inference as to his guilt may be a confession within S. 24 of the Act. If it is found that a confession recorded under S. 164 of the Cr. P. C. was procured by a Police Officer by the offer of an inducement, it becomes inadmissible under S. 24 of the Evidence Act.

*Per Shah, J.*—S. 24 will apply even if the person confessing was not a accused person at the time of confession. It is sufficient if he ultimately comes to be the accused person with reference to the charge in respect of which he is said to have confessed. Though a statement of an approver may be given in evidence against him under S. 389 (2) of the Cr. P. C. it cannot be said that the operation of S. 24 is altogether excluded, if it is shown that some influence was proceeding from some authority, simultaneously with the legal tender of pardon, which would invite the application of S. 24 of the Evidence Act, then the confessional part of statement would be inadmissible by virtue of the section. *Per Heaton, A.C.J.*—(*Hayward, J.*) *Semle* :—A statement falling within S. 389 (2) of the Code excludes the operation of S. 24 of the Evidence Act. (*Heaton, A.C.J., Shah and Hayward, JJ.*). **EMPEROR v. GUNNA.**

59 I.C. 324=22 Bom. L.R. 1247=22 Cr.L.J. 68.

**EVIDENCE ACT (1872), S. 24—Miscellaneous.****—S. 24—Miscellaneous.**

*Question of admissibility of confession comes when statement is made to police officer or while in police custody.*

The question whether or not a statement is to be regarded as admissible as being a confession or not usually arises in the case of a statement made to a police officer or in the case of statement made to a man while in custody of the police. (*Rankin, C. J. and Buckland, J.*). **AMBAR ALI v. EMPEROR.** 1929 Cr. C. 194 = A.I.R. 1929 Cal. 539.

*Admissibility in evidence is a matter which is to be decided after a full consideration of the evidence and the particular circumstances of each case.*

It is not possible for a Court to say that the making of a confession appears to have been caused by any inducement, threat or promise except upon evidence before it. The inference may be suggested by the confession itself or by the evidence of the prosecution or by the evidence adduced by the accused person or by the surrounding circumstances which the Court is always bound to take into consideration, but the conclusion cannot be reached on surmise or conjecture. Whether or not a confession is admissible in evidence is a matter which is to be decided after a full consideration of the evidence and the particular circumstances of each case: A.I.R. 1923 Pat. 13. Appr.; A.I.R. 1925 Lah. 605, Ref. and A.I.R. 1925 Cal. 587, Dist. (*Broadway and Coldstream, J.J.*). **BUDHOO v. EMPEROR.** 108 I.C. 387 = 29 Cr. L.J. 385 = A.I.R. 1928 Lah. 676.

**—S. 25—Admissibility.**

*Confession to police may be used by the Court to bring on record by evidence any material fact that may come to its knowledge.*

Confession recorded in a police diary cannot be used for anything other than to assist the presiding Judge in the enquiry or the trial or for the purpose of enabling the defence under certain circumstances to contradict the witnesses for the Crown. It is the duty of Judge to bring on record by evidence any material fact that may come to his knowledge and it is for that purpose that he can and should use the confession. (*Boys and Iqbal Ahmad, J.J.*). **KARAN SINGH v. EMPEROR.**

106 I.C. 442 = 8 A.I. Cr. R. 426 =

8 L.R.A. Cr. 153 = 26 A.L.J. 92 =

29 Cr. L. J. 26 = A.I.R. 1928 All. 25.

**—S. 25—First information report.**

A confessional statement made to the Police immediately after a murder and which was recorded in the first information Report is inadmissible in evidence. (*Scott-Smith and Zafar Ali, J.J.*). **NUR MAHAMMAD v. EMPEROR.**

90 I.C. 148 = 26 Cr. L.J. 1492.

**—S. 25—Incriminating statement.**

*Incriminating statement to police officer, though on face of it, self-exculpatory is inadmissible.*

An incriminating statement made to a police officer cannot be proved against an accused person even where such statement is on the face of it self-exculpatory. 6 Bom. 34, Foll. (*Crump, J.*). **EMPEROR v. ANANDRAO GANGARAM.**

89 I.C. 1046 = 27 Bom. L.R. 1034 = 49 Bom. 642 =

26 Cr. L.J. 1478 = A.I.R. 1925 Bom. 529.

*Criminal P. C., S. 161—Inquiry under S. 161 Criminal P. C.—Incriminating statement by accused is inadmissible.*

Any incriminating statement made by an accused person at an inquiry held under S. 161, Cr. P. C., would be excluded at the trial under S. 25 of the Evidence Act, as having been made to a Police

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Officer, and as such of no material use at the trial. (*Rupchand Bilaram, A. J. C.*). **UMER DURAZ MUNSHI v. EMPEROR.** 86 I. C. 410 =

26 Cr. L.J. 778 = 19 S.L.R. 142 =

A.I.R. 1925 Sind 237.

**—S. 25—Object of.**

*Object is to prevent the abuse of powers by Police.*

The object of S. 25 is to prevent the abuse of their powers by the police in extorting confessions from persons in their custody Per Marten, C.J. (*Marten, C.J., Shah, Fawcett, Kemp and Mirza, J.J.*). **NANOO SHEKH v. EMPEROR.** 99 I.C. 330 = 51 Bom. 78 =

28 Bom. L.R. 1196 = 28 Cr. L.J. 122 =

7 A.I. Cr. R. 249 = A.I.R. 1927 Bom. 4 (F.B.).

**—S. 25—“Police officer.”**

*Officer exercising powers of police is Police officer (Per Shah, J., Kemp, J., contra).*

The Police officer within the meaning of S. 25 is an officer who exercises the powers of the police conferred upon him by law, whether he is called a Police officer or he is called by any other name and exercises other functions also under other provisions of law. (*Marten, C. J., Shah, Fawcett, Kemp and Mirza, J.J.*). **NANOO SHEKH v. EMPEROR.**

99 I.C. 330 = 51 Bom. 78 = 28 Bom. L.R. 1196 =

28 Cr. L.J. 122 = 7 A.I. Cr. R. 249 =

A.I.R. 1927 Bom. 4. (F.B.).

*“Police officer” in S. 25 is wider than in Police Act (1861), S. 1.*

Primarily the term “Police Officer” in S. 25 of the Evidence Act means the same as it does in the Police Act but it can be extended beyond the definition in S. 1 of the Police Act to cover only those persons who, like Police Officers, coming within that definition, are so much more interested in obtaining convictions than any member of the community is, that they might possibly resort to improper means for doing so. (*Hallifax and Mitchell, A. J. Cs.*). **EMPEROR v. AKALA.**

101 I.C. 599 = 23 N.L.R. 23 = 28 Cr. L.J. 471 =

8 A.I. Cr. R. 66 = A.I.R. 1927 Nag. 222.

*Whether includes person invested with police powers—Confession made to such person—Admissibility.*

Where a confession was made to an Assistant Superintendent of the Pokkoku Hill Tracts who exercised the powers of Additional District Magistrate and who was also an Assistant Commandant of Military Police.

Held, that the confession was made to a police officer and was therefore inadmissible in evidence. (*Carr and Brown, J.J.*). **JAS BAHADUR THAPA v. EMPEROR.** 8 R. 52.

*Excise Officer is not police officer and admission to him is admissible. —Burma Excise Act (5 of 1917), Ss. 53, 54, 55, 56.*

Although under Burma Excise Act 5 of 1917 an Excise Officer has power of arrest, search and granting bail he is not a police officer and an admission made to him is admissible in evidence: (1907-9) U.B.R. 1. Held, no longer good law, (*Baguley J.*). **MAUNGSA MYIN v. EMPEROR.**

121 I. C. 715 = 7 Rang. 771 = 31 Cr. L.J. 303

A. I. R. 1930 Rang. 49.

*Abkari officer exercising powers of Police is a Police officer within S. 25.*

An Abkari officer, who, in the conduct of investigation of an offence punishable under the Bombay Abkari Act, exercises the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of the Police station for the investigation of a cognizable offence, is a Police officer within

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the meaning of S. 25 and therefore a confession made to him is inadmissible. 28 Bom. L. R. 674, *Overruled*; 46 Cal. 411, *Dist.*; 1 Cal. 207, *Rel. on*. (Marten, C.J., *Shah Fawcett, Kemp and Mirza, JJ.*). NANO SHEIKH v. EMPEROR. 99 I.C. 330=

51 Bom. 78=28 Bom. L. R. 1196=28 Cr. L. J. 122=7 A.I. Cr. R. 249=A.I.R. 1927 Bom. 4 (F.B.).

—An Excise Officer is not a Police Officer within S. 25 of the Evidence Act. 46 Cal. 411, *Foll.* (Suhrawardy and Mitter, JJ.). HARBHAJAN SAD v. EMPEROR. 102 I.C. 547=54 Cal. 601=

31 C.W.N. 667=28 Cr. L. J. 579=8 A.I. Cr. R. 114=A.I.R. 1927 Cal. 527.

—Excise officer is not a police officer—Confession made to him is good evidence.

An excise officer is not a police officer within the meaning of the Evidence Act and hence a confession of guilt made to him is good evidence against the accused. 46 Cal. 411 and A.I.R. 1925 Sind 70, *Foll.* (Kincaid, J.C. and Barley, A.J.C.). EMPEROR v. BUDHO. 99 I.C. 594=7 A.I. Cr. R. 290=

28 Cr. L. J. 162=A.I.R. 1927 Sind 112.

—Statement made to excise officer is admissible as he is not a police officer. 46 Cal. 411, *Foll.* (MacLeod, C.J. and Crump, J.). RAPHAEL PEREIRA v. EMPEROR. 97 I.C. 665=28 Bom. L. R. 674=

27 Cr. L. J. 1145=A.I.R. 1926 Bom. 517.

—Excise officers are not police officers within the section. 46 Cal. 411, *Foll.* (Kennedy and Rupchand Bilaram, A. J. Cs.). TILLIBAI v. EMPEROR. 82 I. C. 151=18 S. L. R. 75=25 Cr. L. J. 1223=

A.I.R. 1925 Sind 70.  
—Excise Peon is police officer and confession made to him is inadmissible.

An excise peon having the power to detain, search, seize and arrest any person whom he believes to be guilty of any offence under Opium Act of Bombay Abkari Act has powers which are very similar to those exercised by a police officer. Any confession made to him is therefore inadmissible under the provisions of S. 25. A. I. R. 1927 Bom. 4 (F.B.), *Appl.* (Mirza and Baker, JJ.). EMPEROR v. DINSHEW KURSHETJI. 117 I. C. 331=

31 Bom. L. R. 49=30 Cr. L. J. 783=A.I.R. 1929 Bom. 70.

—Patel in Berar is Police Officer.

A Patel in Berar is a Police Officer, and the fact that powers are conferred upon him by rules made under the Berar Patels and Patwaris Law, 1900 makes no difference. Consequently the confession made by an accused to a Patel is inadmissible. (Baker, J. C.). MT. MECHI v. KING EMPEROR. 88 I.C. 32=26 Cr. L. J. 1088=A.I.R. 1925 Nag. 340.

—Police Patel in Berar is not Police Officer.

A Police Patel in Berar cannot be regarded as a Police Officer for the purposes of S. 24: A. I. R. 1925 Nag. 340, *Diss. from.* (Hallifax and Mitchell, A. J. Cs.). EMPEROR v. AKAIA.

101 I.C. 599=23 N.L.R. 23=28 Cr. L. J. 471=8 A.I. Cr. R. 66=A.I.R. 1927 Nag. 222.

—Kotwar in C. P. is not a police officer.

The widest and most comprehensive extension of the term "police officer" cannot make it include a Kotwar in the Central Provinces. He is popularly regarded as a subordinate police officer and even that idea arises mainly from the fact that it is his duty to make, or rather to carry, frequent reports to the police. But the making of reports to a department of the Government does not constitute a person who makes them, a member of that department even in the popular sense and therefore a confession made before him is admissible in evidence. 17 B. 485; 26 Cal. 569 and

**EVIDENCE ACT (1872), S. 25—Statement and confession.**

1 Cal. 207, *Cons.* (Baker, J.C. and Hallifax, A.J.C.). SUKHWARI CHAMARIN v. EMPEROR.

76 I.C. 291=25 Cr. L. J. 147=A.I.R. 1924 Nag. 29.  
—Constabulary—Frontier constabulary is a police officer.

For the purpose of Ss. 25 and 26 of the Evidence Act a member of the Frontier Constabulary is a police officer and confession made to him while the accused was in his custody and not in the presence of a Magistrate is inadmissible. The term, Police officer in this respect must be construed not in any strict technical sense but according to its most comprehensive and popular meaning. The mere fact that the powers of the police officers have not been actually conferred on certain members of the frontier constabulary does not make them any the less police officers. (Papon, J.C.). KHWAJA HASSAN v. EMPEROR. 71 I.C. 360=24 Cr. L. J. 136.

—Village Headman is not a "Police officer" though invested with power of arrest.

The mere bestowal on a village Headman of some powers of arrest as are given to a police officer, does not make him a police officer any more than it makes a Magistrate a police officer. A confession, therefore, made to him is not inadmissible in evidence, but the weight to be attached to such confession will depend on the circumstances of the case and the part he has taken in the elucidation of the crime. 1 L.B. R. 65, *Affirmed.* (Young, Offg. C.J., *Heald and May Oung, JJ.*). NGA MYIN v. EMPEROR. 81 I.C. 540=2 Rang. 31=3 Bur. L. J. 11=

25 Cr. L. J. 924=A.I.R. 1924 Rang. 235 (F.B.).

—S. 25—Police officer acting as Magistrate.

—Police Officer acting also as Magistrate—Confession to him is illegal.

An Assistant Superintendent having all the powers of a District Superintendent of Police cannot cease to be a police officer simply because he is also a Magistrate and is acting in that capacity and therefore confession made to him is inadmissible in evidence: 7 Bur. L. R. 100 and 1 Cal. 207, *Rel. on.* (Carr and Brown, JJ.). JAS BHADUR THAPA v. EMPEROR. 8 Rang. 52=1930 Cr. C. 705=

A.I.R. 1930 Rang. 227.  
—S. 25—Presence of police officer.

—Confession made to person asked by police officer to take confession—Police officer in near proximity—Confession comes under S. 25.

A confession made to another person in the presence of a police officer, who has asked or instructed that other person to take the confession in such a way as to be his agent where the confession takes place under such circumstances that the police officer is in such proximity as to make his presence likely to affect the mind of the confessing person, is in substance a confession to a police officer. (Walsh and Pullan, JJ.). EMPEROR v. MT. HAR PIARI. 97 I. C. 44=49 All. 57=

27 Cr. L. J. 1068=24 A.L.J. 958=7 L.R.A. Cr. 156=A.I.R. 1926 All. 737.

—S. 25—Repetition to Magistrate.

—Confession made to police officer—Accused merely repeating before Magistrate the fact and contents of the previous confession—Statement to Magistrate is inadmissible in evidence. (Crump, J.). EMPEROR v. ANANDRAO GANGARAM. 89 I.C. 1046=27 Bom. L. R. 1034=49 Bom. 642=

26 Cr. L. J. 1478=A.I.R. 1925 Bom. 529.

—S. 25—Statement and confession.

—Every statement is re-confession.

Every statement made by any accused person to a Police Officer is not a confession and is not ipso

**EVIDENCE ACT (1872), S. 25—Statement and confession.**

*facto* excluded from being received in evidence. Where the prosecution do not rely upon the statements of the accused either as true or as containing any incriminating circumstances to prove their guilt or for the purpose of avoiding their obligation of proving one of the ingredients of the offence with which the accused are charged but the statements are relied on as false and not as confessions they are admissible. 5 Bom. L.R. 812, *Rel. on. (Kennedy, J.C. and Rupchand Bilaram, A.J.C.)*. ADHO v. EMPEROR. 86 I.C. 961=19 S.L.R. 6=

26 Cr. L.J. 897=A.I.R. 1925 Sind 257.

—Question whether statement is confession should be decided on merits of each case.

Each case must be decided as it arises with reference to the question whether a particular statement positive or negative, verbal or expressed by conduct, is or is not a confession. (*Rupchand Bilaram, A.J.C.*). UMER DURAZ MUNSHI v. EMPEROR. 86 I.C. 410=19 S.L.R. 142=

26 Cr. L.J. 778=A.I.R. 1925 Sind 237.

**—S. 25—Village Magistrate.**

—Confession recorded by Village Magistrate even after investigation has begun is admissible.

Rule 195 is not a rule of law, but merely a rule for the guidance of Village Magistrates and therefore, a confession recorded by a Village Magistrate after the police investigation has begun is admissible apart from the fact whether the Magistrate knew that the investigation had begun. (*Ramesam, and Jackson, JJ.*). KUPPATHAN v. KING EMPEROR. 105 I. C. 687=1927 M.W.N. 824=

28 Cr. L.J. 955=9 A.I. Cr. R. 143=A.I.R. 1927 Mad. 974=53 M.L.J. 739.

**—S. 25—Miscellaneous.**

—House searched—Possession of house being in question—Fact of accused's having put his signature on recovery list is inadmissible.

Where a house was searched and the accused put his signature on the recovery list,

*Held*, that the fact of the accused putting his signature on the recovery list is not admissible in evidence against him in a case in which the possession of the house was in question because it would be an incriminating statement of the nature of a confession to a police officer and could not be proved by reason of the prohibition contained in S. 25. (*Campbell, J.*). BEHARI LAL v. EMPEROR. 100 I.C. 707=8 Lah. 326=28 P.L.R. 119=

28 Cr. L.J. 323=7 A. I. Cr. R. 291=A.I.R. 1927 Lah. 343.

**—S. 26—'Custody of police.'**

—Actual arrest and detention is not necessary.

There are found several cases in which police officers have, after detaining a person accused of an offence, put forward the plea that the latter was not in custody, because he had not yet been formally arrested. The object of this seems to be either to avoid the operation of S. 26 or to shorten the period of time between the arrest and the confession subsequently made to a Magistrate or to postpone the necessity for applying for a remand order. The idea of "free detention" is altogether mistaken and sometimes even hypocritical. It is an infringement of the spirit, while appearing to conform to the strict letter of the law. As soon as an accused or suspected person comes into the hands of a police officer he is in the absence of clear and unmistakable evidence to the contrary, no longer at liberty and is therefore in custody

**EVIDENCE ACT (1872), S. 26—Scope.**

within the meaning of Ss. 26 and 27. (*May Oung, J.*). MAUNG LAY v. EMPEROR. 77 I.C. 429=

1 Rang. 609=25 Cr. L.J. 381=A.I.R. 1924 Rang. 173.

**—S. 26—Magistrate.**

—'Juge d' instruction' is a Magistrate—General Clauses Act, Cl. 81.

'Juge d' instruction' is a Magistrate and so statements made in his immediate presence are admissible in evidence. The term Magistrate is not restricted to the Magistrates exercising jurisdiction under Cr. P. Code: 22 Bom. 235, *Rel. on. (Waller and Pandalai, JJ.)*. PANCHANATHAM PILLAI v. EMPEROR. 121 I.C. 157=52 Mad. 529=

29 M. L. W. 643=1929 M.W.N. 383=2 M.Cr.C. 150=31 Cr. L.J. 223=A.I.R. 1929 Mad. 487=56 M.L.J. 628.

**—S. 26—Oral and written confession.**

—S. 26 as it stands makes no distinction between an oral and written confession but embodies a substantive rule of law. (*Jai Lal and Currie, JJ.*). JOG RAI v. EMPEROR. A.I.R. 1930 Lah. 534.

**—S. 26—Oral confession to Magistrate.**

—Admissibility.

A confession or an incriminating statement made in the presence of a Magistrate by an accused person while in police custody who is not produced before the Magistrate with a view to record his confession can be proved by oral testimony of the Magistrate when it has not been reduced to writing. In absence of any provision of law making it obligatory on the part of a Magistrate to record a confession it is not a matter required by law to be reduced to the form of a document. (*Jai Lal and Currie, JJ.*). JOG RAI v. EMPEROR. A. I. R. 1930 Lah. 534.

**—S. 26—'Police officer' and 'Magistrate.'**

—The words "Police officer" and "Magistrate" in S. 26 of the Evidence Act include the police officers and Magistrates of Native States. 22 Bom. 235, *Foll.* but doubted. (*Crump, J.*). EMPEROR v. ANAND RAO GANGARAM. 89 I.C. 1046=27 Bom. L.R. 1034=

49 Bom. 642=26 Cr. L. J. 1478=A. I. R. 1925 Bom. 529.

**—S. 26—Presence of police.**

—Statement made in presence of police officer is not admissible.

A statement made in the presence of a Sub-Inspector and a constable who had the accused under arrest at the time and not recorded by Magistrate under S. 164, Cr. P. Code, is not admissible in evidence. (*Mears, C.J. and Bennet, J.*). NATHU v. EMPEROR. 118 I. C. 46=1929 Cr. C. 408=

10 L. R. A. Cr. 141=30 Cr. L. J. 867=12 A.I. Cr. R. 323=A.I.R. 1929 All. 855.

—Incriminating admissions of accused before police officers are inadmissible in evidence.

Incriminating admissions of an accused, under admitted circumstances that he took the whole of the investigating staff of the police officers round the scene of offence and admitted before them his own guilt, are inadmissible in evidence under S. 26. (*Subhedar, A.J.C.*). SHAMLAL v. EMPEROR. 120 I.C. 210=31 Cr. L. J. 15=

13 A. I. Cr. R. 157=1929 Cr. C. 673=A.I.R. 1929 Nag. 350.

**—S. 26—Scope.**

—S. 26 does not make admission dependent upon knowledge of accused as to identity of Magistrate.

S. 26 does not make the admissibility of the confession dependent upon the knowledge of the accused as to the identity of the Magistrate, the



**EVIDENCE ACT (1872), S. 26—Statements to police.**

main consideration being the presence of the Magistrate and the making of the confession in his presence. (*Jai Lal and Currie, J.J.*). JOG RAI v. EMPEROR. A.I.R. 1930 Lah. 534.

**—S. 26—Statements to police.**

*Statements to police of incriminating nature are inadmissible.*

Statements of accused while in custody of the police officer, and of his having pointed out the places where he committed the offence, are not admissible as being of an incriminating nature, (*Newbould and B. B. Ghose, J.J.*). KERAMAT MONDAL v. EMPEROR. 92 I.C. 439=42 C.L.J. 524=27 Cr. L. J. 263=A.I.R. 1926 Cal. 320.

**—S. 26—To foreign administrator.**

*Confession while in police custody made before Portuguese Administrator is inadmissible.*

Administrator in Portuguese territories is not a Magistrate and therefore confession made by an accused before him while in Police custody is not admissible. (*Macleod, C.J. and Fawcett, J.*). EMPEROR v. MAHABLI RAMA SAIL. 87 I.C. 520=26 Bom. L.R. 706=26 Cr. L. J. 984=A.I.R. 1924 Bom. 480.

**—S. 26—To Magistrate.**

*Confession to Magistrate while in police custody is not inadmissible.*

If a confession is made to Magistrate, while the accused is in police custody, such confession is not inadmissible, as it is one in the immediate presence of a Magistrate, within S. 26. (*Martineau and Zafar Ali, J.J.*). NAZIR SINGH v. EMPEROR. 91 I.C. 806=7 L.L.J. 428=26 P.L.R. 767=27 Cr. L. J. 134=A.I.R. 1925 Lah. 557.

**—S. 26—To Postal officer.**

*Confession made by accused not to Magistrate but Superintendent of Post Offices is not admissible.*

Confession made by an accused not to a Magistrate but to the Superintendent of Post Offices, at his house, where he was taken temporarily by the police and was again removed back to police lock-up, is inadmissible in evidence; 20 Bom. 165, *Foll.* (*Shadi Lal, C.J. and Agha Haider, J.*). EMPEROR v. SHEO RAM. 108 I.C. 398=10 L.L.J. 174=29 Cr. L. J. 386=10 A.I. Cr. R. 115=A.I.R. 1928 Lah. 282.

**—S. 26—Voluntary statement.**

*Coroners Act, S. 20—Voluntary statement by accused in inquest proceedings is admissible against the accused on his trial.*

There is no provision of law which renders a statement made voluntarily by an accused, a suspect, in inquest proceedings before a Coroner inadmissible against the accused on his trial for the offence: A.I.R. 1926 Bom. 144, *Dist.*; A.I.R. 1926 Bom. 151, *Ref.* (*Shah, J.*). EMPEROR v. AZIMKHAN ZAINKHAN. 110 I.C. 107=30 Bom. L.R. 84=10 A.I. Cr. R. 419=29 Cr. L. J. 651=A.I.R. 1928 Bom. 52.

**—S. 27.**

**Accused.**

**Co-accused.**

**Conviction on.**

**Discovery.**

**Discovery of irrelevant fact.**

**Duty of Court.**

**Interpretation.**

**Presence of police.**

**Scope.**

**Several accused.**

**Statement.**

**What can be proved.**

**EVIDENCE ACT (1872), S. 27—Discovery.****—S. 27—Accused.**

*Person not accused at the time of making statement—Statement is not admissible.*

In order to bring the statement within S. 27 the person making it must not only be in the custody of the police but the statement must be of a person who was then an accused: 6 All. 509 (F.B.), *Rel. on.* (*Adami and Wort, J.J.*). DEONANDAN DUSADH v. EMPEROR. 111 I. C. 118=7 Pat. 411=9 P.L.T. 533=10 A. I. Cr. R. 466=29 Cr. L. J. 790=A.I.R. 1928 Pat. 491.

**—S. 27—Conviction on.**

*Person convicted on mere evidence that he pointed out places from which portions of stolen property were recovered—Legality.*

The only evidence on which a person's conviction was based was that he pointed out three places from which portions of the stolen property were recovered. Person's father and brother were also suspected and eventually discharged.

*Held*, that as his relations were also concerned in the crime, it was possible for the person to have knowledge of the places without himself being guilty of any offence and so the recoveries alone were not sufficient to justify the conviction: 18 P. R. 1917, *Cr. Dist.* (*Bhide, J.*). SOHAN SINGH v. EMPEROR. 11 L. L. J. 439=1930 Cr. C. 107=A.I.R. 1930 Lah. 91.

*Offence under Ss. 457 and 380, Penal Code—Tank indicated by statement of accused—Vessels recovered from the tank not within sole control of accused—Evidence is insufficient for conviction of accused.*

Where an accused arrested on the charges under Ss. 457 and 380, makes a statement indicating a tank from which vessels, corresponding to the description of articles stolen, are recovered, but where the tank is not the particular property, or within the sole control of the accused, but accessible to the public in general and it is doubtful whether the accused or some other person concealed the stolen articles, such evidence of itself is not sufficient for a conviction: 17 All. 576, *Rel. on.*; 16 C. W. N. 288; 1 P. R. 1917 *Cr.* and A.I.R. 1923 Lah. 335, *Ref.* (*Curgenvin, J.*). PUBLIC PROSECUTOR v. PAKKIRISWAMI. 30 M. L. W. 791=1929 M.W.N. 785=2 M. Cr. C. 307=1929 Cr. C. 614=A.I.R. 1929 Mad. 846=57 M. L. J. 548.

*Weapon forbidden under Arms Act discovered by reason of information from accused—His conviction is valid.*

Where an article, the possession of which is forbidden by the Indian Arms Act, has been discovered by reason of information given by an accused person his conviction based upon that evidence is valid: 72 P.L.R. 1916, *Foll.* (*Fforde, J.*). NAURANG SINGH v. EMPEROR. 100 I.C. 122=9 L.L.J. 211=28 P.L.R. 626=28 Cr. L. J. 250=A.I.R. 1927 Lah. 900.

**—S. 27—Discovery.**

*Places already known are not places "discovered" within S. 27.*

Incriminating admissions of an accused before police officers cannot be said to lead to the discovery of several places pointed out by the accused where they are already known and cannot be said to have been "discovered" in consequence of the said admissions within the meaning of S. 27, 12 Mad. 163, *Foll.* (*Subhedar, A.J.C.*). SHAMLAL v. EMPEROR. 120 I.C. 210=31 Cr. L. J. 15=13 A. I. Cr. R. 157=1929 Gr.C. 673=A.I.R. 1929 Nag. 350.



**EVIDENCE ACT (1872), S. 27—Discovery**

—*Fact known to police cannot be re-discovered on statement of accused.*

A fact known to the police cannot be re-discovered on the statement of an accused person so as to make such statement or such incriminating conduct admissible under S. 27. (*Aston, A. J. C.*)  
**WAHID BUX v. EMPEROR.** 120 I.C. 81=  
 1929 Cr. C. 678=30 Cr. L. J. 1121=  
 A. I. R. 1929 Sind 250.

—*Accused admitting possession of property—Property produced by accused himself—Statement of accused is admissible.*

The statement of an accused that he had in possession certain stolen property is admissible in evidence even though he himself produced the property. (14 M. L. W. 418, *Foll.*). It makes no difference whether the accused himself digs out the property from the place where it is hidden or whether on information given by him some one else digs up the ground and produces the property. 26 M. L. J. 352, *Appr. (Spencer, Offg. C. J.)*. **SOGIAMUTHU PADAYACHI, In re.** 93 I. C. 42=  
 50 Mad. 274=27 Cr. L. J. 394=  
 A. I. R. 1926 Mad. 638.

**—S. 27—Discovery of irrelevant fact.**

—Section 27 has nothing to do with the question whether the fact discovered is or is not relevant. (*Shadi Lal, C. J. Harrison, Fforde, Tek Chand Jai Lal, Dalip Singh and Agha Haidar, J.J.*). **SUKHAN v. EMPEROR.** 115 I. C. 6=10 Lah. 283=  
 30 P. L. R. 197=11 L. L. J. 159=30 Cr. L. J. 414=  
 12 A. I. Cr. R. 382=A. I. R. 1929 Lah. 344 (F. B.).

—*Confession to police—Discovery of fact irrelevant to inquiry does not make confession admissible.*

In a case where an accused is charged with murder by poisoning, the fact that at some previous date the accused had treated another person with arsenic for a bad leg is not relevant in any way and the discovery of the fact in consequence of a statement made by the accused to the police cannot make this statement admissible. (*Ross and Wort, J.J.*). **GOKUL CHAMUR v. EMPEROR.**

105 I. C. 683=6 Pat. 611=9 P. L. T. 377=  
 28 Cr. L. J. 971=9 A. I. Cr. R. 118=  
 A. I. R. 1928 Pat. 22.

**—S. 27—Duty of Court.**

—*Per Broomfield, J.*—In order to apply S. 27 it is necessary to know exactly what the statements relied upon are; because they are admissible only so far as they lead to the discovery of some fact and no further. 11 B.H.O.R. 242, *Rel. on. (Mirza and Broomfield, J.J.)*. **EMPEROR v. SHIVPUTRAYA BASLINGAYA.** 32 Bom. L. R. 574=  
 A. I. R. 1930 Bom. 244.

—*Court must be very cautious.*

(*Obiter*). Bald evidence introduced through the mouth of a prosecution witness to prove the confessions of an accused under cover of S. 27 ought to receive very little credence by the Court, more especially when the accused stands charged with grave offence as an attempt to murder and particularly, when more direct evidence to prove the same points are available to the prosecution and which they do not take care to produce before the Court. (*Subbedar, A.J.C.*). **SHAMLAL v. EMPEROR.** 120 I. C. 210=13 A. I. Cr. R. 157=  
 31 Cr. L. J. 15=1929 Cr. C. 673=  
 A. I. R. 1929 Nag. 350.

**—S. 27—Interpretation.**

—*‘Fact’.*

The expression “fact” as defined in S. 3 includes not only the physical fact but also the psychological fact or mental condition of which

**EVIDENCE ACT (1872), S. 27—Scope.**

any person is conscious. It is in the former sense that the word is used in S. 27. (*Shadi Lal, C.J., Harrison, Fforde, Tek Chand, Jai Lal, Dalip Singh and Agha Haidar, J.J.*). **SUKHAN v. EMPEROR.** 115 I. C. 6=10 Lah. 283=30 P. L. R. 197=  
 11 L. L. J. 159=30 Cr. L. J. 414=  
 12 A. I. Cr. R. 382=A. I. R. 1929 Lah. 344 (F. B.).

—*‘Information.’*

*Fforde, J.*—The word “statement” is used interchangeably with the word “information”. A. I. R. 1929 Lah. 338, *Diss. from. (Shadi Lal, C.J., Harrison, Fforde, Tek Chand, Jai Lal, Dalip Singh and Agha Haidar, J.J.)*. **SUKHAN v. EMPEROR.**

115 I. C. 6=10 Lah. 283=30 P. L. R. 197=  
 11 L. L. J. 159=30 Cr. L. J. 414=  
 12 A. I. Cr. R. 382=A. I. R. 1929 Lah. 344 (F. B.).

—*‘Information.’*

The word “information” cannot be used as synonymous with the word “statement.” The word “information” as distinct from the word “statement” connotes two things, namely, a statement or other means employed for imparting knowledge possessed by one person to another, and the knowledge so derived by the other person. (*Harrison and Dalip Singh, J.J.*). **KARAM DIN v. EMPEROR.**

115 I. C. 1=30 Cr. L. J. 385=  
 A. I. R. 1929 Lah. 338.

—*‘Confession.’*

In construing S. 27 the word “confession” does not necessarily mean a complete confession of guilt but means and includes any incriminating statement. (*Harrison and Dalip Singh, J.J.*). **KARAM DIN v. EMPEROR.** 115 I. C. 1=30 Cr. L. J. 385=  
 A. I. R. 1929 Lah. 338.

—*‘Discovered.’*

Even more important is the word “discovered”. It is used in a peculiar sense. The test is that the fact discovered must be discovered in the sense, that the proof of the existence of that fact no longer rests on the credibility of the accused’s statement but rests on the credibility of the witnesses who depose to the existence of that fact. The rest of the information is not admissible. (*Harrison and Dalip Singh, J.J.*). **KARAM DIN v. EMPEROR.**

115 I. C. 1=30 Cr. L. J. 385=  
 A. I. R. 1929 Lah. 338.

—*‘Distinctly.’*

Under S. 27 the information to be proved must relate distinctly to the fact thereby discovered. The word “distinctly” in S. 27 is used in some sense other than the word “directly”. It is meant to exclude certain things and to limit and confine the information which may be proved within the definite limits and not necessarily to include everything which may relate to that information. (*Harrison and Dalip Singh, J.J.*). **KARAM DIN v. EMPEROR.**

115 I. C. 1=30 Cr. L. J. 385=  
 A. I. R. 1929 Lah. 338.

—*Section must be strictly construed.*

S. 27 must be very strictly construed. Where one accused has agreed to point out a place where a fact would be discovered, in pursuance of his statement to point out that place, the section does not cover similar statements of the other accused in police custody. (*Prideaux, A.J.C.*). **KUDAON v. EMPEROR.** 91 I. C. 236=21 N. L. R. 86=  
 27 Cr. L. J. 60=A. I. R. 1928 Nag. 407.

**—S. 27—Scope.**

—*Out of statement containing confession only such portion as leads to discovery is admissible.*

*Per Graham, J.*—Section 27 being a proviso to the preceding sections must be strictly construed and any relaxation must be sparingly allowed, *case*

**EVIDENCE ACT (1872), S. 27—Scope.**

being exercised to see that the purpose and object of Ss. 25 and 26 are not rendered nugatory by any lax interpretation.

A statement made by an accused while in police custody which contains a confession of guilt and also supplies information in consequence of which a discovery is made is not admissible in its entirety under S. 27, but only so much of it is admissible as relates distinctly or immediately to the discovery.

Per *Lort-Williams, J.*—S. 27 is not a proviso to either S. 24 or S. 25. It follows that some restricted or limited meaning narrower than the natural meaning must be attached to the words in S. 27.

The practice in England now is and doubtless was at the time when the Evidence Act was passed to allow to be stated in evidence that in consequence of information received from the prisoner certain facts had been discovered, thus to the extent of fixing the prisoner with knowledge. To this extent evidence under S. 27 may be given. (*Graham and Lort-Williams, JJ.*). SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS, BENGAL v. BHARJOO MAJHI.

34 C.W.N. 106=A.I.R. 1930 Cal. 291.

—The provisions of S. 27 must be construed as favourably to the accused as possible for it is a section which makes an exception against the accused contrary to the general sections, namely, 25 and 26, which are in his favour.

When the accused stated "I buried the shirt, which was my share of the stolen property, under the beri tree." The shirt was accordingly found under the tree.

*Held*, that the fact that the accused buried that shirt or the fact that it was his share of the stolen property was not "discovered" within S. 27. Both these statements rested purely on the credibility or otherwise of the accused's statements: the fact that it was his share of the stolen property did not relate distinctly to the fact discovered which was merely that a certain article was buried under a certain tree: these facts could not be proved and would not be admissible or relevant against the accused. What could be rendered admissible under S. 27 would be that which the Court would find necessary in order that the statement may be intelligible and the fact that this was the accused's share of the stolen property or that he buried it, would not necessarily be proved by the admission of the statement. A.I.R. 1928 Lah. 308, *Expt. and Diss. from.* (*Harrison and Dalip Singh, JJ.*). KARAM DIN v. EMPEROR.

115 I.C. 1=30 Cr. L.J. 385=A.I.R. 1929 Lah. 338.

—The provisions of S. 27, Evidence Act are quite independent of those of S. 162, Cr. P. Code, and the amended S. 162 does not repeal or in any way affect S. 27. A.I.R. 1926 Rang. 116 (F.B.); A.I.R. 1926 Lah. 88; A.I.R. 1925 Mad. 574 and A.I.R. 1928 Nag. 108, *Appr.*; A.I.R. 1927 Cal. 17; A.I.R. 1926 Pat. 282; A.I.R. 1925 Rang. 101 and A.I.R. 1926 Rang. 116 (F.B.), *Ref.*; A.I.R. 1926 Nag. 368, *Diss. from.* (*Prideaux, Kinkhede and Kolhatkar, A. J. Cs.*). GOLA v. EMPEROR.

114 I.C. 273=24 N. L. R. 158=30 Cr. L.J. 258=12 A. I. Cr. R. 177=A. I. R. 1929 Nag. 17 (F.B.).

—S. 27 relates to statement of accused while in police custody and not prior to his arrest or detention. (*Prideaux, Kinkhede and Kolhatkar, A. J. Cs.*). GOLA v. EMPEROR. 114 I. C. 273=

24 N. L. R. 158=30 Cr. L. J. 258=12 A. I. Cr. R. 177=A.I.R. 1929 Nag. 17 (F.B.).

**EVIDENCE ACT (1872), S. 27—Scope.**

—S. 27 is confined in its operation to an incriminating statement by an accused person while in police custody. (*Prideaux, Kinkhede and Kolhatkar, A. J. Cs.*). GOLA v. EMPEROR.

114 I. C. 273=24 N. L. R. 158=30 Cr. L. J. 258=12 A. I. Cr. R. 177=A.I.R. 1929 Nag. 17 (F.B.).

—S. 27 qualifies S. 24 as well as Ss. 25 and 26.

The broad ground for not admitting confessions made under inducement or to a police officer is the danger of admitting false confessions, but the necessity for the exclusion disappears in a case provided by S. 27 when the truth of the confession is guaranteed by the discovery of facts in consequence of the information given. (*Addison and Goldstream, JJ.*). BULAQI v. EMPEROR.

112 I.C. 347=9 Lah. 671=41 A. I. Cr. R. 284=29 Cr. L.J. 1019=A.I.R. 1928 Lah. 476.

—S. 27 is not affected by S. 162, Cr. P. Code.

S. 27, Evidence Act, is not affected by S. 162, Cr. P. Code, but S. 162 is affected by S. 27, Evidence Act. The result is that a special exception to S. 162, Cr. P. Code, exists in the circumstances mentioned in S. 27, Evidence Act. A.I.R. 1926 Rang. 116 (F.B.), *Rel. on.* (*Ramesam, Waller and Jackson, JJ.*). CHINNA THIMMAPPA v. TALUKUNTA THIMMAPPA. 112 I.C. 682=

28 M.L.W. 314=1 M. Cr. C. 201=

51 Mad. 967=29 Cr. L.J. 1098=

A.I.R. 1928 Mad. 1028=55 M.L.J. 351 (F.B.).

—S. 27 is not repealed by S. 162, Cr. P. Code—Cr. P. Code, S. 162: A.I.R. 1926 Rang. 116 (F. B.), *Foll.* (*Findlay, J. C. and Macnair, A. J. C.*). SHEOBALAK PRASAD v. EMPEROR.

108 I.C. 442=11 N.L.J. 7=9 A.I. Cr. R. 408=

29 Cr. L.J. 400=A.I.R. 1928 Nag. 108. —S. 162 of Cr. P. Code, overrides the provisions of S. 27, Evidence Act. (*Kothwal, A. J. C.*). BHOGIA v. KING-EMPEROR.

100 I.C. 820=28 Cr. L.J. 340=

7 A.I. Cr. R. 575=A.I.R. 1927 Nag. 203.

—S. 162, Cr. P. Code, does not override S. 27.

S. 162 applies to the statements of persons examined as witnesses by the police in the course of investigation, and not to the statement of an accused person and it does not override or modify the provisions of S. 27 of the Evidence Act. (*Shadi Lal, C. J. and Addison, J.*). RANUN v. KING EMPEROR. 94 I.C. 901=7 Lah. 84=27 Cr. L.J. 709=27 P.L.R. 583=A.I.R. 1926 Lah. 88.

—The general provisions of the law with regard to the admissibility of statements made by accused persons like other admissions do not seem to be affected by S. 162, Cr. P. Code. (*Mullick, Ag. C.J. and Jwala Prasad, J.*). JAGWA DEANUK v. EMPEROR. 93 I.C. 884=5 Pat. 63=

7 P.L.T. 396=27 Cr. L.J. 384=A.I.R. 1926 Pat. 232. —Ss. 160, 161 and 162, Cr. P. Code—If overrides S. 27—(*Per Curiam, Heald, J., Contra.*)

Ss. 160, 161 and 162 do not apply to an accused person and do not affect or override S. 27 of the Evidence Act, which applies only to information received from a person accused of any offence in the custody of a police officer: A.I.R. 1926 Pat. 282 and A.I.R. 1925 Mad. 574; *Appr.* (*Rutledge, C.J., Heald, Duckworth, Chari and Maung Ba, JJ.*). EMPEROR v. NGA THA DIN. 96 I.C. 145=

5 Bur. L.J. 30=4 Rang. 72=27 Cr. L.J. 881=

A.I.R. 1926 Rang. 116 (F.B.).

—S. 27 is not affected by Cr. P. Code, S. 162 (as amended).

S. 27 of the Evidence Act, which deals with information received from persons accused of an

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offence and in police custody is not affected by the aforesaid section of the Cr. P. Code. (*Rutledge, C.J., Heald, Duckworth, Chari and Maung Ba, JJ.*). **EMPEROR v. NGA THA DIN.** 96 I.C. 145=5 Bur. L. J. 30=4 Rang. 72=27 Cr. L.J. 881=

A.I.R. 1926 Rang. 116 (F. B.).  
—S. 27, Evidence Act is overridden by S. 162, Cr. P. Code. (*Doyle, J.*). **EMPEROR v. NGA KYAIN.** 94 I.C. 706=27 Cr. L.J. 658=

A.I.R. 1926 Rang. 112.

—S. 24 will override S. 27 when they conflict.

A statement though admissible under S. 27 should be excluded if under S. 24 the accused at the time of making the statement was under the influence of the village Magistrate's promise to save him from punishment. (*Spencer, Offy. C. J. and Reilly, J.*). **SEMALAI GOUNDAN, In re.**

86 I.C. 664=26 Cr. L.J. 840=21 M. L. W. 199=A.I.R. 1925 Mad. 574.

—Section is not repealed by the amended S. 162, Cr. P. Code.

The amended S. 162 does not exclude from evidence the fact that the accused made a statement to the police that the weapon with which the crime had been committed was concealed in a prickly pear bush. The section both before and after amendment, is directed against the admission, at the instance of the prosecution of Police diaries and other records prepared or copied from the diaries of investigating officers. The provisions of the Evidence Act are quite independent of the sections in the Criminal Procedure Code and cannot be treated as impliedly repealed in consequence of the amendment of the Code of Criminal Procedure. (*Spencer, Offy. C. J. and Reilly, J.*). **SEMALAI GOUNDAN, In re.** 86 I.C. 664=26 Cr. L.J. 840=21 M. L. W. 199=A.I.R. 1925 Mad. 574.

—Cr. P. Code (1923), S. 162—Overrides S. 27 of the Evidence Act.

S. 162 of the Cr. P. Code in its present form, overrides, S. 27 of the Evidence Act. (*Baguley, J.*). **BAWA ROWTHER v. EMPEROR.** 84 I. C. 545=3 Bur. L. J. 245=26 Cr. L. J. 321=A.I.R. 1925 Rang. 101.

**—S. 27—Several accused.**

—Fact discovered in consequence of information by one accused, other giving same information—Fact cannot be said to be discovered from information given by both. 2 Bom. L. R. 1089; 24 W.R. (Cr.) 36; 11 B. H. C. R. 242, *Ref.* (*Mirza and Broomfield, JJ.*). **EMPEROR v. SHIVPUTRAYA BASLINGAYA.** 32 Bom. L. R. 574=

A.I.R. 1930 Bom. 244.  
—Accused jointly pointing to place of dead body—Evidence is not admissible against any of them unless it can be shown who made discovery.

Where all the accused persons jointly pointed out the place where blood stains were found and subsequently the place where the dead body of a person was discovered buried, such evidence is not admissible at all against any of the accused unless it can be shown who made the discovery first. (*Dalip Singh, J.*). **FAQIRA v. EMPEROR.** 116 I.C. 619=30 P.L.R. 397=30 Cr. L.J. 639=1929 Cr. C. 214=13 A.I. Cr. R. 60=A.I.R. 1929 Lah. 665.

—Fact discovered from information of several accused—Fact will be deemed to have been discovered from information of the first.

Where a fact is discovered in consequence of information received from one of several persons charged with an offence and when others give like information the fact should not be treated as dis-

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covered from the information of them all, but from the information of the first: 24 W.R. 36, Cr. and 7 P. R. 1916, *Foll.* (*Shadi Lal, C.J. and Jai Lal, J.*). **ADHAM KHAN v. EMPEROR.** 101 I.C. 488=

28 P.L.R. 187=3 A.I. Cr. R. 94=28 Cr. L.J. 456=A.I.R. 1927 Lah. 739.

**—S. 27—Statement.**

—Statement by accused that he buried body of person murdered at place pointed out by him is admissible only for S. 201, I. P. C.

A statement made by the accused to the police that he had buried the body of the murdered person at the place pointed out by him is clearly admissible in evidence under S. 27 only for the purposes of S. 201, I. P. C., but not for convicting him of murder. A. I. R. 1929 Lah. 344, *Expl.* (*Tapp, J.*). **MAMUN v. EMPEROR.** 121 I. C. 728=

31 Cr. L. J. 293=13 A. I. Cr. R. 382=A.I.R. 1930 Lah. 530.

—Statement of accused before police that he buried an article in a place—Police taken to that place and article delivered—Admissibility of statement.

The accused person stated to the police that he had buried an article at a particular place, took the police to that place and delivered the article to them.

*Held*, that the statement of the accused to the police was admissible under S. 27 of the Evidence Act. (*Zafar Ali and Jai Lal, JJ.*). **EMPEROR v. MELA.** 112 I. C. 55=10 Lah. L. J. 331=

11 A.I. Cr. R. 292=29 Cr. L. J. 967.

**—Statement by accused.**

A person was charged with an offence of being in possession of illicit liquor. When his house was searched he made a statement that he had buried a mat of lahan at a particular place and as a result of that information the mat containing lahan was discovered at the place by the police.

*Held*, that the statement was admissible in evidence against the accused to prove his guilt of being in possession of illicit liquor. A. I. R. 1928 Lah. 308 and A. I. R. 1926 Mad. 688 (F.B.), *Foll.* (*Zafar Ali and Jai Lal, JJ.*). **EMPEROR v. MELA.** 112 I. C. 55=10 L. L. J. 531=28 Cr. L. J. 967=11 A. I. Cr. R. 292.

**—Statements can be made by gesture.**

Statements can be made by other means than by words. They can be made by mere gesture. (*Doyle, J.*). **EMPEROR v. NGA KYANG.**

94 I. C. 706=27 Cr. L. J. 658=A. I. R. 1926 Rang. 112.

**—S. 27—What can be proved.**

—Only so much of the information given by the accused as relates distinctly to the fact thereby discovered can be proved: A. I. R. 1929 Lah. 844, *Rel. on.* (*Wild, A. J. C. on difference between Percival, J. C. and Rupchand, A. J. C.*). **MOHOMUD YUSUF v. EMPEROR.** 1930 Cr. C. 865=

A. I. R. 1930 Sind 225.

—Only that portion of information which is immediate and proximate cause of discovery of fact can be proved.

The legislature has prescribed two limitations in order to define the scope of the information provable against the accused: (1) The information must be such as has caused the discovery of the fact, and (2) the information must "relate distinctly" to the fact discovered. The requirements of both the conditions specified above must be satisfied before an incriminating statement can be received in evidence. Thus, only that portion

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of the information is provable which was the immediate or proximate cause of the discovery of the fact. Anything, which is not connected with the fact as its cause, or is connected with it, not as its immediate or direct cause, but as its remote cause, does not come within the ambit of the section and should be excluded.

A was being tried under S. 302, I. P. C., for having committed the murder of B who was proved to have suddenly disappeared from his house and whose dead body was recovered from a well two days later. At the time of his disappearance B was wearing certain ornaments, but these ornaments were not found on his body at the time of his recovery from the well. During the investigation A was alleged to have made a statement to the police in these terms: "I had removed the karas, had pushed the boy into the well, and had pledged the karas with Alla Din" and in consequence of the information so received the karas were recovered from Alla Din, which were identified as those worn by B at the time of his disappearance.

*Held*, (Per *Full Bench*) that the statement that the accused had pledged with Alla Din the karas subsequently recovered from the latter is admissible under S. 27 but that the rest of the incriminating statement cannot be received in evidence. (*Fforde and Jai Lal, J.J. dissenting.*) 9 Lah. 626; A. I. R. 1928 Lah. 808; 111 I. C. 561, *Overruled*; A. I. R. 1926 Mad. 638; A. I. R. 1928 Pat. 162, *Diss. from*; 12 Mad. 158, *Expl.*

(Per *Fforde, J.*)—The information "I had removed the karas and had pledged the karas with Alla Din" may be proved. (*Cases discussed.*)

(Per *Jai Lal, J.*)—The statement "had removed the karas and had pledged the karas with Alla Din" is admissible under S. 27 while the statement "had pushed the boy into the well" is not admissible. (*Cases discussed.*) (*Shadi Lal, C. J., Harrison, Fforde, Tek Chand, Jai Lal, Dalip Singh and Agha Haidar, J.J.*). SUKHAN v. EMPEROR. 115 I. C. 6= 10 Lah. 283=30 P. L. R. 197= 11 L. L. J. 459=30 Gr. L. J. 414= 12 A. I. Cr. R. 382=A. I. R. 1929 Lah. 344 (F.B.).

—The words used by the legislature in S. 27 make it absolutely clear that only so much of such information whether it amounts to a confession or not, as relates distinctly to the fact which is deposited as discovered in consequence of the information received, may be proved.

An accused gave information to the police in these words: "I shall produce the lathi with which I killed Ismail." It had been admitted as evidence under S. 27: The lathi which the accused handed over had no marks of blood whatsoever.

*Held*, that if the mere fact of the lathi having been handed to the police, might be relied upon, for the purpose of introducing an alleged confession made by the accused to the police, the provisions of S. 26 would become nugatory. (*Per curiam, J. C. and Rupchand, A.J.C.*). ILLAHIBUX v. EMPEROR. 1929 Cr. C. 453= A. I. R. 1929 Sind 173.

—As S. 27 is intended to enable the prosecution to prove a confession made under certain circumstances, the whole of the information including the confessional portion thereof, given by the prisoner, which relates to the fact includes not only the concrete thing discovered by the investigating officer, but also its description as given by the accused including its connexion with the crime

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which is under investigation. While only so much of the information can be proved as has led to the discovery of the fact, there is no legal justification for splitting up or cutting down the statement of the prisoner so as to make it a vague and unintelligible statement and thus to defeat the very object with which S. 27 was enacted and, therefore, the information must be proved in the precise terms in which it was given. A. I. R. 1926 Mad. 638 (F.B.), *Rel. on*; 15 P.W.R. 1913 Cr.; 11 P. R. 1915 Cr.; 9 P.W.R. 1918 Cr., *Doubted*; A. I. R. 1926 Lah. 188. *Dist.*; A. I. R. 1926 Bom. 513 and A. I. R. 1928 Pat. 162, *Appr.*

*Fforde, J.*—The Evidence Act, in express terms, puts the law on the subject on a wider basis than does the common law in England. (*Fforde and Jai Lal, J.J.*). HARNAM SINGH v. EMPEROR.

111 I. C. 561=9 Lah. 626= 29 P. L. R. 679= 29 Cr. L. J. 881=11 A. I. Cr. R. 106= A. I. R. 1928 Lah. 308.

—Confession leading to discovery of anything is admissible.

The whole confession of a prisoner in police custody cannot be admissible, but where the confession includes a statement that a weapon was used for committing the offence charged, that part of the confession can certainly go in if it leads to the discovery of the weapon: A. I. R. 1926 Mad. 638, *Foll.* (*Mullick, A.C.J. and Wort, J.*). LALJI DUSADH v. EMPEROR. 106 I. C. 698=

6 Pat. 747=29 Cr. L. J. 106= 9 A. I. Cr. R. 379=A. I. R. 1928 Pat. 162.

—Corpse—Discovery on information by accused—Statement of accused to police that he buried body is admissible.

Where a person was murdered and his body was discovered in consequence of information received from the accused, the statement of accused to the police that he in company with his father and brother buried the body is admissible in evidence: 25 Cal. 413; 98 P. L. R. 1918 and 72 P. L. R. 1916, *Foll.* (*Zafar Ali, J.*). SAIFAL v. EMPEROR.

95 I. C. 603=8 L. L. J. 519=27 P. L. R. 580= 27 Cr. L. J. 827.

—Information by accused that he buried the dead body is not provable under the section.

In a case under S. 302, I. P. C., the information given by the accused that he buried the body does not distinctly relate to the discovery of the body and is not provable under S. 27: 125 P. L. R. 1920, *Appl.* (*Scott Smith and Zafar Ali, J.J.*). SULAKDAN SINGH v. EMPEROR. 89 I. C. 901=26 Cr. L. J. 1429= A. I. R. 1926 Lah. 138.

—Statement leading to discovery of property should be admitted as a whole.

If an accused makes a statement which is admissible under S. 27, the whole of the statement which leads to the discovery of the stolen property is admissible and sentences should not be cut up so as to reduce the statements only to the actual words which the accused may use to express the fact that he had hidden the properties. (*Spencer, Offg. C.J.*). SOGIAMUTHU PADAYACHI, *In re*.

93 I. C. 42=50 Mad. 274=27 Cr. L. J. 394= A. I. R. 1926 Mad. 638.

—The information given by the accused which led to the recovery of certain jewels which had been stolen was held to be admissible in evidence under S. 27. (*Scott-Smith and Fforde, J.J.*). MANSHA SINGH v. CROWN. 86 I. C. 347=7 L. L. J. 51= 26 Cr. L. J. 763=A. I. R. 1925 Lah. 371.

**EVIDENCE ACT (1872), S. 30—Admissibility of confession.****—S. 30.**

Admissibility of confession.  
 Approver's confession. \*  
 Confession, what is.  
 Corroboration.  
 Essentials for admissibility.  
 Evidentiary value.  
 Retracted confession.  
 Scope and interpretation.  
 Self-exculpatory confession.

**—S. 30—Admissibility of confession.**

—Confession of co-accused during trial implicating the other accused in a warrant case is admissible. (*Johnstone, J.*). **RAM KISHAN v. EMPEROR.** 111 I.C. 387=29 Cr. L. J. 835=11 A. I. Cr. R. 185=A. I. R. 1928 Lah. 880.

—Cr. P. Code, S. 162—Statement by a person, before he is charged for any offence by police is only an admission and is admissible in evidence against him but not against co-accused: A. I. R. 1927 Cal. 17, *Rel. on.* (*Courtney Terrell, C. J. and Adami, J.*). **RAJ KUMAR SINGH v. EMPEROR.** 111 I. C. 721=9 P. L. T. 449=29 Cr. L. J. 913=11 A. I. Cr. R. 143=A. I. R. 1928 Pat. 473.

—*Obiter.*—The statement made by an accused in Court implicating himself as well as his co-accused can be taken into account in considering the guilt of the latter. (*Suhrawardy and Pantou, J.J.*). **NIRMAL CHANDRA v. EMPEROR.** 100 I. C. 113=31 C. W. N. 239=28 Cr. L. J. 241=A. I. R. 1927 Cal. 265.

—A confession of a co-accused implicating himself and others is admissible in evidence against all the accused under S. 10 and can also be taken into consideration against them under the provisions of S. 30. (*Stuart, C. J. and Raza, J.*). **RAM PRASAD v. EMPEROR.** 106 I. C. 721=1 L. C. 339=2 Luck. 631=8 A. I. Cr. R. 449=A. I. R. 1927 Oudh 369.

—Confession of accused who is convicted on his plea of 'guilty' should not be admitted against others. (*Sulaiman, J.*). **SHANKER v. EMPEROR.** 93 I. C. 241=24 A. L. J. 318=27 Cr. L. J. 449=7 L. R. A. Cr. 55=A. I. R. 1926 All. 318.

—Co-accused induced to make confession—Confession cannot be relied on. (*Zafar Ali, J.*). **TEJU SINGH v. EMPEROR.** 92 I. C. 461=7 L. L. J. 631=27 Cr. L. J. 288.

—*Plea of guilty recorded after framing of charge by Magistrate*—Confession is admissible against co-accused.

Three men were sent up for trial before a Magistrate and proceedings taken against them all. When questioned, one of them said that he was guilty and subsequently pleaded guilty after the charge had been framed.

*Held:* that his confession could be taken into account against the other accused. The trial could not be said to have commenced only after the recording of the plea of guilty, 38 Mad. 302 and 43 Mad. 511 (F. B.), *Foll.* (*Harrison, J.*). **FAKHR-UDDIN v. CROWN.** 95 I. C. 63=6 Lah. 176=27 Cr. L. J. 735=A. I. R. 1925 Lah. 435.

—A statement by one co-accused that another was implicated in the offence is inadmissible in evidence against the other. (*Scott-Smith and Fforde, J.J.*). **MAUSHA SINGH v. CROWN.** 86 I. C. 347=7 L. L. J. 51=26 Cr. L. J. 763=A. I. R. 1925 Lah. 371.

**EVIDENCE ACT (1872), S. 30—Corroboration.**

—Statements of co-accused can be taken into consideration and used as evidence not only against the person making them but also against the person tried jointly with the confessing accused of the same offence. 39 All. 484, *Foll.* (*Prideaux, A. J. C.*). **MT. RADHI v. EMPEROR.** 75 I. C. 701=25 Cr. L. J. 13=A. I. R. 1924 Nag. 27.

**—S. 30—Approver's confession.**

—*It is unsafe to base conviction on the uncorroborated statement of approver.*

It is not safe to base a conviction upon the evidence of such an approver who obviously is deeply interested in putting responsibility for the offence upon shoulders other than his own, unless there is some independent evidence to corroborate his story in material particulars. The mere fact that the approver produced a spear and a dang from a field and he stated that the spear was used by the accused is not corroboration of the approver's story; so also the fact that the accused was stained with human blood, does not corroborate the approver's story. (*Fforde, J.*). **CHANAN SINGH v. KING EMPEROR.** 99 I. C. 929=8 L. L. J. 610=28 P. L. R. 39=28 Cr. L. J. 193=7 A. I. Cr. R. 173=A. I. R. 1927 Lah. 78.

—A statement should not be accepted as that of an approver without any test as to his complicity in the crime. Such a statement does not amount to evidence against the accused. (*Dalal, A. J. C.*). **SANT RAM v. EMPEROR.** 74 I. C. 543=24 Cr. L. J. 799=A. I. R. 1924 Oudh 188.

**—S. 30—Confession—What is.**

—Where in a Dhatura poison case one of the co-accused stated that his co-accused brought milk and mixed some powder in it, but he did not know what that powder was and that his co-accused gave the milk to the deceased to drink,

*Held,* that the statement is not a confession. (*Fforde, J.*). **ABDUL AZIZ v. EMPEROR.** 99 I. C. 1009=27 P. L. R. 441=28 Cr. L. J. 209.

—A statement by an accused that he and his co-accused struck the deceased in exercise of their right of private defence is in no sense a confession and cannot be taken into consideration against the co-accused. (*Scott-Smith and Zafar Ali, J.J.*). **MAULU v. EMPEROR.** 85 I. C. 371=6 L. L. J. 434=26 Cr. L. J. 531=A. I. R. 1925 Lah. 532.

—Confession by a person under enquiry under S. 476, Cr. P. Code, is a confession. (*Macleod, C. J. and Fawcett, J.J.*). **ANNAT v. VYANKATESH.** 87 I. C. 593=26 Bom. L. R. 614=26 Cr. L. J. 993=A. I. R. 1924 Bom. 446.

**—S. 30—Corroboration.**

—(Per *Subhadar, A. J. C.*)—Confession of co-accused cannot be used to corroborate evidence of approver—(*Staples, A. J. C., contra.*) A. I. R. 1921 Nag. 39, *Rel. on.* (*Jackson, A. J. C. on difference between Staples and Subhadar, A. J. C.*). **DOULAT v. EMPEROR.** 120 I. C. 721=31 Cr. L. J. 153=A. I. R. 1930 Nag. 97.

—Confession of one co-accused is to be accepted against another with caution unless corroborated by independent evidence—Confession of one co-accused cannot be said to be corroborated by confession of another co-accused. A. I. R. 1921 Pat. 387; 48 Bom. 739, *Rel. on.* (*Mirza and Pathar, J.J.*). **RAMA KARIYAPPA v. EMPEROR.** 120 I. C. 350=31 Bom. L. R. 565=A. I. R. 1929 Bom. 327.

—To say that circumstances corroborative of co-accused's confession should be such as would themselves support conviction is to render S. 30 superfluous—What corroborative evidence is necessary to support conviction must 'depend on



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circumstances of each case. 4 Cal. 433; (Per Jackson, J.) *Not appr.* (Per Garth, C.J.), *Foll.*; A.I.R. 1924 Mad. 805, *Not appr.* (Waller and Jackson, JJ.). UGGAPPA PUJARI v. EMPEROR. 119 I.C. 474=1929 M.W.N. 272=2 M.Cr.C. 96=30 M.L.W. 403=1929 Cr.C. 9=30 Cr.L.J. 1071=A.I.R. 1929 Mad. 498.

—The mere fact that the statement of the co-accused was used as corroboration of another part of the finding about guilt is not a ground for setting aside the conviction. (Wort, J.). SHEODATT ROY v. EMPEROR. 110 I.C. 803=29 Cr. L.J. 771=11 A. I. Cr. R. 43=10 P.L.T. 423=A.I.R. 1929 Pat. 64.

—Existence of a motive for the offence is not sufficient—Person charged must be indubitably identified with the act committed.

The existence of general hostility, general enmity and a desire, however strong, or a motive, however effective to procure the death of another person may be a piece of circumstantial evidence, but is not corroboration of a sworn statement of participation in a particular crime. Corroboration must point indubitably to the identification of the person charged with the particular act with which the direct evidence connects him. (Walsh and Dalal, JJ.). KALWA v. EMPEROR. 95 I.C. 74=48 All. 499=24 A.L.J. 410=7 L.R. A.Cr. 105=27 Cr. L.J. 746=A.I.R. 1926 All. 377.

**—S. 30—Essentials for admissibility.**

—When the statement is self-incriminatory and also implicates a co-accused, the self-implication is the guarantee for the truth of the accusation against the co-accused and may be taken to be a substitute for the sanction of oath. (Young and Sen, JJ.). MT. KHUBAN v. EMPEROR. 120 I.C. 257=31 Cr.L.J. 26=1930 Cr.C. 45=A.I.R. 1930 All. 29.

—Before S. 30 of the Evidence Act can be applied it must be proved that a confession has been made by one of the persons who are being tried jointly for the same offence and that the confession affects the person making it as well as some other persons so jointly being tried. The section is new to the Indian Evidence Act as contrasted with the English Law and must be construed strictly. When once there is no such confession as affects the person making it any statement made by one accused cannot be treated as evidence against the co-accused or be taken as affording corroboration of the evidence of the approver. (Beaseley, C. J. and Ananthakrishna Iyer, J.). ABBOI NAIDU v. EMPEROR. 1929 M.W.N. 698.

—Statement, for using it against the co-accused must be a confession in respect of an offence with which all are charged. 2 All. 444, *Rel. on.* (Chotzner and Gregory, JJ.). BHADRESWAR SARDAR v. EMPEROR. 109 I.C. 351=23 Cr.L.J. 527=32 C.W.N. 731=47 C.L.J. 526=10 A.I.Cr.R. 219=A.I.R. 1928 Cal. 416.

—Statement must not be self-exculpating.

Section 30 contemplates a statement, which, taken by itself, is sufficient to justify the conviction of the person making it for the offence for which he is being jointly tried with the other person or persons against whom it is tendered. 2 All. 444, *Foll.* (Wadegaonkar, A. J. C.). RAGHUNATH v. EMPEROR. 89 I.C. 516=23 N.L.R. 62=26 Cr.L.J. 1380=A. I. R. 1926 Nag. 119.

—Statement must incriminate the maker himself more than or at least equally with the co-accused.

The test to determine whether any statement by a co-accused amounts to a confession under S. 30

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is to see whether his statement proposed to be used in evidence against another is sufficient by itself to justify his conviction for the offence for which he is jointly tried with the other person against whom it is tendered. The statement of one prisoner cannot be taken as evidence against another prisoner under S. 30 unless the parties are admittedly in *pari delicto*, that is, unless a confessing prisoner implicates himself to the full as much as his co-prisoner whom he is criminalizing. The *ratio decidendi* of the cases bearing on this point is that statements which incriminate the maker more than, or equally with, others, alone can afford any satisfactory guarantee of their truth. This necessarily means less weight must be attached to statements which implicate the maker in a lesser degree than others. Where the principal blame is laid on others the statement is self-serving according to the ideas of the person making it and is entirely excluded from consideration. There is absolutely no guarantee whatever as to its truth where the statement entirely exonerates the maker. Such a statement cannot be held admissible as against the co-accused. (Kinkhede, A.J.C.). SHEOCHARAN v. EMPEROR. 90 I.C. 385=21 N.L.R. 88=26 Cr. L.J. 1537=A.I.R. 1926 Nag. 117.

—Confession to be used against co-accused must be confession of guilt of maker. (Ross and Kulwant Sahay, JJ.). BIGNA KUMHAR v. EMPEROR. 94 I.C. 258=1926 P.H.C. 167=27 Cr. L.J. 594=A.I.R. 1926 Pat. 440.

—A confession should justify the conviction of the confessor, and only then it is admissible against the confessor's co-accused. 22 Cr. L.J. 260, *Foll.* (Harrison, J.). FAKHER-UD-DIN v. CROWN. 95 I.C. 63=6 Lah. 176=26 Cr. L.J. 735=A.I.R. 1925 Lah. 435.

—Confession to be admissible must equally incriminate the maker with the co-accused against whom it is to be used. (Kotwal and Kinkhede, A.J.Cs.). SHEROO v. EMPEROR. 81 I.C. 891=25 Cr. L.J. 1067=A.I.R. 1925 Nag. 78.

—Confession of co-accused must implicate the maker to the same extent as the other accused.

The statement of an accomplice is taken into consideration when he himself admits his own guilt to the same extent to which he implicates others. His confession may be taken into consideration against such other persons as well as against himself, because the admission of his own guilt operates as a sort of sanction which to some extent takes the place of the sanction of an oath and so affords some guarantee that the whole statement is a true one. The word 'confession' in S. 30 cannot be construed as including a mere inculpatory admission of guilt. A confession unsupported by other testimony is evidence of the weakest kind against a co-accused. 7 All. 646, *Foll.* (Dalal and Cuming, A.J.Cs.). SHEO AMBAR v. EMPEROR. 77 I.C. 439=25 Cr. L.J. 391=A.I.R. 1925 Oudh 295.

—Only a confession implicating the maker and not exculpating him is admissible as against the other co-accused. (Kennedy, J.C. and Raymond, A.J.C.). TOPANDAS v. EMPEROR. 81 I.C. 249=25 Cr. L.J. 761=A.I.R. 1925 Sind 116.

—Merely because a confession is not complete and detailed up to the hilt it does not become inadmissible against a co-accused. (Walsh and Ryas, JJ.). LAKHAN v. EMPEROR. 84 I.C. 858=5 L.R.A. Cr. 101=26 Cr. L.J. 324=A.I.R. 1924 All. 511.



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—*Confession of co-accused need not completely implicate himself—Substantial implication is sufficient.*

No general rule can be laid down as to the admissibility of confession against co-accused and each case must be decided on its own facts. All that is required is that the confession should substantially implicate its maker in regard to the crime with which he and his co-accused are charged. It is not necessary that there should be an admission of actual guilt. It is sufficient if the admission establishes constructive guilt. (*Mullick and Bucknill, JJ.*). **SUKA RAUT v. EMPEROR.**

75 I.C. 705=4 P.L.T. 505=25 Cr. L.J. 17=  
A. I. R. 1924 Pat. 347.

**—S. 30—Evidentiary value.**

—Statement of accused taken after close of prosecution case under S. 342, Criminal P. C., implicating co-accused—It is admissible against co-accused—But no weight can be attached to it if co-accused implicated by it was not given opportunity to cross-examine accused nor was he asked any questions to explain allegations made against him and statement was not made on oath. 4 Cal. 483; A.I.R. 1923 All. 322; 38 Mad. 302; 17 All. 524 and 23 All. 53, *Cons.*, 6 Bom. 124, *Rel. on.* (*Mirza and Broomfield, JJ.*). **WILLIAM COOPER v. EMPEROR.**

32 Bom. L.R. 747=  
A.I.R. 1930 Bom. 334.

—In the absence of any corroboration connecting an accused with the commission of offences the confession of a co-accused cannot be taken into consideration against him. (*Broadway and Agha Haidar, JJ.*). **ARJAN SINGH v. EMPEROR.**

119 I.C. 325=30 P.L.R. 646=30 Cr. L.J. 1046=  
11 Lah. 106=A.I.R. 1930 Lah. 237.

—The self-inculpatory confession of an accused implicating his co-accused is fact upon which alone the conviction of his co-accused cannot be legally based. Nor can such a confession even if it be corroborated by other evidence which is insufficient by itself to sustain the conviction of the non-confessing co-accused form a legal basis for his conviction.

*Per Full Bench.*—But if there is any other relevant matter implicating the co-accused the Judge is permitted by S. 30 to consider confession along with the said matter and as a result of such consideration to convict the accused. (*Per Subhedar, A.J.C.*). Such confession can be legitimately used to corroborate other evidence and even to supplement the same in those exceptional cases in which without such aid the other evidence falls short by very narrow margin of that standard of proof which is requisite for a conviction.

Where the other evidence was to the effect that the accused were seen going on the night of the murder towards the place where the deceased lived and that there was general enmity between the accused and the deceased the evidence is insufficient to justify conviction of the non-confessing co-accused. 24 W.R. 42 Cr. and 9 C.P.L.R. 35 Cr., *Appr.*; A. I. R. 1926 All. 377, *Rel. on.*; *other case law discussed.* (*Findlay, J.C., Macnair and Subhedar, A.J.Cs.*). **GOBARYA v. EMPEROR.**

A.I.R. 1930 Nag. 242 (F.B.).

—The statement of a co-accused is admissible in evidence but according to the usual practice and as a rule of prudence it is unsafe to accept the tainted testimony of an accomplice so long as it is not corroborated in material particulars. The difficulty enhances where the said accomplice does

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not adhere to his statement. (*Sen, J.*). **MAN SINGH v. EMPEROR.**

121 I.C. 103=  
11 L. R. A. Cr. 1=13 A. I. Cr. R. 52=  
1929 Cr. C. 566=31 Cr. L.J. 206=  
A.I.R. 1929 All. 928.

—Although a confession of one co-accused may be taken into consideration against another under the provisions of S. 30, it would be unsafe, if not illegal, to rely on it without further corroboration in material particulars. (*Harrison and Dalip Singh, JJ.*). **KARAM DIN v. EMPEROR.**

113 I.C. 1=30 Cr. L.J. 385=  
A.I.R. 1929 Lah. 338.

—Where there is nothing against an accused person but a confession made by a co-accused from the dock at the trial, a conviction cannot be supported. (*Waller, J.*). **GOVINDA NAIDU v. EMPEROR.**

118 I. C. 512=1929 M. W. N. 391=  
2 M. Cr. C. 76=30 Cr. L.J. 932=  
A. I. R. 1929 Mad. 285.

—An accused person cannot be convicted solely on such a confession made by a co-accused implicating him. 9 C. P. L. R. 35 Cr. and 37 Cr.; 24 W. R. (Cr.) 42; 38 Cal. 559, *Rel. on.* (*Kinkhede, A. J. C.*). **NEBHA v. EMPEROR.**

103 I.C. 801=  
11 N.L.J. 104=23 Cr. L. J. 609=  
10 A. I. Cr. R. 342=A.I.R. 1923 Nag. 213.

—Conviction based solely on confession of co-accused is bad.

Under S. 30 the Court may take into consideration a confession made by an accused person as against the co-accused, but the Court can only treat a confession as lending assurance to other evidence against a co-accused and a conviction based on the confession of a co-accused alone would be bad in law. 38 Cal. 559, *Foll.* (*Das and Scroope, JJ.*). **DEVENDRA BHATTACHANDRYA v. EMPEROR.**

101 I. C. 831=28 Cr. L.J. 497=  
8 P.L.T. 566=8 A.I.Cr.R. 151=  
A.I.R. 1927 Pat. 257.

—Confession by itself cannot be treated as sufficient evidence upon which a conviction can be based of the co-accused. (*Wazir Hasan, A.J.C.*). **MANNA LAL v. KING EMPEROR.**

73 I.C. 783=  
27 O.C. 40=25 Cr. L.J. 49=  
A.I.R. 1925 Oudh 1.

—A confession is only evidence against the person who makes it. A conviction of an accused based solely on the confession of another accused cannot stand and there must be independent evidence entirely outside if the confession can be used. (*Coutts Trotter, C.J.*). **LILARAM GANGANMULL, In re.**

81 I.C. 817=20 M.L.W. 202=  
25 Cr. L.J. 1041=A.I.R. 1924 Mad. 805.

—Confessing co-accused's evidence is practically that of an approver, and must be treated as such especially where the confession was not free from inducement. (*Wazir Hasan and Cuming, A.J.Cs.*). **MAHADEO v. EMPEROR.**

10 O. L. J. 280=  
A. I. R. 1924 Oudh 65.

—Whether the confession of an accused can be used against his co-accused should be determined on seeing whether the accused can be convicted on that confession of the crime with which he and the co-accused were charged. (*Shadi Lal, C.J. and Wilberforce, J.*). **CHUNNI LAL v. EMPEROR.**

60 I.C. 660=22 Cr. L.J. 260 (Lab.).

**—S. 30—Retracted confessions.**

—In cases where the sole evidence against the accused is that of a retracted confession such confession if it is relied on must be relied on as a

**EVIDENCE ACT (1872), S. 30—Retracted confessions.**

whole and not only in part. (*Young and Sen, J.J.*).  
 DURJAN v. EMPEROR. 121 I.C. 550=  
 1930 Cr. C. 84=31 Cr. L.J. 300=  
 A.I.R. 1930 All. 192.

**—Value of.**

A retracted confession is sufficient evidence for convicting the person who made it if the Court believes it to be true. As regards the person making it such a confession may even without any corroborative evidence form the basis of conviction. As regards his co-accused corroborative evidence is necessary. 20 All. 133; 29 All. 434; A.I.R. 1925 All. 627 and A.I.R. 1927 Oudh 17, *Rel. on.* (*Raza and Nanavutty, J.J.*). WAJID v. EMPEROR.

7 O. W. N. 805=1930 Cr. C. 952=  
 A.I.R. 1930 Oudh 412.

—Retracted confession of accused standing un rebutted and corroborated sufficiently, by material evidence, is admissible and goes strongly against co-accused. A.I.R. 1929 Oudh 167, *Rel. on.* (*Raza and Nanavutty, J.J.*). WAJID v. EMPEROR. A.I.R. 1930 Oudh 412.

**—When material for conviction of co-accused.**

The retracted confession alone of an accused is not sufficient to justify the conviction of a co-accused, but where such confession stands un rebutted, and there is nothing to show that the accused had any reason for naming other men falsely, and his story fits in exactly with the facts known or proved and is corroborated sufficiently by material evidence against the co-accused, the confession is admissible, and may be a strong piece of evidence against the co-accused. (*Raza and Nanavutty, J.J.*). HAZARI v. EMPEROR.

7 O. W. N. 527=A.I.R. 1930 Oudh 353.

—There is no distinction between retracted and un retracted confession.

The Evidence Act makes no distinction whatever between a retracted or un retracted confession. Both are equally admissible and may be taken into consideration against the accused though it may be that less weight would be attached to a retracted confession. (*Cuming and Lort Williams, J.J.*). GOUB CHANDRA DAS v. EMPEROR.

115 I. C. 359=32 C. W. N. 1004=  
 30 Cr. L. J. 475=A.I.R. 1929 Cal. 14.

—Retracted confession must be corroborated by independent evidence in material details. (*Efforde and Jai Lal, J.J.*). MT. MIRAN v. EMPEROR.

116 I. C. 621=30 P. L. R. 377=  
 30 Cr. L. J. 640=1929 Cr. C. 167=  
 13 A. I. Cr. R. 49=A.I.R. 1929 Lah. 597.

—Confession retracted though to be regarded with suspicion is admissible—If corroborated in material particulars or otherwise truthful it can be used even against co-accused. (*Courtney-Terrell, C. J. and Allenson, J.*). SHEONARAIN SINGH v. EMPEROR.

117 I. C. 43=  
 8 Pat. 262=10 P. L. T. 228=  
 30 Cr. L. J. 716=A.I.R. 1929 Pat. 212.

—Retracted confession of co-accused is not sufficient for conviction. 30 P. R. 1914, Cr., *Ref.* (*Bhide, J.*). PALA SINGH v. EMPEROR.

107 I. C. 614=29 Cr. L. J. 267=  
 9 A. I. Cr. R. 527=A.I.R. 1928 Lah. 329.

—The rule is now firmly established that ordinarily, it is improper to use the retracted confession of an accused person against his co-accused, and that, generally speaking it is not safe to convict the maker of such a confession without corroboration in material particulars. (*Tek Chand*

**EVIDENCE ACT (1872), S. 30—Scope and interpretation.**

and Coldstream, J.J.). SHER MAHOMED v. EMPEROR. 104 I. C. 630=28 P. L. R. 583=  
 9 A. I. Cr. R. 56=28 Cr. L. J. 854=  
 A. I. R. 1927 Lah. 765.

—Retracted confessions although they are nevertheless evidence against the person making them cannot be used as against the co-accused without substantial corroboration. (*Das and Scroope, J.J.*). DEVENDRA BHATTACHANDRYA v. EMPEROR. 101 I. C. 881=28 Cr. L. J. 497=  
 8 P. L. T. 566=8 A. I. Cr. R. 151=  
 A.I.R. 1927 Pat. 257.

—As a matter of practice the Courts decline to convict accused persons on retracted confessions unless these confessions receive material corroboration, but this is a rule of prudence, not a rule of law. (*Das and Scroope, J.J.*). DENENDRA BHATTACHANDRYA v. EMPEROR. 101 I. C. 881=  
 28 Cr. L. J. 497=8 P. L. T. 566=8 A. I. Cr. R. 151=  
 A.I.R. 1927 Pat. 257.

—It is not safe to base conviction on the retracted uncorroborated confession of a co-accused and mere identification of an accused person by a confessing accused, who admittedly knew him, is absolutely no corroboration of the statement of the confessing accused. Also the mere fact that the accused were not found at their house and that they were absconding is no corroboration of such a confession. (*Banerji, J.*). DUNGAR v. EMPEROR. 95 I. C. 938=7 L. R. A. Cr. 143=  
 27 Cr. L. J. 858=A.I.R. 1926 All. 603.

—The confession of an accused person, whether retracted or not, can be taken into consideration as against his co-accused. But an accused person cannot be convicted solely on the confession or confessions of his co-accused unsupported by other evidence: 3 U. B. R. 3, *Foll.* (*Carr, J.*). NGA PO KANK v. EMPEROR. 95 I. C. 71=  
 4 Rang. 45=27 Cr. L. J. 743=A.I.R. 1926 Rang. 127.

**—S. 30—Scope and interpretation.**

—Per *Macnair, A.J.C.*—When S. 30 lays down that the Judge may consider a fact in certain circumstances it plainly declares that fact to be relevant in those circumstances. (*Findlay, J.C., Macnair and Subhedar, A.J.Cs.*). GOBARYA v. EMPEROR. A.I.R. 1930 Nag. 242 (F.B.).

—Per *Full Bench.*—Court has discretion to exclude a confession by an accused altogether from consideration against the co-accused if it is so disposed, Per *Macnair, A.J.C.*—The use of the word "may" does not show that every confession is of very small-value against a co-accused. It cannot be said that the word "may" gives the Court right to exclude the confession from consideration if it is so disposed. The Judge is given a discretion but the discretion must be exercised in a judicial manner; if the confession would help in arriving at a decision that the accused is guilty he must do so. (*Findlay, J.C., Macnair and Subhedar, A.J.Cs.*). GOBARYA v. EMPEROR. A.I.R. 1930 Nag. 242 (F.B.).

—“Same offence”—*Meaning.*  
 The expression “same offence” in S. 30 means the identical offence and does not mean an offence of the same kind. The legislature did not intend the section to cover different offences in the same transaction by different persons. The illustration to S. 30 makes the meaning of the section quite clear. (*Cuming and Lort-Williams, J.J.*). GOUB CHANDRA DAS v. EMPEROR. 115 I. C. 339=  
 32 C. W. N. 1004=30 Cr. L. J. 475=  
 A. I. R. 1929 Cal. 14.

**EVIDENCE ACT (1872), S. 30—Scope and interpretation.**

—Section 30 does not refer to statements made at the trial but the statements made before and proved at the trial: 33 Mad. 302, *Diss. from*; 45 All. 323 and 4 Cal. 483, *Appr.* (Waller, J.). **GOVINDA NAIDU v. EMPEROR.** 118 I.C. 512=2 M.Cr.C. 76=30 Cr.L.J. 932=A.I.R. 1929 Mad. 285.

—“May take into consideration.”

The expression ‘may take into consideration’ points to the necessity of there being other evidence on record to which this statement can lend assurance. (Kinkhede, A. J. C.). **NEEHA v. EMPEROR.** 109 I.C. 801=11 N.L.J. 104=29 Cr.L.J. 609=10 A.I.Cr.R. 340=A.I.R. 1928 Nag. 213.

—“Affect”—Meaning.

The word “affect” is a very wide one and S. 30 is not limited to a case where the confessing accused directly implicates another accused as well as himself but also covers a case where the confession indirectly affects a co-accused. (Fawcett and Madgavkar, J.J.). **EMPEROR v. SHIVABHAI BECHAR-BHAI.** 97 I.C. 660=50 Bom. 683=28 Bom.L.R. 1013=27 Cr.L.J. 1140=A.I.R. 1926 Bom. 513.

—To use therefore a statement made in the dock by one accused against the other in a joint trial, offends against at least two of the fundamental principles of criminal law. What is contemplated by Section 30 is formal proof by the prosecution of a confession previously made. When you prove a confession made by a person, you tender evidence at the trial that on some previous occasion he did in fact make a confession, and that is the only thing which was ever contemplated by the section. (Walsh, J.). **MAHADEO PRASAD v. KING EMPEROR.** 76 I.C. 1025=25 Cr.L.J. 305=21 A.L.J. 179=45 All. 323.

**—S. 30—Self-exculpatory confessions.**

—The statement of the accused in her confession admitting her guilt on implicating the co-accused is a self-exculpatory statement and is inadmissible in evidence against the co-accused. (Rasa and Pullan, J.J.). **EMPEROR v. CHATTARPAL SINGH.** 7 O.W.N. 980.

—Confession exculpating author from alleged offence is not confession and should not be relied upon for convicting co-accused. (Boys and Young, J.J.). **ABDUL JALIL KHAN v. EMPEROR.** A.I.R. 1930 All. 748.

—Self-exculpatory statement of accused should not be taken into consideration against his co-accused. (Mirza and Murphy, J.J.). **EMPEROR v. C. E. RING.** 120 I.C. 340=53 Bom. 479=31 Bom. L.R. 545=1929 Cr. C. 114=31 Cr. L. J. 65=A.I.R. 1929 Bom. 296.

—Where a self-exculpatory statement is volunteered by a co-accused it is inadmissible in evidence. (Subhedar, A. J. C.). **SHAMLAL v. EMPEROR.** 120 I.C. 210=31 Cr. L. J. 15=13 A.I. Cr. R. 157=1929 Cr. C. 673=A.I.R. 1929 Nag. 350.

—A confession made by one of the co-accused who does not implicate himself to the same extent as he implicates the other co-accused is of very little value at least as against the other co-accused. (Courtney-Terrell, C. J. and Fazl Ali, J.). **KUNJA SUBUDHI v. EMPEROR.** 116 I.C. 770=8 Pat. 289=10 P.L.T. 549=30 Cr. L.J. 675=1929 Cr. C. 62=13 A.I. Cr. R. 143=A.I.R. 1929 Pat. 275.

**EVIDENCE ACT (1872), S. 31—Explained admissions.**

—Statements implicating co-accused but not inordinating maker are not admissible in evidence. (Aston, A. J. C.). **WAHID BUX v. EMPEROR.** 120 I. C. 81=1929 Cr.C. 678=30 Cr.L.J. 1121.

A.I.R. 1929 Sind 250.

—A confession, intended to be exculpatory as regards the person confessing, is inadmissible against a co-accused though it is admissible against the confessor. *Case-law considered.* (Findlay, Off. J. C. and Prideaux, A. J. C.). **DIWAN DHIMAR v. EMPEROR.** 91 I.C. 1002=9 N.L.J. 83=27 Cr.L.J. 186=A.I.R. 1926 Nag. 229.

—S. 31—Admission by co-defendant.

—Suit for possession—Admission by co-defendant of plaintiff's title—No evidence by plaintiff—Admission is not sufficient proof of plaintiff's title. (Jai Lal, J.). **SAIDU v. MEHR DAD.** 101 I.C. 589=A.I.R. 1927 Lah. 356.

—S. 31—Conclusive admission.

—Admissions under Civil P. C., O. 10, R. 1 are conclusive. (Sulaiman and Banerji, J.J.). **ABDUL AZIZ v. MT. MARIYAM BIBI.** 97 I. C. 176=49 All. 219=25 A.L.J. 48=A.I.R. 1926 All. 710.

—S. 31—Divorce proceedings.

—Divorce Act, S. 13—Husband admitting adultery alleged by wife—Admission is sufficient proof even in absence of other evidence. *Robinson v. Robinson*, 29 L. J. N. S. 178, *Foll.* (Shadi Lal, C. J. and Zafar Ali, J.). **MRS. M. V. O'DONELL v. C. E. O'DONELL.** 9 L.L.J. 315=A.I.R. 1927 Lah. 491.

—S. 31—Effect of admission against third person.

—An admission cannot have binding effect on a third person claiming under an independent title. Where a Hindu father made an admission as regards the law applicable.

*Held*, that it was not binding on the son because he did not claim through the father. (Graham and Mitter, J.J.). **GOPAL JANA v. BROJA MOHAN SWAMI.** 34 C.W.N. 944.

—S. 31—Execution proceedings.

—Admissions made in execution proceedings must be held to be binding when the unsuccessful party proceeds to a suit. (Dalal, J.). **GORDHAN DAS v. HUSAINFA.** 103 I.C. 34=A.I.R. 1927 All. 659.

—S. 31—Explained admissions.

—Admissions are on a somewhat similar footing to a retracted confession, and it is difficult to base a conviction on such an admission. (Addison and Kemp, J.J.). **EMPEROR v. BAKHWAR LAL.** 102 I.C. 492=8 A.I. Cr. R. 196=28 P.L.R. 313=28 Cr. L.J. 556=A.I.R. 1927 Lah. 549.

—S. 32.

Dying declarations.  
Ordinary course of business.  
Panda's register.  
Pedigree.  
Previous statement.  
Public interest.  
Recitals.  
Relationship.  
Revenue papers.  
Scope.  
Special means of knowledge.  
Statement after dispute.  
Statement against interest.  
Unreasonable delay or expense.  
Verbal statements.  
Miscellaneous.

**EVIDENCE ACT (1872) S. 32—Dying declarations—Admissibility.****—S. 32—Dying declarations—Admissibility.**

—The statement of a woman, who was alleged to have been raped and who committed suicide three days later, made immediately, after the incident is inadmissible in evidence as it was not the cause of her death. (*Wallace and Jackson, JJ.*). KAPPINIAH v. EMPEROR. 1930 M.W.N. 702.

—Statement by deceased before Third Class Magistrate not competent to record statement under Criminal P.C., S. 164—Statement is yet relevant under S. 32 (1). (*Zafar Ali and Addison, JJ.*). CHADJI v. EMPEROR. 120 I.C. 274=

1930 Cr. C. 28=31 Cr.L.J. 79=  
A. I. R. 1930 Lah. 60.

—Where a person dies in a hospital after being assaulted and hurt, not of the injuries but of a malady independent of such injuries such for example as pneumonia, the dying statement of such person is not admissible in evidence in a trial of his assailants under S. 324. (*Pullan, J.*). WALI MOHAMMAD v. EMPEROR. 7 O.W.N. 466=A.I.R. 1930 Oudh 249.

—Declaration made by a dying person, though he lingered on for some days, is a dying declaration. (*Eforde and Bhide, JJ.*). THAKUR SINGH v. EMPEROR. 113 I.C. 177=10 L.L.J. 463=

30 Cr.L.J. 65=11 A.I.Cr.R. 843=  
A. I. R. 1929 Lah. 64.

—A dying declaration which contradicts itself in its various parts is inadmissible in evidence. INAYAT ALI v. EMPEROR. 108 I.C. 526=

10 A.I.Cr.R. 68=29 Cr.L.J. 418.

—A dying declaration as to the cause of death is admissible even when the charge is not one of homicide. 6 W. R. (Cr.) 75, *Foll.* (*Mullick, Ag. C. J. and Wort, J.*). LALJI DUSADH v. EMPEROR.

106 I.C. 698=6 Pat. 747=9 A.I. Cr. R. 379=  
29 Cr. L.J. 106=A. I. R. 1928 Pat. 162.

—Dying declaration certified by its recorder in Court to be correct is admissible in proof of its contents. A.I.R. 1932 Cal. 382, *Foll.* (*Harrison and Jai Lal, JJ.*). PARTAB SINGH v. EMPEROR.

92 I.C. 187=7 Lah. 91=27 Cr. L.J. 215=  
28 P.L.R. 222=A.I.R. 1926 Lah. 310

—Dying declaration of one of the dacoits as to the circumstances of dacoity before a Magistrate is admissible against him, so far his implication in the crime is concerned but is not admissible against other dacoits. (*Daniels, J.*). DANNU SINGH v. EMPEROR. 85 I.C. 643=26 Cr. L.J. 547=

5 L.R. A. Cr. 201=A.I.R. 1925 All. 227.

**—S. 32—Dying declarations—Cause of death.**

—First information Report is admissible under S. 32 (1), Evidence Act, as the statement of a person (since deceased) relating to the circumstances of the transaction which resulted in his death. (*Tek Chand and Johnstone, JJ.*). KAPUR SINGH v. EMPEROR. 123 I.C. 120=31 P.L. R. 83=

31 Cr. L.J. 475=A.I.R. 1930 Lah. 450.

—The first information report could also be tendered in a proper case under S. 32 (1) as a declaration as to the cause of the informant's death. (*Rankin and Duval, JJ.*). AZIMADDY v. EMPEROR. 99 I.C. 227=44 C.L.J. 253=

28 Cr. L.J. 99=54 Cal. 237=  
A.I.R. 1927 Cal. 17.

—Statement by a person as to circumstances of transactions resulting in her death are admissible when cause of her death is in question. (*Aston, A.J.C.*) WAHID BUX v. EMPEROR. 120 I.C. 81=

1929 Cr. C. 678=30 Cr. L.J. 1121=

A.I.R. 1929 Sind 250.

**EVIDENCE ACT (1872), S. 32—Dying declarations—Evidentiary value.**

—Statement, as to circumstances of transaction resulting in death made before injury was inflicted is admissible. A.I.R. 1924 Lah. 253; 4 Lah. 451, *Diss.*; A.I.R. 1924 Nag. 115 and 20 P.R. 1916 Cr., *Rel. on.* (*Fawcett and Madgavkar, JJ.*). EMPEROR v. SHIVABHAI BECHARBHAI. 97 I.C. 660=

50 Bom. 683=28 Bom.L.R. 1013=

27 Cr. L.J. 1140=A.I.R. 1926 Bom. 513.

—Report to police showing motive for murder is admissible.

B made a report to the police that he was slapped by a 'pahelwan' of Nagpur because he had refused to deliver the keys of a house. Next day, B was murdered by C, who was identified as the assailant of B on the previous day.

Held, that the report discloses the motive for the murder and is admissible in evidence. (*Baker, J.C. and Kotwal, A.J.C.*). CHUNNILAL v. KING EMPEROR. 88 I.C. 353=7 N.L.J. 144=26 Cr. L.J. 1121=

A.I.R. 1924 Nag. 115.

**—S. 32—Dying declarations—Evidentiary value.**

—It is unsafe to convict a person merely on the dying statement when such statement is not recorded in the deceased's own words and contains a note of the substance of what deceased told the police. (*Boys and Young, JJ.*). EMPEROR v. SIKANDAR. 1930 Cr. C. 767=A.I.R. 1930 All. 532.

—Although a dying declaration, if properly recorded is a valuable piece of evidence, but if while the statement is being recorded a third person is present and prompts the deceased to give out names of certain accused, it would be exceedingly unsafe to attach any weight to such a dying statement. (*Broadway and Zafar Ali, JJ.*). BISHEN SINGH v. THE CROWN. 96 I.C. 215=

8 L.L.J. 296=27 P.L.R. 434=27 Cr.L.J. 903=

A.I.R. 1926 Lah. 496.

—No reliance would be placed on the dying declaration when it is made at a time when the deceased must have been well aware of the fact that the accused has been named as his assailant. (*Broadway and Zafar Ali, JJ.*). MUZAFFAR v. EMPEROR. 99 I.C. 322=8 L.L.J. 410=

27 P.L.R. 632=28 Cr.L.J. 114.

—Reliability depends upon circumstances in which declaration was made and nature of its record.

A dying declaration under the Indian Law assumes a character very widely different from what it is under the English Law. A dying declaration is relevant under the Indian Evidence Act, whether the person who made it was or was not at the time when it was made, under expectation of death, and the weight to be attached to it depends not upon the expectation of death which is a guarantee of its truth, but upon the circumstances and surroundings under which it was made and very much also upon the nature of the record that has been made of it. Hence it becomes almost always a question of fact as to whether it should be relied upon or not. (*Greaves and Mukerjee, JJ.*). EMPEROR v. PREMANANDA DUTT. 88 I.C. 1000=29 C.W.N. 738=42 C.L.J. 247=

52 Cal. 987=26 Cr.L.J. 1256=A.I.R. 1925 Cal. 876.

—Dying declaration of inhabitants of a Punjab is unsafe as basis of conviction. (*Scott-Smith and Martineau, JJ.*). BAKSHISH SINGH v. EMPEROR. 86 I.C. 826=26 Cr.L.J. 890=

A.I.R. 1925 Lah. 549.

—Dying declaration though conflicting with initial report is not wholly unreliable. (*Broadway, J.*). MULA SINGH v. EMPEROR. 71 I.C. 593=

24 Cr.L.J. 177=A.I.R. 1924 Lah. 413.

**EVIDENCE ACT (1872), S. 32—Dying declarations—Partial acceptance.****—S. 32—Dying declarations—Partial acceptance.**

—*Acceptance of dying declaration in part and rejection of the rest is not permissible.*

A dying declaration stands upon a widely different footing from the testimony of a witness given in Court. In the case of the latter it is permissible and at times necessary under certain circumstances to accept a part which is unimpeachable and reject that which is obviously untrue, though, to found a criminal conviction on such appraisement of evidence will be very often unsafe. As regards a dying declaration, to accept a portion and reject the rest is entirely out of the question; there must be absolute guarantee of the accuracy of the record and the truth of the entire statement before it can be acted upon. (*Greaves and Mukerji, JJ.*). EMPEROR v. PREMANANDA DUTT. 88 I.C. 1000=29 C.W.N. 738=42 C.L.J. 247=52 Cal. 987=26 Cr. L. J. 1256=A.I.R. 1925 Cal. 876.

**—S. 32—Dying declarations—Procedure of taking.**

—*Form of dying declaration should show distinctly the questions put to the declarant and his answers to them.*

Where a statement is not the *ipsissima verba* of the person making it but is composed of a mixture of questions and answers there are several objections open to its reception in evidence, which it is desirable should not be open in cases in which the person has no opportunity of cross-examination. In the first place the questions may be leading questions and in the condition of a person making a dying declaration there is always a very great danger of leading questions being answered without their force and effect being freely comprehended. In such circumstances the form of the declaration should be such that it would be possible to see what was the question and what was the answer, so as to discover how much was suggested by the examining Magistrate, and how much was the production of the person making the statements. *R. v. Mitchell*, 17 Cox. C. O. 503 (1892), *Foll.* (*Greaves and Mukerji, JJ.*). EMPEROR v. PREMANANDA DUTT. 88 I.C. 1000=29 C.W.N. 738=42 C.L.J. 247=52 Cal. 987=26 Cr. L. J. 1256=A.I.R. 1925 Cal. 876.

**—S. 32—Dying declarations—Proof.**

—Dying declaration can be proved by examining person recording it or person who heard its being made—It must be taken as a whole and portion only cannot be allowed. (*Graham and Lort-Williams, JJ.*). TAFIZ PRAMANIK v. EMPEROR. 50 C. L. J. 584=1930 Cr. C. 196=A. I. R. 1930 Cal. 228.

—Deceased's statement to doctor made just before death, though admissible, must have independent corroboration to prove murder. (*Jwala Prasad and James, JJ.*). BULLU SINGH v. EMPEROR. 120 I.C. 474=A.I.R. 1929 Pat. 249.

—Dying declaration should be proved in manner prescribed by 8 Cal. 211. (*Suhravardiy and Mukerji, JJ.*). SARAT CHANDRA KAR v. EMPEROR. 88 I.C. 860=52 Cal. 446=26 Cr. L. J. 1244=A.I.R. 1925 Cal. 821.

—Witnesses should not be allowed to prove a dying declaration as if it is a substantial piece of evidence in the case. The relevant fact to be proved is the statement made by a deceased person admissible under S. 32 of the Evidence Act and that statement is not a document made by the Magistrate but the verbal statement made by the deceased person.

**EVIDENCE ACT (1872), S. 32—Statements against interest.**

son. The only way of proving a dying declaration is by the evidence of some witness who heard it made, the witness being at liberty to refresh his memory by referring to the note made by him or read over to him at or about the time the statement is made. (*Abdul Qadir, J.*). KUNJ LAL v. EMPEROR. 67 I.C. 577=23 Cr. L. J. 417=6 L. L. J. 115=A.I.R. 1924 Lah. 12.

**—S. 32—Ordinary course of business.**

—*Post mortem report.*

Where the Civil surgeon who conducted the *post mortem* examination had since died.

*Held*, that the *post mortem* report would be admissible under S. 32 (2) of the Evidence Act as being a statement made by a dead person in the ordinary course of business and in the discharge of his professional duty. (*Sulaiman and Mukerji, JJ.*). MOHAN SINGH v. EMPEROR. 85 I.C. 647=26 Cr. L. J. 551=6 L.R.A.C. 49=A.I.R. 1925 All. 413.

**—S. 32—Relationship.**

—Statements made by a person who is dead as a the name of her mother and other relations (except her husband) are admissible under S. 32 (5) into charge under S. 368, I. P. C. (*Aston, A. J. C.*). WAHID BUX v. EMPEROR. 120 I. C. 81=1929 Cr. C. 678=30 Cr. L. J. 1121=A.I.R. 1929 Sind 250.

—*Mere hearsay evidence about relationship of parties is not admissible.*

Where the witnesses gave no pedigree table but stated vaguely that they were related to the parties and, therefore, knew that the parties were related in the fifth degree, and as regards their personal knowledge they referred to their previous conduct in attending certain ceremonies described as *oos moos* where the attendance of persons other than relatives is possible, and further stated that they heard there the bhats reciting the pedigree table,

*Held*, that the statements were not admissible for proving agnate relationship. 32 Cal. 84 (P.C.); A.I.R. 1922 P. C. 189; 39 Cal. 492 (P.C.); 26 I.C. 110 and 26 All. 581, *Ref. to.* (*Dalip Singh, J.*). MOHAN LAL v. MT. TULSAN. 109 I.C. 774=A.I.R. 1928 Lah. 824.

**—S. 32—Scope.**

—*Statement must relate to the injuries by which death was caused.*

The sub-section applies to the class of statements made by a dying person as to the injuries which have brought him or her to that condition, or her circumstances under which those injuries came to be inflicted. The rule as to the admissibility of evidence under S. 32 (1) has worked ill in India. (*Broadway and Ffords, JJ.*). AUTAR SINGH v. THE CROWN. 81 I.C. 964=4 Lah. 451=25 Cr. L. J. 1140=A.I.R. 1924 Lah. 253.

**—S. 32—Statements against interest.**

—Where a person sentenced to death for murder makes a statement to a Magistrate about the time of his being hanged that the approver appointed to give evidence in the case, who had previously retracted his confessions, was not involved in the crime, the statement may be admissible under S. 32 (8). A. I. R. 1925 P. C. 52, *Rel. on.* (*Findlay, J. C. and Subhedar, A. J. C.*). SHEIKH SHAFI v. EMPEROR. 124 I.C. 459=A.I.R. 1930 Nag. 259.

—*Evidentiary value of.*

So far as a statement against the pecuniary or proprietary or other interest of the person making it is concerned, such statement may be given in



**EVIDENCE ACT (1872), S. 32—Verbal statements.**

evidence against third persons, provided that the reference to such third persons is not foreign to that portion of the statement which is against the interest of the declarant. But although the whole statement of a deceased person is admissible in evidence, the value which the Court will attach to such evidence will depend in each case upon a variety of circumstances. If the statement happens to be recorded in a document it must naturally possess greater value than when it depends upon the evidence of a witness who purports to have heard it. The Court in each case will also have to consider whether or not the statement in question bears on its face the appearances of truth, also the circumstances under which it came to be made, and whether or not the deceased person had a motive in making it or an object in naming the particular person whom he charges with complicity in the crime in question. These are all matters which affect the weight of the evidence and not its admissibility. (*Shadi Lal, C. J. and Fforde, J.*). **MOHAMMAD v. EMPEROR.**

89 I.C. 252=26 Cr. L.J. 1308=

A. I. R. 1926 Lah. 53.

**—S. 32—Verbal statements.**

*Questions with answers by signs owing to throat being cut are admissible under Cl. (5).*

Where the man's throat had been cut and he could not speak but he was said to have replied to the questions put to him by means of signs,

*Held*, that the questions put to the deceased and the signs made by him taken together might properly be regarded as "verbal statements" made by a person as to the cause of his death within the meaning of S. 32. 7 All. 885 (F.B.); A.I.R. 1922 Cal. 402, *Foll. (Scott-Smith and Fforde, J.J.)*. **RANGA v. THE CROWN.**

84 I.C. 552=5 Lah. 305=

26 Cr. L.J. 328=A.I.R. 1924 Lah. 581.

**—S. 33—Admissibility of depositions.**

It is necessary that under S. 33 of the Evidence Act the Judge must be satisfied that the evidence is admissible on the materials before him, namely, on the ground that the witness whose deposition is attempted to be put in was not or could not be found or had been won over by the adverse party or otherwise incapable of giving evidence.

A verbal application made by the Public Prosecutor for admission of evidence of a particular witness under S. 33, Evidence Act, is not by itself a sufficient ground for admitting that evidence. 20 W.R. 69 (Cr.) and 41 Cal. 601, *Ref.*

The fact that no objection was taken to the reception of evidence of a particular witness on the mere verbal application by the Public Prosecutor or by the defence, does not dispense with the requirements of S. 33, Evidence Act. 39 Mad. 449 and 10 Lah. 837, *Ref. (Sukrawardy and Patterson, J.J.)*. **MOKSHAD SHEIKH v. EMPEROR.**

1930 Cr. Cases.

A previous deposition is admissible against the witness on his subsequent trial, unless he has brought himself within the protection of the proviso to S. 132. 39 Cal. 164 and 45 Cal. 720, *Rel. on. (Percival, A.J.C.)*. **EMPEROR v. E.C.D. WHEELER.**

112 I.C. 50=22 S.L.R. 458=

29 Cr. L.J. 962=A.I.R. 1929 Sind 15.

Evidence in previous proceedings admitted with pleader's consent—One accused no party to previous proceedings—Admission of evidence is bad. (*Dierwood, J.*). **ABDUL GAFFOOR v. GOVIND PRASAD.**

117 I.C. 241=30 Cr. L.J. 736=

A. I. R. 1928 Rang. 284.

**EVIDENCE ACT (1872), S. 33—Condition precedent.**

—Evidence under Fugitive Offenders Act may be admissible in proceedings under Penal Code. (*Wild, J. C. and Aston, A. J. C.*). **E. C. D. WHEELER v. EMPEROR.**

112 I. C. 673=

29 Cr. L. J. 1089=A. I. R. 1928 Sind 161.

—Where a witness for the prosecution is examined and cross-examined before charge and leaves for England, and after charge the accused requires him to be cross-examined under S. 257, Cr. P. Code, the Magistrate may act under the provisions of S. 33, Evidence Act. (*Mawng Ba, J.*). **NGA BA ON v. EMPEROR.**

104 I. C. 637=

6 Bur. L. J. 114=9 A. I. Cr. R. 33=

28 Cr. L. J. 861=A. I. R. 1927 Rang. 248.

—Where the formalities prescribed in Ch. 25 of Cr. P. Code are not observed in recording evidence, the accused cannot be said to have had opportunity to cross-examine within S. 33. (*Foster, J.*). **EMPEROR v. PHAGUNIA BHUIAN.**

89 I.C. 1043=26 Cr. L.J. 1475=

A. I. R. 1926 Pat. 58.

—Where evidence was given before a committing Magistrate, but in the Sessions Court the witness proves shy and speechless, S. 33 does not apply to the case and the evidence cannot *ipso facto* be treated as evidence at the Sessions. The proper procedure would be to give the prosecution the right to put leading questions under S. 154 and obtain the admission or denial of the truth of the evidence. (*Pipon, J.C.*). **MOTT RAM v. EMPEROR.**

75 I. C. 152=24 Cr. L. J. 904.

**—S. 33—Compliance with section.**

*Strict proof of compliance with the provision is necessary specially in a murder trial—Reasons should be recorded before admission of evidence.*

*Per May Oung, J.*—The power given by S. 33 requires to be exercised with great caution and the Court must insist on strict proof before holding that the requisite conditions have been satisfied. More especially is this necessary where a man is being tried for his life and the evidence sought to be put in is of signal importance. Moreover, it is essential that a Judge or Magistrate admitting such evidence should either in his judgment or preferably in a separate order record his reasons for doing so.

*Per Lentaigne, J.*—The section pre-supposes a consideration of the grounds for admission of the deposition prior to the admission of the evidence and if the grounds and reasons are recorded prior to the admission of the deposition as evidence, the order constitutes a more convincing proof of the considered adequacy of the grounds than a passage in a judgment subsequently written which in a case near the border line might easily assume the appearance of a subsequent statement of excuses for a previous ill-considered action. (*May Oung and Lentaigne, J.J.*). **NGA NYO v. EMPEROR.**

76 I. C. 817=1 Rang. 512=2 Bur. L.J. 205=

25 Cr. L.J. 257=A.I.R. 1924 Rang. 209.

**—S. 33—Condition precedent.**

*Strict compliance with requirements essential.*

A previous deposition can be admitted in evidence only under the provisions of S. 33, Evidence Act, but before it can be placed on the record of a criminal trial the Court must decide judicially that a proper effort had been made on behalf of the prosecution to secure the presence of the witness, that in spite of that effort he had not been traced and could not be found out, or that he was incapable of giving evidence, or was kept out of the way by the adverse party, or his presence could not be



**EVIDENCE ACT (1872), S. 33—Death of witness.**

obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable. 89 Mad. 449; 41 Cal. 601; A.I.R. 1925 Lah. 418, *Foll.*

The fact that the counsel for the accused gave his consent does not make any difference. A.I.R. 1923 Mad. 32, *Rel. on.* (*Tek Chand and Agha Haidar, J.J.*). GHULAM HAIDAR v. EMPEROR.

116 I.C. 329=10 Lah. 837=30 P.L.R. 192=  
30 Cr. L.J. 623=1929 Cr. C. 85=  
13 A.I. Cr. R. 34=A.I.R. 1929 Lah. 542.

**—S. 33—Death of witness.**

—Witness examined in committal proceedings but not cross-examined immediately—Witness dying before Sessions trial—His deposition in committing Court can be admitted in Sessions trial. (*Rankin, C.J. and C.C. Ghose, J.*). AZIMUDDY v. EMPEROR.

101 I.C. 661=31 C.W.N. 410=  
28 Cr. L.J. 485=8 A.I. Cr. R. 134=  
A.I.R. 1927 Cal. 398.

**—S. 33—Discretion of Court.**

—Application is essentially matter of discretion of Court. (*Rankin, C.J. and C.C. Ghose, J.*). JATI MALI v. EMPEROR. 33 C.W.N. 918=  
1929 Cr.C. 477=A.I.R. 1929 Cal. 765.

**—S. 33—Dying declaration.**

—Dying declaration made to Sub-Inspector—Sub-Inspector examined under S. 208, Cr. P. Code but not cross-examined—Sub-Inspector dying before Sessions Trial—Deposition can be admitted in evidence. (*Graham and Lort-Williams, J.J.*). TAFIR PRAMANIK v. EMPEROR. 50 C.L.J. 584=  
1930 Cr.C. 196=A.I.R. 1930 Cal. 228.

**—S. 33—Evidence before Committing Magistrate.**

—Where a witness who gives evidence before the Committing Magistrate, leaves the district, the Sessions Judge cannot, without taking evidence to see whether S. 33 of the Evidence Act has been satisfied, admit the evidence given before the Committing Magistrate. (*Scott-Smith and Fforde, J.J.*). KHEM SINGH v. EMPEROR. 88 I.C. 30=  
7 L.L.J. 105=26 Gr.L.J. 1086=26 P.L.R. 458=  
A.I.R. 1925 Lah. 319.

**—S. 33—Jurisdiction.**

—A proceeding before a Judge or Magistrate who has no jurisdiction is *coram non judice* and the evidence of witnesses given in such a proceeding cannot be used under S. 33 on a retrial before a competent Court. (*Campbell and Addison, J.J.*). BUTA SINGH v. EMPEROR. 97 I.C. 752=  
7 Lah. 396=27 Cr.L.J. 1168=  
27 P.L.R. 447=A.I.R. 1926 Lah. 582.

**—S. 33—Medical practitioner.**

—*Examining the doctor is not an essential condition when a witness is ill.*

Facilities for obtaining qualified doctors in England are very different from those in India, and thus it cannot be accepted as a proposition of law that it is absolutely necessary to examine a qualified medical practitioner before evidence can be accepted under S. 33 of the Evidence Act when the witness is ill and thus unable to attend. (*Suhrawardy and Duval, J.J.*). SHEIKH ALIJAN v. EMPEROR. 103 I.C. 846=31 C.W.N. 908=  
28 Cr.L.J. 766=A.I.R. 1927 Cal. 679.

**—S. 33—"Parties."**

—"Parties" in the proviso include parties wrongly impleaded. (*Kotval and Pridoux, A.J.Cs.*). GANGABAM v. EMPEROR. 82 I.C. 715=  
25 Cr.L.J. 1355=A.I.R. 1925 Nag. 172.

**EVIDENCE ACT (1872), S. 35—Police records.****—S. 33—Scope.**

—The general provisions of S. 33 of the Evidence Act are in no way affected by S. 350 of the Cr. P. Code. (*Fforde and Addison, J.J.*). LEKAL v. EMPEROR. 101 I.C. 483=8 Lah. 570=  
28 P.L.R. 199=28 Cr. L.J. 451=  
8 A.I. Cr. R. 83=A.I.R. 1927 Lah. 332.

**—S. 33—Witness not cross-examined.**

—If the cross-examination of a witness is reserved by a Magistrate during committal proceedings of his own accord, that deposition is not complete and should not be admitted in evidence at the trial in the Court of Session. (*Percival, J. C. and Barley, A. J. C.*). EMPEROR v. MAHRAL.

120 I.C. 524=1930 Cr. C. 70=31 Cr.L.J. 121=  
A.I.R. 1930 Sind 54.

—In a warrant case until the stage provided for in S. 256 is reached the accused has no right to cross-examine and consequently the evidence of a witness given before framing of the charge is not admissible under S. 33. 8 C. W. N. 388, *Ref.* (*Cuming and Lort-Williams, J.J.*). EMPEROR v. C. A. MATHEWS. 1929 Cr.C. 669=  
A.I.R. 1929 Cal. 822.

—A witness was examined by prosecution but no cross-examination was put to him and after the charge it was discovered that he was too ill to attend the Court and was unable to answer the interrogatories. The result was that he was never subjected to cross-examination. It was contended that the statement being incomplete his evidence could not be considered.

*Held*, that such evidence was admissible but the weight to be attached to it depended upon the circumstances of each case. A.I.R. 1925 Mad. 497, *Rel. on.* (*Johnstone, J.*). MANGAL SEN v. EMPEROR. 118 I.C. 647=1929 Cr.C. 568=11 L.L.J. 384=  
30 Cr.L.J. 951=A.I.R. 1929 Lah. 840.

**—S. 34—Proof.**

—*Necessity of formal proof that books are kept in course of business has been dispensed with.*

Under the old Evidence Act II of 1855, books to be admissible had to be proved to have been regularly kept in course of business. In the later Act I of 1872 the words "proved to have been" have dropped. This amounts to material alteration in the law. The legislature has dispensed with the necessity of any formal proof that the books were kept up in the regular course of business. It is a matter of intrinsic evidence as to whether the books in question were books of account and regularly kept in the regular course of business. The only limitation imposed by the statute is that the statement contained in the account books "shall not alone be sufficient to charge any one with liability." The value of the entries is corroborative and cannot be used as independent evidence to charge any person with liability. 18 All. 92, *Rel. on.*; 27 Cal. 118, *Ref.*; 4 Bom. 576, *Dist.* (*Young and Sen, J.J.*). EMPEROR v. NARBADA PRASAD. 121 I.C. 819=1930 Cr. C. 54=  
51 All. 864=31 Cr.L.J. 356=  
A.I.R. 1930 All. 38.

**—S. 35—Police records.**

—Record of First information report is corroborative and not substantive evidence. (*Sulaiman and Mukerjee, J.J.*). MOHAN SINGH v. EMPEROR. 85 I.C. 647=26 Cr. L.J. 551=  
6 L.R.A. Cr. 49=A.I.R. 1925 All. 413.

—*List of suspects drawn up by Police is not admissible.*

**EVIDENCE ACT (1872), S. 35—Police records.**

Where the question is whether the accused were present at an unlawful meeting, a list of suspects drawn up by the Police at the time is not admissible in evidence and if admissible it proves nothing beyond the fact that the Police expected to find the accused amongst those present. (*Eforde and Scott-Smith, JJ.*). BAWA SARUP SINGH v. THE CROWN. 88 I.C. 22=7 L.L.J. 264=26 P.L.R. 566=26 Cr. L.J. 1078=A.I.R. 1925 Lah. 299.

—Police report is admissible under S. 35. (*Banerji and Kendall, JJ.*). MUHAMMAD SALIUM v. RAM KUMAR SINGH. 110 I.C. 657=26 A.L.J. 1001=A.I.R. 1928 All. 710.

**—S. 35—Miscellaneous.**

—Document neither shown to be prepared by public servant nor shown as forming the act or record of public officer is inadmissible. (*Sen, J.*). GAURI SHANKAR v. EMPEROR. 120 I. C. 547=1930 A. L. J. 244=1930 Cr. C. 42=31 Cr. L. J. 133=A.I.R. 1930 All. 26.

—Entry in vaccination register regarding father's name of illegitimate child made three years after child's birth is inadmissible in evidence. (*Curguenven, J.*). M. KANNIAPPAN v. KUL-LAMMAL. 1930 Cr. C. 88=1929 M. W. N. 696=2 M. Cr. C. 275=A.I.R. 1930 Mad. 194.

—Attendance register of association—Oral testimony to prove its being such is necessary. (*Eforde and Scott-Smith, JJ.*). BAWA SARUP SINGH v. THE CROWN. 88 I.C. 22=7 L. L. J. 264=26 Cr. L. J. 1078=26 P.L.R. 566=A.I.R. 1925 Lah. 299.

**—S. 36—Maps in criminal cases.**

—Maps prepared in criminal cases—Statements of witnesses or information received should not be recorded thereon: A.I.R. 1924 Cal. 1029, *Rel. on.* (*Suhrawardy and Panton, JJ.*). BHAGIRATHI CHOWDHURY v. EMPEROR. 92 I.C. 174=30 C. W. N. 142=27 Cr. L.J. 222=A.I.R. 1926 Cal. 550.

**—S. 36—Site plan.**

—Site plan prepared for a case has very little probative value on question of title. (*Sen, J.*). GAURI SHANKAR v. EMPEROR. 120 I. C. 547=1930 A.L.J. 244=1930 Cr. C. 42=31 Cr.L.J. 133=A.I.R. 1930 All. 26.

**—S. 39—Admissibility.**

—Section 27 governs S. 39.

But if the accused wishes to challenge the veracity of the statement that it was on his information that the thing was discovered he may ask the deponent to depose to the exact words used by him. Then under S. 39 so much of the statement made by him can be given in evidence as the Court considers necessary in that particular case to full understanding of the nature and effect of the statement. (*Harrison and Dalip Singh, JJ.*). KARAM DIN v. EMPEROR. 115 I. C. 1=30 Cr. L.J. 385=A. I. R. 1929 Lah. 338.

**—S. 39—Scope.**

—Section 39 cannot be invoked for the purpose of letting in a confession in respect of which the bar created by Ss. 24, 25 and 26, Evidence Act, has not been removed by S. 27. (*Shadi Lal, C. J. and Harrison, Eforde, Tek Chand, Jai Lal, Dalip Singh and Agha Haider, JJ.*). SUKHAN v. EMPEROR. 115 I.C. 6=10 Lah. 283=30 P.L.R. 197=11 L.L.J. 189=30 Cr. L.J. 414=12 A.I.Cr.R. 382=A. I. R. 1929 Lah. 344 (F.B.).

**EVIDENCE ACT (1872), S. 45—Report of expert.****—S. 41—Grant of letters.**

—Grant of Letters is no bar to further proceedings under Penal Code, S. 477. (*Otter, J.*). MALI MUTHU SERVAY v. EMPEROR. 97 I.C. 1054=4 Rang. 281=27 Cr. L.J. 1230=A.I.R. 1926 Rang. 202.

**—S. 43—Civil judgment.**

—A decision of a Civil Court is admissible to disprove an allegation, the truth of which is the basis of conviction of a person in a criminal case. 41 Bom. 1, *Rel. on.* (*Krishnan, J.*). VELAYUTHAM CHETTY, *In re.* 72 I.C. 172=24 Cr. L. J. 332=A.I.R. 1924 Mad. 516.

**—S. 45—Assistant Mint Master.**

—Assistant Mint Master is an expert. (*Daniels, J.C.*). MT. GILLI v. EMPEROR. 88 I.C. 848=12 O. L. J. 497=2 O.W.N. 377=26 Cr.L.J. 1232=A. I. R. 1925 Oudh 616.

**—S. 45—Court as expert.**

—A Court's opinion based upon its own knowledge without the help of trained assistant to the effect that a certain amount of arsenic contained in certain prescriptions would produce arsenical poisoning, collapse and unconsciousness, is unsound and valueless especially where it is by itself untrained in medicine. Similarly it cannot say what medicines should be prescribed for biliary colic by reference to medical books. (*Greaves and Panton, JJ.*). SUPDT. AND REMEMBRANCE OF LEGAL AFFAIRS, BENGAL v. PURNA CHANDRA GHOSH. 83 I. C. 631=28 C. W. N. 579=26 Cr.L.J. 71=A.I.R. 1924 Cal. 611.

**—S. 45—Evidence on commission.**

—Expert evidence on commission loses much of its value. (*Broadway, J.*). NUR DIN v. EMPEROR. 108 I.C. 369=9 A.I.Cr.R. 561=10 L.L.J. 235=29 Cr. L.J. 377=A.I.R. 1928 Lah. 533.

**—S. 45—Expert opinion.**

—An opinion of an expert witness not based on any well defined inexorable laws of nature cannot be taken as decisive especially where there is direct evidence opposed to it: 11 W.R. 25 (Cr.), *Ref.* (*Zafar Ali, J.*). H. MANSEL FLEYDELL v. EMPEROR. 96 I. C. 641=27 Cr. L.J. 977=A.I.R. 1926 Lah. 313.

**—S. 45—Palm impressions.**

—Opinion of expert as to identity of palm impression is admissible. (*Madgavkar, J.*). EMPEROR v. BABULAL BEHARI. 108 I.C. 508=52 Bom. 223=30 Bom. L. R. 321=29 Cr. L.J. 410=10 A.I. Cr. R. 84=A.I.R. 1928 Bom. 158.

**—S. 45—Report of expert.**

—The opinion of an expert which is admissible against an accused is the opinion given by him at the trial. Opinion given for the purposes of a previous suit is not substantive evidence and when the accused has not the opportunity to cross-examine the expert regarding that opinion its evidential value is very little.

It is doubtful whether the opinion of an expert recorded for the purposes of a civil suit though proved in a criminal case is admissible at all at the latter trial: A. I. R. 1928 Lah. 622, *Ref.* (*Jai Lal, J.*). GAUDA MAL v. EMPEROR. 110 I.C. 810=11 A. I. Cr. R. 5=29 Cr. L. J. 778=A.I.R. 1928 Lah. 921.

—Chemical examiner's negative report regarding absence of trace of blood in the earth, leaves and grass taken from the alleged place of occurrence will not displace strong direct evidence of

**EVIDENCE ACT (1872), S. 45—Report of expert.** the place of a certain murder. (*Newbould and C. C. Ghose, JJ.*). HASENNULLA SHEIKH v. EMPEROR. 83 I.C. 485=26 Gr. L.J. 5=

28 C.W.N. 561=A.I.R. 1924 Cal. 625.

—*Penal Code, S. 193—Opinion of hand expert not examined on oath—Magistrate's own observation may be used as evidence.*

Where in a trial for perjury in respect of a promissory note which the accused said on oath was in his handwriting, the Magistrate admitted in evidence the opinion of a handwriting expert against the accused without his being examined on oath and also had his own opinion after comparing the handwriting of the promissory note with various other handwritings, that the writing was not of the accused.

*Held*, that a conviction under S. 193 based on these materials is bad. The proposition that a Judge should not import his personal knowledge into his judgments and that if he wishes to rely on facts within his knowledge, he must go to the witness box and depose to them on oath is no doubt correct in the main, but it does not apply to facts of which a Judge is permitted to take judicial notice and nowhere in the Indian Evidence Act is it laid down that a Judge must not look at exhibits produced in Court or partly base his judgment on them. 11 W.R.Cr. 95, *Foll.* (*MacColl, J.*). S. O. GUPTA v. KING EMPEROR. 76 I.C. 425=1 Rang. 290=25 Cr. L.J. 185=A.I.R. 1924 Rang. 17.

#### —S. 45—Thumb impression.

—Evidence of thumb-impression expert is valuable. (*Addison, J.*). DILEDDA v. EMPEROR.

113 I.C. 68=30 Gr. L.J. 52=

11 A. I. Cr. R. 428=A.I.R. 1929 Lah. 210.

—As to the probative value of the opinion of an expert on fingerprints, it must have the same value as the opinion of any other expert, such as a medical officer, etc. In each case the evidence is only a guide to the Court to direct its attention to judge of its value. The Court is at liberty to use its own discretion and to come to conclusion either in affirmation or differing from the view taken by the expert. Though it is not safe to convict an accused upon the sole testimony of an expert, yet the Court cannot refuse to convict a person on the evidence of a fingerprint expert, merely on the ground that it is unsafe to base a conviction upon such evidence: A.I.R. 1926 Cal. 581; A. I. R. 1923 Mad. 178 and 82 Cal. 759, *Foll.* (*Jwala Prasad and Macpherson, JJ.*). BASGIT SINGH v. EMPEROR. 104 I.C. 626=6 Pat. 305=28 Cr. L.J. 850=A.I.R. 1928 Pat. 129.

#### —S. 47—Habitually.

—The term "habitually" in S. 47 means "Usually," "generally," or "according to custom." It does not refer to the frequency of the occasions but rather to the invariability of the practice.

The opinion of a record-keeper, who in the course of his official duty has to examine and file papers sent to him, is relevant to prove the handwriting of a person whose papers are so filed, though the number of such papers may not be great. (*Crump, J.*). P. B. PONDE v. EMPEROR.

89 I.C. 1042=27 Bom. L.R. 1031=

26 Cr. L.J. 1474=A.I.R. 1925 Bom. 429.

#### —S. 50—Marriage—Proof of.

—A Court under the provisions of S. 50 while not directed to exclude evidence of opinion as expressed by conduct to prove such a marriage is directed not to base a finding that such a marriage has taken place upon the evidence of opinion alone.

**EVIDENCE ACT (1872), S. 54—Past good character.**

(*Stuart, C. J.*). RAGHUPAT SINGH v. KING EMPEROR.

100 I.C. 535=4 O.W.N. 172=28 Gr. L. J. 311=

7 A. I. Cr. R. 436=A.I.R. 1927 Oudh 140.

#### —S. 54—Evidence of bad character.

—Evidence to show character of persons associating with accused and nature of association is also inadmissible. (*Kemp, J.*). EMPEROR v. WAHIDUDDIN HAMIDUDDIN (No. 1.)

32 Bom. L.R. 324=A.I.R. 1930 Bom. 157.

—It is not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue: *Makin v. Attorney-General for New South Wales*, (1894) A. C. 57, *Foll.*

Evidence of defalcations both prior or subsequent whether such defalcations formed the basis of another charge on which the accused may have been acquitted or not are admissible in evidence to prove guilty intent as also to anticipate the defence of the non-existence of such intent. (*Kincaid, J.C. and Rupchand Bilaram, A. J. C.*). EMPEROR v. STEWART. 97 I.C. 1041=27 Cr. L. J. 1217=

21 S. L. R. 55=A. I. R. 1927 Sind 28.

—Evidence of bad character to prove motive for the crime or otherwise relevant is not excluded. 47 Cal. 671 and A. I. R. 1923 Bom. 71, *Dist.* (*Mullick, Ag. C. J. and Jwala Prasad, J.*). JAGWA DHANUK v. EMPEROR. 93 I. C. 884=5 Pat. 63=

7 P. L. T. 396=27 Cr. L. J. 484=

A.I.R. 1926 Pat. 232.

—Evidence of previous bad character is relevant except where it is given for the purpose of showing that the accused was of a bad character and therefore likely to commit offences of the kind in question. Under S. 167, improper admission is no ground for a new trial if there is other evidence sufficient to support the conviction. (*Rattigan, C.J. and Martineau, J.*). DAULAT RAM v. EMPEROR.

22 Cr. L.J. 128=59 I.C. 560.

#### —S. 54—Object.

—The object of S. 54 is to lay down that evidence of bad character including a previous conviction is, as a rule, irrelevant "to help to establish an accused person's guilt," but not to lay down that it may not be taken into account in passing sentence: 39 Bom. 326, *Foll.* (*Wallace, J.*). SUBAN SAHIB v. EMPEROR. 115 I.C. 483=

52 Mad. 358=29 M.L.W. 194=2 M.Cr.C. 65=

1929 M.W.N. 393=30 Cr. L.J. 471=

12 A.I. Cr. R. 256=A.I.R. 1929 Mad. 306=

56 M.L.J. 595.

#### —S. 54—Past good character.

—Past good character does not lead to presumption of innocence but to prove guilt of such a man; evidence against him must be of an unimpeachable character.

The mere fact that a person has enjoyed the confidence of his superiors or that he had in fact led a life of honesty during the past, is no reason to suppose that he will not succumb to temptation at the close of his career; but before a man of this type and such antecedents is adjudged guilty, the

**EVIDENCE ACT (1872), S. 54—Previous conviction.**

evidence against him must be of an unimpeachable character. (*Tek Chand, J.*). **MANGAL RAI v. EMPEROR.** 110 I.C. 676=

10 L.L.J. 262=29 P.L.R. 703=10 A.I.Cr.R. 519=29 Cr. L.J. 740=A.I.R. 1928 Lah. 647.

**—S. 54—Previous conviction.**

—Previous convictions and proceedings under S. 110, Cr. P. Code, are admissible in a case under S. 401 for the purpose of proving habit though not of general bad character and are not excluded by S. 54, Evidence Act: 18 Cr.L.J. 539; 38 Cal. 438 and A.I.R. 1925 Bom. 195, *Rel. on*; 32 Mad. 179 and A.I.R. 1923 Bom. 71, *Diss. and Dist. (Percival, J.C. and Rupchand, A. J. C.)*. **BAKSHO v. EMPEROR.** A.I.R. 1930 Sind 211.

—Section 54 does not apply to cases in which the bad character of any person is itself a fact in issue. If the evidence of bad character is introduced in order to establish a relevant fact, the evidence of bad character is admissible. Where the evidence of previous conviction or the evidence that a man has been bound over under the preventive sections can be considered only as evidence of character it must be excluded, but where such evidence is admissible *aliunde*, it should not be excluded. Such evidence is admissible under S. 14, not as evidence of character, but as evidence to prove habit and association. 27 Cal. 139; 32 Mad. 179; A.I.R. 1923 Bom. 71; A.I.R. 1925 Cal. 872 and A.I.R. 1925 Oudh 144, *Ref. (Stuart, C.J. and Raza, J.)*. **KHILAWAN v. EMPEROR.** 112 I.C. 337=

5 O.W.N. 760=29 Cr. L.J. 1009=11 A.I. Cr. R. 273=A.I.R. 1928 Oudh 430.

—Guilt of joint possession of cocaine—Evidence of previous conviction of trafficking in cocaine and history sheet opened by the police are inadmissible. (*Stuart, C.J.*). **RAHIM BAKHS v. EMPEROR.** 109 I.C. 349=5 O.W.N. 124=

9 A.I. Cr. R. 416=10 A.I. Cr. R. 169=29 Cr. L.J. 525=A.I.R. 1928 Oudh 215.

—Former judgment more than 25 years old and convicting accused of dacoity is admissible in a case under S. 401, I.P.C., for showing criminal tendency to commit theft and not habit of committing theft. 14 Bom. L. R. 373 and 38 Cal. 408, *Foll. (Marten and Fawcett, JJ.)*. **MOTIRAM HARI v. EMPEROR.** 89 I.C. 527=26 Bom. L.R. 1223=

26 Cr. L.J. 1391=A.I.R. 1925 Bom. 195.

—The principle underlying the legal provision may also be seen in S. 54 of the Indian Evidence Act under which a previous conviction is declared inadmissible against an accused person, except where evidence of bad character is relevant. A.I.R. 1923 Cal. 707, *Dist. (May Oung, J.)*. **MAUNG E. GYI v. THE CROWN.** 81 I.C. 106=1 Rang. 520=

A.I.R. 1924 Rang. 91.

—During the trial of the accused for a substantive offence, the evidence about the previous conviction should not be recorded. Such evidence is forbidden by S. 54 unless the accused offers evidence of good character. (*Jwala Prasad and Sultan Ahmed, JJ.*). **TEKA AHIR v. EMPEROR.** 60 I.C. 331=22 Cr. L.J. 219=5 Pat. L.J. 706.

**—S. 54—Previous dishonesty.**

—Evidence of a previous act of dishonesty of the accused can only be allowed to prevent the accused person from pleading that the act under consideration was committed without a dishonest intention. (*Addison and Kemp, JJ.*). **EMPEROR v. BAKHWOR LAL.** 102 I.C. 492=

8 A.I. Cr. R. 196=28 P.L.R. 313=28 Cr. L.J. 556=A.I.R. 1927 Lah. 549.

**EVIDENCE ACT (1872), S. 60—Dying declaration.****—S. 54—Previous security proceedings.**

—Order under S. 118, Cr. P. Code can be proved against a person proceeded against under S. 110, though the order is not a conviction under Evidence Act, S. 54, Explan. 2. (*Ashworth and King, JJ.*). **EMPEROR v. KUMERA.** 51 All. 275=1929 Cr. C. 346=A.I.R. 1929 All. 650.

**—S. 54—Scope.**

—S. 54 of the Evidence Act does not apply to cases in which the bad character of any person is itself a fact in issue. (*Raza and Nanavutty, JJ.*). **BACHCHU v. EMPEROR.** 7 O.W.N. 862=

1930 Cr. C. 1079=A.I.R. 1930 Oudh 455.

—Section 54 regulates what is relevant for the purpose of proof at an enquiry or trial, not what is relevant for the purpose of deciding whether a longer or shorter sentence is to be imposed. (*Rutledge, C. J., Carr, Cunliffe and Das, JJ.*). **EMPEROR v. NGA BA SHEIN.** 111 I.C. 433=

6 Rang. 391=11 A.I.Cr.R. 126=

29 Cr. L.J. 869=A.I.R. 1928 Rang. 200 (F.B.).

**—S. 57—Thefts on Railways.**

—It is obviously unfair to the railway company to take judicial notice of thefts on the railways. It is for the plaintiff asking for damages to prove "wilful neglect" on the part of the defendant railway. If he wishes to rely on the occurrence of thefts and inadequacy of the method of sealing waggons, it is for him to lead evidence on the point. A.I.R. 1926 All. 641, *Rel. on. (Addison, and Bhide, JJ.)*. **SECRETARY OF STATE v. GHANAYA LAL SRIKISHAN OF AMRITSAR.** 111 I.C. 523=10 Lah. 329=

A.I.R. 1928 Lah. 837.

**—S. 57—Warrant.**

—Warrant issued under S. 46, Calcutta Police Act is not public record—Its contents must be proved in a regular way.

A warrant issued under the provisions of S. 46 of the Calcutta Police Act is not a public record and there is no presumption of any kind attaching to it; therefore the contents thereof must be proved in the popular way and, therefore, it is incumbent upon the prosecution to prove that a warrant of this description was in strict compliance with the provisions of S. 46 of the Act and that it was issued after information upon oath had been brought before the issuing officer and after such enquiry as he thought it necessary to make had been made. (*C.O. Ghose and Chotener, JJ.*). **B. WALVEKAR v. KING EMPEROR.** 96 I. C. 264=

53 Cal. 718=30 C. W. N. 713=

27 Cr. L.J. 920=A.I.R. 1926 Cal. 966.

**—S. 58—Applicability.**

—Section 58 makes no exception of criminal trials and the Criminal Courts, as a matter of practice, do not insist on every fact which is admitted by accused being proved by the prosecution. But, under the proviso, the practice is to insist on proof of all really essential facts. (*Wazir Hasan and Simpson, Ag.J.Cs.*). **BHULAN v. EMPEROR.** 91 I.C. 233=27 Cr.L.J. 57=

A.I.R. 1926 Oudh 245.

**—S. 60—Dying declaration.****—Proof of.**

Witnesses should not be allowed to prove a dying declaration as if it is a substantial piece of evidence in the case. The relevant fact to be proved is the statement made by a deceased person admissible under S. 32 of the Evidence Act, and that statement is not a document made by the Magistrate but the verbal statement made by the deceased

**EVIDENCE ACT (1872), S. 60—Hearsay evidence.**

person. The only way of proving a dying declaration is by the evidence of some witness who heard it made, the witness being at liberty to refresh his memory by referring to the note made by him or read over to him at or about the time the statement is made. (*Abdul Qadir, J.*). KUNJ LAL v. EMPEROR. 67 I.C. 577=23 Cr. L.J. 417=6 L.L.J. 115=A.I.R. 1924 Lah. 12.

**—S. 60—Hearsay evidence.**

—Evidence of a witness that he learnt that one of the accused is known by a certain name is hearsay evidence and is therefore inadmissible. (*Boys, J.*). DANNA v. KING-EMPEROR. 108 I.C. 689=9 A.I. Cr. R. 194=9 L.R.A. Cr. 27=29 Cr. L.J. 449.

—Hearsay evidence is inadmissible. (*Teunon and Ghose, JJ.*). ASHUTOSH DAS v. KING EMPEROR. 66 I.C. 513=34 C. L. J. 53.

**—S. 60—Opinions and impressions.**

—Only what the witness actually saw and heard as to what a mob was doing and saying is admissible to prove the nature of the assembly; his opinion and impressions that the assembly appeared to be unlawful are not admissible. (*Jwala Prasad, J.*). JOGI RAUT v. EMPEROR. 105 I.C. 234=9 P.L.T. 260=28 Cr. L.J. 906=A. I. R. 1928 Pat. 98.

**—S. 60—Statement of accused.**

—Statement by accused immediately after the offence is relevant but statement by another person to the accused must be proved by the person who heard it. (*Broadway and Campbell, JJ.*). KAKAR SINGH v. THE CROWN. 81 I.C. 717=6 L.L.J. 575=25 Cr. L.J. 1005=A.I.R. 1924 Lah. 733.

**—S. 62—Newspaper.**

—One specimen of a newspaper is not a copy of another specimen of the same newspaper of the same date. There is no relation between them of copy and original. They are all counterpart originals, each being primary evidence of the contents of the rest. (*Hilton, J.*). RAM CHANDRA v. EMPEROR. 120 I.C. 793=1930 Cr. C. 331=31 Cr. L.J. 168=A.I.R. 1930 Lah. 371.

**—S. 65—Admissibility of secondary evidence—Telegram.**

—Three months after sending a telegram it can be proved by secondary evidence. (*Dalal, J.C.*). BISHAMBHAR NATH TANDON v. EMPEROR. 90 I.C. 760=26 Cr. L.J. 1602=2 O.W.N. 760=A.I.R. 1926 Oudh 161.

**—S. 65—Miscellaneous.****—Scope.**

S. 65 has no reference to a case where mere secondary evidence of the documents has not been tendered, but it is the document itself which is put in as secondary evidence of facts which have to be proved *aliunde*. Hence newspapers are not secondary evidence of facts narrated by them. (*Fforde and Scott-Smith, JJ.*). BAWA SARUP SINGH v. THE CROWN. 88 I.C. 22=7 L.L.J. 264=26 Cr. L.J. 1078=26 P.L.R. 566=A. I. R. 1925 Lah. 299.

**—S. 66—Absence of notice.**

—Oral evidence of contents of letter inadmissible under S. 66 cannot become admissible by subsequent dispensing with notice. 20 Cal. 53, *Rel. on.* (*Mukerji and Jack, JJ.*). PROFULLA KUMAR BOSE v. EMPEROR. 50 C.L.J. 593=1930 Cr. C. 209=A.I.R. 1930 Cal. 209.

**EVIDENCE ACT (1872), S. 74—'Act' or 'Record of an Act.'****—S. 67—Kind of proof required.**

—Signatures attributed to accused persons—Handwriting must be proved. (*Fforde and Scott-Smith, JJ.*). BAWA SARUP SINGH v. THE CROWN. 88 I.C. 22=7 L.L.J. 264=26 Cr. L.J. 1078=26 P.L.R. 566=A. I. R. 1925 Lah. 299.

**—S. 68—Account-book.**

—Account book is not document required by law to be attested. (*Young and Sen, JJ.*). EMPEROR v. NARBADA PRASAD. 121 I.C. 819=1930 Cr. C. 54=51 All. 864=31 Cr. J. 356=A.I.R. 1930 All. 38.

**—S. 73—Applicability.**

—It is only where other evidence is not available and the handwriting has not been proved by independent evidence to be the handwriting of a particular person, that it is necessary to have recourse to the provisions of S. 73 to see whether by comparison it can be determined whether the document was written by that person or not. (*Cum-ing and Mukerji, JJ.*). KHAJIRUDDIN v. EMPEROR. 92 I.C. 442=53 Cal. 372=42 C.L.J. 504=27 Cr. L.J. 266=A. I. R. 1926 Cal. 139.

**—S. 73—Thumb impression.**

—A Court can direct an accused person to give his thumb impression in Court. A. I. R. 1924 Rang. 115 (F. B.), *Foll.*; A. I. R. 1922 Pat. 78, *Dist.* (*Mullick and Wort, JJ.*). ZAHURI SAHU v. EMPEROR. 106 I.C. 212=6 Pat. 623=8 P.L.T. 847=28 Cr. L. J. 1028=9 A.I. Cr. R. 173=A.I.R. 1928 Pat. 103.

—Thumb-impressions on a deed compared with others not shown to be of executant—Evidence of expert is of no value. (*Kulwant Sahay and Scroope, JJ.*). GAFFAR BUKSH KHAN v. EMPEROR. 101 I.C. 187=8 A.I. Cr. R. 4=8 P. L. T. 393=28 Cr. L.J. 411=A. I. R. 1927 Pat. 408.

**—S. 73—Thumb impression of accused.**

—Section 73 specifically directs that any person present in Court may be directed to make a finger impression for the purpose of comparing it with any finger impression alleged to have been his. There is no exception made in favour of an accused person. Section 342, Criminal Procedure Code, does not prohibit the taking of the finger impression from an accused. (10 B. L. T. 32, *Overruled*).

Per *Young, Offg. C. J.*—Such a direction is specifically allowed by the Evidence Act and S. 342, Cr. P. Code, does not operate to prevent it.

Per *Heald, J.*—There is no possible connection between S. 73, Evidence Act and S. 342 of the Cr. P. Code.

Per *May Oung, J.*—There is nothing in common between the power to examine the accused under S. 342, Cr. P. Code, and the power to take his finger impression under S. 73, Evidence Act unless it can be held that by directing the accused to make his finger impression the Court is, in effect, compelling him to provide evidence against himself. (*Young, Offg. C. J., Heald and May Oung, JJ.*). EMPEROR v. NGA TUN HLAING. 83 I.C. 688=1 Rang. 759=2 Bur. L.J. 270=26 Cr. L. J. 108=A.I.R. 1924 Rang. 115 (F. B.).

**—S. 74—'Act' or 'Record of an Act.'**

—A circular by which the Director General of Post and Telegraphs notified that stamps of a certain kind would soon be issued to Post Offices for sale to the public was not an 'Act' or 'Record of an act' of a public officer within the meaning of S. 74 of the Evidence Act and the same was inadmissible in evidence. (*Reilly, J.*). VEDAYUDHAM PILLAI v. EMPEROR. 115 I.C. 509=1929 M.W.N. 193=30 Cr. L.J. 403.



**EVIDENCE ACT (1872), S. 74—Admissibility.****—S. 74—Admissibility.**

Document neither shown to be prepared by public servant nor shown as forming the act or record of public officer is inadmissible. (*Sen, J.*). *GOURI SHANKAR v. EMPEROR.*

120 I.C. 547=1930 A.L.J. 244=1930 Cr. C. 42=  
31 Cr.L.J. 133=A.I.R. 1930 All. 26.

**—S. 74—Dakhalnamah.**

A dakhalnamah is a public document and its copy is admissible without proof. 13 A. L. J. 935, *Foll.* (*Banerji, J.*). *SILA RAM v. EMPEROR.*

98 I.C. 471=7 L.R.A. Cr. 173=27 Cr. L.J. 1351=  
A.I.R. 1927 All. 52.

**—S. 74—Departmental enquiry.**

Departmental enquiry by a Magistrate in his executive capacity is not judicial enquiry and statements recorded therein is not evidence taken on oath. Such statements, therefore, are not public documents. (*Pearson and Patterson, JJ.*). *GOVERNMENT OF BENGAL v. SANTIBAM MONDAL.*

A.I.R. 1930 Cal. 370.

**—S. 74—Letters of officers.**

Magistrate sending an official memo to a Civil Surgeon to examine an accused and report his age—Civil Surgeon's report is not a record of "act" in official capacity—It is not admissible in evidence without formal proof. 20 Mad. 189, *Rel. on.* (*Gokaran Nath Misra, J.*). *ABDUL HALIM KHAN v. SOADAT ALI KHAN.*

108 I. C. 817=  
1 L. C. 733=A. I. R. 1928 Oudh 155.

**—S. 77—Reports.**

Execution of decree—Report of an officer of the Court, entrusted with the execution, is a public document and can be proved by a certified copy. (*Neave, A.J.C.*). *BALKU v. KING EMPEROR.*

81 I.C. 533=25 Cr.L.J. 917=  
A.I.R. 1925 Oudh 183.

**—S. 78—Order of Government.**

Circular issued by the Director-General of Post and Telegraphs notifying that stamps if a certain kind would soon be issued to post offices for sale to the public is not an order of Government within the meaning of S. 78 and the same is inadmissible in evidence. (*Reilly, J.*). *VELAYUDHAM PILLAI v. EMPEROR.*

115 I.C. 509=  
1929 M.W.N 193=30 Cr. L.J. 483.

**—S. 80—Confession.**

Confession recorded according to law is presumed to be genuine. (*Harrison and Jai Lal, JJ.*). *HARI RAM v. EMPEROR.*

89 I.C. 897=  
26 Cr. L.J. 1325=A.I.R. 1926 Lah. 122.

Confession containing memorandum under S. 164 (3)—Presumption under S. 80, Evidence Act, arises that all formalities have been performed—Court must be satisfied that confession was voluntarily made. (*Broadway and Addison, JJ.*). *PRATAP SINGH v. EMPEROR.*

93 I.C. 978=  
27 Cr. L.J. 514=6 Lah. 415=  
7 L.L.J. 482=A.I.R. 1925 Lah. 605.

**—S. 80—Scope.**

Section 80 does not deal with admissibility of documents—Only formal proof is dispensed with. (*Rankin, C.J., C. G. Ghose, Suhravardiy, Mukerji and Jack, JJ.*). *PADAM PRASHAD v. EMPEROR.*

119 I. C. 193=50 C.L.J. 106=33 C.W.N. 1121=  
30 Cr. L. J. 993=1929 Cr. C. 228=  
A.I.R. 1929 Cal. 617 (S.B.).

**—S. 81—Gazette.**

Under the provisions of S. 81 the genuineness of the Gazette must be presumed, though it is not formally reported at the trial. It is enough if the

**EVIDENCE ACT (1872), S. 105—Discharge of burden.**

Court has the Gazette before it. (*Efforde and Scott-Smith, JJ.*). *BAWA SARUP SINGH v. THE CROWN.*

88 I. C. 22=7 L. L. J. 264=26 Cr. L. J. 1078=  
26 P. L. R. 566=A. I. R. 1925 Lah. 299.

**—S. 81—Newspaper.**

Newspaper actually produced—Presumption of genuineness arises. (*Hillon, J.*). *RAM CHANDRA v. EMPEROR.*

120 I. C. 798=1930 Cr. C. 331=  
31 Cr. L. J. 168=A. I. R. 1930 Lah. 371.

Even if newspapers are admissible in evidence without formal proof, the paper itself is not proof of its contents. It would merely amount to an anonymous statement. (*Efforde and Scott-Smith, JJ.*). *BAWA SARUP SINGH v. THE CROWN.*

88 I. C. 22=7 L. L. J. 264=26 Cr. L. J. 1078=  
26 P. L. R. 566=A. I. R. 1925 Lah. 299.

**—S. 88—Evidentiary value.**

On the only evidence of telegrams, it cannot be presumed that they are issued from a particular person but they can be considered with the other evidence. (*Fawcett and Madgavkar, JJ.*). *EMPEROR v. ABDUL.*

91 I.C. 690=49 Bom. 878=  
27 Bom.L.R. 1373=27 Cr.L.J. 114.  
A.I.R. 1926 Bom. 71.

**—Ss. 101 to 103—Affirmation of fact—Service of summons.**

Person who alleges regular service of summons must prove it. (*Sanderson, C.J. and Rankin, J.*). *BENI MADHAB SAPIN v. JADU NATH SAPIN.*

94 I. C. 907=43 C.L.J. 113=27 Cr. L.J. 715=  
31 C.W.N. 148=A.I.R. 1926 Cal. 1208.

**—S. 105—Defamation.**

Where the statements made by the defendants are *per se* defamatory, the burden is on the defendant to prove that the allegations on which his comment was based are substantially true. The plaintiff should not be called upon to prove the quantum of damages: A. I. R. 1929 Sind 90 and *Devis v. Shepstone*, (1888) 55 L. J. P. C. 51, *Ref.* (*Rupchand, A. J. C.*). *MURLIDHAR v. NARAIN DAS.*

117 I. C. 155=A. I. R. 1929 Sind 172.

Prosecution must make out a case for conviction but the accused must prove that his case comes within exceptions: A.I.R. 1924 All. 299, *Dist. from.* (*Kinkhede, A. J. C.*). *SURAJMAL v. RAMNATH.*

105 I. C. 820=28 Cr. L. J. 996=  
9 A. I. Cr. R. 204=A. I. R. 1928 Nag. 58.

**—S. 105—Discharge of burden.**

Where prosecution itself has proved the exception, accused need not prove it. Section 105 says nothing about pleas but merely places burden of proof on the accused. (*Hallifax and Kotival, A.J.Cs.*). *MANGAL GAUDA v. EMPEROR.*

81 I.C. 901=25 Cr. L. J. 1077=  
A. I. R. 1925 Nag. 37.

Although under the Indian Evidence Act the burden of proving an exception under the Penal Code is on the accused person, it does not follow that the circumstances together with the accused person's statement cannot be sufficient evidence to establish the exception in his favour. (*Mukerji and King, JJ.*). *MANGALIA v. EMPEROR.*

98 I.C. 707=7 L.R.A. Cr. 187=  
27 Cr. L. J. 1395=A.I.R. 1927 All. 119.

**—S. 105—Infancy.**

No proof as to infancy and immaturity of understanding—Defence is not barred.

There is this difference between a child and a lunatic that the latter is not able to be tried unless he has regained sanity whereas the child may be tried while he is still a child. If a child commits an offence when he is unable to understand the



**EVIDENCE ACT (1872), S. 105—Insanity.**

nature of the offence, it can hardly be supposed that he will be able to understand that he must plead his own lack of understanding when placed upon his trial. He cannot be debarred from the defence allowed to him by S. 83 of the I. P. C., merely because of his ignorance of the Court procedure. Therefore, the question cannot be excluded from consideration by the jury notwithstanding that no proof may have been adduced on the point. (*Pullan, A. J. C.*). **EMPEROR v. ALI RAZA.**

84 I.C. 454=26 Cr. L.J. 310=  
28 O. C. 69=A.I.R. 1925 Oudh 311.

**—S. 105—Insanity.**

—*Penal Code, S. 84.*

Where the evidence as to the insanity of accused is conflicting, the accused should be convicted as on him lies the burden of proving insanity which in the case of conflicting evidence cannot be said to be sufficiently discharged. (*Daniels, J.*). **CHANDU LAL v. THE CROWN.**

77 I.C. 236=  
21 A.L.J. 776=4 L.R.A. Cr. 234=  
25 Cr. L.J. 348=A.I.R. 1924 All. 186.

**—S. 105—Plea of justifiable homicide.**

—*Causing death to burglar—Onus.*

Where it appeared that a thief was killed with lathi blows by the inmates of the house when the thief was trying to escape through a hole,

*Held*, that the burden of proving that the death was justifiable homicide lay upon the persons who were proved to have dealt the blows. (*Raza and Nanavutty, JJ.*). **MAHABIR v. EMPEROR.**

7 O.W.N. 797=1930 Cr. C. 948=  
A.I.R. 1930 Oudh 408.

**—S. 105—Provocation.**

—Accused must prove that his case came within the Exception 1 to S. 300 of the Penal Code and the Court is bound to presume the absence of any such case. (*Broadway and Campbell, JJ.*). **KAKAR SINGH v. THE CROWN.**

81 I.C. 717=  
25 Cr. L.J. 1005=6 L.L.J. 575=  
A.I.R. 1924 Lah. 733.

**—S. 105—Self-defence.**

—It lies upon the person bringing the plea of self-defence to establish the circumstances under which each blow that causes an injury to a member of the opposite party is inflicted. (*Tek Chand, J.*). **HAZUBA SING v. EMPEROR.**

104 I.C. 454=  
28 Cr. L.J. 838=A.I.R. 1927 Lah. 786.

**—S. 106—Knowledge of facts.**

—Assistant Manager of a Press cannot be presumed to have knowledge of every job printing done in the press—Especially where consequences of the knowledge are grave, stricter proof than assumption is necessary. (*Darwood, J.*). **CHELLAM PILLAI v. EMPEROR.**

117 I. C. 49=  
30 Cr. L. J. 707=A.I.R. 1928 Rang. 276.

**—S. 106—Misappropriation by servant.**

—It is settled law that where property is entrusted to a servant, it is the duty of the servant to give a true account of what he does with the property so entrusted to him. If such a servant fails to return the property or to account or gives an account which is shown to be false and incredible, it is ordinarily a reasonable inference that he has criminally misappropriated the property so entrusted to him and dishonestly converted it to his own use. (*Lentaigne, J.*). **SONA MEAH v. EMPEROR.**

84 I.C. 331=2 Rang. 476=  
26 Cr. L.J. 267=A.I.R. 1925 Rang. 47,

Cr. D.—97

**EVIDENCE ACT (1872), S. 114—Criminal trial.****—S. 106—Shifting of burden.**

—Where it is proved that thefts occurred at quite different dates the presumption is that the stolen property passed from the hands of the thief to the receiver at different dates also. The burden is then shifted from the Crown to the accused to prove that that he received it at one time only in a case where the accused is charged separately of offences of receiving stolen property. (*Kincaid, J. C. and Kennedy, Ag. J. C.*). **GHULAMO v. EMPEROR.**

96 I.C. 120=27 Cr. L.J. 872 (Sind).

**—S. 109—Nafargats.**

—The Nafargats only prove a chain of cultivators in succession, but they do not in themselves prove whether each successor came upon the land under a derivative title or independently of the landlord. So long as each cultivator held the land, there might arise a presumption under S. 109 of the Evidence Act that his tenancy had a continuance, but there is no presumption that his successor is necessarily a transferee from him. (*Kinkhede, A.J.C.*). **RAMCHAND v. SHRI RATNANATH SAUN SHAN OF BHAR.**

98 I.C. 674=A.I.R. 1927 Nag. 99.

**—S. 112—Validity of marriage.**

—Validity of marriage established—Legitimacy of child is presumed. (*Curgenven, J.*). **NARAYAN NAIR v. MANIKATH KULLAPPURA VETTEL BHARGAVI AMMA.**

100 I.C. 123=38 M.L.T. 39=  
25 M.L.W. 151=28 Cr. L.J. 251=  
7 A.I. Cr. R. 351=A.I.R. 1927 Mad. 361=  
52 M.L.J. 118.

**—S. 112—Void divorce.**

—Where divorce in the sense of a legal dissolution of the marriage, has not taken place, a child born must be taken to be born during the continuance of a valid marriage between a woman and her husband. (*Curgenven, J.*). **M. KANNIAPPAN v. KULLAMMAL.**

1930 Cr. C. 88=1929 M.W.N. 696=  
2 M. Cr. C. 275=A.I.R. 1930 Mad. 194.

**—S. 114—Common course of events.**

—*Food partaken at evening meal by husband.*

It is a violent presumption drawn from one's knowledge of human nature and of Indian village life which it is the duty of a tribunal in a case of dhatura poisoning to apply, namely, that the food partaken at the evening meal by a husband in an ordinary constituted house is prepared for him and served to him by his wife. (*Walsh and Pullan, JJ.*). **EMPEROR v. MT. HAR PIARL.**

97 I.C. 44=  
49 All. 57=24 A.L.J. 958=27 Cr. L.J. 1068=  
7 L.R.A. Cr. 156=A.I.R. 1926 All. 737.

—The fact that a man is arrested in the district where an offence has been committed many months after its commission does not in any way lead to any inference against him. (*Scott-Smith and Fforde, JJ.*). **MANSHA SINGH v. CROWN.**

86 I.C. 347=7 L. L. J. 51=  
26 Cr. L.J. 763=A. I. R. 1925 Lah. 371.

**—S. 114—Criminal trial.**

—Person carrying in his cart dacoits, one of whom being injured and having blood-stains on clothes soon after dacoity—Unless he explains circumstances presumption is that he knew of part taken by those persons in dacoity and that one injured was injured in dacoity. (*Boys and Young, JJ.*). **EMPEROR v. KANHAIYA.**

124 I.C. 553=  
A.I.R. 1930 All. 481.

—Evidence of eye-witnesses not on good terms with accused should not be relied upon unless corroborated. (*Hilton, J.*). **BHARTU v. EMPEROR.**

30 P.L.R. 562=A. I. R. 1930 Lah. 314.

**EVIDENCE ACT (1872), S. 114—Criminal trial.**

Where the prosecution witnesses are found to be untruthful as to the greater part of their evidence, it is dangerous to convict the accused on the residue without corroboration: 42 Cal. 784, *Foll.* (*Nanavutti and Raza, JJ.*). **GENDAN LAL v. EMPEROR.** A.I.R. 1930 Oudh 460.

**—Agent Provocateur as witness.**

The evidence of an agent provocateur is looked upon with suspicion and should be seldom relied upon in support of a conviction. (*Agha Haidar, J.*). **HAZURA SINGH v. EMPEROR.**

118 I.C. 544 = 11 L.L.J. 58 =  
30 Cr. L.J. 941 = 30 P.L.R. 603 =  
1929 Cr. C. 3 = A.I.R. 1929 Lah. 436.

**—Approver's evidence—Corroboration—Nature of—Mere presence of person at the scene—Whether sufficient.**

The corroboration that is required in connection with the approver's testimony is corroboration of the material facts which go to connect the accused with the commission of the offence. The mere presence of a person in the house is not such a corroboration. (*Beasley, C. J. and Ananthakrishna Iyer, J.*). **ABBOI NAIDU v. EMPEROR.**

1929 M.W.N. 698.

**—Witnesses relations of co-accused.**

Where four men are suspected and relatives of three try to implicate the fourth alone who is a stranger, they are naturally suspected of bias and the principle universally adopted in the case of co-accused comes into play and a Court should require some independent corroboration before accepting the evidence. (*Barlee, J.C. and Kalumal, A.J.C.*). **EMPEROR v. PANJAL.**

1929 Cr. C. 539 =  
A.I.R. 1929 Sind 245.

Butcher without license importing meat in quantities more than required for his personal use and distributing it—No proof of receiving money—Presumption that he actually imported meat and sold it is justified. (*Barlee, J.C. and Kalumal Phalumal, A.J.C.*). **MAHOMEDDIN v. EMPEROR.**

118 I.C. 223 = 1929 Cr. C. 318 = 30 Cr. L.J. 906 =

A.I.R. 1929 Sind 150.

Conviction should not be based on the evidence of witnesses who are bitter enemies of the accused unless it is supported by the evidence of reliable and disinterested witnesses. (*Shadi Lal, C.J. and Agha Haidar, J.*). **DALIP SINGH v. EMPEROR.**

99 I. C. 75 = 28 Cr. L.J. 43 =  
A.I.R. 1927 Lah. 874.

In a criminal case Courts are not permitted to proceed upon an assumption that accused actually did what they were required by the rules to do. (*Cuming and Mukerji, JJ.*). **PRAFULLA KUMAR ROY v. EMPEROR.**

91 I. C. 383 =  
30 C.W.N. 94 = 27 Cr. L.J. 147 =

A.I.R. 1926 Cal. 345.

An attempt to fabricate false evidence of *alibi* would be a very strong piece of evidence against the accused if his connection with such attempt had been established. But where the attempt was proved only against his co-accused no such connection should be presumed. (*Shadi Lal, C. J. and Jai Lal, J.*). **MAJHI v. EMPEROR.**

86 I.C. 344 = 7 L.L.J. 48 = 26 Cr. L.J. 760 =

A.I.R. 1925 Lah. 323.

**Penal Code, S. 408—Servant—Failure to account properly for property entrusted—Presumption of misappropriation.**

It is settled law that where property is entrusted to a servant, it is the duty of the servant to give a true account of what he does with the property so entrusted to him. If such a servant fails

**EVIDENCE ACT (1872), S. 114—Murder.**

to return the property or to account or gives an account which is shown to be false and incredible, it is ordinarily a reasonable inference that he has criminally misappropriated the property so entrusted to him and dishonestly converted it to his own use. In such cases the Courts are entitled to draw hostile inferences and presumptions from the action and statement of the servant. (*Lientaigne, J.*). **SONA MEAH v. EMPEROR.**

84 I.C. 331 =  
2 Rang. 476 = 26 Cr. L.J. 267 =  
A.I.R. 1925 Rang. 47.

**—Possession of cocaine.**

Where cocaine was found in certain pots containing grain in a Bania's shop where the accused who were brothers were serving habitually in the shop.

*Held*, that they must have been daily handling the pots in question and that therefore the finding that both of them must have been aware of the existence of the cocaine in the pot is justifiable. 20 A. L. J. 162; 77 I. C. 447, *Dist.* (*Boys, J.*). **GANESH v. KING EMPEROR.**

83 I.C. 892 =  
5 L.R.A. Cr. 136 = 26 Cr. L.J. 183 =  
A.I.R. 1924 All. 776.

**—S. 114—Documents—Insured cover.**

The mere fact that a cover insured for a certain amount is sent, raises no presumption in law that that cover contains the necessary amount of Government currency notes. (*Sulaiman, J.*). **TULA RAM v. EMPEROR.**

83 I.C. 993 = 21 A.L.J. 865 =  
5 L.R.A. Cr. 15 = 26 Cr. L.J. 209 =  
A.I.R. 1924 All. 205.

**—S. 114—Human conduct.**

Where a person is at liberty to stop something being done in his house and is proved not to do so the presumption is that he is an accessory to the doing of that thing and he may be held to be in possession of the materials used in the doing of it. (*Ashworth, A. J. C.*). **MAI KU v. EMPEROR.**

86 I. C. 707 = 26 Cr. L.J. 851 =  
A. I. R. 1925 Oudh 684.

**—S. 114—Murder.**

**Murder by some dacoits of person running from scene of dacoity—Murder not in furtherance of common intention.**

It can hardly be natural that the common intention of all the persons who took part in the robbery was to murder not only persons who resisted them in the execution of the robbery but also to murder the persons who ran away from the scene of the robbery and therefore a murder of a person running from the scene of robbery cannot be said to be in furtherance of the common intention of dacoits. (*Harrison and Dalip Singh, JJ.*). **KARAM DIN v. EMPEROR.**

115 I.C. 1 = 30 Cr. L.J. 385 =  
A.I.R. 1929 Lah. 338.

The trial Judge rejected evidence about three objects, an umbrella, a stick and a bundle said to have been pointed out by the accused, as being in the well where the body of the dead man was found. This was not the exclusive evidence against the accused but there was other considerable evidence also.

*Held*, that the Judge should not have rejected the evidence. A.I.R. 1926 Mad. 688, *Dist.* (*Coutts-Trotter, C.J. and Walsh, J.*). **PUBLIC PROSECUTOR v. CHANDAYA SHETTY.**

2 M. Cr. C. 56 =  
A.I.R. 1929 Mad. 92.

Person knowing of his wife's murder but making no report to police nor trying to find out murderer—His conduct may lead to conclusion

**EVIDENCE ACT (1872), S. 114—Murder.**

that he was murderer. (*Raza and Pullan, JJ.*).  
**BHAGWAN v. EMPEROR.** 116 I.C. 193=  
 6 O.W.N. 218=30 Cr. L. J. 567=  
 12 A.I. Cr. R. 420=4 Luck. 679=  
 A. I. R. 1929 Oudh 190.

—*Poisoning by members—Presumption when arises.*

A violent presumption that the deceased was poisoned by the members of the family arises, perhaps one of the strongest presumptions known to the law, when a man dies in his own house surrounded by his own family, and poisoned shortly after eating food which must have been prepared for him by his wife, and no explanation is forthcoming from the occupants of the household as to what had happened to him to cause his death, and where, in addition to such violent presumption, the persons accused are proved to have been guilty of persistent lying in an attempt to account for the absence of the deceased, and are also shown to have hidden the corpse to save themselves, the presumption becomes a certainty. (*Walsh and Pullan, JJ.*). **EMPEROR v. MT. HAR PIARI.** 97 I.C. 44=49 All. 57=  
 24 A.L.J. 958=27 Cr. L. J. 1063=  
 7 L.R. A. Cr. 156 = A.I.R. 1926 All. 737.

—*Charge of murder and theft—Possession of stolen property not explained—Accused cannot be presumed to have committed murder.*

When the charge is that the accused committed murder or theft in a building or both, it is not legitimate to presume that the accused are guilty of the more serious offence of murder because they are unable or unwilling to explain their possession of stolen property, and when the unexplained possession of stolen property is the only circumstance appearing in the evidence against an accused they cannot be convicted of murder unless the Court is satisfied that possession of the property could not have been transferred from the deceased to the accused except by the former being murdered. (*Spencer, J.*). **SOGIAMUTHU PADAYACHI, In re.** 93 I.C. 42=50 Mad. 274=  
 27 Cr. L. J. 394=A. I. R. 1926 Mad. 638.

**—S. 114—Retracted confession.**

—It is not absolute rule of law that retracted confession cannot be accepted without corroborative evidence—But where corroborative evidence does not show beyond reasonable doubt that accused is guilty he should be given benefit of doubt. (*Adams and Scroope, JJ.*). **BHAGWAN DAS BHAGAT v. EMPEROR.** A.I.R. 1930 Pat. 289.

—*Rule as to.*

In a proper case a Court may act upon retracted confession alone, but the rule of prudence and safety is to require generally that such confessions should be corroborated in material particulars by some reliable evidence before an accused person is convicted. (*Courtney-Terrell, C. J. and Fazl Ali, J.*). **KUNJA SUBUDHI v. EMPEROR.**

116 I. C. 770=8 Pat. 289=10 P. L. T. 549=  
 30 Cr. L. J. 675=1929 Cr. C. 62=  
 13 A.I. Cr. R. 143=A.I.R. 1929 Pat. 275.

**—S. 114—Miscellaneous.**

—*Omission to presume is no ground for revision.*  
 A Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it; but it cannot be taken to be a principle of law that the Court must presume it, and if the Court does not make such a presumption under the circumstances of a case, it is no ground for interfering in

**EVIDENCE ACT (1872), S. 114, III. (a)—Guilty knowledge.**

revision. (*Pullan, J.*). **ADITYA PRASAD SINGH v. EMPEROR.** 103 I.C. 560=1 L.C. 195=  
 28 Cr. L. J. 704=8 A.I. Cr. R. 414=  
 A.I.R. 1927 Oudh 318.

**—S. 114, III. (a)—Burden of proof.**

—*Long lapse of time between theft and discovery of stolen property.*

Where there is long lapse of time between the theft and the discovery of the stolen property (in this case over 15 months), the onus of proving innocent possession should not be cast on the accused. 62 P. L. R. 1916, *Rel. on.* (*Fforde, J.*). **NARAIN SINGH v. EMPEROR.** 108 I. C. 912=  
 29 Cr. L. J. 464=29 P. L. R. 441=  
 A. I. R. 1928 Lah. 687.

—*Criminal case—Onus never changes.*

In a criminal case the onus is on the prosecution to prove beyond reasonable doubt the guilt of the accused. The onus never changes.

Where the Judge stated in his direction to the jury regarding Evidence Act, S. 114, III. (a) that if the property was proved or reasonably presumed to be stolen property, the onus would shift to the accused to show that he acquired the property in an innocent manner,

*Held*, that it was a misdirection: 31 C. L. J. 810 and 1914 Cr. App. R. 45, *Foll.* (*Newbould and Mukerji, JJ.*). **SATYA CHARAN MANNA v. EMPEROR.** 88 I. C. 515=52 Cal. 223=  
 26 Cr. L. J. 1155=A. I. R. 1925 Cal. 666.

**—S. 114, III. (a)—Dacoity.**

—*Presumption relates to offence of dacoity also.*

The Presumption not confined to charges of theft but extends to all charges, however penal, not excluding even murder. Consequently where a person charged with dacoity is shown to have been in possession of part of stolen property soon after the dacoity it may be presumed that he was one of the dacoits or he received the property knowing it to have been stolen at the dacoity: 13 Mad. 426, *Ref.* (*Macpherson and Davie, JJ.*). **RAMSARUP SINGH v. EMPEROR.**

A. I. R. 1930 Pat. 513.

**—S. 114, III. (a)—Grounds for presumption.**

—*Accused showing place where stolen property is concealed—When a ground.*

The mere fact that an accused person points out the place in which stolen property is concealed does not give rise to any presumption under S. 114, or justify his conviction of the offence of receiving stolen property, still less of the offence of theft or dacoity. But if such property is produced from the house of the accused person a presumption would arise under S. 114, III. (a), that the accused was either the thief or had received the goods knowing them to be stolen unless he can account for his possession of the stolen articles: 17 All. 576, *Ref.* (*Mirza and Broomfield, JJ.*). **EMPEROR v. SHIV-PUTRAYA BASLINGAYA.** 32 Bom. L. R. 574=  
 A. I. R. 1930 Bom. 244.

**—S. 114, III. (a)—Guilty knowledge.**

—*Articles of ordinary type found 2½ years after theft—No presumption.*

2½ years before the discovery, at the house of accused, of the articles (four silver ornaments of ordinary type worth Rs. 100) these had been removed from the houses of the two complainants by means of a dacoity. The accused was a goldsmith by caste and profession and when asked, he explained that he himself had made them for his wife. The articles were found, except in one case, on the person of the wife of the accused,

**EVIDENCE ACT (1872), S. 114, III. (a)—Misdirection to jury.**

*Held*, that the accused cannot be presumed to be in possession of the articles with guilty knowledge: 29 All. 138, *Foll.* (*Mukerji, J.*). *CHHOTY LAL v. EMPEROR.* 85 I. C. 722=26 Cr. L. J. 578=5 L. R. A. Cr. 199=A.I.R. 1925 All. 220.

**—S. 114, III. (a)—Misdirection to jury.**

—Before a presumption under S. 114 (a) can arise, it must be proved that the goods found in the possession of the accused have been stolen. No such presumption will arise in a case when it may reasonably be presumed that the property in question is stolen property. A direction to the jury that the presence of a reasonable presumption of the property being stolen property is enough to raise the presumption of guilt, is misdirection. (*Newbould and Mukerji, JJ.*). *SATYA CHARAN MANNA v. EMPEROR.* 88 I. C. 515=26 Cr. L. J. 1155=52 Cal. 223=A.I.R. 1925 Cal. 666.

**—S. 114, III. (a)—Nature of possession.**

—In order to raise legitimately the presumption of theft, the possession of stolen property should be exclusive as well as recent. (*Rupchand Bilaram and De Souza, A. J. Cs.*). *MATARO v. EMPEROR.* 111 I. C. 732=29 Cr. L. J. 924=23 S.L.R. 5=A.I.R. 1929 Sind 9.

**—S. 114, III. (a)—Possession.**

—From the mere fact that the articles were discovered in accused's possession soon after the theft the Judges did not draw the presumption that accused was the thief himself. (*Sulaiman, J.*). *YAMINI v. EMPEROR.* 83 I. C. 705=5 L. R. A. Cr. 81=26 Cr. L. J. 145=A.I.R. 1924 All. 701.

**—S. 114, III. (a)—Possession following theft.**

—When a person is found in possession of stolen articles soon after the theft, the law presumes that such person must either be the thief or the receiver of the stolen goods. The identity of the stolen articles being established, the identity of the thief or the receiver of the stolen goods is presumed to be established. (*Rasa and Nanavutty, JJ.*). *HAZARI v. EMPEROR.* 7 O.W.N. 527=A.I.R. 1930 Oudh 353.

—The fact that a person is found in possession of the stolen property shortly after the theft raises the presumption that he took part in the theft. (*Adami and Scroope, JJ.*). *KHALIR JAMA KHAN v. EMPEROR.* 123 I. C. 393=31 Cr. L. J. 492=1930 Cr. C. 767=A.I.R. 1930 Pat. 385.

**—S. 114, III. (a)—Possession not immediate.**

—Possession of stolen property 19 months after theft raises no presumption that the holder thereof was either the thief or received the goods knowing them to be stolen: 22 C.W.N. 597; 11 M.L.W. 48 and 22 Cr. L. J. 595, *Foll.* (*Addison, J.*). *NAGLI v. EMPEROR.* 95 I. C. 471=27 Cr. L. J. 807=A.I.R. 1926 Lah. 528.

—Where the accused was found possessed of stolen goods several months after the theft and at a place several miles away from the place of occurrence no presumption that he is either the thief or a receiver of stolen property arises and the *onus* is not on the accused to explain how he got the property and the prosecution cannot succeed by proving the defence to be false. (*Campbell, J.*). *ALIA v. EMPEROR.* 91 I. C. 544=27 Cr. L. J. 112=A.I.R. 1926 Lah. 272.

—No presumption arises out of mere possession of stolen articles 12 years after they were

**EVIDENCE ACT (1872), S. 114, III. (b)—'Accomplice', who is.**

stolen: A.I.R. 1926 Lah. 528, *Foll.* (*Coldstream, J.*). *MANGAL v. EMPEROR.* 96 I. C. 650=27 Cr. L. J. 986 (Lah.).

—Possession of property 2 years after loss—Refusal to answer as to source—Adverse inference is justified.

Though usually a Court is not justified in drawing the presumption of guilty knowledge from possession of property such as jewellery nearly two years after the property had been stolen or otherwise lost to the real owner, the Court is always entitled to request the possessor to disclose the name of the person from whom he had obtained the articles and the particulars as to the origin of the possession and the Court is entitled to draw unfavourable inferences, if the accused refuses to disclose such facts or gives an explanation which can be shown to be false. (*Lentaigne, J.*). *RAM PERSHAD v. KING EMPEROR.* 81 I. C. 443=2 Rang. 80=25 Cr. L. J. 907=A.I.R. 1924 Rang. 256.

**—S. 114, III. (a)—Recent possession.**

—What amounts to recent possession depends on facts of each case.

The question as to what amounts to recent possession sufficient to justify the presumption of guilt in any particular case, varies according as the stolen article is, or is not, calculated to readily pass from hand to hand: A.I.R. 1926 Lah. 528; 11 M.L.W. 48; A.I.R. 1921 Lah. 89 and 22 C.W.N. 597, *Rel. on.* But the strength and nature of such presumption must vary according to the seriousness of the offence and the nature of the property involved. (*Kimkhede, A. J. C.*). *NECHA v. EMPEROR.* 109 I. C. 801=11 N.L.J. 104=29 Cr. L. J. 609=10 A.I. Cr. R. 340=A.I.R. 1928 Nag. 213.

**—S. 114, III. (a)—Time limit.**

—No time limit can be fixed.

No fixed time-limit can be laid down to determine whether possession of articles is recent or otherwise. But every case must be judged on its own facts. If a few stolen articles were found in possession of a person under circumstances which may give rise to the probability of his coming by them honestly some time after the theft the presumption under the law might not arise against him. (*Suhrawardy and Panton, JJ.*). *EMPEROR v. EKABBAE.* 94 I. C. 361=27 Cr. L. J. 617=A.I.R. 1926 Cal. 925.

**—S. 114, III. (b).**

'Accomplice', who is.

Corroboration, extent and nature.

'Corroboration', what is.

Retracted confession.

Value of accomplice's evidence.

Value of approver's evidence.

Miscellaneous.

**—S. 114, III. (b)—'Accomplice', who is.**

—Witnesses who admittedly had witnessed the crime, who have assisted in concealing the evidence of that crime or at least connived at such being done and who have not attempted to give any information either to the police or to any other person to enable the offender to be brought to justice are in a very little better position than that of accomplices. (*Eforde and Hilton, JJ.*). *HAYATU v. EMPEROR.* 120 I. C. 190=31 Cr. L. J. 50=1929 Cr. C. 87=A. I. R. 1929 Lah. 540.

—Witness, accused's paramour and assisting him to put murdered man on bed and covering him with chadar.

Where the witness was the accused's paramour, and on her own admission accompanied,

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him to the scene of the murder and waited outside the hut while the accused went in and murdered the husband of the witness and then covered him with a chadar and where after that, she returned to the village and shut herself up in her house and gave no information to any one until the next morning when she told one of the P. Ws. privately what had happened,

*Held*, that in these circumstances she was, to all intents and purposes, an accomplice of the murderer. (*Scott-Smith and Fforde, JJ.*). **BAHAWALA v. CROWN.**

88 I.C. 854=6 Lah. 183=  
26 P. L. R. 331=26 Cr. L. J. 1238=  
A.I.R. 1925 Lah. 432.

**—S. 114, III. (b) — Corroboration, extent and nature.**

—Where the case against accused depends on the view taken as to the corroboration of the approver's story in material particulars, and whether it is such, taken along with the other facts and circumstances, that it can be relied upon as bringing home the guilt for the crime, the corroboration of the approver's story requires most careful investigation upon the question of the identity of the accused persons as participants in the occurrence. (*Pearson and Mullick, JJ.*). **MANOHAR MANDAL v. EMPEROR.**

1930 Cr. C. 657=  
A. I. R. 1930 Cal. 430.

—Although it is not illegal to convict on the uncorroborated evidence of an accomplice, a conviction on the uncorroborated evidence of an accomplice is rarely justifiable. The evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime, but the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connexion with the crime. (*Raza and Nanavutty, JJ.*). **HAZARI v. EMPEROR.**

7 O. W. N. 527=  
A.I.R. 1930 Oudh 353.

—Several accused—Corroboration as regards each accused—If necessary.

Per *Staples, A. J. C.*—It is true that an approver's story should be corroborated not only as regards the facts of the case but also as regards the identity of the accused, but where there are several accused and the story of the approver has been confirmed on many points, and as regards the identity of several of the accused, it should not be considered necessary that his story should be corroborated as regards the identity of the remaining accused unless there are reasons for believing that the approver has named those other accused on account of personal spite or for some other reason. The real test of the evidence of the approver is whether it has been believed or not and when it has been corroborated on many points and has not been shown to be false in any particular it should be accepted; and when once it has been accepted as a whole, corroboration as regards the identity of each of several accused should not be demanded. A.I.R. 1921 Nag. 89; 9 All. 528, *Expl.*; *Rea v. Baskerville*, (1916) 2 K. B. 658, *Dist.*

(Per *Jackson and Subhedar, A.J.Cs.*)—Even where there are several accused persons, an approver's story to be corroborated as regards a particular accused must be corroborated on some point which implicates that accused. It is not necessary that it should be corroborated on all points relating to him, but there must be some guarantee that his evidence is true as regards that particular

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accused. A. I. R. 1921 Nag. 89, *Rel. on*; 14 Bom. 331; A.I.R. 1922 Nag. 172; A. I. R. 1925 Nag. 78, *Appl.* (*Jackson, A.J.C. on difference between Staples and Subhedar, A.J.Cs.*). **DOULAT v. EMPEROR.**

120 I.C. 721=31 Cr. L. J. 153=  
A.I.R. 1930 Nag. 97.

—It is not all evidence corroborating the accomplice's story, which comes within the rule requiring corroboration. The corroboration indicated in S. 114, III. (b), is corroboration in material particulars and these particulars must be such as to connect or identify each of the accused with the offence. [*Rea v. Baskerville*, (1916) 2 K. B. 658.] It is not necessary that the accomplice should be corroborated in every material particular. (*Cumming and Lort-Williams, JJ.*). **REBATI MOHAN v. EMPEROR.**

115 I.C. 258=32 C.W.N. 945=  
56 Cal. 150=30 Cr. L.J. 435=

12 A. I. Cr. R. 265=A.I.R. 1929 Cal. 57.

—The extent of corroboration which a Court demands naturally varies with the circumstances of each case, including the character and antecedents of the approver and the degree of suspicion attached to his evidence. (*Bhide and Johnstone, JJ.*). **HAKAM SINGH v. EMPEROR.**

1929 Cr. C. 626=A.I.R. 1929 Lah. 850.

—Corroboration need not necessarily consist of direct evidence that the accused committed the crime; it is sufficient even if it consists of circumstantial evidence of his connexion with the crime. *Rea v. Baskerville*, (1916) 2 K.B. 658; *Rea v. Marks Feigenbaum*, (1919) 1 K. B. 481, *Rel. on and Expl.* (*Bhide and Johnstone, JJ.*). **HAKIM SINGH v. EMPEROR.** 1929 Cr. C. 626=A.I.R. 1929 Lah. 850.

—Corroborative evidence itself need not be sufficient to base conviction on—Independent evidence showing in material points that the story of the accomplice is true, is sufficient corroboration.

The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged and it would be in a high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice, that the accused committed the crime, is true not merely that the crime has been committed, but that it was committed by the accused. The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connexion with the crime.

Corroborative evidence need not be sufficient in itself to base a conviction on. Confirmation of the story of an accomplice does not mean that there should be independent evidence of the accomplice's account of the crime itself. What the law clearly requires is that some relevant and material part of the approver's story incriminating the accused should have support from an independent source. This supplies a test of the truth of the accomplice's narrative as a whole by checking it in some relevant portion. *Rea v. Baskerville*, (1916) 2 K. B. 658, *Foll.* (*Fforde, J. on difference between Aga Haidar and Broadway, JJ.*). **BAR-KATI v. EMPEROR.** 103 I.C. 49=28 Cr.L.J. 625=8 A.I.Gr. R. 273=A.I.R. 1927 Lah. 581.

—Corroboration must go to the guilt of each accused separately.

An accomplice is unworthy of credit, unless he is corroborated in material particulars. The corroboration must go to the guilt of each of the accused



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separately. 8 All. 306, *Foll.* It must be such as to satisfy the Court that the approver has not substituted the name of one or more of the accused for that of some other person, possibly a particular friend of his own, who actually took part in the offence. The rule is not absolute: 9 All. 528, *Ref.* But it is only in exceptional cases that the corroboration can be dispensed with. (*Simpson and Gokaran Nath Misra, A. J. Cs.*). SHEO NARAIN SINGH v. KING EMPEROR.

89 I.C. 261=12 O. L. J. 429=26 Cr. L.J. 1317=  
A.I.R. 1925 Oudh 715.

**—S. 114, III. (b)—‘Corroboration,’ what is.**

—To use the statement of an approver in such a way as to convict an accused on its strength, care should be taken to see that it is corroborated in material particulars so as to induce one to an inference that the accused were connected with and guilty of the offence. (*Bhide and Fforde, J.J.*). NATHU LABHA v. EMPEROR. 114 I.C. 326=

30 Cr. L.J. 292=12 A.I. Gr. R. 223=  
A.I.R. 1929 Lah. 680.

—An approver's evidence is unworthy of credit unless corroborated in material particulars. And where the only corroborating evidence is that of the approver's son, who repeats parrot-like what he is tutored to say, it is not safe to convict a person. (*Zafar Ali and Bhide, J.J.*). MEHR SINGH v. EMPEROR. 122 I.C. 91=11 L.L.J. 223=

30 P. L. R. 422=1929 Cr. G. 149=  
A. I. R. 1929 Lah. 587.

—Where the evidence of an approver is principally on the question of conspiracy and where that evidence is sought to be corroborated by the evidence of the confessing accused, it amounts to this that one tainted piece of evidence is sought to be corroborated by another tainted piece of evidence and would not justify the conviction of co-accused. (*C. C. Ghose and Jack, J.J.*). LATAFAT HOSSAIN v. EMPEROR. 116 I.C. 174=

30 Cr. L.J. 586=12 A.I. Gr. R. 460=  
33 C. W. N. 58=A.I.R. 1928 Cal. 745.

—The evidence of an accused person's conduct may be used as corroboration of an approver's story: *R. v. Feigunbaum*, (1919) 1 K.B. 481, *Rel. on.* (*Addison and Coldstream, J.J.*). CHATRU MALIK v. EMPEROR. 111 I.C. 435=29 Cr. L.J. 851=

10 Lah. 265=11 A.I. Gr. R. 171=  
31 P.L.R. 41=A. I. R. 1928 Lah. 681.

—The production of stolen property by an accused person even from a place which is not in his own possession may be accepted as material corroboration of the evidence of an accomplice who has deposed that the accused joined him in committing the burglary or theft: A.I.R. 1928 Lah. 335, *Foll.* (*Coldstream, J.*). MUHAMMAD v. EMPEROR. 111 I. C. 447=29 Cr. L. J. 863=

11 A. I. Gr. R. 198.

**—Approver's story.**

The mere fact that the approver produced a spear and a dang from a field and he stated that the spear was used by the accused is not corroboration of the approver's story: so also the fact that the accused was stained with human blood, does not corroborate the approver's story. (*Fforde, J.*). CHANAN SINGH v. KING EMPEROR. 99 I.C. 929=

8 L.L.J. 810=28 P.L.R. 39=28 Cr. L. J. 193=  
7 A. I. Gr. R. 173=A.I.R. 1927 Lah. 78.

—Existence of a motive for the offence is not sufficient.

The existence of general hostility, general enmity and a desire, however strong, or a motive, however

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effective, to procure the death of another person may be a piece of circumstantial evidence, but is not corroboration of a sworn statement of participation in a particular crime. Corroboration must point indubitably to the identification of the person charged with the particular act with which the direct evidence connects him. (*Walsh and Dalal, J.J.*). KALWA v. EMPEROR.

95 I.C. 74=48 All. 409=  
24 A.L.J. 410=7 L.R.A. Gr. 105=  
27 Cr. L.J. 746=A. I. R. 1926 All. 377.

—Where an approver gave evidence that the deceased had been put to death by the accused and himself for the sake of his ornaments, and a witness deposed that the accused was seen talking to the deceased on the evening on which he disappeared,

*Held*, that the deposition of the witness did not amount to a material corroboration of the approver's statement. (*Scott-Smith and Zafar Ali, J.J.*). EMPEROR v. RAM KARAN. 88 I. C. 453=

7 L.L.J. 528=26 Cr. L.J. 1141=  
26 P.L.R. 295=A.I.R. 1925 Lah. 600.

—Stolen property being found in possession of accused is sufficient corroboration. (*Zafar Ali, J.*). MAULA DAD v. EMPEROR. 86 I.C. 69=

26 Cr. L.J. 693=26 P.L.R. 40=  
A. I. R. 1925 Lah. 426.

**—Dacoity.**

In a dacoity case, where an approver gives evidence, the fact that on some day previous to the dacoity, the accused were seen together at a place other than that at which the dacoity took place is not such corroboration of the approver's evidence as to justify the conviction of the accused. (*Zafar Ali, J.*). MAULA DAD v. EMPEROR. 86 I.C. 69=

26 Cr.L.J. 693=26 P. L. R. 40=  
A.I.R. 1925 Lah. 426.

—Evidence of motive is not corroboration of any of the incidents of the crime. 180 C. 247, *Ref.* (*Dalal and Cuming, A.J.Cs.*). SHEO AMBAR v. EMPEROR. 77 I.C. 439=25 Cr.L.J. 391=

A.I.R. 1925 Oudh 295.

**—S. 114, III. (b)—Retracted confession.**

—Conclusive against himself but is only evidence against other co-accused.

Where a confession does not appear to have been tutored nor made under the influence of drugs or fear but is one which adds to the knowledge which was then available as to the cause of death in many particulars and has not been contradicted by anything and thus appears to be in the evidence a true confession, it is sufficient, without any corroborative evidence, for the conviction of the maker though retracted. A.I.R. 1927 Oudh 17, *Foll.*

Such a confession is not alone sufficient evidence to justify a conviction of a co-accused but that confession if un rebutted is admissible in evidence against a co-accused. (*Raza and Pullan, J.J.*). SHEO RATAN v. EMPEROR. 114 I. C. 771=6 O.W.N. 159=

30 Cr.L.J. 360=A.I.R. 1929 Oudh 167.

**—S. 114, III. (b)—Value of accomplice's evidence.**

—Evidence of accomplice requires corroboration. (*Boys, J.*). PARAS RAM v. EMPEROR. A.I.R. 1930 All. 740.

—The statement made by an accomplice should be accepted when it is strongly corroborated in material particulars by clear and cogent evidence



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for authenticity of which is not open to doubt. (*Young and Sen, JJ.*). MT. KHUBAN v. EMPEROR.

120 I.C. 257=31 Cr. L. J. 26=1930 Gr. C. 45= A. I. R. 1930 All. 29.

—Although it is not illegal to convict on the uncorroborated evidence of an accomplice there is a consensus of opinion that a conviction on the uncorroborated testimony of an accomplice is rarely justified. Nature of corroboration that is required indicated. (*Raza and Nanavutty, JJ.*). BACHCHU v. EMPEROR. 7 O.W.N. 862=1930 Gr. C. 1079= A. I. R. 1930 Oudh 455.

—Confession implicating a co-accused requires corroboration if a co-accused is to be convicted on it. 38 Cal. 559; 15 Bom. 66 and 38 Bom. 156, *Ref.* (*Adami and Scroope, JJ.*). KHATIR JAMA KHAN v. EMPEROR. 123 I.C. 393=31 Cr. L. J. 492=

1930 Gr. C. 767=A. I. R. 1930 Pat. 385.

—The testimony of a professed accomplice requires to be carefully scrutinized with anxious search for possible corroboration. (*Lord Atkin*). W. C. MACDONALD v. FRED LATINER.

112 I. C. 375=29 M. L. W. 155= A. I. R. 1929 P. C. 15 (P. C.).

—The statement of a co-accused is admissible in evidence but according to the usual practice and as a rule of prudence it is unsafe to accept the tainted testimony of an accomplice so long as it is not corroborated in material particulars. The difficulty enhances where the said accomplice does not adhere to his statement. (*Sen, J.*). MAN SINGH v. EMPEROR. 121 I.C. 103=11 L. R. A. Gr. 1=

13 A. I. R. Gr. 52=1929 Gr. C. 656= 31 Cr. L. J. 206=A. I. R. 1929 All. 928.

—*Slighter degree—Of corroboration when sufficient.*

Where police officers act in conspiracy with one another to demand and receive illegal gratification and are ready to make use of their official position to enforce such demand, the testimony of accomplices who are really victimised by them into offering them illegal gratification and have not willingly done so requires a much slighter degree of corroboration than would be the case if the accomplices were entirely voluntary accomplices. 38 Cal. 649, *Ref.* (*Mirza and Murphy, JJ.*). EMPEROR v. O. E. RING. 120 I.C. 340=33 Bom. 479=

31 Bom. L. R. 545=1929 Gr. C. 114= 31 Cr. L. J. 65=A. I. R. 1929 Bom. 296.

—"May" is not "must" and evidence of accomplice stands on same footing as other evidence.

Although S. 114, Illus. (b), provides that a Court may presume that the evidence of an accomplice is unworthy of credit, unless corroborated, "may" is not "must" and no decision of Court can make it "must." Therefore in spite of all that has been said to the contrary in law, the evidence of an accomplice stands on the same footing as any other evidence. The Court is not obliged to hold that he is unworthy of credit and must be corroborated. It is for the Court to consider after taking into consideration all the circumstances one of which being that he is an accomplice whether it does or does not rely on the evidence. To entirely rule out the uncorroborated evidence of an accomplice might in many cases lead to miscarriage of justice. (*Cuming and Lort-Williams, JJ.*). EMPEROR v. C. A. MATHEWS. 1929 Gr. C. 669= A. I. R. 1929 Cal. 822.

—*Rule discussed.*

There is no definite rule of law that a person cannot be convicted upon the uncorroborated evi-

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dence of an accomplice. But Ill. (b) to S. 114 of the Evidence Act is the rule in such cases and Courts must act up to it. If the suspicion which attaches to the evidence of an accomplice be not removed that evidence should not be acted upon unless corroborated in material particulars. Rule as to corroboration elaborately discussed. (*Scroope and Chatterji, JJ.*). EMPEROR v. KAILASH MISSIR. 11 P. L. T. 545.

—*Uncorroborated testimony.*

Although a conviction is not "illegal" merely because it proceeds on the uncorroborated testimony of an accomplice, the rule of practice is now firmly established that corroboration of such testimony in material particulars connecting each of the individual accused with the crime is necessary to justify his conviction: A. I. R. 1927 Lah. 581, *Ref.* (*Bhide and Johnstone, JJ.*). HAKAM SINGH v. EMPEROR. 1929 Gr. C. 626=A. I. R. 1929 Lah. 850.

—The well-known rule of criminal law that an accomplice is unworthy of credit unless he is corroborated in material particulars, which is formulated in S. 114, III. (b), is not absolute as will be evident from S. 114 as to Ill. (b) and S. 193, but it is only in exceptional cases that the corroboration can be dispensed with. A. I. R. 1928 Oudh 480, *Cons.* (*Raza, J.*). LALE v. EMPEROR.

113 I.C. 423=6 O.W.N. 441=30 Cr. L. J. 922= 1929 Gr. C. 143=A. I. R. 1929 Oudh 321.

—*Credibility of approver.*

The testimony of one accomplice is of little value as a piece of corroborative evidence in support of the testimony of another accomplice. The testimony of an approver can be used for the purpose of corroboration if the taint attached to it is removed. But this "taint" must be removed to such an extent that the Court is prepared to believe the testimony of the approver in the same way and to the same extent as the testimony of an ordinary witness whom it considers to be worthy of credit. A. I. R. 1923 Lah. 76 and 20 P. R. 1919, *Ref.* (*Bhide and Johnstone, JJ.*). HAKAM SINGH v. EMPEROR. 1929 Gr. C. 626=A. I. R. 1929 Lah. 850.

—*Confession of co-accused.*

Although a confession of one co-accused may be taken into consideration against another under the provisions of S. 30, it would be unsafe, if not illegal, to rely on it without further corroboration in material particulars. (*Harrison and Dalip Singh, JJ.*). KARAM DIN v. EMPEROR.

115 I. C. 1=30 Cr. L. J. 385= A. I. R. 1929 Lah. 338.

—*Confession by co-accused.*

Where there is nothing against an accused person but a confession made by a co-accused from the dock at the trial, a conviction cannot be supported. (*Waller, J.*). GOVINDU NAIDU v. EMPEROR. 118 I.C. 512=1929 M. W. N. 391=

2 M. Cr. C. 76=30 Cr. L. J. 932= A. I. R. 1929 Mad. 285.

—Where the accomplice makes his confession and sticks to it, and he actually allows himself to be convicted upon it, no doubt to that extent, there is some sort of guarantee of its truthfulness, but he remains an accomplice with all the suspicion attaching to an accomplice, and his evidence must be viewed with all the suspicion which ordinarily attaches to the evidence of an accomplice. (*Walmesley and Mukerji, JJ.*). EMPEROR v. KOMORUDDIN SHEIKH. A. I. R. 1928 Cal. 233.

—Although under S. 193, Evidence Act, an accomplice is a competent witness against an

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accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of such accomplice, the rule of caution that such testimony should be supported by extrinsic evidence connecting the accused with the crime as now regarded as a rule of law, and although it is not illegal to convict a person on the uncorroborated testimony of an approver, the Courts in points of facts always insist upon the rule being followed. (*Eforde, J. on difference between Aga Hatdar and Broadway, J.J.*). **BARKATI v. EMPEROR.** 103 I. C. 49=28 Cr. L. J. 625=

8 A.I. Cr. R. 273=A. I. R. 1927 Lah. 581.

—In dealing with the evidence of an accomplice the Judge is not bound to rely on such statements only as are corroborated by other reliable evidence. Once a foundation is established for a belief that a witness is speaking the truth because he is corroborated by true evidence on material points, the Judge is at liberty to come to a conclusion as to the truth or falsehood of other statements not corroborated. (*Macleod, C. J. and Crump, J.*). **BEHIMRAO NARASIMHA HUBLICAR v. EMPEROR.** 86 I. C. 72=27 Bom. L. R. 120=

26 Cr. L. J. 696=A. I. R. 1925 Bom. 261.

**—Co-accused.**

Confessing co-accused's evidence is practically that of an approver, and must be treated as such especially where the confession was not free from inducement. (*Wasir Hasan and Cuming, A. J. Cs.*). **MAHADEO v. KING EMPEROR.**

10 O. L. J. 280=A. I. R. 1924 Oudh 65.

**—S. 114, III. (b)—Value of approver's evidence.**

—Numerous persons from area of 50 miles tried for dacoity—Offences continuing for over four years—Consistently correct identification is difficult—Approver failing to identify particular person on one occasion—His evidence becomes weak regarding that man, but he can be convicted if there is strong evidence besides that of approver. (*Stuart, C. J. and Raza, J.*). **KHILAWAN v. EMPEROR.** 112 I. C. 337=5 O. W. N. 760=

29 Cr. L. J. 1009=11 A. I. Cr. R. 273=A. I. R. 1928 Oudh 430.

—The evidence of an approver does not differ from the evidence of any other witness save in one particular respect, namely, that the evidence of an accomplice is regarded *ab initio* as open to grave suspicion. Accordingly, if the suspicion which attaches to the evidence of an accomplice be not removed, that evidence should not be acted upon unless corroborated in some material particular and if the suspicion attaching to the accomplice's evidence is removed then that evidence may be acted upon, even though uncorroborated and the guilt of the accused may be established upon that evidence alone. The law on the point as laid down in Ss. 114, 183 and 184, Evidence Act, gives no countenance to the contention that the uncorroborated testimony of an accomplice is necessarily insufficient to establish a charge against an accused. (*Courtney-Terrell, C. J. and Macpherson, J.*). **RATTAN DEANUK v. EMPEROR.** 113 I. C. 329=

9 P.L.T. 672=8 Pat. 235=30 Cr. L. J. 137=

11 A. I. Cr. R. 41=A. I. R. 1928 Pat. 630.

—It is not safe to base a conviction upon the evidence of such an approver who obviously is deeply interested in putting responsibility for the offence upon shoulders other than his own, unless there is some independent evidence to corroborate

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his story in material particulars. (*Eforde, J.*). **CHANAN SINGH v. KING EMPEROR.** 99 I. C. 929=

8 L.L.J. 610=28 P.L.R. 39=28 Cr. L. J. 193=

7 A.I. Cr. R. 173=A.I.R. 1927 Lah. 78.

—The acquittal of any number of persons for want of corroboration cannot weaken the weight of the testimony of an approver. The matter would be different, if it is shown that even one accused person has been acquitted not for want of corroboration but in virtue of a finding that the accused person was innocent of the crime. (*Dalal and Neave, A.J. Cs.*). **MURLI BRAHMAN v. KING EMPEROR.** 89 I. C. 836=27 O. C. 385=

26 Cr. L. J. 1412=A. I. R. 1925 Oudh 374.

—A person who owns himself to be a scoundrel and in addition to that is also a traitor, is a person whose evidence must be received with caution. Nevertheless the law does not require the total rejection of accomplice's evidence. It is enough if after considering the evidence, the Court is of opinion that the whole body of evidence put together proves the guilt of the accused person. (*Kennedy, J.C. and Aston, A.J.C.*). **EMPEROR v. SUNDER DAS,** 87 I. C. 916=19 S.L.R. 111=26 Cr. L. J. 1028=

A.I.R. 1925 Sind 295.

—An approver's evidence is in itself tainted evidence though in some cases it may be worthy of belief for various reasons but the uncorroborated statement of an approver taken at the end of the trial is of very little evidentiary value. (*Shadi Lal, C.J. and Wilberforce, J.*). **SUNDER SINGH v. EMPEROR.** 66 I. C. 187=4 L. L. J. 284=23 Cr. L. J. 251.

—In order to support conviction the statement of an approver, especially of one whose initial statement was very long delayed, requires material corroboration connecting each individual accused with the crime committed. (*Harrison, J.*). **SARDARE v. EMPEROR.** 63 I. C. 612=22 Cr. L. J. 676.

**—S. 114, III. (b)—Miscellaneous.**

—Court should exercise judicial discretion and have regard to facts of case in considering whether an accomplice is or is not worthy of credit. (*Courtney-Terrell, C. J. and Macpherson, J.*). **RATTAN DEANUK v. EMPEROR.** 113 I. C. 329=

9 P.L.T. 672=8 Pat. 235=30 Cr. L. J. 137=

12 A.I. Cr. R. 41=A. I. R. 1928 Pat. 630.

—*Accomplice is presumed to be unworthy of credit—Jury must be directed that corroboration is necessary.*

Among the presumptions a Court may make, is the presumption that an accomplice is unworthy of credit, unless he is corroborated in material particulars. That is a direction of law or of practice, which Judges themselves should give to every jury in any case in which they have to direct them upon the law and which in matters of fact they should themselves follow: 29 All. 484, Dist.; 4 Cal. 488, Foll. (*Walsh and Dalal, J.J.*). **KALWA v. EMPEROR.** 95 I. C. 74=48 All. 409=

24 A.L. J. 410=7 L.R.A. Cr. 105=

27 Cr. L. J. 746=A. I. R. 1926 All. 377.

—Though Ill. (b) is not imperative, the Courts *ex majore cautela* insist upon the corroboration of an approver's evidence in material particulars. A.I.R. 1924 Lah. 857, Foll. (*Kincaid, J.C. and Aston, A.J.C.*). **FAIZULLAH v. EMPEROR.** 81 I. C. 881=

19 S.L.R. 183=25 Cr. L. J. 1057=

A.I.R. 1925 Sind 105.

**—S. 114, III. (e)—Acts of Courts.**

—*Presumption of regularity in official acts—Confession placed on record by Magistrate—Duty of Sessions Judge to presume it was voluntarily made.*

**EVIDENCE ACT (1872), S. 114, Ill. (e)—Execution proceedings.**

A Court should not disregard S. 114, Illus. (e) of the Evidence Act and assume irregularity in official acts. A Sessions Judge should presume that a confessional statement placed on record by the Magistrate was voluntarily made. (*Jackson, J.*). **PUBLIC PROSECUTOR v. NAGARAJ.** 59 M. L. J. 114.

**—S. 114, Ill. (e)—Execution proceedings.**

—The presumption is that all proceedings taken by the Court in execution are in proper form and if anybody wants to challenge, he must advance and prove the facts on which he wishes to rely. (*Wallace, J.*). **N. M. RAMA RAJA, In re.** 99 I.C. 33=24 M.L.W. 484= 28 Cr. L.J. 2.

**—S. 114, Ill. (e)—Official acts.**

—Where a Committing Magistrate writes at the foot of the deposition that the cross-examination is being reserved, he does not mean that it is being reserved by him and that the accused has not been given an opportunity for cross-examination. All official acts must be presumed to have been done properly and it is difficult to suppose that Magistrate who must be presumed to have known the law did not give the accused an opportunity of cross-examination to which he was entitled by S. 208, Cr. P. Code. (*Percival, J. C. and Barlee, A.J.C.*). **EMPEROR v. MAHRAB.** 120 I.C. 524= 1930 Cr. C. 70=31 Cr.L.J. 121= A.I.R. 1930 Sind 54.

**—S. 114, Ill. (e)—Official order.**

—There is a presumption in favour of any order of an official being legal until the contrary is proved. (*Ashworth, J.*). **SHAM SUNDER v. EMPEROR.** 91 I.C. 56=27 Cr. L.J. 24= A.I.R. 1926 All. 264.

**—S. 114, Ill. (e)—Sanction.**

—Name of accused appearing on back of paper. While sanctioning the prosecution of accused for an offence under Penal Code, S. 294-A the name of the accused was shown on the back of the paper instead of in the body of the sanction merely because there was not sufficient space left on the front side.

*Held:* that the initial presumption was that all the official acts were done in a regular manner and hence the sanction was valid. (*Zafar Ali and Bhide, J.J.*). **EMPEROR v. DIWAN CHAND JOLLY.** 124 I.C. 347=1930 Cr. C. 97= A.I.R. 1930 Lah. 81.

**—S. 114, Ill. (e)—Signing of order.**

—Warrant signed by Sheristadar "by order"—Must be presumed to be legal.

Where a Sheristadar signed the warrant by "order" it was held that the statement that appeared on the face of the warrant that the Sheristadar signed "by order" can be presumed to be true and that in the absence of anything to suggest to the contrary it was held that he was actually the officer appointed by the Court to sign processes as required by R. 24 (2) of O. XXI, O.P.C. 6 C.W.N. 845, Dist. (*Newbold and Suhrawardy, J.J.*). **HARISH CHANDRA CHAUDHURY v. GIRIDAR SARKAR.** 73 I.C. 328=37 G.L.J. 331=27 C.W.N. 1042= 24 Cr. L.J. 584.

**—S. 114, Ill. (e)—Warrants.**

—Calcutta Police Act—No presumption.

Section 114, Ill. (e) of the Indian Evidence Act cannot be relied upon in order to presume the regularity of warrants under S. 46, Calcutta Police Act, and unless the law expressly says that proof shall be required, evidence ought to be required in every case of this description that the essential

**EVIDENCE ACT (1872), S. 118—Child.**

preliminaries precedent to the issue of such a warrant have been complied with. (*C. C. Ghose and Chotner, J.J.*). **B. WALVEKAR v. KING EMPEROR.** 96 I.C. 264=53 Cal. 718=30 C.W.N. 713= 27 Cr. L.J. 920=A.I.R. 1926 Cal. 966.

**—S. 114, Ill. (g)—Criminal Trial.**

—Non-production of witnesses cited by prosecution when their evidence was unnecessary cannot justify adverse inference when there is nothing else on record to justify it. (*Tapp, J.*). **JOWAYA v. EMPEROR.** 120 I.C. 606=1930 Cr. C. 171= 31 Cr.L.J. 131=A.I.R. 1930 Lah. 163.

—The non-summoning of a witness alleged to have taken part in the proceedings on which the trial is founded raises adverse presumption. (*Young, J.*). **MA HT WAY v. EMPEROR.** 86 I.C. 478= 4 Bur. L.J. 2=26 Cr. L.J. 827= A. I. R. 1925 Rang. 205.

**—S. 114, Ill. (g)—Material witnesses.**

—Non-summoning of.

Where a witness is not called by the prosecution which it was the duty of the prosecution to call what happens is at the most there arises a presumption that if the witnesses had been called he would not have supported the prosecution case. (*Dhale and Fazl Ali, J.J.*). **KRISHNA MAHARANA v. EMPEROR.** 1929 Cr. C. 379=A.I.R. 1929 Pat. 651.

—Failure of prosecution to examine a material witness justifies the inference that the witness, if examined, would have deposed against the prosecution. (*Shadi Lal, C.J.*). **TAJ MAHAMMAD v. EMPEROR.** 107 I. C. 100=29 P. L. R. 14= 29 Cr. L. J. 212=9 A. I. Cr. R. 508= A. I. R. 1928 Lah. 125.

**—S. 114, Ill. (g)—Preliminary enquiry.**

—Defence not disclosed in earlier stages—Inference.

If neither in their examination before the Committing Magistrate, nor in that in the Sessions Court, accused disclose what their exact defence is to be, and they only enter on their defence of alibi, a certain presumption arises against them as to their guilt of offence. (*Findlay, J. C.*). **RAMADHIN BRAHAMIN v. EMPEROR.** 112 I.C. 51= 29 Cr. L. J. 963=11 A. I. Cr. R. 302= A.I.R. 1929 Nag. 36.

—There is no duty cast upon an accused person to disclose his defence in the course of a preliminary enquiry, and no inference can be drawn against the accused for non-disclosure of his defence at that stage. (*Sen, J.*). **KUMAR PRASAD v. KING EMPEROR.** 102 I.C. 899=28 Cr. L.J. 611= 8 P.L.T. 656=8 A.I. Cr. R. 297= A. I. R. 1927 Pat. 292.

**—S. 114, Ill. (g)—Thumb impression.**

—Where a person was asked in Court whether he was willing to give his thumb impression and he declined,

*Held,* that the Court was entitled to draw an inference adverse to him upon his denial to do so. (*Mullick and Wort, J.J.*). **LAHURI SAHA v. EMPEROR.** 106 I.C. 212=6 Pat. 623= 8 P.L.T. 847=28 Cr. L.J. 1028= 9 A.I. Cr. R. 173=A. I. R. 1928 Pat. 103.

**—S. 118—Child.**

—Criminal trial.

Where the Court is of opinion that the child upon whom an offence under S. 376, I.P.C., is committed is unable to give relevant information in the matter by reason of tender years and consequent immaturity of judgment, it should not examine the child at all; 38 All. 49, *Foll.*; 41 Cal. 406.

**EVIDENCE ACT (1872), S. 118—Child.**

*Not foll. (Agha Haidar, J.).* GHULAM HUSSAIN v. EMPEROR. A.I.R. 1930 Lah. 337.

—Evidence by child should be accepted with caution.

There is no more dangerous witness than young children. Any mistakes or discrepancies in their statements are ascribed to innocence of failure to understand, and undue weight is often given to what is merely a well taught lesson. Children have good memories and no conscience. They are easily taught stories and live in a world of make-believe so that they often become convinced that they have really seen the imaginary incident which they have been taught to relate. The evidence of a child should therefore be accepted with great caution. (*Raza and Pullan, J.J.*). MANNI v. EMPEROR. A.I.R. 1930 Oudh 406.

—Sufficient understanding.

A child of tender years is a competent witness when such child is intellectually sufficiently developed to understand what it has seen and afterwards to inform the Court about it; this sufficiency may be tested even in examination-in-chief: understanding is thus the sole test of competency under S. 118: 38 All. 49, *Foll.*; 41 Cal. 406, *Rel. on*; 10 All. 207, *Expl. (Kalumal, A.J.C.)*. S. RASUL v. EMPEROR. 120 I. C. 514=31 Cr. L.J. 114=

A. I. R. 1930 Sind 129.

—Procedure before admitting child as a witness.

Before examining a child of tender years as a witness, a Court should satisfy itself that the child is sufficiently intellectually developed to comprehend what he has seen and to give an intelligent account of it to the Court, by testing his intellectual capacity, by putting a few and simple and ordinary questions to him and the Court should record a brief proceeding so that the appellate Court may feel satisfied as to the capacity of the child to give evidence. If the Court is of opinion that by reason of tender years and defective or immature understanding the child could not have perceived the particular incident to prove which he is produced as a witness, the Court should not only refrain from administering the oath to him but should also decline to examine him as a witness: 38 All. 49 and 11 C.W.N. 51, *Ref. (Agha Haidar, J.)*. TULSI v. EMPEROR. 110 I. C. 799=

10 A. I. Cr. R. 527=29 Cr. L.J. 767=

A.I.R. 1928 Lah. 903.

—Capacity—Record of opinion as to, is not obligatory.

When the evidence of a child of tender years is adduced the Judicial Officer should for the sake of precaution ascertain as a preliminary measure by means of a few simple questions whether the intelligence of the child is such that (whether sworn or not) it is capable of giving testimony and it is certainly desirable that something should at the commencement of the record of the evidence of a witness of this character be entered to show that such a test has been in fact made. But the mere fact that the Judge omits to make the record will not render the evidence inadmissible, if the Judge is, as a matter of fact satisfied about the capacity to give the evidence. (*Bucknill, J.*). PANCHU CHAUDHURY v. EMPEROR. 66 I.C. 73=3 P.L.T. 649=

23 Cr. L.J. 233.

**S. 118—Competency.**

Test.

The only test of competency is that the witness should not be prevented from understanding the questions put to him or from giving rational answers to those questions by tender years or other

**EVIDENCE ACT (1872), S. 124—Document of state.**

cause. (*Ross and Wort, J.J.*). RAM JOLAHA v. EMPEROR. 102 I. C. 349=8 A. I. Cr. R. 189=

8 P.L.T. 594=28 Cr. L.J. 541=

A. I. R. 1927 Pat. 406.

**S. 118—Counsel.**

—Rule as to exclusion from Court—Inapplicable.

The rule as to the exclusion of the witnesses from Court until they have been examined is not without exceptions. It does not extend to the parties themselves in civil cases so long as they conduct themselves properly, or to their solicitors whose assistance is necessary for the proper conduct of the case. The same rule applies in Criminal Cases. There are even stronger reasons for not applying the rule to the Counsel for the parties who have to conduct the case. (*Wallis, C. J. and Krishnan, J.*). VEMUREDDI BABUREDDI, *In re*. 62 I. C. 828=44 Mad. 916=13 M.L.W. 702=

1921 M.W.N. 440=22 Cr. L.J. 588=

41 M.L.J. 158.

**S. 118—Rejection of evidence.**

—Rejection of evidence on the ground of a relation of the witness belonging to the same village as the wife of a near relation of the accused was held to be bad. (*Scott-Smith and Fford, J.J.*). BAGH SINGH v. EMPEROR. 81 I. C. 113=

25 Cr. L. J. 625=A.I.R. 1925 Lah. 49.

**S. 118—Scope.**

—Section 118 makes no distinction between prosecution and defence witnesses. (*Daguley, J.*). A. V. JOSEPH v. EMPEROR. 85 I. C. 236=

26 Cr. L. J. 492=3 Bur. L. J. 265=3 Rang. 11=

A. I. R. 1925 Rang. 122.

**S. 122—Confession to husband.**

—No statement of an incriminating nature made by the appellant as to her guilt under S. 302 to her husband could be received in evidence. 10 P. R. 1914, *Foll. (Broadway and Martineau, J.J.)*. MT. IHSANAN v. THE CROWN.

81 I.C. 271=25 Cr. L.J. 783.

**S. 123—Jail report.**

—Privileged document.

A report submitted to the Inspector-General of Prisons under S. 900 of the Jail Manual is clearly an unpublished official record relating to affairs of State within the meaning of S. 123, and there is no distinction between the actual text of the report and the statements which it incorporates: 48 C. 304, *Foll. (Daniels, J. C.)*. KING EMPEROR v. NANDA SINGH. 89 I.C. 387=12 O.L.J. 450=

2 O.W.N. 422=26 Cr. L.J. 1347=

A.I.R. 1925 Oudh 540.

—Moreover it is the public officer concerned, and not Judge, who is to decide whether the evidence referred to shall be given or withheld. In such cases the head of the department has absolute discretion to give or withhold permission and the Court is not entitled to question the claim of privilege raised by him. 5 O. L. J. 294, *Foll. (Daniels, J.C.)*. KING EMPEROR v. NANDA SINGH.

89 I.C. 387=12 O.L.J. 450=2 O.W.N. 422=

26 Cr. L.J. 1347=A.I.R. 1925 Oudh 540.

**S. 124—Document of state.**

—Court can on its own motion disallow a document of state if public policy so requires.

No sound distinction can be drawn between the duty of the Judge when objection is taken by the responsible officer of the Crown, or by the party, or when no objection being taken by anyone, it becomes apparent to him that a rule of public policy prevents the disclosure of the documents or in-

**EVIDENCE ACT (1872), S. 124—Railway communications.**

formation sought and therefore a Court is justified in declining to allow a document of State to be produced on its own motion. *Hennessy v. Wright*, 21 Q.B.D. 509, *Foll.* (*Findlay, O.J.C.*). *WAMAN-RAO v. EMPEROR*. 94 I.C. 899=22 N.L.R. 34=27 Cr. L.J. 707=A.I.R. 1926 Nag. 304.

**—S. 124—Railway communications.**

*Communications by railway employees to Station Master as regards theft are not protected.*

B was charged of having committed theft of certain pieces of cloth in charge of the railway company from a goods truck at a railway station. The Station Master started an enquiry and recorded statements of four persons all of whom were railway employees; these statements were forwarded to the Divisional Superintendent who objected under S. 124 to their production before the trying Magistrate when the accused called for them in order that he might cross-examine the witnesses.

*Held*, that these communications were not protected. (*Stuart, C.J.*). *EMPEROR v. BHAGWATI PRASAD*. 6 O.W.N. 937=1929 Cr. C. 677=A.I.R. 1929 Oudh 543.

**—S. 132—Co-accused.**

The section affords sufficient protection to a co-accused to give evidence against his co-accused if compelled to do so and there is no ground why his evidence should be refused. (*Zafar Ali, J.*). *RAJA RAM v. EMPEROR*. 73 I.C. 521=5 L.L.J. 429=24 Cr. L.J. 633=A.I.R. 1924 Lah. 247.

**—S. 132—Compulsion.**

*What is.*

The protection offered by S. 132, Proviso, does not cover any and every answer given by a witness during the course of his trial. The compulsion contemplated in that section is something more than being put into the witness-box and being sworn to give evidence. The compulsion in the proviso refers to compulsion by Court and not compulsion under law. The witness, of course, need not ask in so many words the protection of the Court. The compulsion may be implied or explicit, and in every case it is a question of fact whether there was or was not compulsion. But a witness who answers a question or questions put to him without seeking the protection of S. 132 by objecting to the question put, and requesting to be excused, is not entitled to that protection. 3 Mad. 271 (F.B.); A.I.R. 1926 Bom. 141 (F.B.); A.I.R. 1926 Mad. 906 (F.B.); A.I.R. 1924 All. 381; 16 All. 88; 40 All. 271, *Foll.*; 42 All. 257 and A.I.R. 1921 All. 362, *Not foll.*; A.I.R. 1927 Mad. 379; A.I.R. 1925 Rang. 845, *Dist.* (*Devadoss and Waller, J.J.*). *PEDDABHA REDDI v. VARADA REDDI*. 116 I.C. 337=52 Mad. 432=29 M.L.W. 210=2 M.Cr.G. 8=1929 M.W.N. 84=30 Cr. L.J. 613=13 A.I. Cr. R. 21=A.I.R. 1929 Mad. 236=56 M.L.J. 570.

Compulsion under that section is a question of fact. It by no means follows that the witness is compelled to answer every question put by Counsel. (*Watts and Ryves, J.J.*). *EMPEROR v. BANARSE*. 77 I.C. 829=46 All. 254=22 A.L.J. 144=5 L.R.A. Cr. 73=25 Cr. L.J. 477=A.I. R. 1924 All. 381.

**—S. 132—Compulsory and voluntary.**

*Test—Mere record of deposition is not by itself sufficient.*

Where the Judges are permitted to simply make notes of the deposition of a witness it is difficult to know whether a witness voluntarily

**EVIDENCE ACT (1872), S. 132—Voluntary statement.**

made a statement or was "compelled" to make it in answer to a relevant question. So the mere record of a deposition is not by itself sufficient evidence of compulsory or voluntary nature of the statement of a witness. (*Kinkhede, A.J.C.*). *SURAJMAL v. RAMNATH*. 105 I.C. 820=28 Cr.L.J. 996=9 A.I. Cr.R. 204=A.I.R. 1928 Nag. 58.

**—S. 132—Defamation, what is.**

To give out that a woman had miscarriage without any knowledge whether she was married or not would amount to defamation because the person who makes the statement would have reasonable belief that such imputation would harm the reputation of the woman in case she was not married and if such statement is made in a witness-box and especially so in examination-in-chief when the character of the woman is not a fact in issue, the witness is not protected by S. 132, unless the Judge himself asked the question: 32 Cal. 756; 18 A.L.J. and 112, *Ref.* (*Dalal, J.*). *KASHI RAM v. EMPEROR*. A.I.R. 1930 All. 493.

**—S. 132—Liquidation proceedings.**

In proceedings under S. 196 (5), Companies Act there is no contest between two parties and therefore the proviso to S. 132 does not confer any special privilege on the person so examined. (*Jai Lal, J.*). *RAMOHAND GURWALA v. KING EMPEROR*. 98 I.C. 599=27 Cr. L.J. 1383=A.I.R. 1926 Lah. 385.

**—S. 132—Omission to protest.**

Relevant statements made by a witness on oath or solemn affirmation in a judicial proceeding are not protected in cases where the witness has not objected to answering the question put to him. (*Macleod, C. J., Crump and Goyajee, JJ.*). *BAI. SHANTA v. UMROO AMIR*. 93 I.C. 151=50 Bom. 162=28 Bom. L.R. 1=27 Cr. L.J. 423=A.I.R. 1926 Bom. 141 (F.B.).

**—S. 132—Privilege.**

*Motive—Important elements.*

Not only the status of the witness claiming privilege and his capacity to realize the risk and take objection to the question at the time of giving the answers but also the motive with which he gives his evidence, go a great way to determine his criminal responsibility or otherwise for the statement. (*Kinkhede, A.J.C.*). *SURAJMAL v. RAMNATH*. 105 I.C. 820=28 Cr.L.J. 996=9 A.I. Cr.R. 204=A.I.R. 1928 Nag. 58.

Ordinarily, it is for the witness to claim protection at the time of giving his self-criminating answer, and to prove it as a defence to a prosecution for defamation. (*Kinkhede, A.J.C.*). *SURAJMAL v. RAMNATH*. 105 I.C. 820=28 Cr.L.J. 996=9 A.I. Cr.R. 204=A.I.R. 1928 Nag. 58.

**—S. 132—Scope of protection.**

*Privilege applies only to particular questions objected to—Objection to answer is necessary.*

The proviso applies only to answers given to particular questions. It does not confer a general immunity on a person who is examined even after his protest. In order to substantiate the privilege he must object to the particular questions which are put to him if he desires that answers to those questions be not used against him in any subsequent criminal proceedings. A general objection is not sufficient. (*Jai Lal, J.*). *RAMOHAND GURWALA v. KING EMPEROR*. 98 I.C. 599=27 Cr.L.J. 1383=A.I.R. 1926 Lah. 385.

**—S. 132—Voluntary statement.**

Witness actuated by malicious motives making voluntary and irrelevant statement not



**EVIDENCE ACT (1872), S. 133—Accomplice, who is.**

elicited by questions put to him, is guilty under S. 500. He cannot claim privilege under I.P.C. 21 Cal. 392; 32 Cal. 756; 40 Cal. 433, *Rel. on. (Kinkhede, A.J.C.)*. *SURAJMAL v. RAMNATH*. 105 I.C. 820=28 Cr.L.J. 996=9 A.I.Cr.R. 204=A.I.R. 1928 Nag. 58.

—S. 133—See also EVIDENCE ACT, S. 114, ILL. (b).

**Accomplice, who is.**

**Conviction on uncorroborated testimony.**

**Corroboration, extent and nature.**

**Corroboration, what is.**

**Retracted confession.**

**Value of accomplice's evidence.**

**Value of approver's evidence.**

**Miscellaneous.**

—S. 133—Accomplice, who is.

—Persons assisting concealment of evidence of crime are "accomplices."

Witnesses who admittedly had witnessed the crime, who have assisted in concealing the evidence of that crime or at least connived at such being done and who have not attempted to give any information either to the police or to any other person to enable the offender to be brought to justice are in a very little better position than that of accomplices. (*Efode and Hilton, J.J.*). *MAYATU v. EMPEROR*. 120 I.C. 190=

31 Cr. L. J. 50=1929 Cr.C. 87=A.I.R. 1929 Lah. 540.

—Penal Code, S. 161.

A person who offers a bribe to a public officer is an accomplice. Persons who actually pay the bribes or co-operate in such payments or are instrumental in the negotiations for the purpose are also accomplices of the person bribed, and a person who with knowledge that the bribe has to be paid advances money is clearly an abettor and as such an accomplice. 14 Bom. 331; 26 Bom. 193 and 27 Cal. 144, *Rel. on. (Kinkhede, A.J.C.)*. *MUHAMMAD USAF KHAIN v. EMPEROR*. 114 I.C. 457=

30 Cr. L.J. 311=1929 Cr.C. 110=A.I.R. 1929 Nag. 215.

—Accomplice and informer—Distinction.

In criminal cases the distinction between an informer and an accomplice assumes at times considerable importance, and in order to determine whether a witness who first associated with wrongdoers and subsequently gave information to the police belongs to the first category or is an accomplice whose evidence cannot be accepted without corroboration, it has to be seen whether the witness had entered into the conspiracy for the sole purpose of detecting and betraying it or whether he is a person who concurred fully in the criminal designs of his co-conspirators for a time and joined in the execution of those till either out of fear or for some other reasons he turned on his former associates and gave information to the police. If at the time when he joined the conspiracy he had no intention of bringing his associates to book, but his sole object was to partake in the commission of the crime, he cannot be called an informer but is an accomplice; and his position is not modified simply because later on he turns round and carries information to the police: A. I. R. 1928 Lah. 193, *Rel. on. (Tek Chand, J.)*. *MANGAT RAI v. EMPEROR*. 110 I.C. 676=10 L.L.J. 262=

29 P.L.R. 703=10 A.I. Cr. R. 519=29 Cr. L. J. 740=A.I.R. 1928 Lah. 647.

—Distinction between accomplice and informer explained.

**EVIDENCE ACT (1872), S. 133—Conviction on uncorroborated testimony.**

If at the time when a person joined the conspiracy he had no intention of bringing his associates to book but his sole object was to partake in the commission of the crime, he cannot be called an informer but is an accomplice and his position is not modified simply because later on he turns round and carries information to the police.

A person was present when the plans for committing a dacoity were hatched and had agreed to go to the meeting place in the evening armed with a revolver. He returned soon after and remained there for more than six hours but during this period he took no steps whatever either to inform the police or his master that a dacoity was contemplated. He then actually proceeded to a spot near the house where the dacoity was to be committed and took part in the preparations for committing the offence. It was only after it had been decided to postpone the dacoity till the moon had gone down and he had been sent to the town to bring food for two of the offenders that he for the first time disclosed the whole affair.

*Held*, that in view of these facts the person cannot but be regarded as an accomplice and his evidence needs corroboration in material particulars against each convict. (*Tek Chand, J.*). *KARIM BAKHSI v. EMPEROR*. 109 I.C. 593=9 Lah. 550=29 Cr. L.J. 577=10 A.I.Cr.R. 293=A.I.R. 1928 Lah. 193.

—A person who has knowledge of the commission of an offence but keeps quiet for some days is no better than an accomplice. 21 Cal. 828 and 24 W.R. 55 (Cr.), *Foll. (Suhrawardy and Duna, J.J.)*. *UMED SHEIKH v. EMPEROR*. 96 I.C. 887=30 C. W. N. 816=27 Cr. L. J. 1011=45 C. L. J. 531.

—Person privy to crime.

Where a witness is found from his own testimony, to be privy to the crime alleged to be committed by accused, his evidence is no better than that of an accomplice. (*Martineau and Campbell, J.J.*). *NUR MUHAMMAD v. EMPEROR*. 6 L.L.J. 529=A.I.R. 1925 Lah. 253.

—S. 133—Conviction on uncorroborated testimony.

—In law the uncorroborated testimony of an accomplice is sufficient to uphold a conviction provided there is any reason to suppose that it is true. Thus if an accomplice makes a clean breast of the crime and convinces the Court that he is speaking the truth the Court can accept his evidence against his fellow offender. But if so far from making a clean breast of it, he consorts a story of his perfect innocence saying that the fellow offender committed the crime the Court cannot in the same breath refuse to accept the story and convict the fellow offender. (*Jackson, J.*). *KUPPUSWAMY IYER, In re*. 1930 M.W.N. 169.

—It is not safe to convict on the sole testimony of accomplice unless corroborated in material particulars by direct or circumstantial evidence.

The evidence of accomplices is always admissible and is always relevant, but under a very old practice of the Courts in England some evidence is accepted only with great caution and after the closest scrutiny and is not usually accepted against any individual person unless it is corroborated. Although it is not illegal to convict on the uncorroborated evidence of an accomplice, there is a consensus of opinion that a conviction on the uncorroborated evidence of an accomplice is rarely justified. The practice in India is the same as the



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practice in England. The evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words it must be evidence which implicates him, that is, which confirms in some material particulars not only the evidence that the crime has been committed, but also that the prisoner committed it. The corroboration need not be direct evidence that the accused committed the crime, it is sufficient if it is merely circumstantial evidence of his connexion with the crime: A.I.R. 1927 Oudh 369, *Ref. (Raza and Nanavutty, JJ.)*. **BACHCHU. v. EMPEROR.**

A.I.R. 1930 Oudh 455.

—It is nowhere laid down as an inflexible proposition of law that a conviction cannot be based upon the uncorroborated testimony of an accomplice; but it is the usual practice of the Courts to require corroboration of the story of the approver before declaring an accused person to be guilty of a crime. The amount or kind of corroboration required in a particular case must, however, depend upon the peculiar circumstances of that case. (*Shadi Lal, C. J. and Bhide, J.*). **NARAIN v. EMPEROR.** 107 I.C. 97=9 A.I. Cr. R. 497=29 Cr. L.J. 209.

**Co-accused and accomplice—Difference explained.**

A confession of an accused person implicating a co-accused under S. 30 cannot be considered as the same thing as 'the testimony of an accomplice, which is referred to in S. 133. Section 133 contemplates that the accomplice shall be examined as a witness. This being so, the provision that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, has no application to the case of an uncorroborated confession taken into consideration as against a co-accused jointly tried with the confessing accused under S. 30. Therefore an accused person cannot be convicted solely on such a confession made by a co-accused: 9 C. P. L. R. 85 Cr. and 87 Cr.; 24 W. R. (Cr.) 42; 98 Cal. 559, *Rel. on. (Kinkhede, A. J. C.)*. **NECHA v. EMPEROR.**

109 I.C. 801=11 N.L.J. 104=29 Cr. L. J. 609=10 A.I. Cr. R. 340=A.I.R. 1928 Nag. 213.

**If jury be not warned of danger in accepting uncorroborated evidence, conviction based upon it must be set aside.**

A jury must be warned expressly of the danger in accepting the uncorroborated evidence of an accomplice and if the warning is omitted a conviction based upon such uncorroborated evidence must be set aside. (*Courtney Terrell, C. J. and Macpherson, JJ.*). **RATTAN DHANUL v. EMPEROR.**

113 I.C. 329=9 P.L.T. 672=8 Pat. 235=30 Cr. L. J. 137=12 A. I. Cr. R. 41=A.I.R. 1928 Pat. 630.

**Conviction is rarely justifiable though not illegal—English Law.**

The evidence of accomplices is always admissible and is always relevant but under a very old practice of the Courts in England such evidence is accepted only with great caution and after the closest scrutiny, and is not usually accepted against any individual person unless it is corroborated. Although it is not illegal to convict on the uncorroborated evidence of an accomplice, there is a consensus of opinion that a conviction on the uncorroborated evidence of an accomplice is rarely justifiable. The practice in India is the same as the

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practice in England. *Rev v. Baskerville*, (1916) 2 K. B. 658, *Cons. and Rel. on. (Stuart, C. J. and Raza, J. C.)*. **RAM PRASAD v. EMPEROR.**

106 I. C. 721=2 Luck. 631=1 L. C. 339=8 A. I. Cr. R. 449=A.I.R. 1927 Oudh 369.

—When there is no corroborative evidence of the approver's testimony, it is unsafe to base a conviction on that evidence. (*Broadway and Zafar Ali, JJ.*). **JANG SINGH v. EMPEROR.**

96 I. C. 262=27 Cr. L. J. 918 (Lah.).

—A conviction can be based on the uncorroborated testimony of an accomplice: A.I.R. 1922 Lah. 1, *Ref. (Daniels and Neave, JJ.)*. **ABDUL WAHAB v. EMPEROR.**

93 I. C. 756=47 All. 39=27 Cr. L. J. 836=5 L.R.A. Cr. 193=

A.I.R. 1925 All. 223.

—Conviction entirely based on the evidence of an approver with no corroboration in material particulars is bad. (*Scott-Smith and Campbell, JJ.*). **PEROZ KHAN v. EMPEROR.**

86 I. C. 401=

6 L. L. J. 608=26 Cr. L. J. 769=

A.I.R. 1925 Lah. 268.

—If the Court is satisfied as to the veracity of the testimony of an accomplice, conviction may be based on the uncorroborated evidence of the accomplice. (*Baguley, J.*). **A. V. JOSEPH v. EMPEROR.**

85 I.C. 236=26 Cr. L.J. 492=3 Bur. L.J. 265=

3 Rang. 11=A.I.R. 1925 Rang. 122.

—Judge should direct the jury that they can legally convict.

There is no doubt that the uncorroborated evidence of an accomplice is admissible in law. But it has long been a rule of practice for the Judge to warn the Jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices and in the discretion of the Judge to advise them not to convict upon such evidence but the Judge should point out to the Jury that it is within their legal province to convict upon such unconfirmed evidence. (*Richardson and Suhrawardy, JJ.*). **EMPEROR v. JAMALDI FARIR.**

81 I.C. 712=51 Cal. 160=28 C.W.N. 536=

25 Cr. L.J. 1000=A.I.R. 1924 Cal. 701.

**Conviction on uncorroborated evidence, when approver is a scoundrel is not warranted.**

The decision in each case must depend on its own particular circumstances and no general rule can be laid down as to when an accomplice's uncorroborated evidence alone should be accepted and acted on against an accused. A conviction on the uncorroborated evidence of an accomplice is to be regarded as exceptional. The two illustrations given under S. 114 of the Act clearly indicate that the application of S. 133 must be exceedingly rare. There is no positive legal bar to taking an approver's evidence as a basis for a conviction but unless some reliable corroboration on a material point were superadded to it, it would, in almost all cases, be unsafe to accept it as conclusive. Where in several respects the approver's evidence did not appear to the Trial Court to be quite satisfactory and the likelihood of his "playing a double game" strongly suggested itself at one time, and the approver was a thorough paced scoundrel.

*Held*, that the uncorroborated testimony of the approver did not afford a sufficient foundation for conviction. (*May Oung, J.*). **MAUNG LAY v. EMPEROR.**

77 I.C. 429=

25 Cr. L.J. 381=A.I.R. 1924 Rang. 173.

—The evidence of an accomplice by itself is enough for a conviction, but it is a rule of practice founded on experience that in every case where an

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accomplice has given evidence, the Court must raise a presumption that he is unworthy of credit unless corroborated in material particulars. Failure to raise this presumption is an error of law, but in each case the weight to be attached must depend on the particular circumstances. (*Mullick and Thornhill, JJ.*). **MADAN GURU v. EMPEROR.** 73 I. C. 963=4 P.L.T. 381.

**—S. 133—Corroboration, extent and nature.**

**—Several accused—Corroboration as regards particular accused—Necessity of.**

**Per Staples, A. J. C. (Contra)**—It is true that an approver's story should be corroborated not only as regards the facts of the case but also as regards the identity of the accused, but where there are several accused and the story of the approver has been confirmed on many points, and as regards the identity of several of the accused, it should not be considered necessary that his story should be corroborated as regards the identity of the remaining accused unless there are reasons for believing that the approver has named those other accused on account of personal spite or for some other reason. The real test of the evidence of the approver is whether it has been believed or not and when it has been corroborated on many points and has not been shown to be false in any particular it should be accepted; and when once it has been accepted as a whole corroboration as regards the identity of each of several accused should not be demanded: A. I. R. 1921 Nag. 89; 9 All. 528, *Expl.*; *Re v. Baskerville*, (1916) 2 K. B. 658, *Dist.*

(*Per Jackson and Subhedar, A. J. Cs.*)—Even where there are several accused persons, an approver's story to be corroborated as regards a particular accused must be corroborated on some points which implicates that accused. It is not necessary that it should be corroborated on all points relating to him, but there must be some guarantee that his evidence is true as regards that particular accused: A. I. R. 1921 Nag. 39, *Rel. on*; 14 Bom. 381; A. I. R. 1922 Nag. 172; A. I. R. 1925. Nag. 78, *Appl.* (*Jackson, A. J. C. on difference between Staples and Subhedar, A. J. Cs.*). **DOULAT v. EMPEROR.**

120 I. C. 721=31 Cr. L. J. 153=  
A. I. R. 1930 Nag. 97.

**—Corroboration may be circumstantial.**

(*Per Staples, A. J. C.*)—A. I. R. 1922 Nag. 172, *Rel. on.* (*Jackson, A. J. C. on difference between Staples and Subhedar, A. J. Cs.*). **DOULAT v. EMPEROR.**

120 I. C. 721=31 Cr. L. J. 153=  
A. I. R. 1930 Nag. 97.

**—Need not be direct.**

The evidence in corroboration of the approver's evidence need not be direct evidence showing that the accused have committed the crime. It is sufficient if it is merely circumstantial evidence of their connexion with the crime: 1 L. C. 339, *Cons.* (*Raza, J.*). **LAL v. EMPEROR.** 118 I. C. 423=

6 O. W. N. 441=30 Cr. L. J. 922=  
1929 Cr. C. 143=A. I. R. 1929 Oudh 321.

**—Approver's evidence must be corroborated also as to the identity of accused.**

The evidence of an approver must be confirmed not only as to the circumstances of the crime, but also as to the identity of the prisoner: A. I. R. 1922 Lah. 1; *Re v. Baskerville*, (1916) 2 K. B. 658 and *Re v. Francis Stubbs*, (1855) 25 L. J. M. C. 16, *Foll.* (*Addison and Skemp, JJ.*). **WAZIR CHAND v. EMPEROR.**

102 I. C. 500=8 A. I. Cr. R. 230=  
28 Cr. L. J. 564=A. I. R. 1928 Lah. 30.

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—It is very difficult to vary the standard of corroborative proof required in the case of various approvers. Tender age is no ground for applying lenient standard. (*Addison and Skemp, JJ.*). **WAZIR CHAND v. EMPEROR.** 102 I. C. 500=

8 A. I. Cr. R. 230=28 Cr. L. J. 564=  
A. I. R. 1928 Lah. 30.

**—Corroboration is required with respect to each individual accused.**

Where there are several accused, corroboration is required with respect to the guilt of each individual accused, that is to say, the fact that the evidence of the accomplice is corroborated as to certain of the accused does not amount to corroboration of the evidence as regards the guilt of the other accused. (*Courtney-Terrell, C. J. and Macpherson, J.*). **RATTAN DHAMUK v. EMPEROR.** 113 I. C. 329=

9 P. L. T. 672=8 P. L. T. 235=30 Cr. L. J. 137=  
12 A. I. Cr. R. 41=A. I. R. 1928 Pat. 630.

—There is no definite rule of law that a person cannot be convicted upon the uncorroborated evidence of an accomplice. But Ill. (b) to S. 114 of the Evidence Act is the rule such cases and Courts must act up to it. If the suspicion which attaches to the evidence of an accomplice be not removed that evidence should not be acted upon unless corroborated in material particulars. Rule as to corroboration elaborately discussed. (*Scooke and Chatterji, JJ.*). **EMPEROR v. KAILASH MISSIR.** 11 P. L. T. 545.

**—Principles explained.**

Although under S. 133, Evidence Act, an accomplice is a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of such accomplice, the rule of caution that such testimony should be supported by extrinsic evidence connecting the accused with the crime is now regarded as a rule of law, and although it is not illegal to convict a person on the uncorroborated testimony of an approver, the Courts in points of facts always insist upon the rule being followed.

What is required is some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it.

The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged and it would be in a high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice, that the accused committed the crime, is true not merely that the crime has been committed, but that it was committed by the accused. The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connexion with the crime.

Corroborative evidence need not be sufficient in itself to base a conviction on. Confirmation of the story of an accomplice does not mean that there should be independent evidence of the accomplice's account of the crime itself. What the law clearly requires is that some relevant and material part of the approver's story incriminating the accused should have support from an independent source. This supplies a test of the truth of the accomplice's narrative as a whole by checking it in some relevant portion: *Re v. Baskerville*, (1916) 2 K. B. 658, *Foll.*

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(*Eforde, J. on difference between Agha Haidar and Broadway, J.J.*). BARKALI v. EMPEROR.

103 I. C. 49=28 Cr. L. J. 625=8 A. I. Cr. R. 273= A.I.R. 1927 Lah. 581.

—Must connect the prisoner with the offence.

It is not sufficient that the approver's testimony is confirmed as to the circumstances of the felony but it must be proved that the testimony is corroborated in some material circumstances, such circumstance connecting and identifying the prisoner with the offence. (*Shadi Lal, C.J. and Jai Lal, J.*). KATTU v. EMPEROR.

98 I. C. 190= 27 P. L. R. 615=8 L. L. J. 616= 27 Cr. L. J. 1294=A.I.R. 1927 Lah. 10.

—Corroboration as to the part played by the accomplice.

It is not sufficient that the approver should be corroborated with regard to the actual commission of the crime itself; for such corroboration merely shows that he himself took part in the offence. Experience requires that the approver should also be corroborated in material points as to the part played by his accomplices. The amount of corroboration in this respect as indeed in respect of all corroboration of an approver's evidence, must depend upon the view which the Court takes of the approver's character and of his general demeanour in the witness-box. (*Mullick, Ag.C.J. and Jwala Prasad, J.*). JAGWA DHANUK v. EMPEROR.

93 I. C. 884=5 Pat. 63=7 P.L.T. 396= 27 Cr.L.J. 484=A. I. R. 1926 Pat. 232.

—A statement of an approver in order to be a basis for conviction must be a trustworthy statement and must be amply corroborated in material particulars which must be independent of the accomplice or of the co-confessing accused. (*Kotval and Kinkhede, A.J. Cs.*). SHEROO v. EMPEROR.

81 I. C. 891=25 Cr. L. J. 1067= A. I. R. 1925 Nag. 78.

—It is not necessary that the approver should be corroborated as regards every single statement that he makes and therefore a direction to jury that if the approver was corroborated on some points, they might believe him on other points in respect of which he was not corroborated, is not mis-direction. (*Newbould and B.B. Ghose, J.J.*). LEDU MOLLA v. EMPEROR.

87 I. C. 925=52 Cal. 595= 26 Cr.L.J. 1037=42 C.L.J. 501= A.I.R. 1925 Cal. 872.

**—S. 133—Corroboration, what is.**

—*Theft and murder—Corroboration of theft—If connects accused with murder.*

The evidence of an approver must be corroborated in material particulars, and those material particulars should connect the accused persons with the crime.

In a charge for theft and murder the approver in no way sought to exculpate himself so far as the conspiracy to commit theft and the theft itself was concerned, nor so far as regards conspiring to commit murder, though he exculpated himself so far as the actual murder was concerned. The story of the approver so far as a conspiracy to commit theft and the actual theft was corroborated, and the circumstances showed that the persons who committed theft were the same who committed the murder.

Held, that the corroboration connected the accused with the crime of murder. (*Adami, J.*). SHEO BARI v. EMPEROR. A.I.R. 1930 Pat. 164.

—*Involuntary accomplices—Slighter degree of corroboration enough.*

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Where police officers act in conspiracy with one another to demand and receive illegal gratification and are ready to make use of their official position to enforce such demand, the testimony of accomplices who are really victimised by them into offering them illegal gratification and have not willingly done so requires a much slighter degree of corroboration than would be the case if the accomplices were entirely voluntary accomplices. 33 Cal. 649, *Ref.* (*Mirza and Murphy, J.J.*). EMPEROR v. C. E. RING. 120 I. C. 340=

34 Bom. L. R. 545=53 Bom. 479=31 Cr. L. J. 65= 1929 Cr. C. 114=A.I.R. 1929 Bom. 296.

—A man who has been guilty of a crime himself will always be able to relate the facts of the case and if the confirmation be only on the truth of that history, without identifying the persons, that is no corroboration at all: *R. v. Farler*, 8 C. and P. 106 and *R. v. Blahai Buw*, B.L.R. Sup. Vol. 459 (F.B.). *Foll. (Cumming and Lort Williams, J.J.)*. REHATI MOHAN v. EMPEROR. 115 I. C. 258=

32 C.W.N. 945=56 Cal. 150=30 Cr.L.J. 435= 12 A. I. Cr. R. 265=A. I. R. 1929 Cal. 57.

—*Dacoity—Approver—Corroborating witness omitting to mention dacoits in F. I. R.—No corroboration.*

Where a dacoity was committed and the evidence against the accused persons was that of an approver and the corroborative evidence consisted of a witness who said he identified certain accused persons when they committed the dacoity but omitted to mention the dacoits by their names in the first information report, such omission is a disqualifying circumstance for accepting his evidence on the point of identification and there is absolutely no corroborative evidence which connects or tends to connect the accused persons with the crime: 6 Bom. L.R. 443; 8 All. 806; A.I.R. 1921 Nag. 39; A.I.R. 1922 Nag. 172; A.I.R. 1925 Nag. 78, *Rel. on*; *Reu v. Baskerville*, (1916) 2 K. B. 658, *Ref.* (*Kinkhede, A.J.C.*). LODYA MAHAR v. EMPEROR. 114 I. C. 623=30 Cr. L. J. 331=1929 Cr. C. 108=

A. I. R. 1929 Nag. 222.

—Confirmation does not mean that there should be independent evidence of that which the accomplice relates, otherwise his testimony would be unnecessary. The evidence of an accomplice must be confirmed not only as to the circumstances of the crime, but also as to the identity of the prisoner. The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime. (*Stuart, C.J. and Raza, J.*). RAM PRASAD v. EMPEROR.

106 I. C. 721=2 Luck. 631=1 L. C. 339= 8 A. I. Cr. R. 449=A.I.R. 1927 Oudh 369.

—*Co-accused and approver.*

There is no statutory prohibition against accepting the evidence of an approver who is thoroughly unreliable and base a conviction upon his uncorroborated testimony, but to do so is extremely dangerous especially where such evidence when examined is obviously open to criticism from the point of view of possible mistake, or intentional concealment or misrepresentation. The confession of a criminal who has confessed his guilt, in so far as it implicates other persons besides himself, must be treated as very little if at all superior in value to that of an accomplice who has received a pardon and therefore where the Court has a witness belonging to each of these classes the question necessarily arises as a matter of logic whether unless

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both these witnesses survive every test which can reasonably and ought properly to be applied to witnesses so that in the result one can say with confidence that neither of them has swerved in substance from the truth the problem remains the same or whether tainted evidence is made better in quality by being doubled in quantity. (*Walsh and Fullan, JJ.*). PARTAB SINGH v. EMPEROR. 96 I.C. 127=

27 Cr. L.J. 879=A.I.R. 1926 All. 705.

—It cannot be said that as a point of law the evidence of the witnesses who support the statement of the approver is not corroborative evidence because such evidence was known to the police before the approver was examined by them. (*Newbould and B. B. Ghose, JJ.*). IBRAHIM, In re.

88 I.C. 458=42 C.L.J. 496=26 Cr. L. J. 1146=

A. I. R. 1926 Cal. 374.

—Verification of the approver's confession may be of value as corroboration of his evidence in Court. (*Newbould and B.B. Ghose, JJ.*). LEDU MOLLA v. EMPEROR. 87 I.C. 925=

26 Cr.L.J. 1037=52 Cal. 595=42 C.L.J. 501=

A.I.R. 1925 Cal. 872.

—Murder—Blood stains on accused's shirt is not sufficient corroboration—Evidence as to motive does not dispense with need for corroborative evidence. (*Le Rossignol and Fford, JJ.*). JIT SINGH v. EMPEROR. 86 I.C. 811=26 Cr.L.J. 875=

26 P.L.R. 124=A. I. R. 1925 Lah. 826.

—Mere fact that the accused were seen with the approver a few days before the dacoity is not a material corroboration of the evidence of the approver to the effect that they joined him in the dacoity. If the accused person produces certain property which is identified at the trial as having been stolen in the course of the dacoity, it is sufficient corroboration. (*Scott-Smith, A.C.J.*). HAZARA SINGH v. THE CROWN. 82 I.C. 707=6 L.L.J. 370=

25 Cr.L.J. 1347=A.I.R. 1924 Lah. 727.

—Approver's detention in Police lock-up is immaterial.

That the evidence of an approver, if believed is sufficient foundation whereon to repose a conviction is quite clear, but in practice the Courts *ex majori cautela* insist upon corroboration of the approver's statement in material particulars. Where the statement of the approvers that there was a murderous conspiracy to which the accused was a party was supported by the evidence proving that he did aid the parties to that conspiracy to obtain murderous weapons.

*Held*, that there was sufficient corroboration. The facts that the approvers did not make statements as soon as they were arrested and that they were kept in the Police lock-up during the enquiry were immaterial. (*Le Rossignol, J.*). TOTA SINGH v. EMPEROR. 69 I.C. 462=A.I.R. 1924 Lah. 357.

—Identification by three persons and the recovery of stolen property with the accused constitute a very satisfactory corroboration. (*Dalal, J.C.*). EMPEROR v. RAM CHARAN. 27 O.C. 29=

11 O.L.J. 210=25 Cr.L.J. 785=

A.I.R. 1924 Oudh 314.

—An approver may be telling the truth and it is quite probable that he himself was concerned in the murder but his statement as to who his accomplices were, must be corroborated by reliable evidence before it can form the basis of a conviction. The corroboration offered by the statement of two men who apparently knew something about the matter from the very beginning but refused to make any statement until the third day of the

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police investigation, must be regarded with doubt and these witnesses may possibly be hiding themselves at the cost of innocent men. (*Chevis, C. J. and Le Rossignol, J.*). FATTA v. EMPEROR.

67 I.C. 828=2 L.L.J. 296=23 Cr.L.J. 476=

18 P.W.R. (Cr.) 1922.

**—S. 133—Retracted confession.**

—*Must be much more corroborated than evidence of accomplice taken on oath.*

A retracted confession is not 'the testimony of an accomplice within the meaning of S. 133. A retracted confession should carry practically no weight as against the person other than the maker, because it is not made on oath, it is not tested by cross-examination and its truth is denied by the maker himself who has lied on one or other of the occasions and the very fullest corroboration would be necessary in such a case, far more than would be demanded for the sworn testimony of an accomplice on oath: 28 Cal. 689; 38 Cal. 559, *Ref.* (*Newbould and Mookerjee, JJ.*). MOYSE SARDAR v. EMPEROR. 84 I. C. 712=40 C.L.J. 551=26 Cr. L.J. 360=

A.I.R. 1925 Cal. 406.

**—S. 133—Value of accomplice's evidence.**

—Although it is not illegal to convict on the uncorroborated evidence of an accomplice there is consensus of opinion that a conviction on the uncorroborated testimony of an accomplice is rarely justified. Nature of corroboration that is required indicated. (*Raza and Nanavutty, JJ.*). BACHCHU v. EMPEROR. 7 O.W.N. 862=1930 Cr.C. 1079=

A.I.R. 1930 Oudh 453.

**—Rule of practice.**

Although a conviction is not "illegal" merely because it proceeds on the uncorroborated testimony of an accomplice, the rule of practice is now firmly established that corroboration of such testimony in material particulars connecting each of the individual accused with the crime is necessary to justify his conviction. A.I.R. 1927 Lah. 581, *Ref.* (*Bhide and Johnstone, JJ.*). HAKAM SINGH v. EMPEROR. 1929 Cr. C. 626=

A.I.R. 1929 Lah. 850.

—*One accomplice cannot corroborate another accomplice—'Taint' must be removed.*

The testimony of one accomplice is of little value as a piece of corroborative evidence in support of the testimony of another accomplice. The testimony of an approver can be used for the purpose of corroboration if the taint attached to it is removed. But this "taint" must be removed to such an extent that the Court is prepared to believe the testimony of the approver in the same way and to the same extent as the testimony of an ordinary witness whom it considers to be worthy of credit. A.I.R. 1923 Lah. 76 and 20 P.R. 1919, *Ref.* (*Bhide and Johnstone, JJ.*). HAKAM SINGH v. EMPEROR. 1929 Cr. C. 626=A.I.R. 1929 Lah. 850.

—*Controlled by S. 114, Illus. (b).*

Absolute rule of law regarding the evidence of accomplices that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice is subject to a rule of guidance in illustration (b) to S. 114 and which says that an accomplice is unworthy of credit, unless he is corroborated in material particulars. (*Kimkhede and Mohindin, A.J.Cs.*). MUSA v. EMPEROR.

114 I.C. 609=30 Cr.L.J. 333= 1929 Cr. C. 257=A.I.R. 1929 Nag. 233.

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It is generally unsafe to convict a person on the evidence of accomplices unless corroborated in material particulars. In considering whether this maxim applies to a particular case it must be remembered that all persons coming technically within the category of accomplices cannot be treated on precisely the same footing.

Accomplice evidence is untrustworthy for three reasons:—(i) He is likely to swear falsely to shift the guilt from him; (ii) He being a participator in crime is likely to disregard the sanction of an oath; and (iii) He gives evidence under promise of or in expectation of a pardon. Therefore if the principal evidence is of accomplices, it is tainted evidence and hence there is need for corroboration. 26 Bom. 193; 14 Bom. 115, *Foll.* (*Kinkhede, A.J.C.*). MUHAMMAD USUF KHAN v. EMPEROR.

114 I. C. 437=30 Cr. L. J. 311=1929 Cr. C. 110=A.I.R. 1929 Nag. 215.

**—Withdrawal of prosecution does not make him independent witness—Corroboration of one accomplice by another is not independent.**

The withdrawal of prosecution against an accomplice relegates him from the position of a co-accused to his original position of an accomplice who had for all practical purposes earned complete immunity for his participation in the crime. His evidence under such circumstances could not be a piece of independent evidence. To regard the testimony of one accomplice as corroborated by the testimony of another accomplice is to hold that there is corroboration where under law or fact there is none at all. (*Kinkhede, A.J.C.*). MAHOMED YUSAF KHAN v. EMPEROR.

114 I. C. 457=30 Cr. L. J. 311=1929 Cr. C. 110=A. I. R. 1929 Nag. 215.

**—If evidence of accomplice is truthful demand of corroboration is not obligatory on tribunal—It should apply intrinsic and extrinsic tests to ascertain truthfulness.** (*Courtney Terrell, C.J. and Macpherson, J.*). RATTAN DHANUK v. EMPEROR.

113 I. C. 329=9 P. L. T. 672=8 Pat. 235=30 Cr. L. J. 137=12 A. I. Cr. R. 41=A.I.R. 1928 Pat. 630.

**—It is impossible to hold that the evidence of an accomplice uncorroborated cannot be said to be evidence against an accused: 1 A. L. J. R. 110, *Ref.* (*Banerji, J.*). BULCHAND v. EMPEROR.**

97 I. C. 489=49 All. 181=24 A. L. J. 1050=7 L. R. A. Cr. 197=27 Cr. L. J. 1369=A. I. R. 1927 All. 90.

**—Co-accused—Discharged instead of being tendered a pardon—Competent witness.**

Where in a trial for offence under S. 401 the case against an accomplice had been withdrawn on the ground that he had aided materially in bringing to light the operations of the gang and he was discharged under S. 494 (1) instead of tendering a pardon under S. 387 and then he was examined as a witness against his co-accused,

*Held*, that there was nothing illegal in the procedure adopted and that the accomplice was a competent witness in the case: Cr. App. No. 22 of 1918 (Nagpur J.C.'s Court) and 25 Bom. 422, *Rel. on.* (*Findlay, Offg. J.C.*). MAHADEO v. EMPEROR.

95 I. C. 471=27 Cr. L. J. 807=A. I. R. 1926 Nag. 426.

**—Corroboration in all material particulars is not necessary.**

In dealing with the evidence of an accomplice the Judge is not bound to rely on such statements

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only as are corroborated by other reliable evidence. Once a foundation is established for a belief that a witness is speaking the truth because he is corroborated by true evidence on material points, the Judge is at liberty to come to a conclusion as to the truth or falsehood of other statements not corroborated. (*Macleod, C.J. and Crump, J.*). BHIM-RAO NARASIMHA HUBLIKAR v. EMPEROR.

86 I. C. 72=27 Bom. L. R. 120=26 Cr. L. J. 696=

A. I. R. 1925 Bom. 261.

**—Provided that an accomplice is not a co-accused under trial in the same case, in a trial before a Magistrate an accomplice is a competent witness and may be examined on oath.** (*Baguley, J.*). A. V. JOSEPH v. EMPEROR.

85 I. C. 236=26 Cr. L. J. 492=3 Bur. L. J. 265=3 Rang. 11=A. I. R. 1925 Rang. 122.

**—Accomplice against whom case is withdrawn—One to whom pardon is tendered—Position of.**

An accomplice witness against whom the case has been withdrawn under S. 494 is less reliable than one to whom a pardon has been tendered under S. 387. The latter is pardoned conditionally and has before him, as an inducement to stick to the truth, the constant apprehension that his statement may be used against him in a trial hereafter if he is proved to have given false evidence on any point. On the other hand the accomplice witness who has not received a conditional pardon is a freer man in the witness-box since he is not pinned down to a previous statement which may be based on tutored material by the fear of prosecution for, perjury if his deposition in Court does not correspond exactly with that previous statement. (*Campbell, J.*). CHHAPROLIA v. EMPEROR.

73 I. C. 805=24 Cr. L. J. 696=A. I. R. 1924 Lah. 235.

**—S. 133—Value of approver's evidence.**

**—Dacoits, drawn from different places and committing offence for over a long period—Consistent correct identification of every accused not necessary.**

In the case of a gang the members of which had been collected from an area with a diameter of over fifty miles, and had been concerned in dacoities in the course of which more than a hundred different individuals had taken part in the offences and where the offences had continued over a period of four years, it would almost be a miracle if any man had been able consistently to identify correctly every man who had taken part in these offences, or who had belonged to the gang. No doubt, in such a case the failure of an approver to identify a particular man on one occasion, although he identified him on others, weakens his evidence considerably in respect to that particular man. But this circumstance does not show such a man to be innocent and cannot outweigh other evidence which establishes his guilt. Even where the approver's evidence is weak against a particular individual, that particular individual should be convicted when there is strong evidence apart from the evidence of the approver to establish that he was a member of the gang. (*Stuart, C. J. and Raza, J.*). KHILAWAN v. EMPEROR.

112 I. C. 337=5 O. W. N. 760=29 Cr. L. J. 1009=11 A. I. Cr. R. 273=A. I. R. 1928 Oudh 430.

**—Principle explained.**

The evidence of an approver does not differ from the evidence of any other witness save in one particular respect, namely, that the evidence of an accomplice is regarded *ab initio* as open to grave



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suspicion. Accordingly, if the suspicion which attaches to the evidence of an accomplice be not removed, that evidence should not be acted upon unless corroborated in some material particular, and if the suspicion attaching to the accomplice's evidence is removed then that evidence may be acted upon, even though uncorroborated and the guilt of the accused may be established upon that evidence alone. The law on the point, as laid down in Ss. 114, 133 and 134, Evidence Act, gives no countenance to the contention that the uncorroborated testimony of an accomplice is necessarily insufficient to establish a charge against an accused. (*Courtney-Terrell, C. J. and Macpherson, J.*). **BATTAN DHANUK v. EMPEROR.** 113 I. C. 329 = 9 P. L. T. 672 = 8 Pat. 235 = 30 Cr. L. J. 137 = 12 A. I. Cr. R. 41 = A.I.R. 1923 Pat. 630.

—Where the approver's testimony was not sufficiently corroborated by the evidence as to the recovery of articles which were incapable of identification,

*Held*, the accused should not be convicted. (*Abdul Raof, J.*). **SHAH ALAM v. CROWN.**

84 I.C. 1052 = 6 L.L.J. 280 = 26 Cr. L.J. 412 = A.I.R. 1925 Lah. 44.

**Charge of murder.**

It is not safe to convict the accused for murder on the strength of an approver's statement and the retracted confession of one of the accused, especially when there is a conflict between the two statements and there is very little independent corroboration. (*Neave and Kendal, A. J. Cs.*). **PARMESHWAR v. EMPEROR.** 82 I.C. 135 = 11 O.L.J. 325 = 25 Cr.L.J. 1207 = A.I.R. 1924 Oudh 369.

**Approver's complicity in the crime must be proved.**

A statement should not be accepted as that of an approver without any test as to his complicity in the crime. Such a statement does not amount to evidence against the accused. (*Dalal, A. J. C.*). **SANT RAM v. EMPEROR** 74 I.C. 543 = 24 Cr. L.J. 799 = A.I.R. 1924 Oudh 188.

**S. 133—Miscellaneous.****If one section is controlled by the other.**

Per *Subhedar, A. J. C.*—The rule in S. 114, Illus. (b), that an accomplice is unworthy of credit unless he is corroborated in material particulars has become a rule of practice of so universal application that it has now almost acquired the force of law.

Per *Jackson, A. J. C.*—S. 133 cannot be entirely nullified by judicial decisions and there may be cases in which the rule in S. 114, Illus. (b), should not be applied. The question arising in every case where the uncorroborated evidence of the accomplice has to be considered is whether it can be believed or not. Further when the evidence is strengthened by corroboration of other facts of the story by evidence of several accomplices or by confessions of co-accused, the question whether the maxim should still apply must receive careful consideration: A.I.R. 1921 Nag. 39, *Rel. on.* (*Jackson, A. J. C. on difference between Staples and Subhedar, A. J. Cs.*). **DOULAT v. EMPEROR.** 120 I. C. 721 = 31 Cr. L. J. 133 = A. I. R. 1930 Nag. 97.

—If the evidence of an approver is discarded, it must be discarded as a whole and the defence cannot base arguments on it any more than the prosecution. (*Adami, J.*). **SHEO BARI v. EMPEROR.** A.I.R. 1930 Pat. 164.

**EVIDENCE ACT (1872), S. 133—Mode of examination.****Duty of prosecution to show that evidence is of accomplices and is corroborated.**

It is mainly the duty of the prosecution to bring the accomplice character of the evidence to the notice of the Court and then invite it to believe it by reference to the corroborative evidence on record. An accused is under no legal obligation to do so. He can keep quiet and take advantage of the flaw in the evidence brought by the prosecution against him, or in short, of the weakness of the prosecution case. (*Kinkhede, A. J. C.*). **MUHAMMAD USAF KHAN v. EMPEROR.** 114 I. C. 457 = 30 Cr. L. J. 311 = 1929 Cr. C. 110 = A.I.R. 1929 Nag. 215.

—The evidence of a spy requires corroboration to practically the same extent as that of an accomplice. (*Wazir Hasan and Pullan, A. J. Cs.*). **SURAT BAHADUR v. KING EMPEROR.** 81 I.C. 986 = 25 Cr. L. J. 1162 = 11 O. L. J. 640 = A.I.R. 1925 Oudh 158.

**Impossibility of corroborative evidence does not dispense with necessity thereof.**

It would be a perversion of the lesson gained by accumulated experience of the conduct of an accomplice to adopt any such rule of practice as that where corroboration is not possible his testimony may be accepted as true without corroboration. An accomplice is too immoral a person to be worthy of credit without corroboration in material particulars and if corroboration is not forthcoming because it is not possible in the nature of things that it should be forthcoming it does not make the accomplice less immoral. The guiding rule in this behalf is furnished by Illus. (b) of S. 114. (*Wazir Hasan, A. J. C.*). **MANNA LAL v. KING EMPEROR.** 75 I.C. 783 = 27 O.C. 40 = 25 Cr. L.J. 49 = A.I.R. 1925 Oudh 1.

**S. 134—Criminal trial.**

—In a criminal trial it is not incumbent upon the prosecution to produce all the persons who happened to have gathered at the spot where the offence occurred and that the production of two or three of the respectable and leading members of the village would suffice. (*Broadway and Jai Lal, J. J.*). **BAHADUR v. EMPEROR.** 112 I.C. 215 = 10 L.L.J. 229 = 29 Cr. L.J. 999.

**One witness.**

It is not illegal to convict a man on the evidence of only one witness. It must entirely depend on the circumstances of each case. (*Coutts Trotter, C. J. and Devadoss and Beasley, J. J.*). **VEERAPPA GOUNDAN v. EMPEROR.** 114 I.C. 353 = 31 Mad. 956 = 1 M. Cr. C. 56 = 28 M.L.W. 575 = 1929 M.W.N. 185 = 30 Cr. L. J. 317 = A.I.R. 1928 Mad. 1186 = 35 M.L.J. 591 (F.B.).

**S. 138—Mode of examination.****Court itself examining witnesses—Impropriety of.**

Generally it is not the province of the Court to examine witnesses and as a rule of the Court the Court should leave the witnesses to the pleaders to be dealt with as is provided for in S. 138 of the Indian Evidence Act; where therefore the Court took the witnesses into its own hands and proceeded with their examination and they were not permitted to be examined by the complainant or his pleader,

*Held*, that a ground for transfer of the case was made out. (*Wazir Hasan, J. C.*). **JANKI v. SHEO NARAIN SINGH.** 82 I.C. 154 = 11 O.L.J. 333 = 25 Cr.L.J. 1226 = 27 O.C. 246 = A.I.R. 1924 Oudh 374.



**EVIDENCE ACT (1872), S. 138—Scope.****—S. 138—Scope.**

—Section 138 deals not with the rights of the party but only provides the order in which the proceedings are to be conducted. (*Cuming and Lort-Williams, J.J.*). **EMPEROR v. O.A. MATHEWS.** 1929 Cr. C. 669 = A. I. R. 1929 Cal. 822.

**—S. 145—Admissibility.**

—It is not necessary, in order to make the previous statements admissible for the purpose of impugning the credit of a witness, that the accused should have had an opportunity to cross-examine. (*Madgavkar, J.*) **EMPEROR v. RAGHOO GANPAT.** 97 I.C. 37 = 28 Bom. L.R. 775 =

27 Cr. L.J. 1061 = A.I.R. 1926 Bom. 404.

**—S. 145—Depositions in commitment proceedings.**

—Former statement cannot be put in under S. 288, Cr. P. Code without putting to witness.

No doubt when depositions before the committing Magistrate are admitted in the Sessions Court under S. 288 they are on the same footing with any other evidence in the case. But S. 145, Evidence Act; governs the position in so far as these statements are used for contradicting the witness either mainly or incidentally. Depositions, therefore, taken in the Committing Magistrate's Court which contradict the evidence given in the Sessions Court cannot, however, be put in without putting them to the witness: A. I. R. 1922 Pat. 40; 7 All. 862. *Appr.*; 28 All. 683, *Expl.* and *Not appl.*; 4 C.W.N. 49, *Diss. from.* Other case-law referred. (*Scroope and Dhavle, J.J.*). **NANHU MAHTON v. EMPEROR.** A.I.R. 1930 Pat. 338.

**—S. 145—Evidentiary value.**

—Cr. P. Code, S. 164.

Previous statements used for discrediting the evidence of a witness cannot be used as substantive evidence: 34 Cal. 129 (P.C.), *Ref.*; 26 Mad. 191 and 17 O. C. 363, *Foll.* (*Walsh and Kendall, J.J.*). **BISHEN DATT v. EMPEROR.** 105 I.C. 677 =

8 L.R.A. Cr. 130 = 8 A.I. Cr. R. 287 =

25 A.L.J. 994 = 28 Cr. L.J. 965 =

A.I.R. 1927 All. 705.

**—S. 145—First Information.**

—A first information report can only be used to corroborate or contradict under the provisions of Ss. 157 and 145, the person who makes it. It cannot be used as substantive evidence to contradict other persons: A.I. R. 1928 Lah. 17, *Foll.* (*Addison and Dalip Singh, J.J.*). **GAMAN v. EMPEROR.** 116 I.C. 187 = 11 L.L.J. 1 = 12 A.I. Cr. R. 453 =

30 Cr. L.J. 871 = A.I.R. 1928 Lah. 913.

—The statement of a person recorded by the police as a first information report can be proved to corroborate that person's evidence in Court under the provisions of S. 157, to impeach his credit by cross-examination under S. 145 of the Act provided that the procedure there prescribed is observed, but it cannot be used as substantive evidence against him: 4 P.R. 1918 Cr., *Foll.* (*Tek Chand and Coldstream, J.J.*). **THAKAR SINGH v. EMPEROR.** 107 I.C. 761 = 29 Cr. L.J. 277 = 9 A.I. Cr. R. 516.

**—S. 145—Mode of contradicting.**

—Procedure.

If the defendant wishes to cross-examine a witness on a previous deposition with a view to discrediting him the attention of the witness must be drawn to those discrepancies so that he may have the chance of explaining them. In such a case it is

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not proper for a judge to stop the examination and have the whole deposition filed with a view to discrepancies being pointed out at the time of argument. (*Waller and Cornish, J.J.*). **SUBBIAH THEVAN v. EMPEROR.** 1929 M. W. N. 789.

—In order to contradict a witness by a writing or a former statement made by him, it is essential that writing or statement should be put to him. (*Broadway and Agha Haidar, J.J.*). **MAKHAN SINGH v. EMPEROR.** 119 I. C. 333 =

30 Cr. L. J. 1052.

**—S. 145—Mode of proof.**

—S. 145 controls S. 155.

Section 155 only lays down that the credit of a witness may be impeached *inter alia* by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted; but it does not lay down the manner in which the former statement is to be proved. The mode of proof of such a statement in writing when it is sought to be tendered in evidence for contradicting a witness is provided in S. 145. In other words S. 155 is controlled by S. 145 and is not independent of it. (*Jai Lal and Bhide, J.J.*). **GOPI CHAND v. EMPEROR.** A. I. R. 1930 Lah. 491.

**—S. 145—Object.**

—The object of the provision in S. 145 is to give the witness the chance of explaining or reconciling his statements before the contradiction can be used as evidence. (*Chotener and Duval, J.J.*). **MADARI SIKDAR v. EMPEROR.** 102 I.C. 550 =

54 Cal. 307 = 28 Cr. L. J. 582 =

8 A.I. Cr. R. 112 = A.I.R. 1927 Cal. 514.

**—S. 145—Omission to draw attention.**

—Previous statement cannot be used to contradict him.

Where the witness seemed to have improved in his evidence in the Court, upon the statement made by him in the first information report,

*Held*, that inasmuch as his attention was not directed to the statement made by him in the first information report in accordance with the procedure laid down in S. 145 that statement cannot be used for the purpose of contradicting the evidence given by him in Court. (*Scott-Smith and Martineau, J.J.*). **MOHNA v. THE CROWN.** 83 I.C. 406 =

7 L.L.J. 59 = 26 Cr. L. J. 774 =

A.I.R. 1925 Lah. 328.

**—S. 145—Police diary.**

—Principle explained.

It is only what is written in the police diaries that can be used under S. 145, to contradict the witness, and what the Police officer stated that a witness said or did not say, is inadmissible. The way to prove those portions of the written statement of a witness which have been specifically put to him in order to contradict him is for the accused to mark the passage or passages in the copy from the police diaries given to him and then to ask the writer of the statement to say that it is a true copy: (A. I. R. 1926 Lah. 347 and A. I. R. 1925 Lah. 337, *Ref. to.* (*Addison and Coldstream, J.J.*). **DHARAM SINGH v. EMPEROR.** 108 I.C. 162 =

9 A.I. Cr. R. 567 = 29 Cr. L.J. 343 =

A.I.R. 1928 Lah. 507.

**—S. 145—Previous deposition.**

—Deposition before Magistrate who first started to try the case cannot be used for the purpose of discrediting the evidence given before another

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Magistrate unless it is produced in evidence. (*Fforde, J.*). SAWAN SINGH v. CROWN. 90 I.G. 657=7 L.L.J. 339=26 P.L.R. 811=26 Cr. L.J. 1585=A.I.R. 1925 Lah. 499.

**—S. 145—Proof of statement.**

—The statement by which it is sought to contradict the prosecution witness under S. 162, Cr. P. C. must be either proved by the investigating officer, or must be admitted by the witness in his cross-examination, or must be proved in some other way before it is put to the witness under S. 145. (*Patkar and Baker, J.J.*). SHAIKH USMAN v. EMPEROR. 107 I.C. 57=52 Bom. 195=9 A.I. Cr. R. 476=29 Cr. L.J. 221=29 Bom. L.R. 1581=A.I.R. 1928 Bom. 23.

**—S. 145—Statements to police.**

—Compliance with section necessary.

Under S. 162, Cr. P. Code., a statement made before the investigating officer can be used for the purpose of contradicting such witness when produced at the trial but after strict compliance with the provisions of S. 145, Evidence Act.

If the witness admits to have made the statement the previous statement in writing need not be proved. If he denies to have made any such statement and it is intended to contradict him the relevant portions of the record contrary to his statement in Court must be read to him and the witness should be given the opportunity to reconcile the same. It is only after this is done that the record of the previous statement becomes admissible in evidence for the purpose of contradicting the witness and can then be proved in any manner provided by law. (*Jai Lal and Bhide, J.J.*). GOPI CHAND v. EMPEROR. A.I.R. 1930 Lah. 491.

—If the entire statement is no part of the judicial record.

Only those portions of statements made by witnesses before the police as have been actually used under S. 162, Cr. P. Code., to contradict the witnesses in the manner provided in S. 145, in the course of their cross-examination or re-examination are parts of the judicial record and can be treated as evidence in a case. The other parts of the statements cannot be relied upon by the prosecution or the defence in determining the guilt or innocence of the accused and should not be referred to by the Judge. (*Tek Chand and Agha Haidar, J.J.*). MT. SABHAI v. EMPEROR. 121 I.C. 66=31 Cr. L.J. 199=A.I.R. 1930 Lah. 449.

—Cr. P. Code, S. 162—Stage when it can be used.

So far as proceedings before charge are concerned, copies of witnesses, statements made to the police should not be granted until the stage of cross-examination is reached. If that stage is allowed to go by without application being made, an accused must wait until the witness is again about to be subjected to cross-examination before he can claim grant of a copy. Under S. 145, until the occasion arises for putting the statement to the witness it cannot legally be used for any purpose whatsoever. It should not therefore be placed in the accused's hands until that stage in the trial has been reached when he may so use it. (*Curgenven, J.*). PUBLIC PROSECUTOR, MADRAS v. VEDI. 122 I.C. 463=2 M. Cr. C. 243=1929 M.W.N. 885=31 M.L.W. 241=1930 Cr. C. 185=31 Cr. L.J. 417=

A.I.R. 1930 Mad. 118,

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—Procedure indicated.

A copy of the statement made before the police cannot be used against the witness till he has been confronted with it. The right procedure, when a prosecution witness is contradicting himself, is to ask the Judge to look into the diary and decide whether the accused person should not have a copy of the statement. If such copy be granted, the witness's attention must be called to the same: A.I.R. 1915 P.C. 7, *Ref. (Mears, C.J. and Mukerjee, J.)*. KASHI RAM v. EMPEROR. 109 I.C. 120=26 A.L.J. 139=9 A.I. Cr. R. 249=9 L.R.A. Cr. 30=29 Cr. L.J. 472=A.I.R. 1928 All. 280

—How they can be used.

The only way a witness can be contradicted by statements made to the police under the provisions of S. 162, Cr. P. Code, is to prove his written statement and put it to the witness under S. 145, Indian Evidence Act, to permit him to explain the contradictions, if any. Statements made to the police cannot be used at a trial in any other way. (*Addison and Kemp, J.J.*). EMPEROR v. IBRAHIM. 105 I.C. 807=8 Lah. 605=28 P.L.R. 649=28 Cr. L.J. 983=9 A.I. Cr. R. 132=A.I.R. 1928 Lah. 17.

—First information report—Statement by third parties to police during investigation and counter-information against complainant or his party—Principles explained.

The first information report against the accused is clearly not a statement within the contemplation of S. 162 because it is not made in the course of an investigation. Such report has to be tendered under one or other of the provisions of the Evidence Act. The usual course is for the prosecution to call the informant and for the first information to be tendered as corroboration under S. 157; but it could also be tendered in a proper case under S. 32 (1) as a declaration as to the cause of the informant's death, or as part of the informant's conduct (of the *res gestae*) under S. 8. Theoretically, the defence could prove the information to impeach the informant's credit under S. 155 or to contradict him under S. 145.

Statements made by third parties to the police in the course of their investigation can be used as corroboration under S. 157, or in contradiction under S. 145 or to impeach credit under S. 155 provided the person who made the statement is called as a witness. This would apply to the prosecution and to the defence indifferently under the Evidence Act. But S. 162 of the Cr. P. Code enacts first that if such a statement is not recorded in writing it cannot be used in evidence in any circumstance or for either side or for any purpose: A.I.R. 1920 Rang. 116 (F.B.); A.I.R. 1925 Lah. 399 and A.I.R. 1924 Bom. 510, *Foll.*

If such a statement has been recorded in writing then it cannot be used for any purpose but one and that by the defence. Provided that the person who made it is called as a witness for the prosecution the defence may apply for a copy of the statement and if it be proved may use it under S. 145 of the Evidence Act to contradict that witness.

It sometimes happens that after the first information has been laid against the accused, a counter-information is laid against the complainant or his party by a member of the accused's party who is not himself an accused. As this comes under S. 154 and must be reduced to writing and signed,

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it cannot come within S. 162. Whether it is admissible at the trial of the accused will depend upon the circumstances and must be decided under Evidence Act. The police cannot of course treat statements as informations unless they are really received as such and come truly and properly within S. 154. (*Rankin and Duval, JJ.*). *AZIMADDY v. EMPEROR.* 99 I.C. 227=

44 C.L.J. 253=28 Cr. L.J. 99=54 Cal. 237=  
A.I.R. 1927 Cal. 17.

—*Compliance with section necessary.*

The provisions of S. 162 as amended absolutely bar the use of statements, both oral and written, and make those statements inadmissible for any purpose under the Evidence Act in any enquiry or trial except for one purpose, and that is by the accused to contradict a prosecution witness in the manner provided by S. 145: A.I.R. 1925 Mad. 579, *Diss. from. (Butledge, C.J., Heald, Duckworth, Chari and Maung Ba, JJ.)*. *EMPEROR v. NGA THA DIN.* 96 I.C. 145=5 Bur. L. J. 30=4 Rang. 72=

27 Cr. L.J. 881=A.I.R. 1926 Rang. 116. (F. B.).

**—S. 145—Third party's statement.**

—To hold that a witness may be contradicted by previous inconsistent statements, not of himself but of a third party, would be against principle and opposed to this section. (*Phillips and Venkata-subba Rao, JJ.*). *B. BEHAVAMMA v. B. RAMAMMA.* 78 I.C. 176=19 M.L.W. 205=1924 M. W.N. 270=

34 M. L. T. 338=A.I.R. 1924 Mad. 537.

**—S. 145—Uninterpreted depositions.**

—Depositions of the witnesses in a previous case in which there has been no compliance with the provisions of S. 360 may not possibly be used as evidence in the case in which they were made, but nevertheless they can be used on a subsequent occasion to contradict the witnesses under S. 145. (*Adami and Scroope, JJ.*). *FAZLUR RAHMAN v. KING EMPEROR.* 104 I.C. 100=6 Pat. 478=

8 P. L. T. 773=8 A.I. Cr. R. 555=

28 Cr. L.J. 772=A. I. R. 1927 Pat. 315.

**—S. 143—Leading questions.**

—*If may be asked without declaring witness hostile.*

Section 154 read with S. 143 provides that the Court may allow the party to put leading questions to his own witnesses. This does not necessarily mean that he must declare the witness hostile and cross-examine him. It is only when he declares the witness hostile and cross-examines him that he cannot rely upon his evidence. Where the Public Prosecutor asks a witness some questions with the permission of the Court desiring to get from him not a contradiction of what he said but something in addition, he cannot be said to have cross-examined the witness. The questions are merely leading questions.

Per *Lort-Williams, J.*, contra.—Sections 143 and 154 read together do not give power to prosecution to put leading questions to their own witnesses even with the assent of the Judge. The meaning of S. 154 is that with permission of the Court they may treat a witness hostile and cross-examine him. (*Cuming and Lort-Williams, JJ.*). *BIKRAM ALI PRAMANIK v. EMPEROR.* 50 C.L.J. 467=

1930 Cr. C. 139=31 Cr. L.J. 610=  
A.I.R. 1930 Cal. 139.

**—S. 150—Criminal prosecution.**

—There is no absolute privilege in the case of an advocate but a question asked in cross-examination making an imputation as regards a witness affords no ground ordinarily for a criminal prosecu-

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tion: A. I. R. 1927 Cal. 823, *Foll. (C. C. Ghosh and Gregory, JJ.)*. *NAZIR AHMAD v. JOGESH CHANDRA BANERJI.* 111 I.C. 569=29 Cr. L. J. 839=

11 A.I. Cr. R. 156.

**—S. 154—Cross-examination without examination-in-chief.**

—A prosecution witness not called by the prosecution but "tendered as gained over" cannot be cross-examined by the prosecution. (*Ross and Wort, JJ.*). *RAMJAG AHIR v. EMPEROR.* 109 I. C. 114=7 Pat. 55=9 P. L. T. 567=

29 Cr. L.J. 466=A.I.R. 1928 Pat. 203.

**—S. 154—Cross-examination without permission.**

—*Procedure explained.*

The party desiring to cross-examine its own witness has to take the permission of the Court, implying thereby that there is a discretion in the Court whether it would permit the witness to be cross-examined or not. That discretion has always to be exercised with caution by the Court before which the matter comes up for consideration. Putting questions by way of cross-examination to one's own witness without the permission of the Court is a procedure not to be allowed. (*Cuming and Mukerji, JJ.*). *KHJIRUDDIN v. EMPEROR.* 92 I. C. 442=53 Cal. 372=42 C.L.J. 504=

27 Cr. L.J. 266=A.I.R. 1926 Cal. 139.

**—S. 154—Hostile witness.**

—*Definition.*

A hostile witness may be defined as one who from the manner in which he gives his evidence (within which is included the fact that he is willing to go back upon previous statements made by him) shows that he is not desirous of telling the truth to the Court. (*C. C. Ghose and Pearson, JJ.*). *PANCHANAN GOGAI v. EMPEROR.* 51 C.L.J. 203=34 C.W.N. 526=

A.I.R. 1930 Cal. 276.

—*Ground for discrediting a witness as hostile.*

The grounds that witnesses do not support the prosecution story, but they are neighbours of the accused and they have been won over by them, that one of them is a tout and the other is a man of straw and quite unreliable, are no reasons for declaring the witnesses hostile; and unless there is something in their depositions which is conflicting with earlier statements made by them, which would afford ground for thinking that they have been gained over by the defence, the prosecution is not entitled to declare them hostile. The fact that the witnesses are neighbours of the accused is not sufficient ground for treating them as hostile in order to discredit the statements that they made favourable to the defence. (*Ross and Kulwant Sahay, JJ.*). *PARMSEHWAR DAYAL v. EMPEROR.* 94 I.C. 705=7 P.L.T. 567=1926 P.H.C.C. 139=

27 Cr. L.J. 657=A.I.R. 1926 Pat. 316.

**—S. 154—Purpose of cross-examination.**

—*To obtain admission on which party cross-examining may rely.*

A party is allowed to cross-examine its own witness because that witness displays hostility and not necessarily because he displays untruthfulness. The main purpose of such cross-examination is to obtain admissions and it would be ridiculous to assert that a party cross-examining a witness is thereby prevented from relying on admissions and to hold that the fact that the witness is being cross-examined implies an admission by the cross-examiner that all the witnesses' statements are falsehoods: A.I.R. 1927 Bom. 501, *Rel. on; Bradley v. Ricardo*, (1881) 8 Bing. 57, *Rel.*

**EVIDENCE ACT (1872), S. 154—Result of cross-examination.**

*Faulkner v. Brines*, (1858) 1 F. & F. 254; A.I.R. 1926 Cal. 139; A.I.R. 1928 Cal. 690, *Diss. from*. (*Courtney Terrell, C. J. and Dhave, J.*). *SOHRAI SAO v. EMPEROR*. 124 I.C. 836=11 P.L.T. 148=9 Pat. 474=A.I.R. 1930 Pat. 247.

**—S. 154—Result of cross-examination.**

*Position of hostile witness—Rule as to.*

The evidence of a hostile witness cannot in part be relied upon and the rest of it discarded or rejected. When a witness is declared hostile so that leave to cross-examine is granted to the party calling him, it is necessary that the Judge should explain what the position is that then arises, namely that by asking for leave to cross-examine the witness, the party calling him admits that he is not a witness of truth and one whose evidence is not entitled to credit, who is prepared to make one statement on oath at one time and another at another time and that the evidence of such witness should be rejected and left out of account in the minds of the jury. It is a rule which leans in favour of the accused and as such ought not to be departed from lightly. The Judge should tell the jury to reject the evidence of such witness altogether and his omission to do so amounts to misdirection: A.I.R. 1923 Cal. 463; *Alexander v. Gibson*, 2 Camp. 556, *Ref.* (C. C. Ghose and Pearson, J.J.). *PANCHANAN GOGAI v. EMPEROR*. 51 C.L.J. 203=34 C.W.N. 526=A.I.R. 1930 Cal. 276.

*No reliance in part.*

A party cannot be allowed to say that his witness is a truthful witness so far as a part of his evidence is concerned but an untruthful witness so far as some other portion is concerned. Once a party cross-examines his own witness he must be held to no longer rely on him: A.I.R. 1926 Cal. 139 and A.I.R. 1923 Cal. 463, *Rel. on.* (*Cuming and Lort-Williams, J.J.*). *MOKBUL KHAN v. EMPEROR*.

114 I.C. 793=56 Cal. 145=30 Cr. L.J. 350=

32 C.W.N. 872=A.I.R. 1928 Cal. 690.

*Discrediting certain statements does not amount to discrediting whole of the evidence.*

Seeking to discredit the statements of witnesses considered hostile only on certain points does not amount to discrediting the evidence *in toto*, of these witnesses, and it must be a matter for the Court, on the particular facts in each case to credit or to discredit the different portions of the evidence of each witness as in other cases: A.I.R. 1926 Cal. 139, *Diss.* (*Crump and Madgavkar, J.J.*). *EMPEROR v. JEHANGIR ARDESHIR*. 106 I.C. 100=8 A.I. Cr. R. 324=29 Bom. L.R. 996=28 Cr. L.J. 1012=A.I.R. 1927 Bom. 501.

When a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution under the provisions of S. 154, the result of that course being permitted is to discredit that witness altogether and not merely to get rid of a part of his testimony. (*Cuming and Mukerji, J.J.*). *KHJIRUDDIN v. EMPEROR*. 92 I.C. 442=53 Cal. 372=42 C.L.J. 504=27 Cr. L.J. 266=A.I.R. 1926 Cal. 139.

**—S. 155—First information report.**

*Conviction based on first information report alone, illegal.*

First information report is not substantive evidence of the facts recorded in them and a conviction cannot be based on such reports. They can be used to corroborate the witnesses who made them and are of value showing that they told the same story at the first possible occasion. If they tell a different story in Court, the report can be used to

**EVIDENCE ACT (1872), S. 155—Statements to police.**

contradict them or discredit their testimony. But it is not legitimate for a Court, when witnesses tell a different story in the witness box and contradict the report made by them, to discard the evidence given on oath and to rely on the report. (*Ryves, J.*). *JAMALUDDIN v. KING EMPEROR*. 74 I.C. 716=24 Cr. L.J. 812=A.I.R. 1924 All. 164.

**—S. 155—Investigating officer.**

*Should not be asked what a witness told him when the evidence is taken down in writing.*

Where the counsel for accused asked in the course of cross-examination the investigating officers if a certain witness made or not a particular statement to them,

*Held*, that though the language of S. 153 (3) is *prima facie* wide enough to permit of such questions, yet where the evidence has been reduced to writing, it is undesirable to permit the putting of such questions as, if the witness is replying from his memory alone, there is little value in what he may say. If he is refreshing his memory by looking at the diary, the procedure is outside the scope and intent of S. 159, Evidence Act. (*Mears, C. J. and Mukerjee, J.*). *KASHI RAM v. EMPEROR*.

109 I. C. 120=26 A.L.J. 139=

9 A.I. Cr. R. 249=9 L.R. A. Cr. 30=

29 Cr. L. J. 472=A.I.R. 1928 All. 280.

**—S. 155—Rape case.**

In rape cases the general immoral character of the woman is relevant evidence. (*Newbould and B. B. Ghose, J.J.*). *KERAMAT MONDAL v. EMPEROR*.

92 I. C. 439=42 C. L. J. 524=

27 Cr. L. J. 263=A.I.R. 1926 Cal. 320.

**—S. 155—Report of offence.**

*Report after 24 hours.*

A report of an offence, not made at or about the time of the occurrence, to an officer, who has no powers to investigate the matter, though it can be used under S. 155 to impeach the credit of the person making the same, cannot be used to corroborate the witness under S. 157. (*Cuming and Gregory, J.J.*). *EMPEROR v. RAM CHANDRA*.

111 I. C. 327=55 Cal. 879=10 A. I. Cr. R. 456=

29 Cr. L. J. 823=A.I.R. 1928 Cal. 732.

**—S. 155—Scope.**

Section 27 of the Evidence Act remains unaffected by the latest amendment of S. 162 of the Cr. P. C., but Ss. 155 and 157 are affected except in the only instance mentioned in the proviso to S. 162, Cr. P. C. (*Ruledge, C. J., Heald, Duckworth, Chari and Mawla, J.J.*). *EMPEROR v. NGA THA DIN*.

96 I. C. 145=4 Rang. 72=

5 Bur. L. J. 30=27 Cr. L. J. 881=

A.I.R. 1926 Rang. 116 (F.B.).

**—S. 155—Statements to police.**

Statements made by witnesses to the police officer during the course of investigation under Chapter 14 cannot be used by the Court for contradicting those witnesses. (*N. R. Chatterjee and B. B. Ghose, J.J.*). *KERAMAT MONDAL v. EMPEROR*.

92 I. C. 453=42 C. L. J. 528=

27 Cr. L. J. 277=A.I.R. 1926 Cal. 147.

*Admissible if S. 145 is complied with.*

Statements made before a police officer and taken down by him in writing are admissible under S. 155 (8) provided only that the provisions of S. 145 had been complied with, in the matter of putting the specific parts of it, which were to be relied upon, to the witnesses in their cross-exa-

**EVIDENCE ACT (1872), S. 157—First information report.**

mination. (*Sanderson, C.J. and Pearson, J.*). THOMAS JAMES HENRY ARNUP v. KEDAR NATH GHOSH. 91 I. C. 801=27 Cr. L. J. 129=30 C.W.N. 835=A.I.R. 1925 Cal. 1017.

**—S. 157—First information report.**

Statements in first information report can be used for the purpose of corroborating or contradicting a witness but are inadmissible for the purpose of proving that the facts alleged therein are correct: 17 C.W.N. 1218; A.I.R. 1925 All. 808 and A.I.R. 1927 Cal. 17, *Foll.* (*Beasley, C. J. and Pandalai, J.*). SANKARALINGATEVAN v. EMPEROR. 124 I. C. 506=1930 M.W.N. 496=3 M. Cr. C. 100=1930 Cr. C. 632=31 M.L.W. 451=A.I.R. 1930 Mad. 632=53 M.L.J. 397.

**—Cannot be used to contradict other persons.**

A first information report can only be used to corroborate or contradict under the provisions of Ss. 157 and 145, the person who makes it. It cannot be used as substantive evidence to contradict other persons: A.I.R. 1928 Lah. 17, *Foll.* (*Addison and Dalip Singh, J.J.*). GAMAN v. EMPEROR. 116 I. C. 187=11 L. L. J. 1=12 A.I. Cr. R. 453=30 Cr. L. J. 571=A.I.R. 1928 Lah. 913.

First information report is not substantive evidence by itself, but it can only be used under S. 157 as a previous statement to corroborate or contradict a statement made subsequently in Court. (*Shadi Lal, C. J. and Zafar Ali, J.*). CHOGHATTA v. EMPEROR. 91 I. C. 697=27 Cr. L. J. 121=A.I.R. 1926 Lah. 179.

**—S. 157—Hearsay evidence.****—Duty of prosecution.**

Section 157 provides an exception to the general rule excluding hearsay evidence and in order to bring a statement within the exception the duty is cast on the prosecution to establish by clear and unequivocal evidence the proximity of time between the taking place of the fact and the making of the statement. (*Tek Chand, J.*). MANGAL RAI v. EMPEROR. 110 I. C. 676=10 L. L. J. 262=29 P.L.R. 703=10 A.I. Cr. R. 519=29 Cr. L. J. 740=A.I.R. 1928 Lah. 647.

**—S. 157—Prior deposition.**

Where there is nothing in the deposition of a witness in the trial which may be corroborated by his earlier statements, there is no justification for the whole of the depositions being brought as evidence in the record, but only particular passages which are relevant may be used. (*Cuming and Mukerji, J.J.*). KHIJIRUDDIN v. EMPEROR. 92 I. C. 442=53 Cal. 372=42 C.L.J. 504=27 Cr. L. J. 266=A.I.R. 1926 Cal. 139.

**—S. 157—Rape case.**

If the evidence of raped girl is excluded from the case, the evidence of her relatives to the effect that she accused a certain person of having raped her cannot be used as corroborative evidence under S. 157. (*Foster, J.*). EMPEROR v. PHAGUNIA BHUIAN. 89 I. C. 1043=26 Cr. L. J. 1475=A.I.R. 1926 Pat. 58.

Where a tender girl was alleged to have been raped, a statement made by her stating that she was raped, and uttered immediately after the rape, crying and weeping, is admissible as explaining her act of crying, under S. 8 and by way of corroboration under S. 157. (*Kinkhade, A.J.C.*). SOOSALAL, BANIA v. EMPEROR. 82 I. C. 142=25 Cr. L. J. 1244=A.I.R. 1925 Nag. 74.

**EVIDENCE ACT (1872), S. 157—Statements to Police.****—S. 157—Records and documents.****—Entry in vaccination register.**

Where an entry in the vaccination register, which includes a statement by a woman that a person, bearing the name of the alleged father of her illegitimate child, was the father of the illegitimate child, is made three years after its birth, the entry does not satisfy the terms of S. 157, and is not admissible in evidence.

*Quaere*.—It is doubtful whether such a statement is rendered admissible by S. 85. (*Curgenvven, J.*). M. KANNIAPPAN v. KULLAMMAL. 1930 Cr. C. 88=1929 M. W. N. 696=2 M. Cr. C. 275=A.I.R. 1930 Mad. 194.

**—S. 157—Report of offence.**

A report of an offence, not made at or about the time of the occurrence, to an officer, who has no powers to investigate the matter, though it can be used under S. 155 to impeach the credit of the person making the same, cannot be used to corroborate the witness under S. 157. (*Cuming and Gregory, J.J.*). EMPEROR v. RAM CHANDRA ROY. 111 I. C. 327=55 Cal. 879=10 A. I. Cr. R. 456=29 Cr. L. J. 823=A.I.R. 1928 Cal. 732.

**—S. 157—Scope.**

Section 157 affected by S. 162 of the Cr. P. C., so far as statements to the police, taken under S. 161, whether oral or recorded are concerned, but S. 27 which deals with information received from persons accused of an offence and in police custody is not affected by the aforesaid section of the Cr. P. C. (*Rutledge, C. J., Heald, Duckworth, Chari and Maung Ba, J.J.*). EMPEROR v. NGA THA DIN. 96 I. C. 145=4 Rang. 72=5 Bur. L. J. 30=27 Cr. L. J. 881=A.I.R. 1926 Rang. 116 (F. B.).

**—S. 157—Statements before Magistrate.**

Any Magistrate is competent to hold a test identification and if he is not empowered to deal with the matter under enquiry he can prove the statement made before him under the provisions of S. 157. (*Chotener and Gregory, J.J.*). SAMI-UD-DIN v. EMPEROR. 109 I. C. 225=32 C.W.N. 616=10 A.I. Cr. R. 223=29 Cr. L. J. 497=A.I.R. 1928 Cal. 500.

**—S. 157—Statements in commitment proceedings.**

Statements made before a Committing Magistrate, when admissible under the Evidence Act, can be admitted for all purposes and not only for the purpose of corroboration or contradiction: A. I. R. 1925 Pat. 51, *Appr.* (*Sulaiman and Banerji, J.J.*). BEHARI v. EMPEROR. 98 I. C. 485=49 All. 251=25 A.L.J. 126=7 L.R.A. Cr. 205=27 Cr. L. J. 1365=7 A.I. Cr. R. 10=A.I.R. 1927 All. 479.

The object and effect of S. 288 of the Criminal Procedure Code is to place the deposition in the committal enquiry on exactly the same footing as the deposition in the Sessions Court. Such a deposition is "testimony" within the meaning of S. 157 of the Evidence Act, which, a prior statement by the witness during the police investigation is admissible in evidence to corroborate. A.I.R. 1928 Mad. 20 and 27 Cal. 295, *Foll.* (*Scott-Smith and Forde, J.J.*). MAM CHAND v. THE CROWN. 82 I. C. 129=5 Lah. 324=25 Cr. L. J. 1201=A.I.R. 1924 Lah. 609.

**—S. 157—Statements to Police.****—Statements to police and Committing Magistrate—Not substantive evidence.**

The statements made by a witness to the Police, are relevant only for the purpose of contradicting,



**EVIDENCE ACT (1872), S. 157—Statements to Police.**

his testimony at the trial, and in the absence of any order under Cr. P.C., S. 288, the statements made to the Committing Magistrate can be used only for the purpose of contradicting or corroborating that testimony. These statements cannot be treated as though they were substantive evidence like the statement made by the witness at the trial. (*Martineau and Zafar Ali, JJ.*). RAM KARAN v. EMPEROR. 92 I.C. 577=7 L.L.J. 371=26 P.L.R. 659=27 Cr.L.J. 289=A.I.R. 1925 Lah. 483.

—Statements made by the witnesses to the police during the investigation are not admissible for purpose of corroborating their depositions before the Committing Magistrate. (*Shadi Lal, C.J. and Zafar Ali, J.*). RAKHA v. CROWN. 93 I.C. 230=27 Cr.L.J. 438=26 P.L.R. 304=6 Lah. 471=A.I.R. 1925 Lah. 399.

—Oral statements by witnesses in Police investigation which do not corroborate their evidence at the trial are inadmissible. (*Wallace and Madhavan Nair, JJ.*). VENKATASUBBIAH v. EMPEROR. 85 I.C. 209=26 Cr.L.J. 721=48 Mad. 640=21 M.L.W. 190=1923 M.W.N. 68=A.I.R. 1925 Mad. 579=48 M.L.J. 198.

—*Deputy Superintendent of Police.*  
A statement, made to the Deputy Superintendent of Police, in which the informant gave an account of what occurred is admissible in evidence as the Deputy Superintendent of Police is an officer legally competent to investigate the facts of a murder and dacoity, within the meaning of S. 157. (*Ayling and Odgers, JJ.*). THACHROTH HYDROSS, *In re*. 75 I.C. 695=18 M.L.W. 113=1923 M.W.N. 860=25 Cr.L.J. 7=A.I.R. 1923 Mad. 694=45 M.L.J. 279.

—S. 158—Opinion of Court.  
—The question whether a witness is entitled to credit or not must be decided by a Court on the evidence before it, and not on what another Court thought of the witness in another case, and therefore opinion of Court in another case as to the witness cannot be put in to impeach his credit. (*Das and Foster, JJ.*). CHANDRESHWAR PRASAD NARAIN SINGH v. BISHESHWAR PRATAB NARAIN SINGH. 101 I.C. 289=3 Pat. 777=8 P.L.T. 510=A.I.R. 1927 Pat. 61.

—S. 158—Previous statements.  
—Previous statement not made in Court can be used for limited purpose of corroborating or contradicting witness only and not as substantive evidence: 26 Mad. 191 and 25 A.L.J. 994, *Foll.* (*Jai Lal and Abdul Qadir, JJ.*). NIAMAT KHAN v. EMPEROR. 31 P.L.R. 411=A.I.R. 1930 Lah. 409.

—S. 158—Statement to police.  
—Section 158 places a person whose statement has been used as evidence under S. 32 in the same category as a witness actually produced in Court for the purpose of contradicting his statement by a previous statement made by him. Therefore a statement which has been admitted in evidence under S. 32 may be contradicted by another statement of the same person made to police during investigation. (*Harrison and Jai Lal, JJ.*). HARI RAM v. EMPEROR. 89 I.C. 897=26 Cr.L.J. 1426=A.I.R. 1926 Lah. 122.

—S. 159—Document by others.  
—Document read at or near the transaction.  
When a witness wants to refresh his memory under S. 159, he is to do so by referring in Court to the document which he had read at or near the

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time of the transaction, and it is the fact that he had known it to be correct when he read it that is the justification for his doing so. It is quite immaterial that a document to which the witness refers in Court was not printed by the witness himself or in his presence. It is essential only that he should have read it at or soon after the transaction to which it relates. (*Hilton, J.*). RAMCHANDRA v. EMPEROR. 120 I.C. 798=1930 Cr. C. 331=31 Cr. L.J. 168=A.I.R. 1930 Lah. 371.

—S. 159—Investigating officer.

—*Practice explained.*

Where the counsel for accused asked in the course of cross-examination the investigating officers if a certain witness made or not a particular statement to them,

*Held*, that though the language of S. 155 (3) is *prima facie* wide enough to permit of such questions, yet where the evidence has been reduced to writing, it is undesirable to permit the putting of such questions as, if the witness in replying from his memory alone, there is little value in what he may say. If he is refreshing his memory by looking at the diary, the procedure is outside the scope and intent of S. 159, Evidence Act. (*Mears, C.J. and Mukerji, J.*). KASHIRAM v. EMPEROR. 109 I. C. 120=29 Cr. L.J. 472=9 L.R.A. Cr. 30=9 A. I. Cr. R. 249=26 A.L.J. 139=A.I.R. 1928 All. 280.

—S. 159—List of articles.  
—Lists of discovery of stolen articles can be used by the persons in order to refresh their memory at the time of giving evidence, but the lists are not themselves evidence. (*Scott Smith, A.C.J.*). HAZARA SINGH v. THE CROWN. 82 I. C. 707=25 Cr. L.J. 1347=6 L.L.J. 370=A.I.R. 1924 Lah. 1727.

—S. 159—Mode of proof.  
—Statement of the person injured by the accused, made before certain villagers and recorded in full by the Patwari, is not to be proved by producing the written record of it. The proper method is that given in S. 159. (*Hallifax and Mitchell, A.J.Cs.*). EMPEROR v. AKATA. 101 I. C. 599=23 N.L.R. 23=28 Cr. L.J. 471=8 A. I. Cr. R. 66=A.I.R. 1927 Nag. 222.

—S. 159—Notes of speech.  
—Section 159 does not render the notes of a speech inadmissible in evidence. (*Tapp, J.*). OM PARKASH v. EMPEROR. A.I.R. 1930 Lah. 867.

—S. 159—Post-mortem notes.  
—*If can go on the record en bloc.*  
Per *Rupchand, A.J.C.*—Sections 159 to 161 permit limited use being made of post-mortem notes of Medical Officer, namely that they be used by the witness who made them for refreshing his memory or by a party for the purpose of contradicting the witness. It is extremely undesirable that such notes of post-mortem examination be put in evidence through the Medical Officer *en bloc* as it is prejudicial to both parties.

Per *Percival, J. C.*—When pleader for accused takes no objection to the post-mortem notes going on the record and when there is no discrepancy between the post-mortem notes and the evidence of the Medical Officer, the placing of the post-mortem notes does not do the accused any harm: 9 Cal. 455 and 27 Cal. 295, *Ref.* (*Wild, A. J. C.*); on difference between *Percival, J. C.* and *Rupchand, A. J. C.*). MOHAMMAD YUSUF v. EMPEROR. 1930 Cr. C. 865=A.I.R. 1930 Sind 225.



**EVIDENCE ACT (1872), S. 159—Prior deposition.****—S. 159—Prior deposition.**

—Evidence recorded during absence of accused can't be used—Where witness is unable to remember details of occurrence but his memory can be refreshed under.

Where the deposition recorded under S. 512, Cr. P. C., of a witness who is unable to remember the details of the occurrence is sought to be given in evidence. The proper procedure in such a case is to read out his previous deposition to the witness under the provisions of S. 159 to refresh his memory and then to ask him whether he remembers the details of the occurrence. (*Scott-Smith, J.*). **BRIKA v. KING EMPEROR.**

76 I.C. 31=25 Cr.L.J. 95=A.I.R. 1924 Lah. 605.

**—S. 159—Statement of injuries.**

—A copy of the statement of injuries recorded in the register of medico-legal cases may be used by the medical witness for the purpose of refreshing his memory but it cannot be treated as evidence: 9 Cal. 455, *Ref. (Zafar Ali, J.)*. **MAHOMED SADIQ v. EMPEROR.**

89 I.C. 458=

26 P.L.R. 533=26 Cr.L.J. 1370=

A.I.R. 1926 Lah. 51.

**—S. 159—'Writing.'**

—The word "writing" used in S. 159 includes also printed matter. (*Hallon, J.*). **RAMCHANDRA v. EMPEROR.**

120 I.C. 798=1930 Cr. C. 331=

31 Cr.L.J. 168=A.I.R. 1930 Lah. 371.

**—S. 160—Engineer's report.**

—In a suit for damages for negligence in supervising a building, an engineer's report is admissible to prove quantity of damages, provided the Engineer makes the contents of the report a part of his deposition by using it to refresh his memory. (*Walmesley and Chakravarti, JJ.*). **NAGENDRA NATH SINGH v. SRIMATI NAGENDRA BALA.**

97 I.C. 200=43 C.L.J. 479=

A.I.R. 1926 Cal. 988.

**—S. 162—Procedure.**

—In order to ascertain whether certain public documents are privileged or not, the proper procedure to follow is as follows: The Court should issue summonses to the Record Keeper and the person who is in possession of such documents to produce them and on receipt of the summons it is the duty of those persons to appear in Court with those documents and there raise such objections as they might have had to their production or admissibility, and the Magistrate should then decide whether the objections were valid under Ss. 123 and 124, Evidence Act. They can then plead privilege under S. 123 or produce a proper privilege certificate from the head of their department that all or any of the documents summoned related to "affairs of State" and were privileged. (*Tek Chand and Agha Haidar, JJ.*). **EMPEROR v. KARTAR SINGH.**

110 I.C. 785=10 A.I. Cr.R. 557=

29 Cr.L.J. 753.

**—S. 165—Inadmissible evidence.**

—The power conferred on the Judge under S. 165 cannot be exercised for the purpose of introducing evidence in contravention of the law. (*N. R. Chatterjea and B. B. Ghose, JJ.*). **KERAMAT MANDAL v. EMPEROR.**

92 I.C. 453=42 C.L.J. 528=

27 Cr. L. J. 277= A.I.R. 1926 Cal. 147.

**—S. 165—Scope.**

—The provisions of S. 165 cannot be used in contravention of S. 162 of the Criminal Procedure Code. (*Otter, J.*). **MAUNG HTIN GYAW v. MAUNG RO SEIN.**

99 I.C. 1019=4 Rang. 471=

28 Cr. L. J. 219=7 A.I. Cr. R. 378=

A.I.R. 1927 Rang. 74.

**EXAMINATION OF WITNESSES.****—S. 167—Duty of appellate Court.**

—Reception of inadmissible evidence.

What a Court of appeal, has to consider is whether the reception of inadmissible evidence influenced the minds of the jury so seriously as to lead them to a conclusion which might have been different but for its reception. Hence where inadmissible evidence has been admitted, there are two points for consideration firstly whether the reception of the inadmissible evidence has in fact occasioned a failure of justice, and secondly whether if it is excluded, there was sufficient evidence to justify the verdict of the jury. (*Sanderson and Chotener, JJ.*). **HARENDRA NATH v. EMPEROR.**

84 I.C. 451=40 C.L.J. 313=26 Cr.L.J. 307=

A.I.R. 1925 Cal. 161.

**—S. 167—Objection about admissibility.**

—C. P. C., S. 100—Objection can be taken for first time in second appeal.

An erroneous omission to object to inadmissible evidence does not make it admissible. The omission to take objection to the admissibility of a document becomes fatal only in cases where if the objection is taken in time, any defect in its admissibility can be cured and the document made admissible. In other cases objection as to inadmissibility can be raised even in second appeal though it was not raised in the lower Courts: 19 All. 76 (P. C.), *Foll. (Suhrawardy and Cuming, JJ.)*. **CHOONI LAL KHEMANI v. NILMADHAB BARIK.**

86 I.C. 734=41 C.L.J. 374=A.I.R. 1925 Cal. 1034.

**—S. 167—Other evidence sufficient.**

—Under S. 167 it is permissible for High Court in spite of the improper admission of a confession in evidence to uphold the conviction if independently of the evidence objected to there is sufficient evidence to justify the decision of the Sessions Judge. (*Macleod, C. J. and Fawcett, J.*). **KING EMPEROR v. MAHABLI RAMA SAL.**

87 I.C. 520=

26 Bom. L.R. 706=26 Cr.L.J. 984=

A.I.R. 1924 Bom. 480.

**—S. 167—Revision.**

—Practice explained.

The High Court in revision, ordinarily speaking will remand a case for a finding with reference to admissible evidence only, where the lower Court being competent to deal with facts has not adopted the course of ignoring the evidence wrongly admitted and considering whether there still remains enough evidence to support the judgment.

If the Court takes the view that irrespective of the improperly admitted evidence the decision is sustained by sufficient evidence, the decision cannot be reversed merely on the ground of the improper admission of evidence. (*Venkatasubba Rao, J.*). **SANKAR CHENNA BASAPPA v. K. MANAPPA.**

82 I.C. 283=21 M.L.W. 87=25 Cr. L.J. 1475=

A.I.R. 1925 Mad. 245.

**EXAMINATION.**

See EVIDENCE ACT, Ss. 132-153.

**EXAMINATION OF ACCUSED.**

See (1) CR. P. CODE, Ss. 164, 256, 342, 364 AND 365.

(2) CRIMINAL TRIAL.

**EXAMINATION OF WITNESSES.**

See (1) C. P. CODE, O. 16 AND O. 26.

(2) EVIDENCE.

(3) EVIDENCE ACT, Ss. 118-184.

**EXCESS PROFITS DUTIES ACT (1919), S. 18—**  
Rules under R. 24 (3).**EXCESS PROFITS DUTIES ACT (10 of 1919).**

—S. 18—Rules under R. 24 (3).

—*Interpretation.*

The words "proceedings for the recovery of any sum" in sub-rule (3) of R. 24 mean the proceedings taken under sub-rule (1) of that rule after default has been made in payment. (*Martineau, J.*)

GIAN SINGH BAHADUR SINGH v. THE CROWN.

73 I.C. 106=4 Lah. 165=A.I.R. 1924 Lah. 54.

**EXCISE ACT.**See (1) BENGAL EXCISE ACT, VII OF 1878.  
V OF 1909.(2) EASTERN BENGAL AND ASSAM EXCISE  
ACT, I OF 1910.(3) BIHAR AND ORISSA EXCISE ACT, II OF  
1915.

(4) BURMA EXCISE ACT, V OF 1917.

(5) PUNJAB EXCISE ACT, I OF 1914.

(6) U. P. EXCISE ACT, IV OF 1910.

**EXPERT.**

See EVIDENCE ACT, SS. 45, 50.

**EXPERT EVIDENCE.**

See EVIDENCE ACT, S. 45.

**EXPERT OPINION.**

See EVIDENCE ACT, S. 45.

**EXPLOSIVES ACT (4 of 1884).**

—S. 5—Rules under—R. 138—Liability.

—*Servant of licensed master manufacturing gunpowder in master's house without latter's knowledge or consent—Master is liable for servant's act.*

The accused held a license under the Indian Explosives Act to manufacture gunpowder. One of the conditions of the license was that the explosive shall be manufactured in a tent or lightly constructed building exclusively appropriated for the purpose and separated from any dwelling house. The accused constructed a building outside the village, which complied with this condition, and employed a woman who used to work exclusively in this building. One day the woman with her assistant went with ingredients for manufacturing gunpowder to the house of the accused in the village, and performed part of the process of manufacture there with pestles having iron rings without the knowledge of their master and while he was engaged elsewhere. During the process of manufacture there was explosion and the woman was killed and her assistant was injured.

*Held*, (Per *Fawcett and Crump, JJ.* contra *Shah, J.*)—that the act of the woman, though unauthorized, was one within the scope of her employment and the accused, her master, would be liable for her wrongful act. (*Case-law discussed.*) (*Crump, J. on difference between Shah, and Fawcett, JJ.*)

EMPEROR v. MAHADEVAPPA HANMANTAPPA.  
100 I. C. 972=51 Bom. 352=29 Bom. L.R. 153=  
28 Cr. L. J. 364=7 A.I. Cr. R. 489=  
A. I. R. 1927 Bom. 209.

—S. 7—Rules under—R. 35 (1914)—Onus.

—Where a person is accused of having taken delivery of consignments described as "fire works" in contravention of R. 35, the burden of proving that these were explosives such as are covered by the Explosives Rules is upon the prosecution and the mere fact that the accused took possession of and signed for a consignment which was described as fireworks does not amount to an admission by him that these were explosives such as are within the purview of these rules. (*Beasley, C. J. and Pandalai, J.*) POLAKI CHIDAMBARAM v. EMPEROR.

1930 Cr. G. 762=3 M. Cr. C. 58=  
1930 M. W. N. 73=A.I.R. 1930 Mad. 678.**EXPLOSIVE SUBSTANCES T (1908), S. 4—**  
Possession.

—S. 7—Rules under—Rr. 35 and 47.

—*Toy fireworks—Onus.*

*Held* that the Rules under the Explosives Act do not apply to the manufacture, possession, etc., toy fireworks, and that no offence was committed by reason of such acts.

*Held* also that the burden of proving that certain articles were explosives is clearly on the prosecution and that the mere fact that the accused took possession of and signed for a consignment which was described as fireworks does not amount to an admission by him that they were explosives such as are within the purview of the rules. (*Beasley, C. J. and Krishna Pandalai, J.*) CHIDAMBARAM v. EMPEROR.

1930 M. W. N. 73.

**EXPLOSIVE SUBSTANCES ACT (6 of 1908).**

—S. 3—"Maliciously."

—*Word used in legal sense.*

"Malice" in the legal acceptance of the word is not confined to personal spite against individuals but consists in a conscious violation of the law to the prejudice of another. In its legal sense it means a wrongful act done intentionally without just cause or excuse. It is in the legal sense that the word "maliciously" is used in S. 3: *Bromage v. Prosser*, 4 B. and C. 247, *Rel. on.* (*Fforda and Addison, JJ.*) BHAGAT SINGH v. EMPEROR.

121 I. C. 726=31 P.L.R. 73=

31 Cr. L. J. 230=A. I. R. 1930 Lah. 266.

—Ss. 4 and 7—Consent.

—*Committal consent not obtained—Proceedings not void.*

The failure to obtain necessary consent of Government as required by S. 7 does not invalidate the commitment proceedings conducted by a Magistrate for an offence under S. 4 and exclusively triable by the Sessions Court as the committal proceedings are only an "inquiry" as defined in Cl. (k) of S. 4 of the Criminal P. C. (*Fawcett and Madgavkar, JJ.*) EMPEROR v. KALLAPPA DUNDAPPA.

99 I. C. 37=80 Bom. 695=28 Bom. L.R. 1290=

28 Cr. L. J. 5=7 A. I. Cr. R. 161=

A. I. R. 1927 Bom. 21.

—S. 4—Maliciously.

—*A person not knowing existence of explosives cannot be said to possess it maliciously.*

Not only does the term "possession" imply knowledge, but the expression "maliciously" as used in S. 4, connotes intention. But neither knowledge, nor intention as to the use to be made of an object, can be imputed to a person who is not conscious of its existence. (*Shadi Lal, C.J. and Agha Haidar, J.*) DULA SINGH v. EMPEROR.

109 I.C. 208=9 Lah. 531=10 A.I. Cr. R. 235=

29 Cr. L.J. 481=10 L.L.J. 408=

29 P.L.R. 629=A.I.R. 1928 Lah. 272.

—S. 4—Possession.

—*Presumption of, with head of the family—When arises.*

Where the portion of a house in which an article is found is not in the exclusive possession of any one member of the joint family, but is used by, or accessible to, all the members of the family there is no presumption that the article is in the possession or control of any person other than the house-master or the head of the family. But it is open to the prosecution to prove that the possession was with some other member of the family, and that

**EXPLOSIVE SUBSTANCES ACT (1908), S. 5—**  
**Offence under.**

member would then be liable to account for it: 15 All. 129, *Foll.* (*Shadi Lal, C.J. and Agha Haidar, J.*). DULA SINGH v. EMPEROR. 109 I.C. 209= 10 A.I. Cr. R. 235=29 Cr. L. J. 431= 9 Lah. 831=10 L.L.J. 408= 29 P.L.R. 629=A.I.R. 1928 Lah. 272.

**—S. 5—Offence under.**

*Temporarily residing in the house is no offence.*  
Per *Suhrawardy, J.*—Temporary residence in a house containing explosive articles, even with the knowledge of their existence there, is not possession within the meaning of S. 5, Explosives Act. Conspiracy to possess connotes some act of possession or attempted possession. (*Buckland, Suhrawardy and Cammiade, J.J.*). HARI NARAYAN CHANDRA v. EMPEROR. 106 I.C. 545= 46 C.L.J. 368= 29 Cr. L.J. 49= 9 A.I. Cr. R. 228=A. I. R. 1928 Cal. 27.

**EXPRESS MALICE.**

See (1) MALICIOUS PROSECUTION.  
(2) TORT.

**EXTORTION.**

See PENAL CODE, SS. 383-389.

**EXTRADITION ACT (15 of 1903).****—Construction.**

—Extradition Act and Criminal Procedure Code both being penal enactments their terms must be strictly construed in favour of accused persons wherever such construction can be reasonably justified. (*Mirza and Baker, J.J.*). BAI AISHA, *In re*. 117 I.C. 321=53 Bom. 149=31 Bom. L.R. 62= 30 Cr. L.J. 772=A.I.R. 1929 Bom. 81.

**—Foreign state.**

—*Pondicherry—Treaties between Great Britain and France, 1815 and 1876—Surrender of British Indian subject for theft committed in Pondicherry—Summary order for surrender—Validity—Indian Extradition Act, Chap. II—Applicability.*

The East Indian possessions of France are not a "Foreign State" and Chap. II of the Indian Extradition Act of 1903 do not apply to those possessions. Extradition in such cases is governed by the treaty of 1815 between Great Britain and France. Article (ix) of the treaty of 1815 remains unaffected by Art. (xvi) of the treaty of 1876 and a British Indian subject may on requisition by the Governor of Pondicherry for instance be surrendered for the offence of theft committed therein without any preliminary procedure being adopted. The treaty of 1815 having provided that the surrender should be on demand, a more elaborate procedure cannot be superimposed by the unilateral act of one of the high contracting parties. Nor is it open to a Municipal Court to say that the accused should be surrendered with a certain amount of procedure: 47 C. 87, *Foll.*; 48 C. 328, *Expi.* (*Wallace and Jackson, J.J.*). MUTHU REDDI v. EMPEROR. 1930 M.W.N. 381.

**—S. 7—Revision.**

—*Order of District or Chief Presidency Magistrate executing warrant under S. 7 can be revised.*

Execution by the District Magistrate (or the Chief Presidency Magistrate) in British India of a warrant under S. 7 of Extradition Act is not an executive act. The Magistrate has judicially to consider the matter and decide whether the warrant can be executed according to law and the order of the Magistrate is subject to the revisional powers of the High Court. The order can also be interfered with under S. 561-A. On proper proceedings being taken High Court can also interfere under S. 491:

**EXTRADITION ACT (1903), §. 23—Bail.**

42 Cal. 793, *held too widely stated*; 7 Bom. L.R. 463; 41 Cal. 400 and A.I.R. 1922 Pat. 442, *Rel. on.* (*Mirza and Baker, J.J.*). BAI AISHA, *In re*.

117 I.C. 321=53 Bom. 149=31 Bom. L.R. 62= 30 Cr. L.J. 772=A.I.R. 1929 Bom. 81.

**—S. 7—Warrant.**

—*Magistrate need not enquire as to its legality.*

Section 7 lays down that the Magistrate to whom the warrant is addressed shall act in pursuance thereof and does not require him to take evidence; hence it is no part of his duty to ascertain whether the warrant issued under S. 7 was a legal warrant; 3 P. R. (Cr.) 1909, *Rel. on.* (*Martineau, J.*). HANS RAJ v. CROWN. 95 I.C. 275=7 Lah. 159= 27 P.L.R. 319=27 Cr. L.J. 755= A.I.R. 1926 Lah. 411.

—A warrant of extradition signed by the Assistant British Envoy of Nepal Court is not valid where the officer is not empowered as a Political Agent within S. 7. (*Adami and Buckmill, J.J.*). SADHAK GIR v. EMPEROR. 81 I. C. 175= 25 Cr.L. J. 687=A. I. R. 1925 Pat. 112.

**—S. 8—Bail.**

—On an arrest of a person in Berar by or at the instance of Nizam's police once the warrant from the Nizam's state authority has been received the Magistrate has no power to admit to bail even under the Extradition Act except under Ss. 8 and 8 (a) and therefore unless the Nizam's authority directs bail to be taken, the Magistrate can only do so if he reports the case to the Local Government: 48 Bom. 310 at 320, *Ref.* (*Baker, Off. J.C.*). DADDIPRASAD v. DISTRICT MAGISTRATE, YBOMMAL. 77 I.C. 234=25 Cr. L. J. 346= A.I.R. 1924 Nag. 313.

**—S. 10—Bail.**

—Magistrate has power to grant bail to an accused who has been arrested in pursuance of S. 54 (7) of the Criminal P. O. whom, he has been asked to retain in custody, by the Dt. Magistrate of a Native State.

Per *Fawcett, J.*—As S. 57 (7) does not apply to arrests in Bombay, when the accused is arrested without warrant in Bombay, he must be deemed to have been arrested under S. 33 (g). But even in such a case under S. 23 of the Extradition Act, the Magistrate has power to grant bail. (*Marten and Fawcett, J.J.*). SHRIRAM SHANBHUDAYAL, *In re*. 87 I.C. 100=26 Cr. L. J. 943=26 Bom. L.R. 984= A.I.R. 1925 Bom. 404.

**—S. 18—Extradition.****—Scope of.**

There is no derogation of the rights of the parties to the treaty by allowing one Government with the consent of the other to obtain extradition of a criminal who has committed an offence not mentioned in the treaty. A Government or a State is entitled if it so wishes, to hand over persons subject to the law of another State at the request of that State. In such a case there is no derogation to the Sovereign rights of either power. All that S. 18 provides is that the Act shall not work against the will of either party so as unduly to impose any liability on such party. It does not prevent their co-operation in a friendly action according to the comity of nations. (*Kennedy, J. C. and Raymond, A.J.C.*). JAMNA v. EMPEROR. 91 I.C. 69= 20 S.L.R. 128=27 Cr.L.J. 37=A.I.R. 1926 Sind 126.

**—S. 23—Bail.****—Power to grant.**

Magistrate has power to grant bail to an accused who has been arrested in pursuance of S. 54 (7) of

**EXTRADITION TREATY (1867)—Surrender of accused.**

the Cr. P.C., whom he has been asked to retain in custody, by the Dt. Magistrate of a Native State.

Per *Fawcett, J.*—As S. 54 (7) does not apply to arrests in Bombay, when the accused is arrested without warrant in Bombay, he must be deemed to have been arrested under S. 83 (g). But even in such a case, under S. 23 of the Extradition Act, the Magistrate has power to grant bail. (*Marlen and Fawcett, J.J.*). *SHRIRAM SHAMBHUDAYAL, In re.*

87 I.C. 100=26 Bom. L.R. 984=

26 Cr. L.J. 948=A.I.R. 1925 Bom. 104.

**EXTRADITION TREATY (1867).****—Surrender of accused.**

*—Surrender of accused is to be made on requisition being sent through Commissioner of Berar.*

When an accused person is arrested in Berar by or at the instance of Nizam's Police he is kept by the Berar Police till a requisition is received by the District Magistrate for his surrender. This requisition is sent by the Nizam's authority the Talukdar to the District Magistrate through the Commissioner of Berar, together with the evidence of criminality. The District Magistrate on receiving the requisition from the Commissioner surrenders the accused person. On no account may he comply with a requisition made direct to him by the Nizam's authorities. No time limit is laid down and there is no necessity of a warrant from the Political Agent. (*Baker, Offg. J.C.*). *DADDI PRASAD v. DISTRICT MAGISTRATE, YEOTMAL.*

77 I.C. 234=25 Cr. L.J. 346=A.I.R. 1924 Nag. 313.

**EXTRA TERRITORIAL JURISDICTION.**

See (1) CR. P. CODE, S. 183.

(2) PENAL CODE, SS. 2, 3 AND 4.

**EXTRINSIC EVIDENCE.**

See EVIDENCE ACT, S. 92, ETC.

**FABRICATED DOCUMENT.**

See PENAL CODE.

**FABRICATING FALSE EVIDENCE.**

See PENAL CODE, SS. 193 AND 114.

**FACTORIES ACT (12 of 1911).****—Construction.**

*—Position both of employee and employers should be looked to.*

Factory Acts should be properly enforced for the protection of workmen but on the other hand one must also bear in mind that the employer's position has to be considered too. It may be that without any negligence on their part defects will exist in their factories but if they are to be proceeded against in a Criminal Court for alleged negligence, then it would seem only fair that the matter should be clearly brought home to them. (*Marlen and Fawcett, J.J.*). *NARAYAN ANANT v. EMPEROR.*

85 I.C. 226=26 Bom. L.R. 1245=

26 Cr. L.J. 482=A.I.R. 1925 Bom. 143.

**—S. 2—"Employed."**

*—Persons employed merely for selling the manufactured articles do not come within the definition of "employed," even though they happen to occupy a room at the factory for the sake of convenience. (Addison and Skemp, J.J.). PRAG NARAIN v. CROWN.*

109 I.C. 599=8 Lah. 666=

29 P.L.R. 234=29 Cr. L.J. 533=

A.I.R. 1928 Lah. 78.

**—S. 2—Interruption.**

*—Interruption must be taken in connexion with each individual employed and not confined to the general cessation of work and it is more reasonable to interpret the section as meaning actual work and not merely residence in the factory for a*

**FACTORIES ACT (1911), S. 18—Procedure.**

certain number of hours. (*Dalal, J.*). *KAMLAPAT v. EMPEROR.* 11 L.R.A. Cr. 42=1930 A.L.J. 459=

A. I. R. 1930 All. 214.

**—S. 2—Factory.**

*—Gurhal Ghar is a factory.*

A Gurhal Ghar is a factory within the meaning of S. 2 (3) (a), Factories Act, even though the engine shed is a separate building and less than twenty persons are employed therein but over twenty persons are employed in the Gurhal Ghar inclusive of those employed on the crushers and those employed in the boiling shed, and these latter must be said to be employed both "on the premises and within the precincts of the Gurhal Ghar." *A.I.R. 1927 Mad. 345, Rel. on. (Mirza and Broomfield, J.J.). GANPAT DATTU v. EMPEROR.*

32 Bom. L.R. 329=

A. I. R. 1930 Bom. 162.

*—Mechanical power used only in aid of manufacturing process—Persons simultaneously employed in premises exceeding twenty—It is a factory. (Mirza and Broomfield, J.J.). GANPAT DATTU v. EMPEROR.*

32 Bom. L.R. 329=

A.I.R. 1930 Bom. 162.

**—Meaning of.**

By a factory is meant premises where anything is done towards the making or finishing of an article up to the stage when it is ready to be sold or is in a suitable condition to be put on the market. (*Addison and Skemp, J.J.*). *PRAG NARAIN v. CROWN.*

103 I.C. 599=8 Lah. 666=

29 P.L.R. 234=29 Cr. L.J. 533=

A. I. R. 1928 Lah. 78.

*—Premises or precincts within which mechanical power is used for manufacture are factory.*

A factory includes everything, machine rooms, sheds, godowns, yards. If within these premises or precincts mechanical power is used in aid of any process for altering for transport or sale of any article, than these premises or precincts are a factory.

The drying yard used for drying ground-nuts, where machinery for decorticating the ground-nuts was working was held to be a part of factory although there was no connexion with machinery or any work incidental to the manufacturing process: *101 L. T. 571, Dist. (Jackson, J.). V. RAMANATHAM v. KING EMPEROR.*

100 I.C. 235=

50 Mad. 834=25 M.L.W. 176=38 M.L.T. 78=

28 Cr. L.J. 267=7 A. I. Cr. R. 443=

A.I.R. 1927 Mad. 345=52 M. L.J. 207.

**—S. 2—Occupier.**

*—The definition of 'occupier' in the Factories Act is not an exhaustive definition and there is nothing in it which in any way limits the normal meaning of the word 'occupier' as indicating a person who is in actual possession and control of a factory. (Fawcett and Madgaokar, J.J.). GAMADIA v. EMPEROR.*

91 I.C. 949=50 Bom. 34=

27 Bom. L.R. 1405=27 Cr. L.J. 165=

A.I.R. 1926 Bom. 57.

**—S. 18—Procedure.**

*—'Service of notice.'*

The numerous provisions in the Procedure Code for service of notices or orders are intended to make it certain that a particular process or an order of the Court is brought to the specific notice of the individual affected. A mere knowledge that proceedings may be instituted or something of that sort is not sufficient to take the place of the imperative directions in the Code as to service on the actual individual. The words in S. 18 (2) "serve on the manager an order in writing" mean that such an

**FACTORIES ACT (1911), S. 20—Partition.**

order as is referred to in Form O should be served definitely on the manager of the factory: and that it should specify exactly what measures the manager is to take in order to remove the danger. But a mere note of a visit is not such an order as is contemplated therein. (*Marten and Fawcett, J.J.*). NARAYAN ANANT v. EMPEROR. 85 I.C. 226 = 26 Bom. L. R. 1245 = 26 Cr. L. J. 482 = A. I. R. 1925 Bom. 143.

**—S. 20—Partition.**

The provisions of S. 20 are not fulfilled if there is a door made in a partition between the two portions of the room and that door is shown to be open at a particular time, or even although it is shut, yet it is not locked or other effective means taken to prevent its being opened by a woman or child wishing to get into the press room. (*Fawcett and Madgavkar, J.J.*). GAMADIA v. EMPEROR. 91 I. C. 349 = 50 Bom. 34 = 27 Bom. L. R. 1405 = 27 Cr. L. J. 165 = A. I. R. 1926 Bom. 57.

**—S. 23—Children.**

Even in the case of a child of fourteen there is need for a certificate under S. 23, Cl. (a). (*Mirza and Patkar, J.J.*). EMPEROR v. GOKULDAS HARI-DAS. 117 I.C. 447 = 31 Bom. L. R. 844 = 30 Cr. L. J. 793 = A.I.R. 1929 Bom. 272.

Where children were employed for purposes of sorting ground-nuts in a yard close to a room where machinery for decortication of ground-nuts was used,

*Held*, that the children were employed in a factory. (*Jackson, J.*). V. RAMANATHAM v. KING EMPEROR. 100 I. C. 235 = 50 Mad. 834 = 25 M.L.W. 176 = 38 M.L.T. 78 = 28 Cr. L.J. 267 = 7 A.I. Cr. R. 448 = A.I.R. 1927 Mad. 345 = 52 M.L.J. 207.

**—S. 26—Offence under.**

Where men work during a time which is admittedly outside the time fixed for employment of each person employed in the factory, the owner of the factory is guilty under S. 26. (*Dalal, J.*). KAMLAPAT v. EMPEROR. 11 L.R.A.Cr. 42 = 1930 A.L.J. 459 = A.I.R. 1930 All. 214.

**—S. 34—Liability.**

*Liability of manager and occupier.*

The duty to inform the authority under the Factories Act under S. 34 is laid on the manager. It is therefore primarily the manager who is to be supposed to have contravened this provision of the Act, but both the occupier and manager are made responsible jointly and severally for this contravention under S. 41-J. (*Tek Chand, J.*). WAZIR CHAND v. EMPEROR. A.I.R. 1930 Lah. 658.

**—S. 34—'Person.'**

The word "person" includes the plural and consequently where as a result of a single accident more persons than one are injured the accident cannot be split up into as many persons injured and notice contemplated is single notice of the accident which the manager is required to submit to the authorities and therefore contravention of this rule is one offence which cannot in its turn be split up into as many offences as the number of casualties. (*Tek Chand, J.*). WAZIR CHAND v. EMPEROR. A. I. R. 1930 Lah. 668.

**—S. 42—Scope.**

The structure of S. 42, Factories Act, indicates that one proceeding is split up into two proceedings and while the manager or occupier is accused of having committed an offence under the Act, he is also a complainant on his complaint against the other person or persons he has brought in. In the proceeding in which the manager or the

**FOREIGNERS ACT (1864), S. 2—Effect of transfer of territory.**

occupier is the complainant he is liable to be cross-examined by the other person or persons who has or have been brought before the Court on his complaint. This must mean that the manager or occupier *qua* complainant must give evidence himself. There is no substance in the objection that the manager or occupier who initially is charged with an offence against the Act cannot go into the witness-box and give evidence himself, because he goes into the witness-box not as an accused in the case originally started against him, but in his own right as a complainant on his complaint against the other person or persons whom he has brought in. It is not a material irregularity to dispose of the two matters by one judgment or to record the evidence in the two matters together. (*C. C. Ghose and Gregory, J.J.*). SUPT. & REMEMBRANCE OF LEGAL AFFAIRS v. MURRAY. 117 I.C. 673 = 30 Cr. L.J. 818 = 56 Cal. 400 = 32 C. W. N. 922 = A.I.R. 1928 Cal. 557.

**FAIR COMMENT.**

See PENAL CODE, Ss. 499 AND 500.

TORT—DEFAMATION.

**FALSE ALLEGATION.**

See PENAL CODE, S. 193.

**—Charge.**

See PENAL CODE, Ss. 182, 211.

**—Complaint.**

See (1) CRIM. PRO. CODE,

(2) CRIMINAL TRIAL.

(3) PENAL CODE.

**—Document.**

See PENAL CODE, Ss. 464, 467.

**—Entry.**

See PENAL CODE, S. 477.

**—Evidence.**

See PENAL CODE, Ss. 191—200.

**—Information.**

See PENAL CODE, Ss. 182—211.

**—Measure.**

See PENAL CODE, S. 267.

**—Personation.**

See PENAL CODE, Ss. 205, 416, 419.

**—Receipt.**

See PENAL CODE, Ss. 463 AND 471.

**—Statement.**

See PENAL CODE, Ss. 191—200.

**—Weight.**

See PENAL CODE, S. 267.

**FALSE IMPRISONMENT.**

See TORT.

**FINE.**

See PENAL CODE, Ss. 63—70.

**FINGER IMPRESSION.**

See (1) CRIMINAL TRIAL.

(2) EVIDENCE ACT, S. 45.

**FIRST INFORMATION.**

See CR. P. CODE, Ss. 154—160.

**FOREIGNERS ACT (3 of 1864).****—S. 2—Effect of transfer of territory.**

*Cession of territory by Britain to another state*  
*—British subject ceases to be such on cession.*

A relinquishment of the Government of a territory is not only a relinquishment of the right to soil or territory, but also of the rights over the inhabitants of the country. The distinction between a right of election of which sovereign he will become the subject and the method by which a man can leave a newly ceded territory and remain within the allegiance of his former sovereign, seems somewhat fine: but the distinction is one between a mere assertion of elected allegiance and actual

**FOREIGNERS ACT (1864), Ss. 3 & 3 (a)—Procedure.**

conduct clearly showing such an election. It is not enough for an inhabitant to assert, when the question arises, that he has elected to remain within the allegiance of his former sovereign; there must be conduct on his part, such as leaving the ceded territory and going to reside permanently in his former sovereign's dominions to indicate his previous election. Any inhabitant of the ceded or separated territory has not the right to remain an inhabitant of it, and at the same time to retain the allegiance and nationality of the State which ceded or permitted the separation. The common law of England embodying the above rules is the law for the time being in force in British India within the meaning of the proviso to S. 1: 18 Cal. 620 (P. C.) and 42 Mad. 589 (P. C.), *Foll.*

The applicant was born in Ramdupati which was in British territory. In that village he had some lands and owned a house in which his family resided permanently. He, however, came to Bombay for purposes of trade. Ramdupati was subsequently ceded to the Maharaja of Benares by the British Government. The applicant continued to live in Bombay for trade before as well as after the cession.

*Held*, that the applicant was a "foreigner" by virtue of the proviso to S. 2 of Act III of 1915, amending the Foreigners Act, 1864. (*Fawcett and Madgaonkar, J.J.*). **EMPEROR v. JAGARDEO RAMSUMER TIWARI.** 90 I.C. 310 = 49 Bom. 304 = 87 Bom. L.R. 1043 = 26 Cr. L.J. 1526 = A.I.R. 1925 Bom. 489.

**—Ss. 3 & 3 (a)—Procedure.**

Government must issue orders about detention or release or removal without delay—Commissioner of Police cannot do any such thing without such orders. (*Marten and Fawcett, J.J.*). **JAGARDEO RAMSUMER TEWARI, In re.** 85 I. C. 138 = 49 Bom. 222 = 26 Bom. L.R. 1252 = 26 Cr. L.J. 458. A.I.R. 1925 Bom. 139.

**FOREST ACT (7 of 1878).****—Berar grazing rules.**

There is nothing in the grazing rules for Berar given in appendix 15 of the C.P. Forest Manual, which imposes any criminal liability on a licensee for grazing, for the acts of his servant. (*Baker, J.C.*). **FAKIRA SAMBHAJEE KUNTU v. EMPEROR.** 87 I.C. 918 = 26 Cr. L.J. 1030 = A.I.R. 1926 Nag. 73.

**—Presumption.**

If a person is found with a gun and ammunition in a Reserved Forest it may be presumed until the contrary is shown that hunting was being engaged in. (*Curgenvven, J.*). **SAMUEL v. EMPEROR.** 1929 M.W.N. 808.

**—S. 25 (d)—Essentials for conviction.**

The owner of cattle found grazing in a Government Forest Reserve cannot be convicted under S. 25 (d). Forest Act (7 of 1878) in the absence of evidence that he pastured the cattle or permitted them by some overt act or negligent omission to trespass in the reserve. (*Baker, J.C.*). **FAKIRA SAMBHAJI KUNBI v. EMPEROR.** 87 I.C. 918 = 26 Cr. L.J. 1030 = A.I.R. 1926 Nag. 73.

**—S. 29—Breaking and clearing.**

Where "breaking" only is forbidden by the notification an offence is not committed where there has been only "clearing." (*Boys and Kendall, J.J.*). **UMMED SINGH v. EMPEROR.** 99 I.C. 407 = 49 All. 291 = 8 L. R. A. Cr. 27 = 25 A. L. J. 143 = 28 Cr. L. J. 151 = 7 A.I.C.R. 200 = A. I. R. 1927 All. 121.

**FOREST ACT (1878), S. 41—Interpretation.****—S. 29—Fixing of date.**

Notification under S. 29 (a) fixing no date is bad—Conviction for cutting trees reserved by such notification is illegal under S. 32. (*Rankin and Duval, J.J.*). **MOSLEM SIKDAR v. EMPEROR.** 102 I. C. 493 = 54 Cal. 296 = 23 Cr. L. J. 562 = A. I. R. 1927 Cal. 516.

**—S. 29—Reversion.**

"Protected forests" were declared to be reserve forests and then they were declared to have ceased to be reserve forests.

*Held*, the later notification did not turn the forests into village forests or into land to which the Forest Act did not apply at all; but the effect of it was to revert them to their former position of protected forests. (*Stuart, J.*). **KAMLA PATI v. EMPEROR.** 81 I.C. 711 = 46 All. 128 = 25 Cr. L. J. 999 = A.I.R. 1924 All. 539.

**—Ss. 29 and 32 (c)—Clearing.**

Where "breaking" of ground only is forbidden by a notification issued under the Forest Act, no offence is committed when there has been only "clearing". A. I. R. 1927 All. 121, *Foll.* (*Iqbal Ahmad, J.*). **THEP SINGH v. EMPEROR.** 102 I. C. 553 = 8 A. I. Cr. R. 111 = 8 L. R. A. Cr. 112 = 28 Cr. L. J. 591 = A.I.R. 1927 All. 767.

**—S. 39 (b)—Liability to duty.**

The ordinary interpretation of Cl. (b) would be that the duty is to be levied from the person who actually brought the timber from some place outside British India to the place, whereon its importation the duty becomes leviable, and thus it would be straining Cl. (b) to hold that timber, of which a person obtains possession and which has been originally brought from a place beyond the frontier of British India, is liable in the hands of that person to duty, though he has taken no part in the bringing of that timber from the place beyond the frontier. What the clause only contemplates is the levy of duty from a person, who has actually brought timber from a foreign place to the place where the duty is leviable; and if in fact, a person has not brought it from such foreign place and has not participated in a conspiracy to so bring it, the timber is not liable in his hands to a levy of duty: 17 Bom. L. R. 72, *Foll.* (*Fawcett and Patkar, J.J.*). **EMPEROR v. KADARBHAI USUFALLI.** 103 I. C. 593 = 51 Bom. 896 = 28 Cr. L. J. 705 = 8 A. I. Cr. R. 346 = 29 Bom. L. R. 987 = A.I.R. 1927 Bom. 483.

**—S. 41—Confiscation.**

Confiscation made in order to test the wrong interpretation of the words "timber" and "forest produce" in S. 41 put by the High Court though vexatious was held necessary. (*Harrison, J.*). **LAL BADSHAH v. EMPEROR.** 106 I.C. 790 = 29 Cr. L. J. 198 = A.I.R. 1928 Lah. 80.

**—S. 41—Interpretation.**

"Timber" and "forest produce." The words "timber" and "forest produce" in S. 41 are used in the widest sense as given in the definitions to be found in S. 2 and not in the narrow and restricted sense especially introduced to define and limit the powers described in Ch. 7. (*Harrison, J.*). **LAL BADSHAH v. EMPEROR.** 106 I. C. 790 = 29 Cr. L. J. 198 = A.I.R. 1928 Lah. 80.

"Timber and other forest produce." The phrase "timber and other forest produce" in S. 41 refers to timber and other forest produce as defined in S. 39, viz., timber or other forest produce which is produced in British India and in respect of which the Government has any right or which



# FOREST ACT (1878), S. 41—(Bom. Rules) 3 and 4—Liability of forester.

is brought from any place beyond the frontier of British India. (*Harrison, J.*). LAL BADSHAH v. KING EMPEROR. 76 I. C. 104=25 Cr. L. J. 104=A. I. R. 1925 Lah. 225.

# —S. 41—(Bom. Rules) 3 and 4—Liability of forester.

—Forester is not liable for consenting to removal of produce to a place other than the one to which pass relates so long as the quantity and description of the produce are not exceeded. (*Shah, Ag. C. J. and Kincaid, J.*). KING EMPEROR v. PANDU VITHU. 84 I.C. 250=26 Bom. L. R. 971=26 Cr. L. J. 250=A.I.R. 1924 Bom. 489.

# —S. 41 (Bom. Govt.), Rr. 3 and 4—Removal of wood.

—Removal of wood to place other than that to which passes related is an offence. (*Shah, Ag. C. J. and Kincaid, J.*). KING EMPEROR v. PANDU VITHU. 84 I.C. 250=26 Bom. L. R. 971=26 Cr. L. J. 250=A.I.R. 1924 Bom. 489.

# —S. 59—Appeal.

—Under S. 59 even a third person who was not a party to the proceedings in the Original Court and whose claim for relief from confiscation was not adjudicated upon is entitled to prefer an appeal. The phrase, "any person claiming to be interested in the property so seized" in S. 59 cannot be construed as limited to the case contemplated by S. 57. And, the words 'so seized' refer to the seizure under S. 52. (*Pearson and Jack, JJ.*). MEHAR SARDAR v. EMPEROR. 34 C.W.N. 956=52 C. L. J. 171=1930 Cr. C. 903=A.I.R. 1930 Cal. 577.

# —Ss. 63 and 29—Scope.

—Under S. 63 a Forest Officer cannot arrest, without warrant, persons committing an offence under S. 29 and his custody is not a lawful custody under S. 63 within the meaning of S. 225, Penal Code. (*Rankin and Duval, JJ.*). MOSLEM SEKDAR v. EMPEROR. 102 I. C. 498=54 Cal. 296=28 Cr. L. J. 562=A.I.R. 1927 Cal. 516.

# —S. 75 (d)—Withdrawal of tender.

—Rule under S. 75 (d) prohibiting withdrawal of tenders before acceptance is not *ultra vires*. (*Macleod, C. J., Crump and Coyajee, JJ.*). SECRETARY OF STATE v. BHASKAR KRISHNAJI. 89 I.C. 498=49 Bom. 759=27 Bom. L.R. 973=A.I.R. 1925 Bom. 435 (F.B.).

# —S. 84—Applicability.

—Section 84 does not apply generally to the consequences of a breach on the part of the contractor but only to a particular penalty provided for a breach of the condition as to the contractor performing any duty or act or abstaining from a particular act. (*Shah, Ag. C. J. and Kincaid, J.*). BHAGWANDAS RANGILDAS v. SECRETARY OF STATE. 86 I.C. 87=27 Bom. L.R. 66=49 Bom. 194=A.I.R. 1925 Bom. 227.

# —(16 of 1927).

# —S. 26—Burden of proof.

—Where the charge against the accused is that he has made an encroachment on Government forest land, the *onus* is on the prosecution to establish that the land forms part of the Government forest: 19 Mad. 165, *Ref.* (*Findlay, J. C.*). NAGO WANI v. EMPEROR. 124 I. C. 622=1929 Cr. C. 53=A.I.R. 1929 Nag. 190.

# GAMBLING.

# —S. 26 (d)—Conviction under.

—Cattle grazing in the Government forest—Owner not authorizing directly nor indirectly such grazing—He cannot be convicted: 11 N. L. R. 76, *Ref.* (*Subhedar, A. J. C.*). EMPEROR v. SARTOKI. 120 I.C. 414=1930 Cr. C. 152=31 Cr. L. J. 109=A. I. R. 1930 Nag. 64.

—Where it is clear from evidence that the accused has been cultivating land alleged to be part of a Government forest for at least seven years and the probabilities are that his father had done the same before him he cannot be held to have cleared or broken up the land for cultivation or any other purpose and his conviction under S. 26 (h) cannot be sustained. (*Findlay, J. C.*). NAGO WANI v. EMPEROR. 124 I.C. 622=1929 Cr. C. 53=A.I.R. 1929 Nag. 190.

# —S. 59—Interpretation.

—Words "any person claiming to be interested in the property" in S. 59—"So seized".

The first canon of construction of a statute is that you must take the language as it stands and if it is clear, give effect to it. There is no possible ground for saying that the phrase "any person claiming to be interested in the property so seized" occurring in S. 59 could be construed as limited to the case contemplated by S. 57 when no mention is made of any such limitation, the language of the section is perfectly clear and unrestricted in its terms and must be given effect to accordingly. Apart from that, the words "so seized" logically and grammatically refer to the seizure under S. 52, which includes seizure of tools, boats, etc. (*Pearson and Jack, JJ.*). MEHAR SARDAR v. EMPEROR. A.I.R. 1930 Cal. 577.

# FORFEITURE.

*See* (1) ACT OF STATE.  
(2) CROWN.  
(3) PENAL CODE.

# —Of Property—*See* PENAL CODE, S. 62.

# FORCED ENDORSEMENT.

*See* PENAL CODE, S. 465, ETC.

# FORGED NOTES.

*See* PENAL CODE, S. 489-B.

# FORGERY.

*See* (1) CR. P. CODE, SS. 195 and 476.  
(2) PENAL CODE, SS. 463 and 471.

# FORM AND CONTENTS OF JUDGMENT.

*See* CR. P. CODE, S. 367.

# FRAUDULENTLY, DEFINITION OF.

*See* PENAL CODE, S. 25.

# FUGITIVE OFFENDERS ACT (1881, 44 & 45 Vict., Ch. 69).

# —S. 33—Interpretation.

—The word "return" in S. 33 is not to be read as implying that the offender is a fugitive from the country to which he is being sent for trial: 108 Law Times 473, *Rel. on.* (*Wild, J. C. and Aston, A.J.C.*). E. C. D. WHEELER v. EMPEROR.

112 I.C. 673=29 Cr. L. J. 1089=A.I.R. 1928 Sind 161.

# FURTHER ENQUIRY.

*See* CR. P. C., S. 203 AND 437.

# GAMBLING.

*See* GAMBLING ACTS, IMPERIAL (PUBLIC GAMBLING ACT 3 OF 1867) AND PROVINCIAL.

**GAMBLING ACT (1897) S. 3—Gambling in Dewali.****GAMBLING ACT (3 of 1867).****—S. 3—Gambling in Dewali.**

—Gambling in Dewali should not be considered to be an offence; but the law will not countenance gambling even at Dewali if it is in contravention of the Gambling Act. Where the only evidence that anything was done in contravention of the Act was that the owner of the house had in front of him a small pot containing a few annas and there was no reason to suppose that the sum represented his profits or that it was what is known as 'nal' and the sums staked were quite trifling.

*Held*, that it was only a case of Dewali Gambling in a private house and no offence was committed. (*Pullan, J.*). *LACHMAN v. EMPEROR*. 7 O.W.N. 757=1930 Cr. C. 943=

A.I.R. 1930 Oudh 403.

**—S. 5—General warrant—Legality.**

—To issue a warrant to raid houses where gambling goes on at the time of Dewali is highly undesirable as the police are merely encouraged to run in numbers of perfectly innocent persons in order to get a reward. (*Pullan, J.*). *LACHMAN v. EMPEROR*. 7 O.W.N. 757=1930 Cr. C. 943=

A.I.R. 1930 Oudh 403.

**GAMING.**

See GAMBLING ACTS, IMPERIAL AND PROVINCIAL.

**GENERAL CLAUSES ACT (10 of 1897).****—S. 3 (31)—Juge d' instruction.**

—'Juge d' instruction' is a Magistrate and so statements made in his immediate presence are admissible in evidence. The term 'Magistrate' is not restricted to the Magistrates exercising jurisdiction under Cr. P. C.: 22 Bom. 235, *Rel. on*. (*Waller and Pandala, JJ.*). *PANCHANATHAM PILLAY v. EMPEROR*. 121 I. C. 157=

29 M.L.W. 645=1929 M.W.N. 383=52 Mad. 529=

2 M. Cr. C. 150=31 Cr. L.J. 223=

A.I.R. 1929 Mad. 487=56 M.L.J. 628.

**—S. 3 (37)—Under Wakf Act.**

—There does not appear to be anything in the Mussalman Wakf Act which is repugnant to the definition of an offence contained in the General Clauses Act and in the Criminal Procedure Code and as the Act contains no provision regarding the Court by which offences under S. 10 of the Act should be tried, they can be tried by any Magistrate. (*Percival, J.C. and Aston, A.J.C.*). *ALI MAHOMED v. EMPEROR*. 105 I.C. 666=

22 S.L.R. 141=28 Cr. L.J. 954=

9 A.I. Cr. R. 142=A.I.R. 1928 Sind 43.

**—S. 6—Interpretation.**

—The word enactment in S. 6 (e) include not only an entire law but any section or provision of a law. (*Daniels, J.*). *KASHMIRI LAL v. MT. KISHEN DEN*. 83 I.C. 650=5 L.R.A. Cr. 99=

26 Cr. L.J. 90=A.I.R. 1924 All. 563.

**—S. 6—Sanction for prosecution.**

—Amended Code—Effect of.

Sanction for prosecution granted before the coming into force of the new Code under which the provision as to the grant and revocation of sanction is abolished, can be revoked even after the coming into force of the new Code, the right to apply for revocation of sanction not being a mere matter of procedure but of substantive right. *Gardner v. Lucas*, (1878) 3 A.C. 582; *Attorney-General v. Sillem*, 10 H.L. C. 704 and *Colonial Sugar Refining Co. v. Irving*, (1905) A.C. 869, *Foll.* (*Coutts-Trotter*,

**GOVERNMENT OF INDIA ACT (1915), S. 72—Emergency.**

*C. J., Spencer, Kumaraswami Sastry, Beasley and Srinivasa Aiyangar, JJ.*). *RAMAKRISHNA AYYAR v. SITHAI AMMAL*. 91 I.C. 293=27 Cr. L.J. 91=1925 M.W.N. 684=48 Mad. 620=22 M.L.W. 879=

A.I.R. 1925 Mad. 911=49 M.L.J. 223 (F.B).

**—S. 10—Cattle Trespass Act.**

—*Principle of S. 10 may be applied to Cattle Trespass Act, S. 20.*

Although S. 10, General Clauses Act, only applies to Acts made on or after 14th January, 1897, and does not cover in terms, an Act like Cattle Trespass Act passed in 1871, the principle underlying S. 10, General Clauses Act, should be applied to complaints under Cattle Trespass Act, S. 20. (*Findlay, J.C.*). *MAHADEO GANPATI PATIL v. NABHA VISWANATH*. 113 I.C. 285=

30 Cr. L.J. 125=12 A.I. Cr. R. 69=

A.I.R. 1929 Nag. 96.

**—S. 26—General and special laws.**

—Where the insolvent was entrusted with furniture by the Official Assignee for the purpose of continuing his business and, in breach of the trust, he disposed of it to various persons,

*Held*, that his conviction under general law was proper, even assuming that the facts proved do amount to an offence under S. 103 (b) (2), Presidency Towns Insolvency Act: 6 M.L.W. 283, *Foll.* (*Waller and Madhavan Nair, JJ.*). *WILLIAM PLYTHE PETRETT v. EMPEROR*. 105 I.C. 448=

39 M.L.T. 268=28 Cr. L.J. 928=

A.I.R. 1927 Mad. 1018.

**GOOD FAITH.**

See PENAL CODE, S. 52.

**GOVERNMENT.**

See (1) ACT OF STATE.

(2) CROWN.

(3) GOVERNMENT OF INDIA ACT.

(4) GRANT.

(5) SECRETARY OF STATE.

**GOVERNMENT OF INDIA ACT (1915).****—S. 65—High Court.**

—*Aston, A.J.C.*—Even the exercise of jurisdiction of a High Court under the Charter Act in British India is subject to the general legislative power of the Governor-General-in-Council: 4 Cal. 172, *Ref.* (*Percival, J.C., Aston, Rupchand Bilaram and DeSouza, A.J.Cs.*). *EMPEROR v. JIAND*. 111 I. C. 865=22 S.L.R. 349=29 Cr. L.J. 945=

A.I.R. 1928 Sind 149 (F.B.).

**—S. 65—'Person.'**

—The expression "person" as used in S. 65, includes any body of persons, corporate or incorporate. (*Mukerji and Niamatullah, JJ.*). *RAMPRA-SAD, In the matter of*. 1930 A.L.J. 579=

A.I.R. 1930 All. 389.

**—S. 72—Emergency.**

—*Authority of the Governor-General—Finality of.*

*Per Broadway, J.*—According to S. 72 of the Act it is the Governor-General, and Governor-General alone, who is concerned and the intention of the framers of the Act is to leave it to the Governor-General to decide, as a pure act of administration whether a state of emergency exists which calls for an Ordinance and that his decision on that point is final and not liable to consideration by the Courts although it is open to the Courts to decide whether, in making the Ordinance he has kept

**GOVERNMENT OF INDIA ACT (1915), S. 72—  
Overriding existing law.**

his terms within the provisions of the Act; *De Verteuil v. Knaggs*, (1918) A.C. 557, *Rel. on.*

*Per Bhide, J.*—The existence of an emergency and the purpose of an Ordinance can be looked into by a Court of law. If, however, there are circumstances which are reasonably capable of being looked upon as giving rise to an "emergency" the Court will not be justified in interfering even if it is inclined to take a different view on the facts, because legislature has invested the Governor-General with a discretion in very wide terms to exercise his powers under S. 72 and hence his decision is entitled to great weight. (*Broadway and Bhide, JJ.*). *DES RAI v. EMPEROR.*

A.I.R. 1930 Lah. 781.

**—S. 72—Overriding existing law.**

*—Ordinance 3 of 1930—Validity.*

Although the provisions of the Ordinance have the effect of depriving the accused person of a right to be tried by a Sessions Judge aided by assessors and a right of appeal to the High Court, still as these rights are given by the Criminal Procedure Code which is only an Act of the Indian legislature it can be overridden by the Indian legislature the Governor-General-in-Council and the Governor-General acting by himself. The terms of the Ordinance, therefore, do not vitiate the provisions of the Government of India Act and hence the Ordinance is not *ultra vires*. (*Broadway and Bhide, JJ.*). *DES RAI v. EMPEROR.*

A.I.R. 1930 Lah. 781.

**—S. 72—Power of High Court.**

*—Ordinance, whether intra vires or ultra vires*

*—Decision of.*

High Court can examine an Act of the legislature whether enacted by the legislature itself or by the Governor-General-in-Council or by the Governor-General, in order to see whether the said Act or Ordinance has been made and promulgated within the scope of the powers conferred on the legislature, the Governor-General-in-Council and the Governor-General respectively, by the Government of India Act, 1919: A.I.R. 1920 P.O. 23 and 4 Cal. 172 (P.C.), *Rel. on.* (*Broadway and Bhide, JJ.*). *DES RAI v. EMPEROR.*

A.I.R. 1930 Lah. 781.

**—S. 80-A, Cl. (1)—Interpretation.**

*—Court of law is not competent to consider the merits of a particular enactment.*

The words "for the peace and good Government" are used because they are words of the widest significance and it is not open to a Court of law to consider with regard to any particular piece of legislation whether in fact it is meritorious in the sense that it will conduce to peace or to good Government. They are words which are intended to give subject to the restrictions of the Act, a legislating power to the body which it invests with that authority. There is nothing in that expression which can be the foundation of any reasonable argument to the effect that the Criminal Law Amendment Act of 1925 was outside the jurisdiction of the local legislature. (*Rankin, C.J. and Mazumdar, J.*). *GIRENDRA NATH v. BIRENDRA NATH.*

102 I.C. 647=54 Cal. 727=31 C.W.N. 593=  
8 A.I. Cr. R. 121=A.I. R. 1927 Cal. 496.

**—S. 80-A, Cl. (3)—Interpretation.**

*—"Affect"—Meaning of.*

Clause 4 is doubtless wider than the mere provision that the local legislature shall not have power to repeal an Act of Parliament and the word "affect" may cover any interference with the will of Parlia-

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Powers of High Court.**

ment as expressed in a statute. But what Cl. 4 of S. 80-A refers to and preserves from interference is the effect of an Act of Parliament by its own force as a determination of the will of Parliament with reference to a particular subject-matter. It may well be that it guards against any possibility that a local legislature might attempt to interfere with the operation of Acts of Parliament that do not technically extend to India. But it cannot be construed as meaning that because in 1726 when there was no other law, the Courts in Calcutta adopted the law that prevailed at home subject to many modifications, therefore any part of that law so introduced which originated in statute as distinct from common law cannot be interfered with by the local legislature. (*Rankin, C.J. and Mazumdar, J.*). *GIRENDRA NATH v. BIRENDRA NATH.*

102 I.C. 647=54 Cal. 727=  
31 C.W.N. 593=8 A.I. Cr. R. 121=  
A.I.R. 1927 Cal. 496.

**—S. 80-A, Cl. (3)—Validity of Acts.**

The Bengal Criminal Law Amendment Act of 1925 does not affect Acts of Parliament and is not *ultra vires* of the local Government that passed it. (*Rankin, C.J. and Mazumdar, J.*). *GIRENDRA NATH v. BIRENDRA NATH.*

102 I.C. 647=  
54 Cal. 727=31 C.W.N. 593=  
8 A.I. Cr. R. 121=A.I.R. 1927 Cal. 496.

**—S. 107—Abuse of powers.**

If a Magistrate abuses his power under S. 144 the remedy is probably to invoke the power of S. 107, Government of India Act. (*Ramesam, J.*). *VEDAPPAN SERVAI v. PERIANNAN SERVAI.*

113 I.C. 279=28 M.L.W. 506=  
1928 M.W.N. 779=52 Mad. 69=1 M.Cr.C. 304=  
30 Cr. L. J. 119=12 A.I. Cr. R. 17=  
A.I.R. 1928 Mad. 1108=55 M.L.J. 621.

**—S. 107—Panchayat Court.**

The High Court cannot interfere with the order of a Panchayat Court under Ss. 435 and 439 of the Cr. P. Code. But under S. 107 of the Government of India Act the High Court has powers of supervision over all the Criminal and Civil Courts in the Presidency, and when a grave error of a Panchayat Court which is not governed by the provisions of the Cr. P. Code appears on the face of the record the powers given by S. 107 of the Government of India Act could be invoked to correct such error.

Where the judgment of a Panchayat Court convicting a person under S. 426 of the Penal Code, does not mention the value of the amount of loss or damage alleged to have been caused, the High Court will set aside the judgment in the exercise of its powers of superintendence under S. 107 of the Government of India Act. (*Devadoss, J.*). *MUNI-GADU v. EMPEROR.*

88 I.C. 521=1925 M.W.N. 600=  
26 Cr. L. J. 1161=A.I.R. 1925 Mad. 1144.

**—S. 107—Powers of High Court.**

The High Courts have under S. 107 of the Government of India Act not only administrative but judicial powers. In the exercise of its power of superintendence it can direct a subordinate Court to do its duty. It cannot however set it aside on the ground of error of law or of fact. In the exercise of its superintending power, it will not ordinarily interfere except in cases of grave and irreparable injustice. Thus it can interfere with orders under S. 86 of the Legal Practitioners' Act if the section has not been complied with or if the person proceeded against was not given a reasonable

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opportunity of defending himself. (*Addison and Hilton, J.J.*). CHATAR BHUJ v. EMPEROR.

31 P.L.R. 542= A.I.R. 1930 Lah. 889.

**—S. 107—Practice and procedure.**

—On a difference of opinion in matters under S. 145, Cr. P. Code, the Senior Judges' opinion prevails as the jurisdiction exercised by the High Court is under S. 107 of the Government of India Act and not under Ss. 435 and 439, Cr. P. Code. (*Choudhuri and Newbould, J.J.*). THE INDIAN IRON AND STEEL COMPANY v. BANSO GOPAL TEWARI.

59 I. C. 403=22 Cr. L. J. 99=32 C.L.J. 54.

**—S. 107—Revenue Court exercising judicial powers.**

—Where the Sub-Deputy Collector after inquiry refused the application of the opposite party for prosecution of petitioner under Penal Code, S. 471 but on appeal the Collector set aside the order of the Sub-Deputy Collector and made a formal complaint under S. 200, Criminal Procedure Code, for the prosecution of the petitioner.

*Held*, that the Collector was clearly acting as a Revenue Court and he was exercising judicial powers in setting aside the order of the Sub-Deputy Collector and in making a complaint under S. 200 and was therefore subject to the superintendence of the High Court and his order is revisable under S. 115, Civ. Pro. Code, as also under S. 107 of the Government of India Act: 6 Pat. L. J. 178, *Ref.* (*Mullick, J.*). FAUJDAR RAI v. EMPEROR.

90 I.C. 445=26 Cr.L.J. 1565=7 P.L.T. 199= A.I.R. 1926 Pat. 25.

**—S. 107—Revocation of sanction.**

—The High Court can only interfere with the order of District Judge revoking the order of the Munsif granting sanction for the prosecution of a party for perjury either under S. 115, Civil Procedure Code, or under S. 107 of the Government of India Act, and the ground that the learned Judge should have considered not whether the prosecution was likely to succeed put whether a *prima facie* case has been made out which was a sufficient justification of removing the bar imposed by the Legislature to a prosecution for perjury, is not one which would justify interference under either of these sections. (*Newbould and Suhrawardy, J.J.*). JAINUDDIN v. KERAMATULLA. 71 I. C. 595=24 Cr.L.J. 179=A.I.R. 1924 Cal. 641.

**S. 107—Transfer of cases.**

—The High Court can, in the exercise of its powers of general superintendence under S. 107, direct a transfer of proceeding under the Legal Practitioners' Act. (*Shadi Lal, C.J.*). LAKSEMI NABAIN v. MT. RATNI. 93 I.C. 700=

27 P.L.R. 225=27 Cr. L. J. 376= A.I.R. 1926 Lah. 199.

**—S. 124—Misdemeanour.****—Procedure.**

The rules of procedure laid down in England for setting into motion the machinery of the law or for instituting prosecutions do not apply to India in the absence of express statutory provision to the contrary. Therefore, the Lahore High Court is competent to take cognizance of an offence of misdemeanour under S. 124, Government of India Act on being moved by the person aggrieved if otherwise it has jurisdiction to entertain the complaint. (*Jai Lal, J.*). FAQIR SINGH v. ALI MAHOMED.

115 I. C. 428=30 Cr. L. J. 460=12 A. I. Cr. R. 413=A.I.R. 1929 Lah. 217.

**GUARDIANS AND WARDS ACT (1890), S. 7—Applicability.****—S. 124—History.**

—History of legislation with respect to trial of the offences of misdemeanours traced. (*Jai Lal, J.*). FAQIR SINGH v. ALI MAHOMED. 115 I.C. 428=30 Cr.L.J. 460=12 A.I. Cr. R. 413=A.I.R. 1929 Lah. 217.

**—S. 124—Issuing of notice.**

—Issuing of a notice to the respondent in criminal case instituted on a petition by way of complaint under S. 124 (1) to show cause why process should not issue against him, is permissible in certain exceptional cases. (*Jai Lal, J.*). FAQIR SINGH v. ALI MAHOMED. 115 I. C. 428=30 Cr. L. J. 460=12 A.I.Cr.R. 413=A.I.R. 1929 Lah. 217.

**—S. 127—Scope.**

—Section 127 does not confer exclusive jurisdiction on His Majesty's High Court of Justice in England, on the other hand it expressly saves the jurisdiction of the other Courts. It is an enabling provision of law and, therefore, it cannot be read to exclude the jurisdiction of other Courts who might otherwise have been competent to take cognizance of the offences. (*Jai Lal, J.*). FAQIR SINGH v. ALI MAHOMED. 115 I.C. 428=30 Cr. L.J. 460=12 A.I.Cr.R. 413=A.I.R. 1929 Lah. 217.

**—Ss. 128 and 129—Scope.**

—Sections 128 and 129 cannot be read as conferring jurisdiction on the High Courts in India to try the offences under S. 127. They merely provide for the manner in which the jurisdiction of such Courts, if it otherwise exists, is to be exercised. (*Jai Lal, J.*). FAQIR SINGH v. ALI MAHOMED. 115 I.C. 428=30 Cr.L.J. 460=12 A.I. Cr.R. 413=A.I.R. 1929 Lah. 217.

**GRAVE AND SUDDEN PROVOCATION.**

See PENAL CODE.

**GRIEVOUS HURT.**

See PENAL CODE, Ss. 320, 326.

**GROSS NEGLIGENCE.**

See TORT—NEGLIGENCE.

**GROUND OFS OF TRANSFER.**

See CR. P. CODE, Ss. 426-428.

**GUARDIANS AND WARDS ACT (8 of 1890).****—Nature of proceedings.****—Judicial or administrative.**

The proceedings under the Guardians and Wards Act, once initiated by an application either for appointment or for declaration of a guardian last or continue throughout the minority of the minor concerned and the filing of the papers do not put an end to the proceedings. The Court appointing the guardian, when it receives the report of the guardian, does not act in an administrative or executive capacity, but as a "Court" within the meaning of S. 195 (c), Criminal Procedure Code. (*Kinkhede, A. J. C.*). TULARAM MARWADI v. EMPEROR. 100 I.C. 1044=28 Cr. L. J. 388=

7 A. I. Cr. R. 521=A.I.R. 1927 Nag. 184.

**—S. 7—Applicability.****—Habeas corpus—Proceedings.**

Where Hindu minors were with the mother and the mother was inclined towards a belief in the Christian religion and it was likely she might be ultimately converted to that religion, and she was likely to bring them up in such a way that they would ultimately express a desire to be converted to Christianity.

*Held*, the proper course for removal of the mother from guardianship and have another guardian appointed was under the Guardians and Wards Act.

**GUARDIANS AND WARDS ACT (1890), S. 7—Welfare of minor.**

The High Court refused to exercise any powers under Cr. P.C., S. 491 (a): 14 M.I.A. 809 (P.O.); 46 P.W.R. 1916; 20 C.W.N. 608 and 57 I. C. 651, *Ref. (Ramesam, J.)*, VEERASAMI v. GUTTIKONDA RATNAMMA. 112 I. C. 472=1 M. Cr. C. 307=

29 Cr. L.J. 1048=11 A. I. Cr. R. 323=  
A.I.R. 1928 Mad. 1037.

**—S. 17—Welfare of minor.**

*—Ties of affection—Religion.*

The word welfare must be taken in its widest sense. The moral and the religious welfare must be considered as well as the child's physical well-being and due regard must be had to the ties of affection. (*Venkatasubba Rao, J.*). SARASWATHI AMMAL v. DANAKOTI AMMAL. 85 I.C. 840=

1924 M.W.N. 870=20 M.L.W. 902=  
48 Mad. 299=26 Cr. L. J. 616=

A.I.R. 1924 Mad. 873= 47 M.L.J. 614.

**—S. 25—Father's application for custody.**

What a Court has to look to on applications under Habeas Corpus is the interest of the child as being paramount.

A father made an application for a writ of Habeas Corpus directing that the custody of his son aged about 7 or 8 should be delivered to him. There was nobody in his house to look after the child of such tender age, he himself being a driver of motor car,

*Held*, that the High Court should not interfere and the proper course for the father would be to set the Court in motion locally under S. 25, Guardians and Wards Act. (*Coutts-Trotter, C.J., Madhavan Nair and Jackson, J.J.*). SHAIK MOIDIN v. KUNHADEVI. 2 M. Cr. C. 58=

A.I.R. 1929 Mad. 33 (F.B.).

**—S. 25—Habeas corpus.**

On an application by the *de jure* guardian for *habeas corpus* in respect of a child detained against its will the dominant question is what conduces to the interests and welfare of the infant and the Court must dispose of the application with reference to it. The moral, the religious and the physical welfare and the ties of affection as also the opinion of the child if it is capable of forming an intelligent opinion are to be taken into consideration. The opinion of the child is an important element and the degree of the child's mental development must to a certain extent weigh with the Court. The age of the infant is also an important factor. There is no inflexible rule in England that a boy over 14 and a girl over 16 will have the final voice and that the wishes of the infant have to be given effect to. Even if such a rule exists it is too artificial to be applicable in India. (*Venkatasubba Rao, J.*). SARASWATHI AMMAL v. DHANAKOTI AMMAL. 85 I.C. 840=

1924 M.W.N. 870=20 M.L.W. 902=  
48 Mad. 299=26 Cr. L.J. 616=

A.I.R. 1924 Mad. 873=47 M. L. J. 614.

**HABEAS CORPUS.**

See CRIMINAL P. C., S. 491.

**HABEAS CORPUS ACT (1862, 25 & 26 Vict., Ch. 20).**

**HABITUAL OFFENDER.**

See (1) CRIMINAL P. C., SS. 106 to 122.

(2) CRIMINAL TRIAL.

(3) PENAL CODE.

**HACKNEY CARRIAGE ACT (XIV of 1879).****—S. 6—Absence of number.**

*—Carriage being re-painted.*

Where in answer to the charge that the number had not been painted in a prominent place on the

**HIGHWAY—Nuisance.**

carriage, the proprietor of a hackney carriage explained that the carriage had been re-painted and was awaiting for the number and where as a matter of a fact five days after the challan the carriage was actually re-inspected and passed correct and where the lamps of the carriage bore the number,

*Held*, that the owner's explanation was correct and that no offence was committed. (*Wazir Hasan, A.J.C.*). KING EMPEROR v. JOHN CASSEL.

88 I.C. 594=2 O.W.N. 443=26 Cr.L.J. 1170=  
A.I.R. 1925 Oudh 447.

**HANDWRITING.**

See (1) EVIDENCE.

(2) EVIDENCE ACT, SS. 47, 67, 68 & 73.

**HEARSAY EVIDENCE.**

See (1) EVIDENCE.

(2) EVIDENCE ACT.

**HIDDEN TREASURE.**

See TREASURE TROVE ACT.

**HIGH COURT.**

See also (1) CR P. CODE, SS. 4, 266, 554, ETC.

(2) GOVERNMENT OF INDIA ACT.

(3) JURISDICTION.

(4) PRIVY COUNCIL.

**HIGH COURTS (INDIAN) ACT (1861, 24 & 25 Vict., Ch. 104).**

**—S. 15—List of touts.**

*—Order of District Magistrate including name in.*

High Court can entertain in exercise of general powers of superintendence an application in revision from an order of District Magistrate including the name of a person in a list of touts under S. 86, Legal Practitioners' Act: 21 All. 181 and A.I.R. 1928 All. 834, *Rel. on.* (*Sulcriman and Niamatullah, JJ.*). KAPOOR CHAND JAIN v. EMPEROR. 1930 A.L.J. 961=A.I.R. 1930 All. 641.

**HIGHWAY.**

*—Interdiction.*

*—Equal right of all sections of the public.*

When the streets are public streets vested in a Municipality all members of the public have equal rights and one section of the community has no right to interdict another section of the community from the lawful use of the public streets: 30 Mad. 185 (P.C.); A.I.R. 1925 P.C. 36 and A.I.R. 1926 Mad. 880, *Foll.* (*Waller and Madhavan Nair, J.J.*). SUNDARESWARA SROUTHIGAL v. EMPEROR.

102 I.C. 481=50 Mad. 673=

8 A.I. Cr. R. 194=25 M.L.W. 667=

38 M.L.T. 307=1927 M.W.N. 279=

28 Cr. L.J. 545=A.I.R. 1927 Mad. 938=

52 M.L.J. 602.

**—Nuisance.**

*—Encroachment—Bona fide claim—Duty of Magistrate.*

Encroachment upon a public road is an obstruction to the public path, and it is a nuisance in itself under S. 263 of the Penal Code. No length of user can justify an encroachment upon a public way. The question of a sufficient width of the road being left in support of the encroachment, for public use is no ground for allowing the encroachment or obstruction to continue. It is the duty of the Magistrate to come to a finding, whether the claim of the person complained of, to such encroachment, is *bona fide* or not, and question of possession is relevant for this purpose. (*Jwala Prasad, J.*). JAGROSHAN BHABHAI v. MADAN PANDE. 105 I.C. 238=6 Pat. 428=8 P.L.T. 452=

8 A.I. Cr. R. 306=28 Cr. L. J. 910=

A. I. R. 1927 Pat. 265.

**HIGHWAY—Religious procession.****—Religious procession.**

—Persons of whatever sect, are entitled to conduct religious processions through public streets so that they do not interfere with the ordinary use of such streets, by the public and subject to such direction as the Magistrates may lawfully give to prevent obstructions of the thoroughfare or breaches of public peace; A.I.R. 1925 P.C. 36 and 5 Mad. 309, *Foll. (Simpson, A.J.C.)*. **DILLI v. KING EMPEROR.** 89 I. C. 269 = 2 O.W.N. 589 = 26 Cr. L. J. 1325 = A.I.R. 1925 Oudh 656.

**HINDU LAW.****—Marriage—Re-marriage.**

—Discarded wife of Kori cannot re-marry in absence of legal divorce. (*Subhedar, A. J. C.*). **EMPEROR v. BHAIYA LAL.** 118 I.C. 681 = 30 Cr. L.J. 960 = 1929 Cr. C. 454 = A.I.R. 1929 Nag. 278.

**—Re-marriage during lifetime of first husband—Custom as to, must be proved.**

*Sagai* in the form of remarriage of widows is the normal condition in all except the five or six highest castes of Hindus in Bihar. But a custom of *sagai*, while the first husband is still alive is, even assuming the custom to be a valid defence under S. 494, something which would require strict proof in respect of the particular caste in the particular area and in respect of the conditions in which the custom operates; 19 Cal. 627, *Dist. (Macpherson, J.)*. **FAGU TANTI v. CHOTE LAL TANTI.** 96 I.C. 115 = 7 P.L.T. 443 = 27 Cr. L.J. 867 = A.I.R. 1926 Pat. 346.

**—Marriage—Validity.**

—In the charge of bigamy, where in the first marriage the giving away of the bride was with the consent of the legal guardian who was in jail,

*Held*, that the first marriage was valid and hence the subsequent marriage with the same woman constituted bigamy. (*Cuming and Gregory, JJ.*). **BENODIN HOWLADAR v. EMPEROR.**

100 I. C. 711 = 28 Cr. L.J. 327 = 7 A.I.Cr.R. 515 = A.I.R. 1927 Cal. 480.

—The marriages between members of different Sudra castes are valid under the Hindu Law. Marriage between a Kayastha and a Dom is valid. The Bengali Kayasthas are treated as Sudras in Calcutta High Court.

Per *Greaves, J.*—Upon the authorities it does not appear that if a marriage is otherwise valid it becomes invalid because it is opposed to the usages of the community and is not recognised by them as valid. (*Greaves and Panton, JJ.*). **BHOLANATH MITTER v. EMPEROR.** 81 I.C. 703 = 51 Cal. 488 = 28 C. W. N. 323 = 25 Cr. L.J. 997 = A.I.R. 1924 Cal. 616.

—*Marriage duly solemnised—Invalidity of.*

A Hindu marriage is a sacrament and a marriage which is duly solemnised and is otherwise valid is not rendered invalid merely because it is brought about without the consent of the guardian in marriage or even in contravention of an express order of the Court. A marriage tainted by fraud is a voidable transaction, but it is binding until it is set aside by a competent Court. Unless it is decided to be invalid, it can sustain an indictment for bigamy. (*Shadi Lal, C.J.*). **GAJJA NAND v. EMPEROR.** 64 I. C. 500 = 71 I.C. 215 = 24 Cr. L.J. 87 = 23 Cr. L.J. 20 = 8 P.L.R. 1922 = 2 Lah. 288 = 108 P.L.R. 1921.

**HINDU WIDOWS RE-MARRIAGE ACT (XV of 1856).****—S. 7—Consent of mother-in-law.****—Sufficiency of.****IMPARTIBLE ESTATE—Joint family.**

Hindu Law like other systems of law does not invest a mother-in-law with the power to give her widowed daughter-in-law in marriage. Even S. 7, Act XV of 1856, does not mention the name of mother-in-law among persons who are authorized to give their consent to the marriage of a widow; she does not possess this right even though the widow is under her guardianship. (*Tek Chand and Agha Haidar, JJ.*). **SANT RAM v. EMPEROR.** 30 P.L.R. 573 = 1929 Cr. C. 305 = A.I.R. 1929 Lah. 713.

**HIRE PURCHASE CONTRACTS.**

See PENAL CODE, S. 406.

**HONORARY MAGISTRATE.**

See CR. P. CODE, S. 15.

**HOUSE-BREAKING.**

See PENAL CODE, Ss. 441 AND 460.

**HOUSE TRESPASS.**

See PENAL CODE.

**HURT.**

See PENAL CODE.

**HUSBAND AND WIFE.****—Dissolution of marriage.****—Proof of.**

The fact that a second marriage in the Karao form during the lifetime of the first husband is recognised as valid amongst a particular class of people carries with it inevitably the proposition that the first marriage can under some circumstances be regarded as no longer a valid marriage. (*Boys, J.*). **ASLOP v. EMPEROR.** 1930 Cr. C. 1137.

**IDENTIFICATION OF PRISONERS ACT (XXXIII of 1920).****—S. 5—Thumb impressions.**

—It is not wrong on the part of the Court to take finger-prints of accused in its presence and to have them compared by an expert with the disputed finger-prints. (*Jwala Prasad and Macpherson, JJ.*). **BASGIT SINGH v. EMPEROR.** 104 I. C. 626 = 6 Pat. 303 = 28 Cr. L.J. 880 = A.I.R. 1928 Pat. 129.

—A Court can direct an accused person to give his thumb impression in Court. A.I.R. 1924 Rang. 115 (F.B.), *Foll.*; A.I.R. 1922 Pat. 78, *Dist. (Mullick and Wort, JJ.)*. **LAHURI SAHA v. EMPEROR.** 106 I.C. 212 = 6 Pat. 623 = 8 P.L.T. 847 = 28 Cr. L.J. 1028 = 9 A.I. Cr. R. 173 = A.I.R. 1928 Pat. 103.

—Under S. 5 thumb impressions can be taken of a person by the order of a Magistrate and are admissible in evidence. (*C.C. Ghose and Duval, JJ.*). **EMPEROR v. KIRAN BALA DAS.** 93 I.C. 73 = 43 C.L.J. 79 = 30 C.W.N. 373 = 27 Cr. L.J. 409 = A.I.R. 1926 Cal. 531.

**IGNORANCE OF LAW.**

See PENAL CODE, S. 79.

**ILLEGAL GRATIFICATION—See PENAL CODE, SS. 161, 163.****ILLEGAL OMISSION.**

See PENAL CODE, S. 44.

**ILLEGITIMACY.**

See CR. P. CODE, S. 488.

**IMMOVABLE PROPERTY.**

See CR. P. CODE, SS. 145-147.

**IMPARTIBLE ESTATE.****—Joint family.****—Rights of co-parcenership.**

Where the estate is impartible the members of the joint family have none of the rights of co-parcenership except a right of succession by survivorship limited by the rule of impartibility which allows only one member at a time to hold.



**INCOME-TAX—Tax in respect of coal mines.**

They cannot demand partition or assert any right to any individual share in the estate nor can they restrain alienation. (*Dawson-Miller, C. J. and Foster, J.*) **RAJA SHIVA PRASAD SINGH v. KING-EMPEROR.** 82 I.C. 653=5 P.L.T. 497=

1924 P.H.C.G. 234=2 Pat. L.R. Gr. 233=  
4 Pat. 73=A.I.R. 1924 Pat. 679.

**IMPRISONMENT.**

See (1) PENAL CODE, Ss. 53—75.

(2) CR. P. CODE.

**INCITEMENT.**

See (1) PENAL CODE.

(2) ABETMENT.

**INCOME-TAX.****—Tax in respect of coal mines.**

—Tax on gross revenue and income-tax—Distinctions.

A percentage tax upon the gross revenues of coal mines is indirect taxation. Though the tax is called a tax on "gross revenue," such gross revenue is in reality the aggregate of sums received from sales of coal, and is indistinguishable from a tax upon every sum received from the sale of coal. The general tendency of a tax upon the sums received from the sale of the commodity is that traders would seek to recover it in the price charged to a purchaser. Under particular circumstances the recovery of the tax may, it is true, be economically undesirable or practically impossible, but the general tendency of the tax remains. It is not analogous to an income-tax, which has always been regarded as the typical example of a direct tax. There are marked distinctions between a tax on gross revenue and a tax on income, which for taxation purposes means gains and profits. There may be considerable gross revenues, but no income taxable by an income-tax in the accepted sense. (*Lord Warrington of Clyffe.*) **KING v. CALEDONIA COLLIERIES, LTD.** 111 I.C. 216=A.I.R. 1928 P.C. 282 (P.C.).

**INCOME-TAX ACT (II of 1886) (Repealed by VII of 1918)****—S. 51—Appeal to Privy Council.**

—A decision under S. 51 of the Income-Tax Act of 1918 is merely advisory, and not in the proper or legal sense of the term final, and therefore no appeal lies to His Majesty in Council. (*Rankin and Page, JJ.*) **PROBHAT CHANDRA BARUA v. EMPEROR.** 84 I.C. 31=

51 Cal. 504=A.I.R. 1924 Cal. 668.

**—S. 51—Contents of reference.**

—*Obiter*—Whilst it is quite proper for Income-tax Commissioner to state his opinion upon the questions involved, it is his first duty to state clearly and fully the material facts admitted or proved in evidence before him. (*Dawson-Miller, C.J. and Foster, J.*) **RAJA SHIVA PRASAD SINGH v. KING-EMPEROR.** 82 I.C. 653=5 P.L.T. 497=

1924 P. H. C. G. 234=2 Pat. L.R. Gr. 233=  
4 Pat. 73=A.I.R. 1924 Pat. 679.

**INCOME-TAX ACT (XI of 1922).****—Fixed capital.**

—'Fixed capital' is capital which has been expended not merely for the production of profits in any given year but for the production of profits over an indefinite number of years. (*Le Rossignol and Martineau, JJ.*) **PUNJAB NATIONAL BANK v. EMPEROR.** 96 I. C. 380=7 Lah. 227=

27 Pat. L. R. 416=A.I.R. 1926 Lah. 373.

**—Permanent Settlement Regulation.**

—*If repugnant to each other.*

The subject-matter of the two legislations Bengal Regulation (I of 1793) and Income-tax Act are different; the later statute is on a subject which

**INCOME-TAX ACT (1922), S. 1—Avoiding tax.**

is financially and economically different from that dealt with in the statute of 1793; one deals with revenue assessed on lands, the other is a tax on profits.

(*Mukerji, J. and Suhrawardy, J., concurring*).

—It may not perhaps be right as a matter or method of construction in order to construe the Income-tax Act (XI of 1922) to put it side by side with Regulation I of 1793 without taking into account the events that have happened during and the changes that have been wrought by the long years that separate the two enactments. If the income-tax was sought to be levied upon Permanent Settlement Zemindars while Regulation I of 1793 was yet in sight it would perhaps have been understood as having taken away from the fixity of the State demand and altered the income and profits the unalterable character of which the Regulation had assured. The two enactments are not necessarily inconsistent or repugnant to each other and the Permanent Settlement Regulation I of 1793 may very well stand as an exceptional proviso under the Income-tax Act, XI of 1922. (*C. C. Ghose, Buckland, Suhrawardy, Panton and Mukerji, JJ.*) **EMPEROR v. RAJAH PROBHAT CHANDRA.** 102 I.C. 845=54 Cal. 863=

45 C. L. J. 323=31 C.W.N. 765=  
A. I. R. 1927 Cal. 432 (F.B.).

—Per *Rankin, J.* (Contra *Page, J.*)—Notwithstanding Permanent Settlement Regulation non-agricultural income from permanently settled estates is not exempt from Income-Tax Act.

Legislature has freely legislated so as to prevent zamindars from exacting excessive rents, imposing illegal cases, imposing undesirable conditions of tenancy, evicting tenants for inadequate reason, and so forth; this is no more than an exercise of the power expressly reserved by the Regulation. The Bengal Act X of 1859 and the Bengal Tenancy Act of 1885 represent this exercise of power. Incomes from fisheries and pasturage in permanently settled estates are not exempt from Income-Tax Act notwithstanding Permanent Settlement Regulation of 1893.

Per *Page, J.*—"The Legislature is entitled to abrogate, modify or destroy any right or privilege even if it be of its own creation. Although it is competent to the Legislature to withdraw or modify an exemption from taxation by a subsequent enactment, this can be done expressly or in general terms or by implication." (1923) 45 Mad. 518, *Foll. partly*; (1916) 2 A.C. 429; (1920) 3 K.B. 109, *Foll.* Where the intention of the Legislature to abrogate or modify existing rights is manifest as a necessary implication from the language used in the repealing statute, it matters not, that the existing rights are not therein expressly and specifically modified or cancelled. The income derived from fisheries and the income derived from land used for stacking timber which accrues from the permanently settled estates cannot lawfully be charged with income-tax. (*Rankin and Page, JJ.*) **PROBHAT CHANDRA BARUA v. EMPEROR.** 84 I.C. 31=

51 Cal. 504=A.I.R. 1924 Cal. 668.

**—S. 1—Avoiding tax.**

—A man who is liable to pay a tax is entitled to take shelter under all devices which he may adopt within the law to avoid payment of the tax. Indeed the whole scheme of the Income-tax Act contemplates that people liable to be assessed with income-tax were likely to shirk making true disclosures and if they did go wrong, they were to be

**INCOME-TAX ACT (1922), S. 2—Agricultural income.**

treated with more or less leniency. (*Mukerji and Niamatullah, J.J.*). *GANGA SAGAR v. EMPEROR.* 120 I.C. 435=1930 A.L.J. 26=31 Cr.L.J. 88=1929 Cr. C. 647=A.I.R. 1929 All. 919.

**—S. 2—Agricultural income.**

—Fees received from land used for storing purchases of crops (*paia*) do not come within the definition of "agricultural income" as given in S. 2, nor does *punyaha nazar* or *nazar* paid by tenants of agricultural holdings at the beginning of the zamindari year, nor does *nazar* paid for petitions presented by the zamindar dealing with questions of succession. But *nazar* paid for recognition of succession or partition or for settlement is an income derived from land. (*Rankin, C.J. and Masumdar, J.*). *EMPEROR v. PROBHA CHANDRA.* 106 I. C. 353=

31 C.W.N. 1047=A.I.R. 1927 Cal. 793.

**—Income from pasturage.**

Income from pasturage is derived from land which is used for "agricultural purposes" and is, therefore, in the case of a permanently settled estate, within the exemption given by S. 4, sub-S. (3), cl. (viii) of the Act to "agricultural income" as defined by S. 2, sub-S. (1), cl. (a). Even to income derived from fees realised from graziers who graze their cattle in the forest areas and waste land there is nothing to render inapplicable the definition of "agricultural income" contained in cl. (a). The income-tax is one tax, and income assessed under one schedule cannot be assessed all over again under another. There is no legal presumption of a general character against "double taxation" in any wider sense. (*Rankin and Page, J.J.*). *PROBHAT CHANDRA BARUA v. EMPEROR.* 84 I.C. 31=51 Cal. 504=A.I.R. 1924 Cal. 668.

**—S. 4—Agricultural income.**

—Income derived from letting land for stocking timber is not "agricultural income". (*Abdul Raof and Jai Lal, J.J.*). *HAR PARSHAD v. EMPEROR.* 86 I.C. 1028=A.I.R. 1923 Lah. 488.

—Income from fisheries and income from land used for stacking timber is not agricultural income. (*Rankin and Page, J.J.*). *PROBHAT CHANDRA BARUA v. EMPEROR.* 84 I.C. 31=

51 Cal. 504=A.I.R. 1924 Cal. 668.

**—S. 4—Interpretation.**

—The receipt of the income referred to in S. 4 must refer to the first occasion upon which the recipient got the money under his own control. (*Dawson-Miller, C.J. and Mullick, J.*). *SAIYID ALI IMAM v. EMPEROR.* 85 I.C. 164=4 Pat. 210=

6 P.L.T. 47=3 P.L.R. Cr. 85=

1924 P.H.C.C. 349=A.I.R. 1925 Pat. 281.

**—S. 4—Permanent settlement.**

—Regulations do not exempt zamindar from any general taxation of income.

While the regulations contain assurances against any claim to an increase of the jama based on an increase of the zamindari income, they contain no promise that a zamindar shall in respect of the income which he derives from his zamindari be exempt from liability to any future general scheme of property taxation, or that the income of the zamindari shall not be subjected with other incomes to any future general taxation of income such as income-tax: A.I.R. 1925 Cal. 698, *Affirmed.* (*Lord Russell of Killowen.*) *PROBHAT CHANDRA BARUA v. EMPEROR.* A.I.R. 1930 P.C. 209 (P.C.).

**—S. 6—Capitalised rent.**

—The capitalised value of the rent paid in a lump sum is not in all cases to be regarded as in-

**INCOME-TAX—ACT (1922), S. 10—Depreciation.**

come. (*Dawson-Miller, C. J. and Foster, J.*). *RAJA SHIVA PRASAD SINGH v. KING EMPEROR.*

82 I.C. 653=5 P.L.T. 497=1924 P.H.C.C. 234=2 Pat. L.R. Cr. 233=4 Pat. 73=A.I.R. 1924 Pat. 679.

**—S. 6—Income from Jalkars.**

—Income from fisheries included in revenue of permanently settled estates is exempt.

The income from the jalkars included in the assets upon which the jamas of the permanently settled estates were assessed under Regulation 1 of 1793 at the time of the Permanent Settlement is not liable to assessment to income-tax under Act 11 of 1922. (*Cuming and Page, J.J.*). *EMPEROR v. INDU BHUSAN SARKAR.* 95 I.C. 539=

53 Cal. 824=30 C.W.N. 524=44 C.L.J. 427=A.I.R. 1926 Cal. 819.

**—S. 6—Royalties.**

—Royalties paid to lessor are nonetheless income though they are paid for rights the exercise of which involves a waste of the capital. (*Dawson-Miller, C.J. and Foster, J.*). *RAJASHIVA PRASAD SINGH v. KING EMPEROR.* 82 I. C. 653=

5 P.L.T. 497=1924 P.H.C.C. 234=2 Pat. L.R.Cr. 233=4 Pat. 73=A.I.R. 1924 Pat. 679.

**—S. 6—Salami.**

—Transactions by which a lump sum is paid under the name of *salami* for the granting of the lease are more in the nature of an out and out sale of property and the sum so received by the lessor is in no sense income within the meaning of the Indian Income-tax Act. (*Dawson-Miller, C.J. and Foster, J.*). *RAJASHIVA PRASAD SINGH v. KING-EMPEROR.* 82 I.C. 653=5 P.L.T. 497=

1924 P.H.C.C. 234=2 Pat. L.R. Cr. 233=4 Pat. 73=A.I.R. 1924 Pat. 679.

**—S. 9—Permanent Settlement.**

—Bengal Permanent Settlement Regulation (1 of 1793)—Estates were not relieved from aiding subsequent necessities of the Government nor are they exempted from general tax like income tax. (*C. C. Ghose, Buckland, Suhrawardy, Panton and Mukerjee, J.J.*). *EMPEROR v. RAJAH PROBHA CHANDRA BARUAH.* 102 I.C. 845=45 C.L.J. 323=

31 C.W.N. 765=54 Cal. 863=A.I.R. 1927 Cal. 432 (F.B.).

—Income from land in permanently settled estates, is assessable.

Per *C.C. Ghose, J.*—(*Buckland and Panton, J.J. concurring*)—Income from the land subject to the exemption in the Income-tax Act is liable to be assessed, to income-tax and therefore even having regard to the terms of the Permanent Settlement Regulation income derived from land such as Jalkar, ground rent for potteries and brickfields, fees for tying boats, storing crops and cart stands yearly *nazar* and *nazar* on petitions, ground-rent in Bazar and stall fees in permanently settled estates subject to the exemption provided by the legislature is liable to assessment to income-tax. (*Mukerji and Suhrawardy, J.J.*, contra. A. I. R. 1924 Cal. 668, *Affirmed*; 53 Cal. 524; A.I.R. 1926 Cal. 819; 95 I.C. 539, *Overruled.* (*C. C. Ghose, Buckland, Suhrawardy, Panton and Mukerji, J.J.*). *KING EMPEROR v. RAJAH PROBHA CHANDRA.* 102 I.C. 845=

54 Cal. 863=45 C.L.J. 323=31 C.W.N. 765=A.I.R. 1927 Cal. 432 (F.B.).

**—S. 10—Depreciation.**

—Depreciation, in high class Government securities purchased by assessee bank not for trading, does not come under S. 10 or any other

**INCOME-TAX ACT (1922), S. 12—Interpretation and scope.**

provision of the Act. (*Le Rossignol and Martineau, J.J.*), PUNJAB NATIONAL BANK v. EMPEROR.  
96 I.C. 380=7 Lah. 227=27 P.L.R. 416=  
A.I.R. 1926 Lah. 373.

**—S. 12—Interpretation and scope.**

Income from zamindari is assessable under S. 12 (1).

The words of S. 12 (1) are clear and emphatic and are expressly framed so as to make the sixth head in S. 6 describe a true residuary group embracing within it all sources of income, profits and gains, provided the Act applies to them, that is, provided that they accrue or arise or are received in British India or are deemed to accrue or arise or to be received in British India as provided by S. 4 (1) and are not exempted by virtue of S. 4 (3). Therefore, Ss. 6 and 12 of the Act bring into charge for the purposes of income-tax the income derived from a zamindari and the zamindar is assessable in respect of income, profits and gains derived from that source after making allowance for the jama assessed and paid. A.I.R. 1925 Cal. 598, *Affirmed.* (Lord Russell of Killowen.) PROBHA CHANDRA BARUA v. EMPEROR. 125 I.C. 871=  
57 I.A. 228=34 C.W.N. 1017=52 C.L.J. 225=  
A.I.R. 1930 P.C. 209 (P.C.).

**—S. 14—Impartible estate.**

The income of an impartible estate is that of the incumbent for the time being and the fact that he is bound to maintain his sons does not entitle him to treat the income as that of the undivided family. (*Dawson-Miller, C.J. and Foster, J.*). RAJA SHIVA PRASAD SINGH v. KING-EMPEROR.

82 I.C. 653=5 P.L.T. 497=  
1924 P.H.C.C. 234=2 Pat L.R. Gr. 233=  
4 Pat. 73=A.I.R. 1924 Pat. 679.

**—S. 22—Entering firm to inspect accounts.**

Forcible entry—Legality of.

Although an Income-tax Officer is empowered under S. 22 (4) of the Income-tax Act to serve the proprietors of a firm with a notice to produce their accounts, there is no provision of law by which he can insist on their producing the accounts if they decline to comply with the notice. He has no authority under the Act to enter the firm's premises in order to inspect the accounts, or to remain on the premises for that purpose against the will of the proprietors, and if he does so he commits criminal trespass and the proprietors have a right to forcibly turn him out as S. 99, Penal Code, would not deprive them of their right of private defence. (*Martineau, J.*). ACHHRU RAM v. EMPEROR. 95 I.C. 308=7 Lah. 104=27 P.L.R. 298=  
27 Cr. L.J. 772=A.I.R. 1926 Lah. 326.

**—S. 22—Notice.**

Person carrying on business at different places—Separate notices requiring separate returns of each branch not necessary. (*Boys, Kendall and Young, J.J.*, on difference between *Mukerji and Niamatullah, J.J.*). In the matter of LACHHMAN PRASAD BABU RAM OF CAWNPORE.

1930 A.L.J. 1=1930 Cr. C. 113=  
A.I.R. 1930 All. 49 (F.B.).

Notice under S. 22 (4) issued by the Income-tax Officer at the place where a person has a principal place of business is not invalid because it includes accounts and documents connected with the assessee's branch shop. (*Boys, Kendall and Young, J.J.* on difference between *Mukerji and Niamatullah, J.J.*). In the matter of LACHHMAN PRASAD BABU RAM OF CAWNPORE. 1930 A.L.J. 1=  
1930 Cr. C. 113=A.I.R. 1930 All. 49 (F.B.).

**INCOME-TAX ACT (1922), S. 23—Denial of accounts.****—S. 22—Return regarding branch business.**

An Income-tax Officer of an assessee's principal place of business has jurisdiction to compel such assessee to submit a return and produce accounts in respect of a branch business even though he has submitted a return, to produce accounts, and otherwise complied with all the requirements of the law before the Income-tax Officer of the place where he has such a branch business. (*Boys, Kendall and Young, J.J.*, on difference between *Mukerji and Niamatullah, J.J.*). In the matter of LACHHMAN PRASAD BABU RAM OF CAWNPORE. 1930 A.L.J. 1=  
1930 Cr. C. 113=A.I.R. 1930 All. 49 (F.B.).

**—S. 22—Revised return.**

There is nothing in cl. (3) which says that any offence committed with respect to a return made under cl. (2) must be condoned if the revised return be true. All that cl. (3) provides is that this return would be treated as a return made in due time, provided it is made before an assessment has been made. (*Mukerji and Niamatullah, J.J.*). GANGA SAGAR v. EMPEROR. 120 I.C. 435=  
1930 A.L.J. 26=31 Cr. L.J. 88=  
1929 Cr. C. 647=A.I.R. 1929 All. 919.

**—S. 22—Time-limit.**

Section 22 (4), Income-tax Act, no doubt standing by itself is uncontrolled by any time-limit. But a time-limit is imposed by the four words "having made a return," as used in S. 23 (4). (*Boys, Kendall and Young, J.J.*, on difference between *Mukerji and Niamatullah, J.J.*). In the matter of LACHHMAN PRASAD BABU RAM OF CAWNPORE. 1930 A.L.J. 1=1930 Cr. C. 113=  
A.I.R. 1930 All. 49 (F.B.).

**—S. 22—Validity of return.**

Letter with statement of income in Hindi.

A merchant sent a letter to the Income-tax Officer stating that he had made a mistake in the figures supplied by him on 25th July. This letter was received in the office of the Income-tax Officer on 7th November. Attached to this letter was a statement of the income in Hindi. Along with this letter and the enclosure, the merchant sent one of the printed forms in Hindi in which an assessee is required to make a statement of his income, and in his letter suggested that the Income-tax Officer might enter the figure contained in the enclosure into the blank form and substitute the fresh return in place of the return made on 25th July.

Held, that the letter and its enclosure and the blank form sent by the merchant did substantially amount to the making of a return. (*Mukerji and Niamatullah, J.J.*). GANGA SAGAR v. EMPEROR.

120 I.C. 435=1930 A.L.J. 26=31 Cr. L.J. 88=  
1929 Cr. C. 647=A.I.R. 1929 All. 919.

**—S. 23—Appeal.**

On reading, therefore, the two Ss. 22 and 23 it is abundantly clear that a right to make an assessment to the best of the officer's judgment cannot be made after an enquiry has been started so as to shut out an appeal simply because at any time after the enquiry has been started the assessee fails to produce an account as asked for. (*Boys, Kendall and Young, J.J.*, on difference between *Mukerji and Niamatullah, J.J.*). In the matter of LACHHMAN PRASAD BABU RAM OF CAWNPORE.

1930 A.L.J. 1=1930 Cr. C. 113=  
A.I.R. 1930 All. 49 (F.B.).

**—S. 23—Denial of accounts.**

Presumption.

Even when an assessee denies the existence of accounts or documents, the Income-tax Officer can

**INCOME-TAX ACT (1922), S. 23—Interpretation.**

presume the existence of such accounts or documents. (*Boys, Kendall and Young, JJ. on difference between Mukerji and Niamatullah, JJ.*). In the matter of LACHHMAN PRASAD BABU RAM OF CAWNPORE. 1930 A.L.J. 1=1930 Gr.C. 113= A.I.R. 1930 All. 49 (F.B.).

**—S. 23—Interpretation.**

—Per *Mukerji, J.*—It is the ordinary privilege of a subject that he shall not be taxed on his income without a proper investigation. It is open to the assessee to prove what his income is before he is assessed on the income. If it had been the intention of the legislature that the mere word of the Taxing Officer should be final, one should find clear indication of that in the language of the statute. (*Boys, Kendall and Young, JJ. on difference between Mukerji and Niamatullah, JJ.*). In the matter of LACHHMAN PRASAD BABU RAM OF CAWNPORE. 1930 A.L.J. 1=1930 Gr. C. 113= A.I.R. 1930 All. 49 (F.B.).

**—S. 23—Notice.**

—Per *Mukerji, J.*—An Income-tax Officer has no jurisdiction to issue a notice under S. 23 (4), after the commencement of an enquiry under S. 23 (9). —*Niamatullah, J.*, contra: A.I.R. 1928 Lah. 219, *Rel. on*; A.I.R. 1928 All. 283; A.I.R. 1928 Cal. 587 and A.I.R. 1928 Pat. 529, *Diss. from.* (*Boys, Kendall and Young, JJ. on difference between Mukerji and Niamatullah, JJ.*). In the matter of LACHHMAN PRASAD BABU RAM OF CAWNPORE. 1930 A.L.J. 1=1930 Gr. C. 113= A.I.R. 1930 All. 49 (F.B.).

**—S. 24—Purchase of shares.**

—Purchase of shares—Price exceeding face-value paid—Excess is no loss. (*Mukerji and Niamatullah, JJ.*). GANGASAGAR v. EMPEROR. 120 I.C. 435=1930 A. L. J. 26=31 Gr.L.J. 88= 1929 Gr.C. 647=A.I.R. 1929 All. 919.

**—S. 25—Re-assessment.**

—Where re-assessment was not made until more than a year had elapsed after the expiration of the year of assessment.

*Held*, the assessee was not liable to any further tax than that already demanded for the year in question. (*Dawson-Miller, C. J. and Mullick, J.*). MAHARAJADHIRAJ OF DHARBHANGA v. COMMISSIONER OF INCOME-TAX. 78 I.C. 783= 3 Pat. 470=2 Pat. L.R.Gr. 25=1924 P.H.C.C. 69= 5 Pat.L.T. 459=A.I.R. 1924 Pat. 474.

**—S. 27—Sufficiency of Cause.**

—There was an assessment made to the best of the judgment and assessee applied to cancel the same. It was alleged that assessee's account books were produced in a criminal case. But the criminal case was disposed of long before best judgment assessment was made. And further the assessee failed to produce within a month's time allowed to him a copy of application said to have been made for return of account books.

*Held*, that it was not proved that assessee was prevented by sufficient cause from making the return. (*Mukerji and Niamatullah, JJ.*). RAM-KUMAR MOHAN LAL, *In re.* 119 I.C. 569= 1929 A.L.J. 536=30 Gr.L.J. 1084.

**—S. 33—Notice.**

—Sufficient notice should be given to an assessee when an order is passed against him under S. 88 by the Commissioner in circumstances where he is really exercising the duties of an Income-tax Officer under S. 23 (2) and is in effect calling on the assessee to give evidence to support his original return. (*Dawson Miller, C. J. and Foster, J.*),

**INCOME-TAX ACT (1922), S. 52—Time of offence.**

SACHCHIDANANDA SINHA v. COMM. OF INCOME-TAX, BIHAR AND ORISSA. 88 I.C. 1014= 2 Pat. L.R. Cr. 180=3 Pat. 664=5 P.L.T. 608= A.I.R. 1924 Pat. 644.

**—S. 34—Tax on escaped income.**

—There is no provision in law for the recovery of taxes on "escaped income" for more than one year. (*Mukerji and Niamatullah, JJ.*). GANGA SAGAR v. EMPEROR. 120 I. C. 435= 31 Gr. L.J. 88=1930 A.L.J. 26= 1929 Gr. C. 647=A.I.R. 1929 All. 919.

**—S. 37—False accounts.**

—S. 37 being a penal section, has to be construed strictly. There is no reference whatsoever in the section itself to S. 196, I. P. C., therefore, a person cannot be prosecuted under S. 196 for producing account books in pursuance of notice under S. 23 (2) where the books were found to be false. (*C. C. Ghose and Cammiade, JJ.*). LAL MOHAN PODDAR v. EMPEROR. 104 I. C. 903= 31 C.W.N.996=46 C.L.J. 550=8 A.I.Cr.R. 443= 28 Gr. L. J. 987=A.I.R. 1927 Cal. 724.

**—S. 46—Distress warrant.**

—*Recovery of tax—Authority to Police Officer.*

Where a Police Officer attached monies in a shop in pursuance of a distress warrant issued by the Collector for recovery of income-tax, and was assaulted by the accused,

*Held*, the Collector may, on receipt of a certificate from the Income-tax Officer recover the amount specified therein as if it were an arrear of land revenue, and in areas notified by the Commissioner arrears may also be recovered by any process enforceable for the recovery of an arrear of any Municipal tax or local rate. But in the absence of orders under S. 46 (3) (4), the Collector cannot issue distress warrant for realisation of arrears of income-tax. The Collector has no authority to issue distress warrant for the realisation of arrears of income-tax under S. 46 (3) to an officer of the Police and the police officer executing such a warrant cannot be said to be acting in execution of his duty as a police officer. On this ground therefore the charge under S. 353 must fail if there was resistance to the police officer. If it was a fact that the money belonged to the petitioners Nos. 2 and 3 and that they were separate from petitioner No. 1 against whom distress warrant was issued, then clearly the seizure of the money was illegal. (*Ross, J.*). JAIRAM SAHU v. EMPEROR. 4 P.L.T. 171= 1923 P.H.C.C. 111=72 I.C. 954= 1 Pat. L.R. Cr. 68=24 Gr. L.J. 490.

**—S. 52—Essentials.**

—*Verification of untrue statement.*

The essence of offence under S. 52 and Penal Code, S. 177 lies in the verification of an untrue statement, and provided the statement was deliberately false or not believed to be true, subsequent rectification cannot make it any the less an offence, though it may be considered as an extenuating circumstance in awarding sentence. (*Mukerji and Niamatullah, JJ.*). GANGA SAGAR v. EMPEROR. 120 I.C. 435=1930 A.L.J. 26= 31 Gr. L.J. 88=1929 Gr. C. 647= A.I.R. 1929 All. 919.

**—S. 52—Time of offence.**

—An offence under S. 52 is committed on the day a return, made under S. 22, is verified by a party. (*Mukerji and Niamatullah, JJ.*). GANGA SAGAR v. EMPEROR. 120 I.C. 435= 1930 A.L.J. 26=31 Gr. L.J. 88= 1929 Gr. C. 647=A.I.R. 1929 All. 919.

**INCOME-TAX ACT (1922), S. 55—Dividends already super-taxed.**

—S. 55—Dividends already super-taxed.

—*Super-tax levied on income of company—Liability of share-holders to be assessed on dividends paid to them.*

In computing the amount on which super-tax is payable by an individual or Hindu undivided family under the Income-tax Act of 1922 the amount received as dividends from a Registered company should not be deducted. There is nothing in the Act from which it can be inferred that in computing the taxable income of individuals or Hindu undivided families for purposes of super-tax dividends upon which super-tax has been paid by the Company should be deducted. The intention of the Legislature was to charge super-tax upon the income of companies as well as upon the income of individual share-holders including in the income of the latter the dividends received from the company although they had already been charged to super-tax at the flat rate of 1 anna. Super-tax must be separately paid on the profits of a company by the company itself at the smaller rate and by the share-holder on the dividends received by him out of those profits as part of his income, the rate payable by him being on a sliding scale according to the amount of his total income. (*Dawson-Miller, C.J. and Mullick, J.*). **MAHARAJA-DHARAJ OF DHARBHANGA v. COMMR. OF INCOME-TAX.** 78 I.C. 783=3 Pat. 470=

2 Pat. L. R. Gr. 25=1924 P. H. G. C. 69=  
5 P.L.T. 459=A.I.R. 1924 Pat. 474.

—S. 66—Limitation.

—*Application for reference after one month—Maintainability.*

Where application upon which a reference is based is presented more than a month after the order has been passed which gives rise to that application no reference is competent. (*Harrison and Campbell, J.J.*). **BANJI LAL v. EMPEROR.**

90 I.C. 1018=6 Lah. 373=26 P.L.R. 796=  
A.I.R. 1925 Lah. 615.

## INFORMATION.

See (1) PENAL CODE.

(2) CR. P. CODE.

—Commission of offence. See CR. P. CODE.

**INFRINGEMENT—of Copyright.**

See COPYRIGHT ACT.

—Of patent. See PENAL CODE.

—Of Trade Mark.

See (1) PENAL CODE.

(2) TRADE MARK.

**INHERENT POWER.**

See (1) CR. P. CODE, S. 561-A.

(2) CRIMINAL TRIAL.

(3) GOVT. OF INDIA ACT, S. 107.

**INSPECTION—Of documents.**

See CR. P.C., S. 94.

**INTERPRETATION OF STATUTES.**

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—Ambiguity.

—Matter doubtful—Interpretation preventing abuse of process of law should be put. (*Boysa, Young and Sen, J.J.*). **EMPEROR v. HUNANCHAI SINGH.** 123 I. C. 673=31 Cr. L.J. 546=

1930 A.L.J. 354=A.I.R. 1930 All. 265 (F.B.).

—Per *Bhide, J.*—Where the language of an enactment is somewhat ambiguous and two constructions are possible, the construction most beneficial to the subject will have to be preferred according to the canon of interpretation. (*Broadway and Bhide, J.J.*). **DES RAI v. EMPEROR.**

A. I. R. 1930 Lah. 781.

—Where there are two possible constructions it is the duty of the Court to use the common-sense construction. (*Young, J.*). **MANSA SINGH v. EMPEROR.** 119 I.C. 570=1929 A.L.J. 1044=

10 L.R.A. Cr. 137=30 Cr. L.J. 1088=

51 All. 996=12 A.I. Cr. R. 337=

1929 Cr. C. 355=A.I.R. 1929 All. 750.

—Codification.

—Practice.

When law has been codified, it cannot be modified gradually from day to day as the changing circumstances of a community, require, by rules of practice made to meet these imperceptibly changing conditions. Any modification, however small must be made by the legislature, when a suitable opportunity arrives. (*Cuming and Lord Williams, J.J.*). **REBATI MOHAN CHAKRABARTY v. EMPEROR.** 115 I.C. 258=32 C.W.N. 945=

56 Cal. 150=30 Cr. L.J. 435=

12 A.I. Cr. R. 265=A.I.R. 1929 Cal. 57.

—The words of a statute should not be departed from on the ground that something was omitted to be enacted, and it is bad policy to add to codified law some of the provisions of the English Common Law on the ground that the codified law is silent as to them. (*Devadoss and Walter, J.J.*). **PEDDABEA REDDI v. VARADA REDDI.**

116 I.C. 337=52 Mad. 432=39 M.L.W. 210=

2 M.Cr.C. 8=1929 M.W.N. 84=30 Cr. L.J. 613=

13 A.I. Cr. R. 21=A.I.R. 1929 Mad. 236=

56 M.L.J. 570.

—Ejusdem-generis.

—Where general words follow particular and specific words, they must be confined to things of the same kind as those specified. (*Mirsa and Patkar, J.J.*). **RAVANSI MIRJI v. EMPEROR.**

120 I. C. 356=53 Bom. 627=

31 Bom. L. R. 581=31 Cr. L. J. 103=

1929 Cr. C. 21=A.I.R. 1929 Bom. 274.

—English decisions.

—Words clearly expressing intention of legislature—Definition from English cases should not be



## INTERPRETATION OF STATUTES—Fiscal Act—Strict construction.

accepted. (*Beasley, C.J. and Pandalai, J.*). (SHROFF)  
VEERAPPA v. EMPEROR. 31 M.L.W. 202=  
1930 M.W.N. 187=3 M. Cr. C. 156=  
31 Cr.L.J. 625=A.I.R. 1930 Mad. 441.

### —Fiscal Act—Strict construction.

—Per *Fawcett, J.*—Fiscal statutes must be construed strictly. 8 Cal. 214, *Rel. on.* (*Fawcett and Patkar, JJ.*). EMPEROR v. KADARBAI USU-FALLI. 103 I.C. 593=51 Bom. 896=  
28 Cr. L.J. 705=29 Bom. L.R. 987=  
8 A.I. Cr. R. 346=A.I.R. 1927 Bom. 483.

### —Fiscal Act—Surplusage.

—Per *Mukerji, J.*—Unless and until the language used in a statute makes the meaning entirely insensible every word used must be given its plain meaning especially in a Fiscal Act. It cannot be said that any word might have been used unnecessarily as a mere tautology or as "harmless words." (*Boys, Kendall and Young, JJ., on difference between Mukerji and Niamatullah, JJ.*). In the matter of LACHHMAN PRASAD BABU RAM OF CAWNPORE. 1930 A.L.J. 1=  
1930 Cr. C. 113=A.I.R. 1930 All. 49 (F.B.).

### —General and special Act.

—A general Act is to be so construed as not to repeal a particular one, that is one directed towards a special object. A general later law does not abrogate a special one by mere implication. *Mary Seward v. Vera Cruz*, (1884) 10 A.C. 59, *Rel. on.* (*Prideaux, Kinkhede and Kolhatkar, A.J.Cs.*). GOLA v. EMPEROR. 114 I.C. 273=24 N.L.R. 158=  
30 Cr. L.J. 258=12 A.I. Cr. R. 177=  
A.I.R. 1929 Nag. 47 (F.B.).

### —General statute does not repeal particular one.

It is a cardinal rule of interpretation that a general statute is to be construed as not repealing a particular one, that is, one directed to a special object or a special class of objects. (*Shadi Lal, C.J. and Addison, J.*). RANNUN v. KING-EMPEROR. 94 I.C. 901=7 Lah. 84=27 Cr.L.J. 709=  
27 P.L.R. 583=A.I.R. 1926 Lah. 88.

—To what extent the provisions of a special enactment override the provisions of a general enactment must depend upon the language of the special Act. (*Mullick, Ag.C.J. and Jwala Prasad, J.*). JAGWA DEANUK v. EMPEROR. 93 I.C. 884=  
5 Pat. 63=7 P.L.T. 396=27 Cr.L.J. 484=  
A. I. R. 1926 Pat. 232.

### —General and Special provisions.

—Where there are two provisions one specific and the other general, the specific provision ought to be applied in preference to the general one. (*Mukerji, J.*). RAM NATH v. EMPEROR. 84 I.C. 714=  
27 All. 268=22 A.L.J. 1106=26 Cr.L.J. 362=  
6 L.R.A. Cr. 25=A.I.R. 1925 All. 230.

### —Hardship.

#### —Municipal Law.

Municipalities are statutory bodies and they are created by a statute for the benefit of the public; and it is not proper that any provision of law relating to them should be so construed as to work hardship or injustice. The provisions of Municipal law prescribing periods of limitation under it, should not be understood as if they were articles of the Limitation Act. (*Devadoss, J.*). MUNICIPAL COUNCIL, CHIDAMBARAM v. SUBRAMANIA IYER. 112 I. C. 210=28 M.L.W. 501=  
1928 M.W.N. 784=1 M. Cr. C. 313=  
29 Cr. L.J. 994=11 A.I. Cr. R. 263=  
A.I.R. 1928 Mad. 1157=55 M.L.J. 495.

## INTERPRETATION OF STATUTES—History of legislation.

### —Harmonious construction—Avoidance of inconsistency.

—C. P. Code, O. 48, R. 1 (w) and O. 47, R. 7.

The two provisions of the code are not mutually inconsistent but are really complementary of each other. The one gives the right to appeal and the other defines the extent to which that right can be exercised and according to the well-established rule of construction that where two co-ordinate provisions in an enactment are apparently inconsistent an effort be made to reconcile them. The two must be read together and taken together and thus they do not give an unlimited right of appeal. And even assuming that the rule that if two sections of a statute are repugnant the last must prevail and override the earlier applies O. 47, R. 7 should be held to control and restrict the earlier rule. *Edbs v. Boulnois*, L. R. 10 Ch. 479 and *Wood v. Riley*, L.R. 3 C. P. 26, *Foll.*; A.I.R. 1926 Bom. 121, *Diss. from*; 11 P.R. 1913 and cases of other High Courts referred. (*Tek Chand, J.*). SIKANDAR KHAN v. BALAND KHAN. 101 I.C. 606=28 Cr.L.J. 478=  
A.I.R. 1927 Lah. 435.

—It is one of the cardinal principles of interpretation of Statutes that the construction which produces the greatest harmony and the least inconsistency between different parts of the same Statute should prevail. *Attorney General v. Sillem*, (1863) 38 L.J. Ex. 92, *Rel. on.* (*Percival, J. C., Rupchand Bilaram, A. J. Cs.*). MAHOMEDABDUL MAJID v. EMPEROR. 101 I.C. 471=28 Cr. L.J. 439=  
8 A.I. Cr. R. 43=A.I.R. 1927 Sind 173.

### —Harmonious construction—Sections in same statute.

—Where two co-ordinate sections are apparently inconsistent an effort must be made to reconcile them. (*Mirza and Patkar, JJ.*). RATANSI HIRJI v. EMPEROR. 120 I.C. 356=53 Bom. 627=  
31 Bom. L.R. 581=31 Cr.L.J. 103=  
1929 Cr. C. 412=A.I.R. 1929 Bom. 274.

—*Rupchand Bilaram, A.J.C.*—It is the duty of the Court to construe the provisions of the statute in such a manner as not to allow one provision to stultify the other, and if possible the provisions in one section should be read as a qualification of the other, so that some effect furthering the intention of the legislature may be given to each. 1 Bom. 67 and 26 Cal. 130, *Rel. on.* (*Percival, J.C., Aston, Rupchand Bilaram and Desouza, A.J. Cs.*). EMPEROR v. JIAUD. 111 I.C. 865=22 S.L.R. 349=  
29 Cr.L.J. 945=A.I.R. 1928 Sind 149 (F.B.).

### —Harmonious construction—Two statutes.

—The language of every enactment must be so construed, as far as possible, as to be consistent with every other which it does not in express terms modify or repeal. (*Mirza and Patkar, JJ.*). RATANSI MIRJI v. EMPEROR. 120 I.C. 356=  
53 Bom. 627=31 Bom.L.R. 581=31 Cr.L.J. 103=  
1929 Cr. C. 41=A.I.R. 1929 Bom. 274.

### —Headings.

—Headings cannot militate against clear language of sections. (*Wallace and Madhavan Nair, JJ.*). KALYANJI v. RAMDEEN. 86 I.C. 449=48 Mad. 395=  
21 M.L.W. 664=26 Cr. L.J. 801=  
A.I.R. 1925 Mad. 609=48 M. L. J. 290.

### —History of Legislation.

—To understand meaning of a section, history thereof should be considered. (*Dalal, J.*). MANNI LAL AWASTHI v. EMPEROR. 116 I.C. 804=  
51 All. 459=11 A.I.C.R. 250=  
10 L.R.A.Cr. 34=30 Cr.L.J. 694=  
1929 A.L.J. 93=A.I.R. 1928 All. 682.



## INTERPRETATION OF STATUTES—History of legislation.

—*Historical survey is permissible only if there is reasonable doubt.*

Per *Mookerjee, J.*—A historical survey is not permissible in the interpretation. Such reference to the history of Legislation can only be legitimately made, when reasonable doubt is entertained as to the true construction of a statute. The operation may, however be easily carried too far, and may, in the case of codifying statutes, lead to results which have been emphatically condemned in decisions of the highest authority. (1891) A.C. 107; (1892) A.C. 481; 23 I.A. 18, *Foll.*

The proper course is, in the first instance, to examine the language of the statute, to interpret it, to ask what is its natural meaning, uninfluenced by considerations derived from the previous state of the law. To begin with an examination of the previous state of the law on the point is to attack the problem at the wrong end; and it is grave error to force upon the plain language of the section of Indian Statute an interpretation which the words will not bear, on the assumption of a supposed policy on the part of the legislature to adopt or to vary, as the case may be, the rules of the English law on the subject. 85 Cal. 84 (F.B.); 45 Cal. 388; 85 Cal. 701, *Foll.* (*Mookerjee, Richardson, C. C. Ghosh, Cuming and Page, JJ.*). *EMPEROR v. BARENDRA KUMAR GHOSE.* 81 I.C. 353=

28 C.W.N. 170=38 C.L.J. 411=25 Cr. L.J. 817=A.I.R. 1924 Cal. 257 (F.B.).

### —Illustrations.

—*Illustrations are preferred to marginal notes.*

Illustrations do not stand on the same footing as marginal notes. Marginal notes may not be notes enacted by the legislature and they cannot be referred to for the purpose of construing the enactment; on the other hand illustrations are part and parcel of enactment. A.I.R. 1926 P.C. 242, *Ref.* (*Wazir Hasan and Raza, JJ.*). *RAM LAL v. EMPEROR.* 106 I.C. 213=3 Luck. 244=

1 L.C. 579=28 Cr. L.J. 1029=9 A.I.Cr.R. 217=A.I.R. 1928 Oudh 15.

—An illustration only simplifies the law as enacted in the Code and cannot certainly be taken to restrict the sense of the section. (*Mukerji, J.*). *CHHOTAY LAL v. EMPEROR.* 85 I.C. 722=

26 Cr.L.J. 578=5 L.R.A.Cr. 199=A.I.R. 1925 All. 220.

### —Indian enactments.

—*Eforde, J.*—The construction of an Indian Statute depends entirely upon the meaning of the word therein used and its interpretation must not be influenced by any similar provision of the English Law. A. I. R. 1928 P. C. 2, *Foll.*; A.I.R. 1928 Lah. 308, *Diss. from.* (*Shadi Lal, C.J., Harrison, Eforde, Tek Chand, Jai Lal, Dalip Singh and Agha Haidar, JJ.*). *SUKHAR v. EMPEROR.* 115 I.C. 6=10 Lah. 283=30 P.L.R. 197=

11 L.L.J. 159=30 Cr.L.J. 414=12 A.I.Cr.R. 382=A.I.R. 1929 Lah. 344 (F.B.).

### —Intention of legislature—Materials for finding.

—Per *Rupchand Bilaram, A. J. C.*—One of the cardinal rules of interpretation of statutes which is often times referred to as the golden rule is that the grammatical and ordinary sense of the words used by the legislature in expressing its intention is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the statute, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid absurdity, repugnance and

## INTERPRETATION OF STATUTES—Intention of legislature—Relevancy of.

inconsistencies. *Pocock v. Pickering*, (1852) 18 Q.B. 789, *Rel. on.* (*Percival, J.C., Aston, Rupchand Bilaram and Desouza, A.J.Cs.*). *EMPEROR v. JIAND.*

111 I.C. 865=22 S.L.R. 349=29 Cr.L.J. 945=A.I.R. 1928 Sind 149 (F.B.).

—Intention of an Act ought to be ascertained from the words used in the enactment. *Salomon v. Salomon*, (1897) A.C. 22, *Ref.* (*Fawcett and Patkar, JJ.*). *EMPEROR v. KADARBHAI USAFALLI.*

103 I. C. 593=51 Bom. 896=28 Cr. L. J. 705=8 A. I. Cr. R. 346=29 Bom. L.R. 987=A.I.R. 1927 Bom. 483.

—*Expressed in words of enactment.*

Intention of the Legislature is a common but very slippery phrase, which popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law of Equity what the Legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication. *Salomon v. Salomon & Co.*, (1897) A.C. 22, *Ref.* (*Fawcett and Madgavkar, JJ.*). *GAMADIA v. EMPEROR.* 91 I. C. 949=

50 Bom. 34=27 Bom. L.R. 1408=27 Cr. L. J. 165=A. I. R. 1926 Bom. 57.

### —Intention of legislature—Penal Act.

—*Paramount object is to ascertain legislative intent.*

*Lobo, A.J.C.*—An omission which the context shows with reasonable certainty to have been unintended may be supplied at least in enactments which are construed beneficially, as distinguished from strictly, but the tendency of modern decisions upon the whole, is to narrow materially the difference between what is called a strict and a beneficial construction. All statutes are now construed with a more attentive regard to the language, and criminal statutes with a more rational regard to the aim and intention of the legislature than formerly. The paramount object, in construing penal as well as other statutes is to ascertain the legislative intent. (*Percival, J. C., Aston, Rupchand Bilaram, De Souza and Lobo, A.J.Cs.*). *EMPEROR v. NOOR MAHOMED.* 105 I.C. 433=

22 S.L.R. 157=9 A.I. Cr. R. 66=28 Cr.L.J. 913=A.I.R. 1928 Sind 1 (F.B.).

### —Intention of legislature—Principles.

—Per *Niamatullah, J.*—It is one of the elementary construction of statute that it should be read as to avoid introducing what the legislature has not thought fit to introduce, and that a construction which has got that effect should be finally rejected. (*Boys, Kendall and Young, JJ. on difference between Mukerji and Niamatullah, JJ.*). *In the matter of LAKHHMAN PRASAD BABU RAM OF CAWNPORE.*

1930 A.L.J. 1=1930 Cr. C. 113=A.I.R. 1930 All. 49 (F.B.).

### —Intention of legislature—Relevancy of.

—Per *Bhide, J.*—It is an elementary rule of the construction of a statute that the provisions of an enactment must be construed according to its plain wording and nothing can be imported into it thereon on the basis of any speculation as to the intention of the legislature. (*Broadway and Bhide, JJ.*). *DES RAI v. EMPEROR.* A. I. R. 1930 Lah. 781.

—Where the language of a statute is clear it is not permissible to speculate as to the intention of

# INTERPRETATION OF STATUTES—Intention of legislature—Relevancy of.

the legislature. (*Broadway, J. on difference between Zafar Ali and Bhide, J.J.*). THIRAJ v. EMPEROR. 119 I.C. 265=30 Cr.L.J. 1019=1929 Cr.C. 205=11 Lah. 55=A.I.R. 1929 Lah. 641.

When once the intention of the legislature is plain, it is not the province of a Court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands according to the real sense of the words. (*Macleod, C.J. and Coyajee, J.*). EMPEROR v. THAKORDAS MOTIRAM. 89 I.C. 1031=26 Cr.L.J. 1463=27 Bom. L.R. 1023=A.I.R. 1925 Bom. 505.

If the ordinary grammatical construction of a statute will result in a manifest contradiction of the apparent purpose of the Act, the rules of grammar are subordinated to the rules of common sense and the statute is construed with reference to the intention of the Legislature. (*Raymond and Aston, A.J. Cs.*). HYDERABAD MUNICIPALITY v. KAZI FAHRUDIN. 81 I.C. 134=17 S.L.R. 273=25 Cr. L. J. 646=A.I.R. 1925 Sind 90.

## Jurisdiction.

### Inferior Court.

The rule defining the jurisdiction of an inferior Court, viz., a Court of limited jurisdiction either in point of place or of subject-matter, is not that where it appears upon the face of the proceedings that the inferior Court has jurisdiction, it will be intended that the proceedings are regular; but that, unless it so appears, that is, if it appear affirmatively that the inferior Court has no jurisdiction or, if it be left in doubt, whether it has jurisdiction or not, no such intendment will be made. (*Percival, J. C., Aston, Rupchand Bilaram, De Souza and Lobo, A. J. Cs.*). EMPEROR v. NOOR MAHOMED. 105 I. C. 433=22 S.L.R. 157=9 A.I. Cr. R. 66=28 Cr. L.J. 913=A.I.R. 1928 Sind 1 (F.B.).

The jurisdiction vested in a superior Court is not to be ousted except by express language or obvious inference from the provisions of a Statute. (*Percival, J. C. and Rupchand Bilaram, A.J.C.*). MAHOMED ABDUL MAJID v. EMPEROR. 101 I.C. 471=8 A.I.Cr.R. 43=28 Cr.L.J. 439=A.I.R. 1927 Sind 173.

Special presumptions of England not to be resorted to.

Per *Richardson, C. J. and Newbould, J.*—Indian statutes being of the modern character, it is wholly advantageous and desirable that they should be interpreted by the ordinary canons without resort to an adventitious presumption recognised, it may be, in England but not sanctioned by general principle and not authorized by anything in the Indian General Clauses Act which is itself so far as it goes, a statutory Code of construction. It is for the Legislature when it creates a new jurisdiction to define and limit the extent of that jurisdiction and when question arises as to what powers are or are not conferred, the answer ought to be found within the four corners of the statute. (*Sanderson, C. J., Tennon, Richardson, Newbould and C.G. Ghose, J.J.*). RAM SAGAR MONDAL v. ALEK NASKAR. 67 I.C. 177=49 Cal. 682=23 Cr.L.J. 358=35 C.L.J. 247=26 C.W.N. 442=A.I.R. 1922 Cal. 59 (F.B.).

## Language.

The first canon of construction of a statute is that the language of the enactment should be taken as it stands and effect be given to it if it is clear. Rule applied to construction of S. 69 of the Forests Act. (*Pearson and Jack, J.J.*). MEHAR

# INTERPRETATION OF STATUTES—Marginal note.

SARDAR v. EMPEROR. 34 C.W.N. 956=52 C.L.J. 171=1930 Cr. C. 908=A.I.R. 1930 Cal. 577.

## Liability.

If a statute creates a new duty or imposes a new liability, and prescribes a specific remedy in case of neglect to perform the duty of discharge... the liability, the general rule is that no remedy can be taken but the particular remedy prescribed by the statute. (*Suhrwardy, Duval and B.B. Ghose, J.J.*). ASHUTOSH GANGULY v. E.L. WATSON. 98 I.C. 116=53 Cal. 929=44 C.L.J. 350=27 Cr.L.J. 1268=A.I.R. 1927 Cal. 149.

Liberal construction.

The law does not favour legal and strained intendments, when over-minute precision may confound legal certainty. (*Kennedy, J. C., Aston and De Souza, A.J.Cs.*). EMPEROR v. NABU. 90 I.C. 434=20 S.L.R. 34=26 Cr. L.J. 1554=A.I.R. 1926 Sind 1 (F. B.).

Location of provisions.

Per *Niamatullah, J.*—The order in which the provisions occur may in some cases assist the Court in construing one of those provisions. But where the arrangement is consistent with a reading which gives effect to the entire language of that provision, its plain meaning cannot be departed from only because a different location of such provisions would have made that meaning clearer. (*Boys, Kendall and Young, J.J. On difference between Mukerji and Niamatullah, J.J.*). In the matter of LACHHMAN PRASAD BABU RAM OF CAWNPORE. 1930 A.L.J. 1=1930 Cr. C. 113=A.I.R. 1930 All. 49 (F.B.).

## Marginal note.

Although a marginal note does not form part of a particular section it is of some assistance in properly construing a section. (*Prideaux, Kinkhede and Kolhatkar, A.J.Cs.*). GOLA v. EMPEROR. 114 I. C. 273=24 N. L. R. 158=30 Cr.L.J. 258=12 A.I.Cr.R. 177=A.I.R. 1929 Nag. 17 (F.B.).

Referring to the marginal note is not a legitimate canon of interpretation. (*Wallace and Madhav Nair, J.J.*). NATESA MUDALIAR, In re. 99 I.C. 324=50 Mad. 733=1927 M.W.N. 6=28 Cr. L.J. 116=38 M.L.T. 166=7 A.I. Cr. R. 263=26 M.L.W. 890=A.I.R. 1927 Mad. 156=81 M.L.J. 704.

Side notes are no real guide to the intention of the Legislature. The safest guide to it is the language of the section. A section must be interpreted according to its plain language although the provision of some other Code is abrogated. (*Kotwal, A.J.C.*). BHAGIA v. KING-EMPEROR. 100 I.C. 820=28 Cr.L.J. 340=7 A.I.Cr.R. 575=A.I.R. 1927 Nag. 203.

There is no objection to Court's referring for the purpose of explaining the ambiguity, if any, in the section, to the marginal note. 4 All. 387 and 20 Cal. 609, Rel. on. (*Kincaid, J. C. and Rupchand Bilaram, A.J.C.*). EMPEROR v. LUKMAN. 98 I.C. 49=21 S.L.R. 107=27 Cr.L.J. 1233=A.I.R. 1927 Sind 39.

Marginal note is not part of section and it cannot alter obvious meaning of the section. (*Macleod, C.J. and Shah, J.*). MADHAV v. EMPEROR. 96 I.C. 121=28 Bom. L.R. 671=27 Cr. L.J. 873=A.I.R. 1926 Bom. 382.

If the language of a statute is not quite clear, the marginal notes in the statute may be

## INTERPRETATION OF STATUTES—Meaning of words—Different words.

used to find out the drift. (*Krishnan, J.*). A. E. SMITH, *In re*. 81 I.C. 72=18 M.L.W. 879=

33 M.L.T. 185=25 Cr. L.J. 584=  
A.I.R. 1924 Mad. 389=45 M.L.J. 731.

### —Meaning of words—Different words.

—Per *Sulaiman, Ag. C.J.*—When two distinct words are used in the same section, the ordinary rule of construction is that they do not mean identically the same thing. (*Sulaiman, Ag. C. J. Boys, Banerji, Kendall and Weir, JJ.*). EMPEROR v. PHUCHAI. 113 I.C. 417=50 All. 909=

26 A.L.J. 1257=9 L.R.A. Cr. 149=  
10 A.I. Cr. R. 531=30 Cr. L.J. 143=  
A.I.R. 1929 All. 33 (F.B.).

### —Meaning of words—Ordinary sense.

—It is an established principle of construction of statutes that words used in an enactment should be taken in their ordinary sense especially when the sense is appropriate to the context. (*Zafar Ali and Bhide, JJ.*). MULA MAL v. EMPEROR. 120 I. C. 188=11 Lah. 24=31 Cr. L.J. 49=

1929 Cr. C. 164=A.I.R. 1929 Lah. 607.

—If the precise words used are plain and unambiguous, a Court is bound to construe them in their ordinary sense, even though they lead to an absurdity or manifest injustice. (*Percival, J.C. and Aston, Rupchand Bilaram, De Souza and Lobo, A.J.Cs.*). EMPEROR v. NOOR MAHOMED. 105 I.C. 433=22 S.L.R. 157=9 A.I. Cr. R. 66=

28 Cr. L.J. 913=A.I.R. 1928 Sind 1 (F.B.).

### —Meaning of words—Reasonable sense.

—It is an elementary principle of the interpretation of statutes that you must give a reasonable meaning to every expression. (*Walsh, Ag. C.J. and Pullan, J.*). EMPEROR v. BHAIRON. 97 I.C. 428=

49 All. 240=7 L.R.A. Cr. 183=  
27 Cr. L.J. 1116=25 A.L.J. 94=A.I.R. 1927 All. 50.

### —Meaning of words—'The.'

—The definite article "the" is frequently used in legislation in the same sense as the Greek "tis". (*Walsh and Ryves, JJ.*). B. RAM NATH v. EMPEROR. 83 I.C. 654=46 All. 611=

22 A.L.J. 497=5 L.R.A. Cr. 109=  
26 Cr. L.J. 94=A.I.R. 1924 All. 684.

### —Penal Act.

—Where there is reasonable ground for doubt as to the correct interpretation of an enactment that interpretation should be adopted which is most in favour of the person to be penalised, especially in fiscal and penal statutes. (*Boys, Young and Sen, JJ.*). EMPEROR v. HUNANCHAL SINGH. 123 I.C. 673=31 Cr. L.J. 546=

1930 A.L.J. 354=A.I.R. 1930 All. 265 (F.B.).

—Per *Reilly, J.*—If two interpretations of a section were grammatically possible the ordinary canons of interpretation would compel the Court to adopt in the interest of accused persons the stricter and narrower one, a construction which would give less scope to the exceptional extension of what may be used against an accused at his trial. Observations made with reference to the meaning of the word "confession" in S. 30 of the Evidence Act. (*Waller and Reilly, JJ.*). PERIYASWAMY MOOPPAN v. EMPEROR. 32 M. L. W. 527=1930 M.W.N. 358=

59 M.L.J. 471.

### —Criminal Procedure Code.

In matters of interpretation of rules of Criminal Procedure any doubt felt by the Court ought, as in the case of an actual trial, to be resolved in favour of the accused. (*Wallace, Madhavan Nair, Jackson, Ananthakrishna Aiyar and Eddy, JJ.*). O. K. N. DARESA IYER v. EMPEROR. 1930 M.W.N. 249 (F.B.).

## INTERPRETATION OF STATUTES—Penal Act.

### —Excise Act.

A penal law like the Excise Act has to be strictly construed and should be interpreted generously in favour of the subject. (*Sen and Niamatullah, JJ.*). RADHEY SHYAM v. MEWA LAL. 116 I.C. 89=51 All. 506=

1929 A.L.J. 212=A.I.R. 1929 All. 210.

—In construing penal statutes in the case of doubt the construction favourable to the subject should be preferred. (*Broadway, J., on difference between Zafar Ali and Bhide, JJ.*). THIRAJ v. EMPEROR. 119 I. C. 265=30 Cr. L.J. 1019=

1929 Cr. C. 205=11 Lah. 55=  
A. I. R. 1929 Lah. 641.

—Per *Fforde, J.*—Statutory rules which involve penal consequences for infringement must be strictly interpreted. (*Fforde and Skemp, JJ.*). GOPAL SINGH v. CROWN. 116 I.C. 709=

30 P.L.R. 147=30 Cr. L.J. 663=

13 A.I. Cr. R. 94=A.I.R. 1929 Lah. 163.

—On the ordinary principles of penal legislation a penal provision does not have retrospective effect. (*Carr, J.*). NGA PO NGWE v. EMPEROR. 120 I.C. 692=7 Rang. 355=1929 Cr. C. 446=

31 Cr. L. J. 174=A.I.R. 1929 Rang. 278.

### —Penal Code, S. 109.

(Per *Baguley, J. in the order of reference*).—Although a Penal law must be interpreted as far as possible in favour of the subject still the Court is not justified in adding at the end of the section a qualifying or explanatory phrase which is not to be found in the section itself. That being so the Court is not justified in saying that the words "punishment provided for the offence" in S. 109 mean punishment provided for the offence either in the Penal Code or in some special or local law. 7 L.B.R. 63, *Discussed and Not appr.* (*Rutledge, C.J. and Maung Ba and Heald, JJ.*). EMPEROR v. MAUNG PU KAI. 118 I. C. 637=

7 Rang. 329=30 Cr. L.J. 961=

1929 Cr. C. 177=A.I.R. 1929 Rang. 203 (F.B.).

—Provisions of other statute cannot impliedly take away right to prosecute under Penal Code. 22 Cal. 131, *Dist.* (*Wallace, J.*). MALAIAPPA GOUN- DAN v. EMPEROR. 115 I.C. 242=30 Cr. L.J. 432=

52 Mad. 79=28 M.L.W. 621=1 M. Cr. C. 317=  
A.I.R. 1928 Mad. 1235=55 M.L.J. 715.

### —Arms Act.

A penal enactment like the Arms Act must be construed in favour of the individual person where any doubt exists. (*Findlay, J.C.*). SETH BALKISAN v. EMPEROR. 109 I.C. 511=11 N.L.J. 84=

29 Cr. L.J. 575=10 A.I. Cr. R. 343=  
A.I.R. 1928 Nag. 219.

—'Strict construction' means benefit of doubt, if any, should be given to party to be charged.

Per *Rupchand Bilaram, A.J.C.*—It is no doubt true that a penal statute or a notification conferring criminal jurisdiction in pursuance of powers vested by a penal statute should be construed strictly, and that omissions, if any, may not be supplied lightly, but there is no absolute bar to the omission being supplied in fit cases.

The rule of 'strict construction' of penal statutes as modified in modern times is not so rigid or unbending as it was in times gone by and the rule means very little more than that such statutes are to be fairly construed like all others according to the legislative intent as expressed by the statute itself or arising out of it by necessary implication, but if there be any fair and reasonable doubt, the statutes should be so construed as to give the party sought to be charged the benefit of the doubt.

## INTERPRETATION OF STATUTES—Penal Act.

(*Percival, J.C., Aston, Rupchand Bilaram, De Souza and Lobo, A.J.Cs.*). *EMPEROR v. NOOR MAHOMED*. 103 I.C. 433=22 S.L.R. 137=

9 A.I.C.R. 86=28 Gr.L.J. 913=  
A.I.R. 1928 Sind 1 (F.B.).

—*Cr. P. Code, S. 15.*

Per *Lobo, A.J.C.*—A notification investing certain Magistrates with certain powers can hardly fall within the category of statutes or notifications which are to be strictly construed. (*Percival, J.C., Aston, Rupchand Bilaram, De Souza and Lobo, A.J.Cs.*). *EMPEROR v. NOOR MAHOMED*.

105 I.C. 433=28 Gr. L.J. 913=  
9 A.I. Cr.R. 66=22 S.L.R. 157=  
A.I.R. 1928 Sind 1 (F.B.).

—*Plain and common sense meaning should be taken.*

All penal statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words, used, and must not strain the words on any notion that there has been a slip that there has been a *casus omissus*, that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed like any other instrument, according to the fair common sense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument. (*Dyke v. Elliott*, 1871 L.R. 4 P.C. 184, *Ref. (Fawcett and Madgavkar, J.J.)*). *GAMADIA v. EMPEROR*.

91 I.C. 949=50 Bom. 34=27 Bom.L.R. 1405=  
27 Gr.L.J. 165=A.I.R.1926 Bom. 57.

—*Whether command to a rule-making body is directory or mandatory depends on the terms of particular enactment.*

The provisions of a penal statute must be strictly construed; and it is equally true that in penal statutes the duties cast upon bodies with delegated powers are generally construed as imperative rather than directory. But each statute has to be construed according to its own terms and no inflexible rule can be laid down to determine whether the command to a body entrusted with the power of framing rules is to be considered merely as a direction involving no invalidating consequences if disregarded or as coercive with an implied nullification if disobeyed. In each case regard must be had to the scope and object of the enactment in question. (*Eforde and Campbell, J.J.*). *EMPEROR v. BARKAT*.

96 I.C. 152=7 Lah. 507=27 Gr.L.J. 888=  
27 Pat.L.R. 791=A.I.R. 1926 Lah. 447.

—A penal statute like the Penal Code should be construed with the strict and narrow sense. When an enactment may entail penal consequences no violence must be done to its language in order to bring people within it: but rather care must be taken that no one is brought within it who is not within its strict language: *London County Council v. Aylesbury Co.*, 1 Q.B. 106 and *Hull Dock Co. v. Browne*, 36 R. R. 459, *Ref. (Findlay, Offg. J.C.)*. *ISMAIL PANJU v. KING-EMPEROR*. 89 I.C. 523=21 N.L.R. 152=26 Gr.L.J. 1387=  
A.I.R. 1926 Nag. 137.

—*Two meanings.*

Where an act is ambiguous and there are two possible interpretations, one of which would mitigate the penalty, and the other would aggra-

## INTERPRETATION OF STATUTES — Rules framed under sections.

vate it, the former should prevail. *Hildesheimer v. W. and F. Faulkner, Ltd.*, (1901) 2 Ch. 552, *Follow. (Kennedy, Rupchand Bilaram and Lobo, A. J. Cs.)*. *EMPEROR v. AHMED*. 96 I.C. 113=29 S.L.R. 163=27 Gr. L. J. 865=A.I.R. 1926 Sind 273 (F.B.).

—Criminal Statutes must be interpreted strictly. (*Wallace and Madhavan Nair, J.J.*). *P. ATHAMU, In re*. 86 I.C. 283=26 Gr. L.J. 737=20 M.L.W. 914=A.I.R. 1925 Mad. 239.

—*Powers of Court—Administration of law.*

—*Where rule of law is absolute in terms, it must be given effect to.*

Where a rule of law is absolute in terms, the said rule has got to be observed and duly given effect to, and it is no province of a Magistrate to deviate from the said rule. (*Sen, J.*). *LUTTUB v. EMPEROR*. 31 Gr. L.J. 590=1930 A.L.J. 547=A.I.R. 1930 All. 263.

—*Powers of Court—Raising doubts.*

—Per *Jack, J.*—If the words of a statute be plain and clear it is not for the Court to raise any doubt as to what they mean. (*Rankin, C.J., C. C. Ghose, Suhrawardy, Mukerji and Jack, J.J.*). *PADAM PRASAD v. EMPEROR*. 119 I.C. 193=50 Gr. L. J. 105=33 C. W. N. 1121=30 Gr. L. J. 993=1929 Gr. C. 228=A. I. R. 1929 Cal. 617. (S.B.).

—*Powers of Court—Miscellaneous.*

—Points of convenience or practice cannot control statutes. (*Shah, and Crump, J.J.*). *G. S. FERNANDEZ v. EMPEROR*. 59 I.C. 129=

45 Bom. 672=22 Gr. L. J. 17=  
A. I. R. 1921 Bom. 374.

—*Proceedings in Legislative Council.*

—(*Quaery*) Per *Bhide, J.*—It is doubtful whether Courts can refer to report of Select Committee sitting to amend a statute, while interpreting the same. (*Broadway, J., on difference between Zafar Ali and Bhide, J.J.*). *THIRAJ v. EMPEROR*.

119 I.C. 265=30 Gr. L.J. 1099=1929 Gr. C. 205=11 Lah. 85=A.I.R. 1929 Lah. 641.

—*Retrospective effect—Procedural law.*

—Statutes relating to procedure have retrospective effect. (*Greaves and Duval, J.J.*). *RAJIB LOCHAN DHAR v. JOGESH CHANDRA DAS GUPTA*.

84 I. C. 705=28 C.W.N. 998=  
26 Gr. L.J. 353=A.I.R. 1924 Cal. 983.

—Amendment in Cr. P. Code, Sch. II regarding the trial of an offence under S. 477-A of the Penal Code relates to procedure and has retrospective effect. (*Greaves and Duval, J.J.*). *RAJIB LOCHAN DHAR v. JOGESH CHANDRA DAS GUPTA*.

84 I.C. 705=28 C.W.N. 998=  
26 Gr. L.J. 353=A.I.R. 1924 Cal. 983.

—*Rights and procedure.*

It is settled law that new procedure affects bygone transactions and alterations in procedure are always retrospective. It is clear law that statute cannot deprive a suit or of a right in a pending action of an appeal to a superior tribunal which belonged to him as of right. No appeal is provided for in the Code, under S. 195, Cr. P. Code and further the amendments made affect only procedure. (*Odgers and Wallace, J.J.*). *NATARAJA PILLAI v. RANGASWAMY PILLAI*. 77 I.C. 297=

47 Mad. 384=19 M. L. W. 358=

34 M. L. T. 56=25 Gr. L. J. 361=

A. I. R. 1924 Mad. 657=46 M.L.J. 274.

—*Rules framed under sections.*

—Rules are not *ultra vires* where rule-making authority is not shown to have no authority not

**INTERPRETATION OF STATUTES—Special powers.**

only under the Act but under any law whatever. 45 M. L. J. 186, *Foll. (Kinkhde, A. J. C.)*. KING-EMPEROR v. SHRIBALLAH. 88 I.C. 28=26 Cr. L.J. 1084=A.I.R. 1925 Nag. 393.

**—Special powers.**

—Discretion allowed to authority—It must be exercised in proper manner—If given in wide terms scope of interference is narrowed. (*Broadway and Bhide, J.J.*). DES RAI v. EMPEROR.

A.I.R. 1930 Lah. 781.

**—Statement of objects and reasons.**

—In construing the provisions of a statute it is not open to the Court to consider the statement of objects and reasons as they form no part of the statute. (*Mirza and Patkar, J.J.*). RATANSI MIRJI v. EMPEROR. 120 I.C. 356=53 Bom. 627=31 Bom. L.R. 581=31 Cr. L.J. 103=1929 Cr. C. 41=A.I.R. 1929 Bom. 274.

**—Strict construction.**

—In the case of penal statutes and fiscal enactments a strict construction most favourable to the subject ought to be adopted. (*Mirza and Patkar, J.J.*). RATANSI MIRJI v. EMPEROR. 120 I.C. 356=53 Bom. 627=31 Bom. L.R. 581=31 Cr. L.J. 103=1929 Cr. C. 41=A.I.R. 1929 Bom. 274.

—Per *Patkar, J.*—In the case of penal statutes fiscal enactments strict construction, most favourable to the subject, ought to be adopted. 81 Mad. 408 and 84 Cal. 257, *Ref. (Faucett and Patkar, J.J.)*. EMPEROR v. KADARBHAI USAFALLA. 103 I.C. 593=51 Bom. 896=28 Cr. L.J. 705=8 A.I.C.R. 346=29 Bom. L.R. 987=A.I.R. 1927 Bom. 483.

—Act should be construed strictly but benefit of doubt should be given to subjects. The general principle is to construe an Act strictly and where there is any doubt such doubts should be given in favour of the subject. (*Broadway, J.*). MISRI LAL v. EMPEROR. 100 I.C. 716=8 Lah. 320=28 Cr. L.J. 332=7 A.I. Cr. R. 572=28 P.L.R. 521=A.I.R. 1927 Lah. 338.

—An Act imposing disabilities should be strictly construed. (*N. R. Chatterjee and Chotner, J.J.*). PRATAP CHANDRA v. JAGADISH CHANDRA. 82 I.C. 886=40 C.L.J. 331=A.I.R. 1925 Cal. 116.

**Surplusage.** *Formalities for a contract.*

When the Legislature, for reasons best known to itself, requires certain formalities to be gone through, or certain formalities to be observed, in order to make a contract valid, or when it requires certain descriptions, or particulars to be given in a contract to make it valid the Court cannot consider any one of the terms or requisites as of no importance. (*Devadoss and Waller, J.J.*). PUBLIC PROSECUTOR v. AYITHA. 98 I. C. 472=49 Mad. 426=23 M.L.W. 559=27 Cr. L.J. 1352=A.I.R. 1926 Mad. 670=50 M.L.J. 659.

**—Miscellaneous.** *Contemporaneous interpretation.*

Per *Jack, J.*—It is well recognized that a contemporaneous interpretation is the best and strongest in law. (*Rankin, C.J., C. C. Ghose, Suhrawardy, Mukherji and Jack, J.J.*). PADAM PRASAD v. EMPEROR. 119 I.C. 193=50 C.L.J. 106=33 C.W.N. 1121=30 Cr. L.J. 993=1929 Cr. C. 228=A.I.R. 1929 Cal. 617 (S.B.).

—It is an elementary rule of construction that phrases and sentences of a statute should be

**JUDICIAL OFFICER—Consultations with other officers.**

construed according to the rules of grammar. (*Broadway on difference between Zafar Ali and Bhide, J.J.*). SHIRAJ v. EMPEROR. 119 I.C. 265=30 Cr. L.J. 1019=1929 Cr. C. 205=11 Lah. 55=A.I.R. 1929 Lah. 641.

—Per *Walsh, J.*—In the interpretation of every section of a statute a reasonable construction must be given to every word contained therein. (*Walsh, Lindsay and Banerji, J.J.*). EMPEROR v. SHERA. 108 I.C. 225=50 All. 625=29 Cr. L.J. 353=9 A.I. Cr. R. 362=9 L.R.A. Cr. 54=26 A.L.J. 321=A.I.R. 1928 All. 207 (F.B.).

—For one statute to cancel another, they must be mutually destructive. The question is whether the legislature can be said not to have intended the two rights to exist together. (*Jackson, J.*). PUBLIC PROSECUTOR v. RANGANAYAKULU. 101 I.C. 667=25 M.L.W. 768=28 Cr. L.J. 491=38 M.L.T. 373=8 A.I. Cr. R. 140=50 Mad. 845=A.I.R. 1927 Mad. 602=52 M.L.J. 653.

**INTOXICATION.** See PENAL CODE.

**IRREGULARITY.** See (1) CR. P. CODE, SS. 529—538.

**JAIL APPEAL.** See (1) CR. P. CODE.

**JOINDER.** —Of Charges. See CR. P. CODE, SS. 238—240, 439 AND 457.

**JOINT TRIAL.** See CR. P. C., S. 239.

**JOURNALIST, PRIVILEGE OF.** See PENAL CODE, S. 490, EXCEP. (9).

**JUDGE.** See (1) JUDICIAL OFFICER. (2) PENAL CODE, S. 19.

**JUDGMENT.** See (1) CR. P. CODE, S. 263 AND SS. 367 TO 370. (2) EVIDENCE ACT. (3) GOVT. OF INDIA ACT, S. 107.

**JUDGMENT-IN-REM.** See EVIDENCE ACT, S. 44.

**JUDICIAL ACTS.** See EVIDENCE ACT, S. 114.

**JUDICIAL COMMITTEE ACT (1833, 3 & 4, WILL. 4, Ch. 41).** —(1814), 7 & 8 Vict., Ch. 69—Criminal case.

—Special leave for appeal cannot be granted under Judicial Committee Act (1844) in a Criminal case. *Nadan v. The King*, (1926) A. C. 482, *Foll. (Lords Chancellor, Merrivale, Atkin, Thorneberry and Russell of Killowen.)* CHUNG CHUCK v. BAK. 123 I.C. 724.

**JUDICIAL NOTICE.** See EVIDENCE ACT, S. 56.

**JUDICIAL OFFICER.** —Consultations with other officers. —Impropriety of.

It is one of the elementary principles of administration of justice that a judicial officer, who is called upon to decide a matter in controversy, must exercise his own independent judgment, after hearing the parties concerned. It is the privilege as well as the duty of the presiding officer of a Court of Justice to form his own opinion on the point before him and to act accordingly. He ought not, as if it were, to mortgage his mind to another officer and to seek instructions from the latter, whenever he is called upon to decide a difficult or



**JUDICIAL OFFICER—Contempt.**

Important matter. A Magistrate who does so, abdicates his proper functions and discloses a lamentable lack of sense of responsibility. (*Tek Chand.*) *CHIRANJI LAL v. CROWN.*  
111 I.C. 319=9 Lah. 537=29 Cr. L.J. 815=  
A.I.R. 1928 Lah. 1.

**—Contempt.**

—*Need for special protection.*

A Judge by reason of his office is precluded from entering into controversy in the columns of the public press. Whether the comments be of a permissible or of an improper character, he cannot enter the arena and do battle with his adversary upon equal terms. The Judge of a superior Court is moreover precluded by considerations of decency from having recourse to the remedy available to any other citizen, of whom defamatory words are spoken or written, of taking proceedings for libel or slander before the ordinary tribunals which are subject to his own jurisdiction and he requires therefore in the exercise of his office a special protection in order that his authority and dignity may be maintained. (*Courtney-Terrell, C.J. and Adami, Ross, Kulwant Sahay and Fazl Ali, J.J.*). *EMPEROR v. MURLI MANOHAR.* 117 I.C. 180=9 P.L.T. 837=8 Pat. 323=30 Cr. L.J. 741=A.I.R. 1929 Pat. 72 (F.B.).

**—Duty of Magistrate.**

—*Magistrate should not allow his executive zeal to outrun judicial discretion.*

It is one of the most important duties of a Court of law to create and maintain confidence in the administration of justice and to conduct itself in such a manner as to produce in the minds of the parties an impression that nothing but absolute justice would be done to them.

Where a Magistrate declined to summon all the witnesses cited on behalf of the accused and took upon himself the duty of arbitrarily selecting only a few witnesses who were to be summoned to give evidence for the defence, adjourned the case for hearing at an out of the way place and continued the hearing in spite of High Court's order directing the Magistrate to give every reasonable facility to the accused to produce his defence evidence, and to hold the trial of the case either at the headquarters of the district or at a place which is either a railway station or easily accessible from a railway station and on closure of the case, called the accused and his counsel in the middle of the night and pronounced judgment at 1 A.M. inflicting upon the convict the maximum term of imprisonment permissible,

*Held*, that the proceedings taken by the Magistrate show that he did not hear the case with that judicial detachment which should characterize the trial of a criminal case, and that he allowed his executive zeal to outrun his judicial discretion. (*Shadi Lal, C.J.*). *TAJ MOHAMMAD v. EMPEROR.* 107 I.C. 100=29 P. L. R. 14=29 Cr. L.J. 212=9 A.I.Cr.R. 505=A.I.R. 1928 Lah. 125.

**—Intervention by superiors.**

—*Invocation of, not allowed.*

The elementary principle of justice is that a person cannot simultaneously perform the functions of a prosecutor and those of a Judge in a criminal case. A Magistrate ceases to be an executive officer when he is sitting in Court to try a criminal case, and thus he cannot be allowed to invoke the intervention of his superior executive officers in a matter

**JURISDICTION—Consent Whether confers**

concerning the discharge of his judicial duties for which he owes responsibility only to the High Court. (*Shadi Lal, C.J.*) *TAJ MOHAMMAD v. EMPEROR.* 107 I.C. 100=29 P. L. R. 14=29 Cr. L. J. 212=9 A. I. Cr. R. 505=A. I. R. 1928 Lah. 125.

—A superior Court is entitled to give general directions to a lower Court, but it is not proper for it to pass any proceedings with reference to pending matters which might fetter its discretion. (*Devadoss, J.*). *SECY. OF STATE v. MUTHU ALAGAPPA.* 113 I.C. 872=A.I.R. 1928 Mad. 1093.

**—Private inquiries.**

—The practice of holding private consultations by Magistrate with the prosecuting agency before commencing the hearing of the case is highly improper. (*Shadi Lal, C.J.*). *TAJ MOHAMMAD v. EMPEROR.* 107 I.C. 100=29 P.L.R. 14=29 Cr. L.J. 212=9 A.I. Cr. R. 505=A.I.R. 1928 Lah. 125.

**JUDICIAL SEPARATION.**

See (1) DIVORCE.

(2) DIVORCE ACT.

**JURISDICTION.****—Absence of.**

—An offence under S. 148, I. P. C., being triable by a Magistrate with first class power, a trial by a Magistrate with second class power is illegal and without jurisdiction. The District Magistrate cannot give jurisdiction by ordering the Magistrate to act for administrative convenience. (*C. C. Ghose and Duval, J.J.*). *AZIZUR RAHMAN v. EMPEROR.* 93 I.C. 1041=43 C. L. J. 215=27 Cr. L. J. 545=A.I.R. 1926 Cal. 590.

**—Civil and Criminal Court.**

—*Dispute of Civil nature.*

Where the dispute between the parties was primarily to be one of the civil nature,

*Held*, that the trying Magistrate would have exercised a better discretion if he had directed the complainant to seek his remedy from a Civil Court, (*Abdul Raoof, J.*). *TULSI v. CROWN.*

92 I.C. 215=7 L.L.J. 389=26 P.L.R. 487=27 Cr.L.J. 231=A.I.R. 1925 Lah. 599.

**—Consent—Whether confers.**

—Consent or silence of parties cannot confer jurisdiction. (*Ross, J.*). *SOMAR SAO v. BALCHAND.*

109 I.C. 46=9 Pat. L.T. 499=A.I.R. 1928 Pat. 451.

—The provisions of S. 137, Cr. P. Code are imperative and failure to comply with them vitiates the order, when the opposite party appears before the Magistrate, shows cause and alleges that what was claimed as a public pathway was not so, the Magistrate should record evidence on the matter of the complaint as in a summons case. He is not justified in consenting to act so to say, as an arbitrator and to decide the matter simply after a local inspection. Consent of the parties or waiver does not vest him with a jurisdiction to proceed in such a manner. 21 C.W.N. 926, *Rel. on.* (*Iqbal Ahmad, J.*). *BHOOR v. TARA SINGH.* 99 I.C. 415=25 A.L.J. 155=8 L.R.A.Gr. 25=28 Cr. L. J. 159=7 A.I.Cr.R. 198=49 All. 270=A.I.R. 1927 All. 267.

—A Court cannot get jurisdiction if it had not any in law, merely because the complainant invoked its jurisdiction. (*Krishnan, J.*). *RAMASWAMI CHETTIAR v. MUTHUVELU MUDALIAR.*

71 I.C. 238=45 Mad. 843=1923 M.W.N. 57=16 M.L.W. 562=31 M.L.T. 420=24 Cr.L.J. 110=A.I.R. 1923 Mad. 191,



**JURISDICTION—High Court.****—High Court.**

—High Court constituted after 1915 can take cognisance of any offence cognizable by High Courts unless prohibited by Letters Patent. (*Jai Lal, J.*). **FAKIR SINGH v. ALI MAHOMED.** 115 I.C. 428=30 Cr.L.J. 460=12 A.I.Gr. 413=A.I.R. 1929 Lah. 217.

**—Habeas corpus.**

High Court has, under its common law powers, jurisdiction to issue a writ for the production of a person outside British India, provided it is satisfied that he is in the custody or control of a person within its jurisdiction and S. 491-A, Cr. P. C. does not deprive it of that jurisdiction. (*Macleod, C.J. and Coyajee, J.*). **MAHOMEDALLI v. ISMAILJI.** 95 I.C. 49=50 Bom. 616=28 Bom.L.R. 471=27 Cr.L.J. 721=A.I.R. 1926 Bom. 332.

—It is not possible to deprive the High Court of any powers granted to it by its Charter except by direct legislation. *Case-law referred to.* (*Macleod, C.J. and Coyajee, J.*). **MAHOMEDALLI v. ISMAILJI.** 95 I.C. 49=50 Bom. 616=28 Bom.L.R. 471=27 Cr.L.J. 721=A.I.R. 1926 Bom. 332.

**—Irregularity.**

—Order passed by a Magistrate after he hands over charge or transfer is without jurisdiction. (*Newbould and Suhravardiy, J.J.*). **JAGAT BANDHU SAHA v. JAGABANDU SAHA SARDAR.** 76 I.C. 432=25 Cr. L.J. 192=38 C.L.J. 201=A. I. R. 1924 Cal. 192.

**—Objection to.**

—Late stage—Technical mistake—Rectification of.

The Municipal Magistrate of Calcutta passed an order of demolition of a certain structure and made the receiver of the premises in question a party to the proceedings. The point raised was that the order ought to be set aside as the Receiver was made a party without the leave of the Court appointing him.

*Held*, however as the proceedings had gone on till the final order was passed without any such point of jurisdiction having been raised and as the Receiver had actively participated in the proceedings, the Opposite Party should be given an opportunity of rectifying the mistake by an application to the necessary Court and the order need not be set aside. 15 C.W.N. 925, *Rel. on*; 30 Cal. 721, *Ref.* (*Pearson and Mullick, J.J.*). **SATIRANJAN BANERJEE v. CORPORATION OF CALCUTTA.**

1929 Cr. C. 187=A.I.R. 1929 Cal. 514.

**—Ouster.**

—The jurisdiction vested in a superior Court is not to be ousted except by express language or obvious inference from the provisions of a Statute. (*Percival, J.C. and Rupchand Bilaram, A.J.C.*). **MAHOMED ABDUL MAJID v. EMPEROR.**

101 I.C. 471=28 Cr.L.J. 439=8 A.I.Gr. 43=A.I.R. 1927 Sind 173.

**—Presumption.**

—Grant of incidental powers—Grant of principal powers cannot be presumed.

*Per DeSouza, A.J.C.*—Jurisdiction does not arise from an intention presumed to exist in the mind of the author of the notification but from apt words giving effect to that intention. The doctrine of interpretation *ut res magis valet, quam pereat* cannot be invoked so as to confer jurisdiction.

The grant of the incidental or accessory powers does not carry with it the grant of the principal powers. (*De Souza and Lobo, A.J.Cs.*), **EMPEROR**

**LANDLORD AND TENANT—Ejectment—Right to.**

**v. NOOR-MAHOMED.** 105 I.C. 433=22 S.L.R. 157=9 A.I. Gr. R. 66=28 Cr. L.J. 913=A.I.R. 1928 Sind 1 (F.B.).

**—Venue.**

—Where a lower Court has jurisdiction, an application must be made to that lower Court first and its order obtained thereon before the superior Court is asked to exercise such jurisdiction as it may think fit. (*Boys and Banerji, J.J.*). **KAMLA-PATI PANTH v. EMPEROR.** 91 I. C. 51=48 All. 23=23 A. L. J. 897=6 L. R. A. Gr. 179=27 Cr. L. J. 19=A. I. R. 1926 All. 27.

**JURISDICTION OF CRIMINAL COURTS.**

See (1) CR. P. CODE, SS. 177—189.  
(2) PENAL CODE, S. 4.

**JURY.**

See (1) CR. P. CODE, SS. 274—336.  
(2) CRIMINAL TRIAL.

**JUS TERTII.**

See (2) EVIDENCE ACT, S. 116.

**JUSTICE, EQUITY AND GOOD CONSCIENCE.**

See (1) INTERPRETATION OF STATUTES,  
(2) LETTERS PATENT.  
(3) PRACTICE.

**JUVENILE OFFENDER.**

See (1) CR. P. CODE, S. 562.  
(2) REFORMATORY SCHOOL.

**KIDNAPPING.**

See (1) CR. P. CODE.  
(2) PENAL CODE, SS. 359 TO 389.

**LAHORE HIGH COURT RULES.**

—Vol. II, Ch. VI, Para 67—Procedure in warrant cases.

—Long list of witnesses filed by accused—Court may refuse to summon but cannot order accused to pay for their costs.

The ordinary procedure in warrant cases is that the costs of causing the attendance of accused's necessary witnesses is usually borne by Government. The Magistrate has no doubt authority to depart from this usual practice, but there should be strong and cogent reasons for making the departure. Where the Magistrate finds that the accused has given a long list of witnesses to defeat or delay the ends of justice, he may decline to compel their attendance, under sub-S. (1), but at the same time he must be careful not to do any act which might hamper the accused in his defence. The Court should, in a case of this kind, adopt a reasonable course which would, while avoiding any hardship on either side, promote the ends of justice. (*Shadi Lal, C.J.*). **SAYAD HABIB v. EMPEROR.** 117 I.C. 867=30 Cr.L.J. 814=A. I. R. 1929 Lah. 23.

**LANDLORD AND TENANT.****—Ejectment—Right to.**

—Termination of tenancy—Forcible eviction.

The tenant whose right is determined has no right to remain forcibly upon the land and say to his landlord that he will cultivate that land till such time as he is evicted by a Civil Court. From the moment the title of the tenant expires, the landlord is in possession in the eye of the law, and provided that he does not use undue force, he is entitled to go upon the land and if necessary to use force for the purpose of asserting and maintaining

**LEGAL PRACTITIONER—Rights and duties—Counsel of accused.**

obligation upon him, *viz.*, to co-operate with the Court in the orderly and pure administration of justice. (*Robinson, C.J. and May Oung, J.*). In the matter of A PLEADER. 82 I.C. 712=2 Rang. 265=25 Cr. L.J. 1352=A.I.R. 1924 Rang. 320.

**—Rights and duties—Counsel of accused.**

—Entire devotion to the interests of the client, warm zeal in the maintenance and defence of his rights and the exercise of his utmost learning and ability these are the points which can only satisfy the truly conscientious advocate. Every man accused of an offence has a constitutional right to a trial according to law and the duty of his counsel requires him to scan with legal knowledge the forms of the proceeding against the accused. Counsel assigned for the defence of an accused charged with the offence of murder cannot decline the office, nor can he abate a jot of his duty to the accused and the Court, because of the querulous attitude taken by another Counsel who is asked to associate himself with the Counsel assigned to the accused. (*C. O. Ghose and Jack, J.J.*). *BAZLUR RAHIMAN v. EMPEROR.* 115 I.C. 561=43 C.L.J. 307=33 C.W.N. 136=30 Cr. L.J. 424=A.I.R. 1929 Cal. 1.

**—Rights and duties—Discretion in questions.**

—While counsel have their privileges they have also their responsibilities and ought never to abuse their position or their privileges and therefore though an advocate may act from a sense of duty towards his client and in entire good faith, he must exercise his own discretion before he puts the question to the witness. (*C. O. Ghose and Camitade, J.J.*). *M. BANERJEE v. EMPEROR.* 104 I.C. 717=55 Cal. 85=46 C.L.J. 227=28 Cr. L.J. 877=A.I.R. 1927 Cal. 823.

**—Rights and duties—Personal opinion—Expression of.**

—Per *Mookerjee, J.*—It is not the duty of the pleader to approach the trial Judge and to apprise him that in his opinion the man, whose fate has been entrusted to his care, has no defence to make.

His duty is to protect his client as far as possible from being convicted except by a competent tribunal and upon legal evidence sufficient to support a conviction for the offence with which he is charged.

A man's rights are to be determined by the Court not by his attorney or Counsel. (*Mookerjee, Richardson, C. O. Ghose, Cuming and Page, J.J.*). *EMPEROR v. BARENDRA KUMAR GHOSE.*

81 I.C. 353=25 Cr. L.J. 817=28 C.W.N. 170=38 C.L.J. 411=A.I.R. 1924 Cal. 257 (F.B.).

**—Rights and duties—Refusing brief.**

—A lawyer has no right to reject a brief when offered to him on payment of fee agreed upon between the parties, on grounds of partisanship for a party to the litigation. A.I.R. 1914 Oudh 872, *Foll. (Simpson, A.J.C.)*. *LALTA v. ZAHOOOR AHMAD.* 88 I.C. 1048=2 O. W. N. 682=26 Cr. L.J. 1272=A.I.R. 1923 Oudh 672.

**—Rights and duties—Resumption of practice.**

—Where a legal practitioner has been in Government service but has been subsequently discharged and he applies for permission to resume practice, it is incumbent on him to make a full and complete disclosure of the circumstances that led to his discharge. 98 C. 809, *Foll. (Mookerjee, A.C.J. and Fletcher, J.)*. In the matter of MURUNDA LAL DHAR. 62 I.C. 831=37 C.L.J. 391=27 C.W.N. 528=22 Cr. L.J. 591.

**LEGAL PRACTITIONERS' ACT (1879), S. 12—Effect of conviction.****LEGAL PRACTITIONERS' ACT (XVIII of 1879) (as amended by XV of 1926.)****—Nature of proceedings.**

—Proceedings under the Legal Practitioners' Act are quasi-criminal and where the facts had already formed the subject of criminal trial which has resulted in an acquittal the principle of "*Autrefois acquit*" must apply. (*Robinson, C.J.*). In the matter of MAUNG PO TOK. 83 I. C. 279=26 Cr. L.J. 1111=2 Rang. 491=A.I.R. 1925 Rang. 110.

**—S. 3—"Tout."**

—It must be shown that a legal practitioner has either paid the tout for his services in bringing work to him, or that the tout has proposed to the legal practitioner, or to some person interested in the legal business to procure the employment of the legal practitioner on condition that the legal practitioner, or some such person, will pay him something as a reward for bringing him a client. (*Adami and Scroope, J.J.*). *UGAM PRASAD PANDAY v. KING EMPEROR.* 102 I.C. 240=8 P.L.T. 587=23 Cr. L.J. 332=8 A.I.Cr.R. 207=6 Pat. 567=A.I.R. 1927 Pat. 282.

—Looking after other people's cases and writing petitions for them cannot by themselves make a person a tout within the meaning of S. 3 of the Legal Practitioners Act. It must be proved that he procured the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner before he can be declared a tout. (*N. B. Chatterjee, Kt. and Panton, J.J.*). *KERAMAT ALI v. EMPEROR.* 62 I.C. 829=22 Cr. L.J. 589 (Cal.).

**—S. 6—Mukhtyar.**

—In Bombay Presidency "Mukhtyar" is a person who can with the permission of the Court represent an accused in any proceeding within the meaning of S. 4 (1) (r), C. P. Code, and so a general order of a District Magistrate against employment of Mukhtyars in criminal cases in his district is improper. (*Pathar and Baker, J.J.*). *BAJI RAO ABAJI, In re.* 107 I.C. 56=29 Bom. L.R. 1587=29 Cr. L.J. 226=9 A.I. Cr. R. 403=113 I.C. 402=A.I.R. 1928 Bom. 33.

**—S. 12—Criminal complaint.**

—If a complaint is made against a legal practitioner that he has committed an offence, it is a matter which should be tried before a Criminal Court and not by proceedings under the Legal Practitioners Act. If he is convicted by the former then disciplinary action can be taken. Under S. 40 a pleader should not be suspended without an opportunity being afforded to defend himself. In the matter of MAUNG KIN SO. 76 I. C. 825=2 Bur. L.J. 213=25 Cr. L.J. 265.

**—S. 12—Discretion.**

—The use of word "may" in S. 12 after the words "the High Court" shows that the discretion of the High Court in each particular case is absolute. (*Jack and Mitter, J.J.*). *S., A PLEADER, In the matter of Petitioner.* 1929 Cr. C. 515=33 C.W.N. 829=A.I.R. 1929 Cal. 771.

**—S. 12—Effect of conviction.**

—Conviction of a legal practitioner is sufficient without any further enquiry to justify the High Court in taking proceedings under S. 12. It is not permissible to go behind the conviction and the pleader cannot be allowed to have indirect

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appeals against the judgment of conviction. (*Jack and Mitter, J.J.*). S., A PLEADER, *In the matter of Petitioner.* 1929 Cr. C. 515=33 C.W.N. 829= A. I. R. 1929 Cal. 771.

**—S. 12—Gambling.**

—The conviction of a pleader under the Gambling Act can hardly be looked upon by itself as sufficient reason for disciplinary action. (*Brown and Maung Ba, J.J.*). G., A PLEADER, *In the matter of.* 1929 Cr. C. 608= A.I.R. 1929 Rang. 352.

**—S. 12—Intimidating and assaulting women.**

—Conviction for assaulting woman—No reason for suspension.

A pleader was convicted under Penal Code for intimidating and assaulting a woman in a most reprehensible manner. It was the first occasion on which disciplinary action was called against him.

*Held*, that the conviction was not by itself sufficient to show defect of character which unfits him to be a pleader within the meaning of S. 12.

*Held* further, that though the words "any other reasonable cause" in S. 13 seem to be wide enough to include the case, still the conduct was not such as to justify suspending him from practice. (*Brown and Maung Ba, J.J.*). G., A PLEADER, *In the matter of.* 1929 Cr. C. 603= A.I.R. 1929 Rang. 352.

**—S. 12—Mitigating circumstances.**

—Conviction—Circumstances of mitigation—Less severe punishment awarded.

A legal practitioner was convicted of criminal breach of trust and abetment thereof, in respect of certain moneys of a client. It was found that he was to a certain extent the victim of his senior. He paid the amount of defalcation after his conviction. High Court in consideration of the fact that he was victim of circumstances and had expressed his repentance and promised to lead honourable life suspended the practitioner for one year. (*Jack and Mitter, J.J.*). S., A PLEADER, *In the matter of Petitioner.* 1929 Cr. C. 515= 33 C.W.N. 829= A.I.R. 1929 Cal. 771.

**—S. 12—Temporary misappropriation.**

—Conviction for criminal breach of trust which was found to have been temporary and not an attempt at permanent misappropriation is a temporary aberration on the part of the pleader who was convicted and, therefore, an order of suspension for six months was held sufficient to meet the requirements of the case. (*Sanderson, C.J. and Richardson, J.*). EMPEROR v. BRAHMANANDA DUTT. 81 I.C. 949=25 Cr. L.J. 1125= A. I. R. 1925 Cal. 238.

**—S. 13—Charges and threats to Court.**

—Making charges against Judicial Officer which the pleader has no prospect of substantiating amounts to misconduct. (*Coults-Trotter, C.J., Wallace and Beasley, J.J.*). *In the matter of DHARMARAJA AYYAR.* 110 I.C. 815= 1928 M.W.N. 317= 28 M.L.W. 202= 51 Mad. 798=10 A.I. Cr. R. 473= 1 M.Cr. C. 279=29 Cr.L.J. 783= A. I. R. 1928 Mad. 918=55 M.L.J. 170 (F.B.).

—Misconduct—Imputation of prejudice to presiding Judge.  
A letter written by a legal practitioner imputing racial antipathy to a Judge and charging him with having allowed such feelings to influence him in passing unfavourable orders to the practitioner constitutes misconduct. A belated apology

**LEGAL PRACTITIONERS' ACT (1879), S. 13—False statements, contradictions and suppressions.**

in the High Court was held to be insufficient and the pleader was suspended from practice for 8 months. (*Broadway and Martineau, J.J.*). *In the matter of KHEWAJA FAKHARUDDIN.* 67 I.C. 304=23 Cr. L.J. 408 (Lah.).

—Retention of money payable to his client by a pleader for a very long time and refusal to remit the same to that client amounts to misconduct on the part of the pleader. (*Stuart, C.J. and Raza, J.*). PROBHAAT CHANDRA GANGULI v. G., A PLEADER. 111 I. C. 880=5 O. W. N. 880= 29 Cr. L. J. 960=11 A. I. Cr. R. 304= A.I.R. 1928 Oudh 464.

—Appropriation of client's money amounts to misconduct.

In one case the Vakil was retained by two persons, one a *gosha* lady and the other an old man. They were the plaintiffs in a suit in which there stood to their credit in Court a sum of Rs. 1,218. The Vakil drew that money out of Court, but did not pay it over to the clients.

In another case, the Vakil appeared on behalf of the defendant in a mortgage suit, the defence was that, owing to the refusal of the plaintiffs to take his money at a time when, defendant was willing to pay it, plaintiffs had inflated the claim by claiming interest throughout a long period when they could have had the money but would not take it. In those circumstances, the client's instructions to the Vakil were to admit that Rs. 760 and odd was due, and he handed that sum to him with instructions to deposit it in Court. The Vakil did not deposit it in Court, nor did he disclaim liability formally for the balance of the plaintiffs, claim and after several adjournments he confessed judgment for the whole amount due.

*Held*, that in both cases the Vakil was guilty of professional misconduct. (*Coults-Trotter, C.J., Beasley and Srinivasa Aiyangar, J.J.*). NARASIMHACHARIAR, *In re.* 88 I.C. 360=26 Cr. L.J. 1128= 22 M.L.W. 152=1925 M.W.N. 321= A.I.R. 1925 Mad. 797 (F.B.).

**—S. 13—False statements, contradictions and suppressions.**

—Legal practitioner making two contradicting statements one before police and other as witness in Court—He is guilty of grossest misconduct. (*Broadway and Dalip Singh, J.J.*). *In the matter of* LEGAL PRACTITIONERS' ACT, S., PLEADER'S CONDUCT, *In re.* 121 I. C. 297= 1929 Cr. C. 441=31 P. L. R. 224= 31 Cr. L. J. 242=A.I.R. 1929 Lah. 803.

—Adjournment asked for in good faith—Absence of sufficient grounds for transfer—Pleader responsible for application is not necessarily guilty of misconduct.

Although every application for adjournment for the purpose of a transfer indirectly implies that there is a belief in the mind of the accused person that he would not have a fair trial, an application for adjournment under S. 526 does not always amount to an allegation of partiality made by the accused's Vakil against the trying Magistrate. If an application is made in good faith, the mere fact that it turns out subsequently that there are not sufficient grounds for transfer would not lead to a necessary inference that there was misconduct on the part of the practitioners who were responsible

**LEGAL PRACTITIONERS' ACT (1879), S. 13—Fees and non-payment.**

for such an application. A.I.R. 1924 All. 253, *Dist. (Sulaiman, Ag. C. J., Dalal and Mukerji, JJ.)*. In the matter of THREE VAKILS OF JHANSI.

110 I. C. 686=29 Cr. L. J. 750=  
26 A.L.J. 1250=A.I.R. 1923 All. 396 (S.B.).

**—S. 13—Fees and non-payment.**

Exorbitant fees claimed by pleader do not amount in themselves to misconduct unless there is clear evidence to prove fraudulent conduct on part of pleader. (*Lord Thankerton.*) **PLEADER v. THE JUDGES OF THE HIGH COURT OF MADRAS.**

123 I.C. 184=1930 A.L.J. 539=

34 C.W.N. 534=1930 M.W.N. 300=

31 M.L.W. 627=7 O.W.N. 517=

51 C.L.J. 418=31 Cr. L. J. 489=

A.I.R. 1930 P.C. 144=58 M.L.J. 635 (P.C.).

**—S. 13—Jurisdiction and procedure.**

Enquiry should proceed on formulated charges—Evidence should be carefully taken and judged according to the ordinary standards of proof. (*Lord Thankerton.*) **PLEADER v. JUDGES OF THE HIGH COURT OF MADRAS.**

123 I.C. 184=1930 A.L.J. 539=34 C.W.N. 534=

1930 M.W.N. 300=31 M.L.W. 627=

7 O.W.N. 517=51 C.L.J. 418=

31 Cr. L.J. 489=A.I.R. 1930 P.C. 144=

58 M.L.J. 635 (P.C.).

**—S. 13—Mistakes and negligence.**

A pleader withdrawing money from Court at the instance of his client's relation who was surety for the guardianship of the client and paying the money to the relation on the strength of two previous withdrawals and payments to the relation is negligent of his duty to the Court and also his client but not guilty of grossly improper misconduct in the discharge of the professional duty within the meaning of S. 13 of the Legal Practitioners' Act. (*Sanderson, C. J. and Richardson, J.*). **EMPEROR v. BHUBANESWAR NAG.**

77 I. C. 181=25 Cr. L.J. 325=

A.I.R. 1925 Cal. 146.

**—S. 13—Non-acceptance of brief.**

Mere fact that opposite party happens to be member of the same profession is not a circumstance which entitles a member of the Bar to refuse to undertake the case against him.

It is very important that men at the Bar should understand that they are members of a public profession. That is by their very calling they engage and undertake to act for anybody who fulfils certain conditions. Therefore if a client comes to them with proper instructions and prepared to pay a fair and proper fee and invites them to undertake a case of a kind, which they are accustomed to do and they refuse, such refusal amounts to professional misconduct and should be punished as such. See A.I.R. 1929 All. 367. (*Mears, C. J.*). **GOKUL PRASAD v. EMPEROR.**

115 I.C. 641=

30 Cr. L.J. 522=1929 A.L.J. 616=

10 L.R.A. Cr. 95=A.I.R. 1930 All. 262.

**—S. 13—Non-attendance.**

(*Aga Haidar, J.*).—Pleader engaged in murder case if unable to attend Court personally should spend whole fee received by him in procuring his substitute. (*Eforde, J.*).—His absence can be excused on the ground of physical inability only.

*Aga Haidar, J.*—It may sometimes happen that a Counsel may find himself in a position of unforeseen difficulty when with all the best intentions in the world it may become impossible for him to appear on behalf of his client in a case and he may be left no alternative except to hand

**LEGAL PRACTITIONERS' ACT (1879), S. 13—Object and scope.**

over his brief to another Counsel so that his client's interest may not suffer. But in a murder case when a Counsel has reason to believe that he would not be available at the time when the case would be called on for hearing, because he has other engagements elsewhere, it is his duty to communicate with the person who had engaged him and to return the fee to him. If it is not possible for him to do so and the pressure of overriding circumstances is beyond his control, then he should try his very best and spend the whole of the fee that he has received in briefing a Counsel who would do full justice to his client's case for the remuneration. 3 Bur. L.T. 181, *Ref.*

*Per Eforde, J.*—It is not practicable or indeed desirable to lay down rigid rules of conduct for the Bar. The independence and sense of responsibility of the legal profession should be encouraged rather than the reverse. But when a practitioner has undertaken the duty of appearing to defend a man for his life, he should give exclusive attention to that case, and nothing should be deemed to exonerate him from that obligation except physical inability to attend at the hearing. (*Eforde and Aga Haidar, JJ.*). In the matter of F.K. BYRNE. 108 I.C. 257=29 Cr. L.J. 362=10 A.I. Cr. R. 42=A.I.R. 1923 Lah. 448.

—*Boycott of a Court and throwing up a brief without obtaining client's consent amount to misconduct.*

Wherein pursuance of a resolution of the local Bar Association to boycott a Magistrate's Court, a pleader refrained from appearing in Court without first obtaining his client's consent and left his client undefended as a result of which the client was detained in jail for about a month more,

*Held*, that the pleader was guilty of unprofessional conduct and that an arrangement arrived at with his client for a consent subsequent to the pleader's failure to appear and defend did not affect his liability. A.I.R. 1923 Cal. 212, *Ref.* (*Robinson, C.J. and May Oung, J.*). In the matter of A PLEADER. 82 I.C. 712=2 Rang. 265=

25 Cr. L. J. 1352=A.I.R. 1924 Rang. 320.

**—S. 13—Object and scope.**

The jurisdiction which the Court exercises under S. 13 is not a vindictive jurisdiction at all. Its main object in such a case is not to allow a man to practise in Courts, when he himself is counselling disobedience to the law and order enforced by Courts. When a man who has offended in that way comes before the Court and honestly expresses his regret and his intention to assist the administration of justice in future, there is no reason why he should not be given an opportunity of showing that his intentions are as he expresses them. (*Schwabe, C.J., Coutts-Trotter and Krishnan, JJ.*). In the matter of A FIRST GRADE PLEADER, GUNTUR. 81 I.C. 87=18 M.L.W. 717=1924 M.W.N. 18=33 M.L.T. 100=25 Cr.L.J. 569=A.I.R. 1924 Mad. 160=45 M.L.J. 718 (F.B.).

A Court is quite competent to order an enquiry into the facts and circumstances of a case whether it came under Cl. (b) or whether it came under Cl. (f) of S. 13 of the Act. 27 Cal. 1023, *Not foll.*; 24 C. L. J. 191, *Ref.* (*Dawson-Miller, C. J., Foster and Kulwant Sahay, JJ.*). **NARENDRA NATH ROY v. THE CROWN.** 75 I.C. 728=1923 P. H. C. G. 329=25 Cr. L.J. 40=5 Pat. L.T. 350=A.I.R. 1924 Pat. 131,

**LEGAL PRACTITIONERS' ACT (1879), S. 13—Politics.****—S. 13—Politics.**

—*The conduct of a pleader should not be inconsistent with the position he holds in the administration of justice.*

A legal practitioner, as any other person has a right to entertain political opinions which may or may not be acceptable to the authorities. But having obtained license to practise in Courts, if he acts inconsistently with the position which he has obtained by virtue of the license granted to him, he abuses it and brings himself within the four corners of the Legal Practitioners' Act, A.I.R. 1922 Cal. 515 and A.I.R. 1922 P.C. 351, *Follow.*

The action of legal practitioners counselling the public not to attend Court and thereby interfering with the administration of justice amounts to misconduct within the provisions of S. 13. (*Suhrawardy and Garlick, JJ.*). **EMPEROR v. KISORI MOHAN.** 114 I.C. 96=30 Cr.L.J. 232=

12 A.I. Gr. R. 214=A.I.R. 1928 Cal. 853.

—*Advising non-payment of taxes or boycott of Courts justifies refusal to issue sanad.*

Courts should not consider what the political opinions of anybody are, whether they are members of the legal or any other profession. But while the Courts will always uphold the liberty of the subject in thought or speech, an applicant who comes to ask for the issue or renewal of a *sanad*, is applying to be treated as a part of the machinery, for the maintenance of law and order in the body politic and to take an active part in administering, for the other subjects of the Crown, the benefits that may be supposed to result from the upkeep of law and order. It is intolerable and illogical that a man should seek to be put in that position, while at the same time he is saying that law and order should be disobeyed, and taxes are not to be paid and that all public offices are to be abandoned, in order to paralyse the very life of the body politic, apart altogether from any other views he may entertain, as to the desirability of the person or the particular members of the Government he attacks, or the particular character of the transactions carried on, in these Courts. A Court would not without stultifying itself, issue a certificate to a man, who, in the same breath that he is asking for it, cuts himself off and announces his intention to do his best to cut off others, from the life of the state. (*Schwabe, C.J., Coutts-Trotter and Krishnan, JJ.*). In the matter of **SECOND GRADE PLEADER, RAMACHANDRAPUR.** 75 I.C. 977=13 M.L.W. 689=1923 M.W.N. 768=33 M.L.T. 98=25 Cr.L.J. 65=A.I.R. 1924 Mad. 129=45 M.L.J. 684 (F.B.).

**—S. 13—Proof of charge.**

Charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however reasonable, or what may be mere error of judgment or indiscretion. An appropriate guide may be found in S. 13 under which a pleader or mukhtar may be suspended or dismissed who is guilty "of a fraudulent or grossly improper conduct in the discharge of his professional duty." (*Lord Thankerton*). **PLEADER v. THE JUDGES OF THE HIGH COURT OF MADRAS.** 123 I.C. 184=1930 A.L.J. 539=34 C.W.N. 534=1930 M.W.N. 300=31 M.L.W. 627=7 O.W.N. 517=51 C.L.J. 418=31 Cr.L.J. 489=A.I.R. 1930 P.C. 144=58 M.L.J. 635 (P.C.).

—Where the gravamen of the charge is that the notice was prejudicial to the interests of the client, on whose behalf it was sent by his pleader

**LEGAL PRACTITIONERS' ACT (1879), S. 13—Miscellaneous.**

it must be shown first that the pleader knew the rights of parties and that his client did not know them, or did not intelligently or deliberately realise them and, secondly, that the notice was in fact prejudicial to the interests of his client. 33 Cal. 151 (P.C.), *Rel. on.* (*Lord Thankerton*). **PLEADER v. THE JUDGES OF THE HIGH COURT OF MADRAS.**

123 I.C. 184=1930 A.L.J. 539=34 C.W.N. 534=1930 M.W.N. 300=31 M.L.W. 627=7 O.W.N. 517=51 C.L.J. 418=31 Cr.L.J. 489=A.I.R. 1930 P.C. 144=58 M.L.J. 635 (P.C.).

**—S. 13—Renewal of sanad.**

—Where a pleader was committed to prison for default in complying with an order under S. 107, Cr. P. Code, and the pleader later disclaimed and disavowed any intention of either disobeying the order or in any way paralysing the administration of justice,

*Held*, the *sanads* of the pleaders may be renewed. Where the pleader before he renewed his *sanad* took up occupation on the press and mainly without remuneration held such conduct can be overlooked. (*Schwabe, C.J., Coutts-Trotter and Krishnan, JJ.*). In the matter of **K., A FIRST-GRADE PLEADER.** 92 I.C. 214=1924 M.W.N. 5=27 Cr. L.J. 230=A.I.R. 1924 Mad. 479 (F.B.).

**—S. 13—Unprofessional conduct.**

—Where, in a criminal trial, the legal practitioner appearing for the accused suggests without reasonable grounds that the prosecution story is all a concoction, the legal practitioner is guilty of the grossest professional misconduct. (*Courtney-Terrell, C.J. and Chatterjee, J.*). **BANSLOCHAN LAL v. EMPEROR.** 9 Pat. 31=10 P.L.T. 703=1930 Pat. 195.

**—S. 13—Working for opposite parties.**

—Pleader drafting complaint for complainant in one case and acting for accused in a different case instituted by same complainant—No offence is committed. 2 P. R. 1904, *Dist.* (*Broadway and Addison, JJ.*). In the matter of **MEHLAKRISHNA CHANDRA, PLEADER.** 109 I.C. 228=8 Lah. 671=29 P.L.R. 126=29 Cr.L.J. 550=A. I. R. 1928 Lah. 65.

**—S. 13—Miscellaneous.**

—*Fraudulent acts of clerk—Pleader is not necessarily guilty of professional misconduct.*

It cannot be too constantly or too emphatically stated that if a Vakil leaves his money business to be conducted by his clerk, he is responsible for what the clerk does for purposes of civil liability. At the same time, if a Vakil is deceived by his clerk, or if his clerk does acts in fraud of him, then of course, it would not be right to hold that the Vakil himself is guilty of professional misconduct. (*Ranvin, C.J., C. C. Ghose and Mukerji, JJ.*). In the matter of **"A" VAKIL.** 114 I.C. 187=30 Cr. L.J. 256=12 A.L. Cr.R. 131=A.I.R. 1928 Cal. 817 (F.B.).

—A legal practitioner who purchases property *benami* in the name of another person, and not only appears as a pleader in the legal proceedings regarding the property but also takes his fee as pleader in the Courts, while he is really the *de facto* plaintiff commits an offence against propriety and is guilty of grossly improper conduct, as a legal practitioner. (*Kendall, A. J. C.*). **SHEO NARAIN LAL v. MIR. AMJAD ALI.** 81 I.C. 975=25 Cr.L.J. 1481=A.I.R. 1925 Oudh 330.



# LEGAL PRACTITIONERS' ACT (1879), S. 13—Miscellaneous.

—A pleader standing surety to a man arrested under S. 420, Penal Code and convicted under the section and keeping in his possession on behalf this accused properties held later on to have been involved in the offence is not guilty of professional misconduct. (*Robinson, C.J.*). In the matter of MAUNG POTOK. 88 I.C. 279=2 Rang. 491=26 Cr. L. J. 1111=A.I.R. 1925 Rang. 110.

—Denying allegiance to British Courts and expressing want of truth in British justice creates liability to disciplinary action—Legal practitioner accepting professorship without permission creates liability to disciplinary action.

A pleader, who acts as a professor in a College without the permission of the High Court, contravenes the rules framed by the High Court to regulate the conduct of legal practitioners and renders himself liable to disciplinary action.

A pleader, who proclaimed before a Criminal Court when he was tried for an offence under S. 188, I.P.C., that he owed no allegiance to British Courts and had no faith in British justice renders himself liable to disciplinary action. (*Mookenjee and Chotmner, J.J.*). EMPEROR v. BIMA-EANAND DAS GUPTA. 77 I.C. 986=38 C.L.J. 353=25 Cr. L.J. 522=A.I.R. 1924 Cal. 329.

## —S. 14—Aiding criminal offence.

—Allegations amounting to aiding or conspiring to commit criminal offences—Proceeding under S. 14 should not be taken but a criminal prosecution may be started. A.I.R. 1926 Cal. 502, *Foll.* (*Panton and Mallik, J.J.*). In the matter of SATISH CHANDRA SINGHA. 54 Cal. 721=31 C.W.N. 554=A.I.R. 1927 Cal. 536.

## —S. 14—Amendment of petition already filed.

—A certain mukhtear instituted certain proceedings under S. 144 of the Cr. P. Code. After the petition had been filed in Court the mukhtear discovered that he had made a mistake on his description of the day in his petition, viz., in giving the number. Instead of presenting to the Court a further petition for amendment of the first petition he proceeded to effect an alteration in the petition which had been filed in Court.

*Held*, that the mukhtear did act in a foolish and reprehensible manner, but that save and except this act of foolishness he did nothing else and did not deserve to be permanently debarred from practice. (*Greaves and Chakravarti, J.J.*). SECOY. OF STATE v. JOGENDRA CHANDRA. 87 I.C. 843=26 Cr. L.J. 1019=A.I.R. 1926 Cal. 223.

## —S. 14—Causing evidence to disappear.

—Where a sanction was given for the prosecution of a party under S. 471, I. P. C., and the party instructed his pleader to withdraw all documents from the case and the pleader withdrew the same, *Held*, that the conduct of the pleader amounted to a charge of aiding and abetting or conspiring to commit a criminal offence, viz., causing evidence to disappear with the intention of screening the offender, an offence punishable under S. 201, and that the correct procedure to be followed is that proceedings under the Legal Practitioners' Act should not be taken, but that if it is thought necessary to take action it should be by way of a criminal prosecution. (*Cuming and B. B. Ghose, J.J.*). In the matter of RAJENDRAKUMAR DUTTA. 94 I.C. 893=30 C.W.N. 186=27 Cr. L.J. 701=A.I.R. 1926 Cal. 502.

## —S. 14—Enquiry into charge.

—The provisions of S. 14 indicate that ordinarily an "enquiry" mentioned in S. 14 should

# LEGAL PRACTITIONERS' ACT (1879), S. 14—Delegation of inquiry.

be made by the presiding officer of the Court where the misconduct has been alleged to be committed. (*Sulaiman, Aq. C. J., Dalal and Mukerji, J.J.*). In the matter of THREE VAKILS OF JHANSI.

110 I.C. 686=26 A.L.J. 1250=29 Cr. L.J. 750=A.I.R. 1923 All. 395 (S.B.).

—Section 14 does not limit the consideration of a charge to the Court in which the misconduct is alleged to have been committed. A.I.R. 1922 Cal. 484, *Foll.*; 1 P.L.T. 379 and 10 C.W.N. 1059, *Not foll.* (*Devadoss and Waller, J.J.*). VENUGOPAL NAYUDU, *In re*. 92 I.C. 896=1926 M.W.N. 466=27 Cr. L.J. 384=A.I.R. 1926 Mad. 1044.

## —S. 14—Nature of proceedings.

—A proceeding under the Act is not a civil proceeding and the provisions of the C. P. Code are wholly inapplicable to a case of misconduct by pleader. Nor can enquiry into the conduct of a pleader be treated as a criminal proceeding, though being penal in its nature it resembles in many respects a criminal case. (*Shadi Lal, C. J.*). LAKSHMI NARAIN v. MT. RATNI. 93 I.C. 700=27 P.L.R. 225=27 Cr. L. J. 476=A.I.R. 1928 Lah. 199.

## —S. 14—Reference.

—Formalities under S. 14 not observed—Reference is not valid.

For a proper reference to the High Court the formalities required by S. 14 ought to be fulfilled and in the absence of those formalities being strictly complied with the reference is no valid reference.

A report made by a Magistrate subordinate to the Magistrate of the District was not made also through the Sessions Judges and hence no opinion of the Sessions Judge was before the High Court. The reference was held to be invalid. (*Sen, Niamatullah and Iqbal Ahmad, J.J.*). In the matter of A MUKHTAR OF BANARES. 118 I.C. 712=1929 A.L.J. 1042=30 Cr. L.J. 966=12 Cr. C. 241=A.I.R. 1929 All. 635.

## —S. 14—Standing counsel.

—Pleader exclusively retained by a client accepting brief against that client in another suit by opponent, is guilty of professional misconduct, *Held*, he acts in violation not only of the principles which govern the conduct of a legal adviser, but of the ordinary principles of good faith as between man and man. Such a course would not have been justified even if the retainer had been first determined. His conduct was "grossly improper conduct in the discharge of his professional duty" within the meaning of the Act. (*Lord Tomlin.*) A., A PLEADER OF AGRA v. JUDGES OF THE HIGH COURT OF JUDICATURE, ALLAHABAD. 122 I.C. 4=1930 A.L.J. 134=1930 Cr. C. 205=7 O.W.N. 264=34 C.W.N. 432=31 M. L. W. 298=32 Bom. L.R. 556=31 Cr. L. J. 337=51 C. L. J. 447=A.I.R. 1930 P.C. 69=58 M. L. J. 488 (P.C.).

122 I.C. 4=1930 A.L.J. 134=1930 Cr. C. 205=7 O.W.N. 264=34 C.W.N. 432=31 M. L. W. 298=32 Bom. L.R. 556=31 Cr. L. J. 337=51 C. L. J. 447=A.I.R. 1930 P.C. 69=58 M. L. J. 488 (P.C.).

122 I.C. 4=1930 A.L.J. 134=1930 Cr. C. 205=7 O.W.N. 264=34 C.W.N. 432=31 M. L. W. 298=32 Bom. L.R. 556=31 Cr. L. J. 337=51 C. L. J. 447=A.I.R. 1930 P.C. 69=58 M. L. J. 488 (P.C.).

122 I.C. 4=1930 A.L.J. 134=1930 Cr. C. 205=7 O.W.N. 264=34 C.W.N. 432=31 M. L. W. 298=32 Bom. L.R. 556=31 Cr. L. J. 337=51 C. L. J. 447=A.I.R. 1930 P.C. 69=58 M. L. J. 488 (P.C.).

## —S. 14—Transfer of proceedings.

—Section does not contemplate either a preliminary enquiry or a transfer of enquiry. (*Devadoss and Waller, J.J.*). VENUGOPAL NAIDU, *In re*.

92 I. C. 896=1926 M. W. N. 466=27 Cr. L.J. 384=A.I.R. 1926 Mad. 1044.

## —S. 36—Delegation of inquiry.

—The Judge and officers mentioned in the section cannot delegate the task of recording the evidence to a subordinate officer. (*Abdul Raouf, J.*). KISHOR CHAND v. EMPEROR. 84 I.C. 462=5 Lah. 443=26 Cr. L.J. 348=A.I.R. 1925 Lah. 225.



# LEGAL PRACTITIONERS' ACT (1879), S. 36— Interpretation—"Members"

## —S. 36—Interpretation—"Members."

Whether a resolution passed by a meeting of a Bar Association declaring certain persons to be touts was or was not regularly passed must be determined by reference to the explanation to S. 36, sub-S. (1) and not by reference to any rules framed by an Association. The Act only requires that "members" shall vote and that the resolution shall be passed by a simple majority irrespective of the rules of the particular Bar Association. When forwarding the resolution the Secretary of the Bar Association ought to state the total number of members belonging to the Association, the number of those who attended the meeting and the figures of the votes for and against the resolution. (*Banerji and Weir, J.J.*). GHAFOR KHAN v. EMPEROR. 118 I.C. 524=26 A.L.J. 790=9 L.R.A. Cr. 113=10 A.I. Cr. R. 193=

A.I.R. 1928 All. 334.

## —S. 36—Interpretation—"Specially convened."

The Collector of a certain place wrote to the Secretary of the Bar Association of that place inviting the Association to take steps "to consider the tout evil." After receiving this letter a meeting of the Association was held and the members then present appointed a sub-committee to investigate the prevalence of touting in the place, and to submit to the Association a list of persons whom the sub-committee considered to be acting as touts. That sub-committee presented to the executive committee of the Bar Association a list of persons whom it considered to be touts, and the executive committee thereupon issued a notice to all "resident members" of the Bar Association, i.e., members of the association resident, summoning an extraordinary meeting of the Association "to consider the tout evil." At that meeting the list of names prepared by the sub-committee of the Association was read out.

Held, that it was a meeting "specially convened for the purpose" of preparing a list of touts under S. 36 (1). (*Banerji and Weir, J.J.*). GHAFOR KHAN v. EMPEROR. 118 I.C. 524=26 A.L.J. 790=9 L.R.A. Cr. 113=10 A.I. Cr. R. 193=A.I.R. 1928 All. 334.

## —S. 36—Non-attendance of touts.

Section 36 does not authorize the District Magistrate to compel the attendance of an alleged tout in the proceedings or to receive orders in the case, and therefore he cannot be charged under S. 174, Penal Code, if he fails to attend the Court. (*Carr, J.*). P. J. MONEY v. EMPEROR.

111 I.C. 672=6 Rang. 529=29 Cr. L.J. 912=A.I.R. 1928 Rang. 296.

## —S. 36—Opportunity reasonable.

Notice to show cause was served on person on 18th December just a few days before X-mas holidays began. On the re-opening of the Court he applied on 2nd January for the issue of summons to a number of witnesses including seven Vakils. The Judge instead of issuing summons and allowing him to take the risk if they were not served in time declined to issue the summons and directed him to produce affidavits from the Vakils. As no

# LETTERS PATENT—(Allahabad), (1866), Cl. 22 —"Court"—Village panchayat.

affidavits were filed the Judge on the resolution of the Bar Association declared him to be a tout on 3rd January.

Held, that sufficient opportunity was not given to him to satisfy the Court that he was not a tout. (*Sulaiman and Niamatullah, J.J.*). RIYAZUDDIN v. BAR ASSOCIATION, AGRA.

1930 Cr. C. 1018=A.I.R. 1930 All. 796.

As S. 36 is somewhat exceptional and of a drastic nature, a great deal of care and caution is necessary before action is taken against anybody and full opportunity should be given to the aggrieved party to meet the case for the prosecution. (*Abdul Raof, J.*). DIWANCHAND v. EMPEROR.

92 I.C. 749=27 Cr. L.J. 333=A.I.R. 1926 Lah. 227.

## —S. 36—Resolutions of Bar Associations.

A resolution passed by a Bar Association declaring certain persons to be touts is merely evidence upon the value of which the judicial officer to whom it is sent must form his own opinion. (*Banerji and Weir, J.J.*). GHAFOR KHAN v. EMPEROR.

118 I.C. 524=26 A.L.J. 790=9 L.R.A. Cr. 113=10 A.I. Cr. R. 193=A.I.R. 1928 All. 334.

A resolution or report of a sub-committee of only seven members, out of an association of about 22 members, declaring certain persons to be touts, is not a resolution by a majority of the members and hence it cannot be used as evidence of general repute under the Explanation to sub-S. (1) of S. 36. (*Adami and Scroope, J.J.*). UGAM PRASAD PANDEY v. KING-EMPEROR. 102 I.C. 340=8 P.L.T. 587=28 Cr. L.J. 532=8 A.I. Cr. R. 207=6 Pat. 567=A.I.R. 1927 Pat. 232.

# LETTERS PATENT—(Allahabad), (1866).

## —Cl. 8—Misconduct of pleader.

Notice issued by High Court on 13th June, 1928—Bar Councils Act coming into force on 1st June—Notice is ultra vires.

A notice was issued on 13th June, 1928, by High Court against a pleader calling upon him to show cause why he should not be dealt with under the Legal Practitioners Act for professional misconduct. Objection was taken by the pleader in view of the Bar Councils Act which had come into force on 1st June, 1928,

Held, that the provisions of the Letters Patent, in so far as they may conflict with the provisions of the Act, were abrogated by S. 19 (2) and therefore it was necessary for the case to be either referred to the Bar Council or at any rate for the Bar Council to be consulted. The Court was not properly seized of the case and that the notice issued to show cause was, as framed, ultra vires and a nullity. (*Boys, Weir and King, J.J.*). In the matter of A VAKIL OF AZAMGARH. 112 I.C. 214=51 All. 76=26 A.L.J. 1039=29 Cr. L.J. 998=A.I.R. 1928 All. 439 (F.B.).

## —Cl. 22—"Court"—Village panchayat.

High Court cannot transfer Criminal Proceedings pending before village panchayat.

A village panchayat constituted under the Local Act VI of 1920 is not a "Criminal" Court within the

**LETTERS PATENT—(Calcutta) (1865), Cl. 25—Procedure.**

meaning of Chapter II of the amended Cr. P. Code; therefore, S. 526 would have no application. So also S. 22 of the Letters Patent (Allahabad) does not apply and the High Court has no jurisdiction to direct the transfer of a case from a panchayat constituted under the Local Act.

Per *Kanhaiya Lal, J.*—A village panchayat is a Court for the purpose of S. 22 of the Letters Patent, and in the absence of any limitation imposed by any Act, the High Court has power under that section to transfer any criminal proceeding pending before a village panchayat to another village panchayat empowered to take cognizance thereof. (*Stuart and Kanhaiya Lal, J.J.*). SAT NARAIN v. SARJU. 83 I.C. 350=

46 All. 167=21 A.L.J. 925=25 Cr.L.J. 1390=  
A.I.R. 1924 All. 265.

**—Calcutta (1865)—****—Cl. 25—Procedure.**

—The initial step is for the trial Judge to reserve a point of law or for the Advocate-General to grant a certificate. The successive stages of the process which follows inevitably may be enumerated:—

(i) The Court reviews the entire case or such part of it as may be necessary.

(ii) The Court finally determines the point or points of law reserved or certified.

(iii) The Court thereupon alters the sentence passed by the Trial Court.

(iv) The Court passes such judgment and sentence as shall seem right to the Court.

The term "thereupon" must be construed with reference to the context; and it may, with good reason, be interpreted as equivalent to "upon final determination of the point of law reserved or certified in favour of the prisoner." It is not necessary that the contention of the prisoner should succeed in its entirety; if the opinion of the trial Judge on the point reserved or certified, which forms an ingredient of the reasons for conviction and sentence, is not supported, the conviction cannot be sustained, and it then becomes open to the Court to alter the sentences passed by the trial Judge. (*Mookerjee, Richardson, C.C. Ghose, Cuming and Page, J.*). EMPEROR v. BARENDRA KUMAR GHOSE. 81 I.C. 353=28 C.W.N. 170=

38 C.L.J. 411=25 Cr.L.J. 817=  
A.I.R. 1924 Cal. 257 (F.B.).

**—Cl. 26—Joint trial.**

—Where a Judge in his discretion under S. 239, Cr. P. C. desires to try a number of accused jointly it is not a matter for interference on a certificate of the Advocate-General under Cl. 26 of the Letters Patent. A defective summing up to the jury unless it causes a failure of justice is no ground for reversing a conviction. (*Maclean, C.J., Prinsep Hill, Harrington and Brett, J.J.*). EMPEROR v. CHARU CHANDER MUKERJEE. 76 I.C. 966=

25 Cr. L.J. 294=38 C.L.J. 309 (F.B.).

**—Cl. 26—Powers under S. 537, Cr. P. Code.**

—Per *Rankin, J.*—Section 537 is applicable under Cl. 26 of the Letters Patent. (*Walmsley,*

**LETTERS PATENT—(Calcutta) (1865), Cl. 26—Verdict of Jury.**

*Rankin, Cuming, B.B. Ghose and Chakravarti, J.J.*). EMPEROR v. COLIN MACKENZIE MACKAY.

93 I. C. 33=53 Cal. 350=43 C.L.J. 310=  
30 C.W.N. 276=27 Cr. L.J. 385=  
A.I.R. 1926 Cal. 470 (F.B.).

**—Cl. 26—Procedure.**

—Advocate-General must hear both sides—Allegation by parties must be verified.

Per *Mookerjee and Richardson, J.J.*—It is clear, on the language of Cl. 26, that the Letters Patent requires that the certificate should reflect the judgment of the Advocate-General and is presumably granted in the interest of justice after careful consideration of all available materials. If that judgment is founded on incomplete materials or inaccurate allegations, its weight is obviously diminished in a corresponding degree. In a case where the error ascribed to the Judge depends on the evidence adduced at the trial, it is plainly desirable that the notes of the evidence, as recorded by the Judge, should be laid before the Advocate-General when he was asked to grant the certificate. The requisite materials can always be obtained on application to the Judge. The Advocate-General must hear not merely Counsel for the prisoner, but also Counsel for the Crown before he grants the certificate. The allegations embodied in the petition to the Advocate-General should be verified by Counsel present at the trial or by other responsible person. (*Mookerji, Richardson, C. C. Ghose, Cuming and Page, J.J.*). EMPEROR v. BARENDRA KUMAR GHOSE. 81 I.C. 353=

28 C.W.N. 170=38 C.L.J. 411=25 Cr. L.J. 817=  
A.I.R. 1924 Cal. 257 (F.B.).

**—Cl. 26—Verdict of jury.**

—Per *Rankin, C. J.*—The verdict of the jury cannot be allowed to stand unless the High Court in review under Cl. 26 be of opinion that the same verdict would have been arrived at, had they been correctly and sufficiently directed. It is not open to direct retrial in such a case. 47 Cal. 671 (F. B.), *Rel. on.*

Per *C. C. Ghose, J.*—The word "thereupon" means that the determination of the point or points of law reserved or certified must be in favour of the prisoner before the Court can interfere with the conviction and sentence. If it be found that the opinion of the trial Judge on the point or points reserved or certified cannot be supported it is not open to the High Court to direct a retrial. No doubt the High Court has power under Cl. 26 to examine evidence and determine for itself whether after the exclusion of the evidence or matter which may be considered inadmissible, the residue and the record are sufficient to justify the conviction. The Court will not substitute its own finding for the verdict of the jury. It must consider whether the evidence on record improperly admitted was of such a nature that it possibly may have considerably influenced the minds of the jury and whether it was reasonably certain that the jury would, not might, have acted on the unobjectionable evidence if the wrongly admitted evidence or matter had not also been presented to them. Section 537, Cr. P. Code, has no application to a case under Cl. 26. 44 Cal. 477 (F. B.), *Appr.*; A. I. R. 1926 Cal. 470 (F. B.), *Not appr.*

# LETTERS PATENT—(Calcutta), (1865), Cl. 28—Scope.

Per *Jack, J.*—The Court can, on review, examine evidence for itself and determine without reference to the probable verdict of the jury, whether, excluding inadmissible evidence, the residue is sufficiently justifiable for the conclusion. If the Court is convinced on the evidence that the accused is guilty, he should not be acquitted merely on account of a defective charge. The unanimous verdict of the jurors should not be set aside on the mere speculation that certain allegations might have influenced them to some extent when it is clear that the verdict is entirely justifiable by the evidence. Section 167, Evidence Act, is imperative and applies even to the decision of the High Court when exercising its powers under Cl. 26. (*Rankin, C. J., C. O. Ghose, Suhrawardy, Mukerji and Jack, J.J.*). **PADAM PRASAD v. EMPEROR.**

119 I.C. 193=50 C.L.J. 106=  
33 C. W. N. 1121=30 Cr.L.J. 993=  
1929 Cr. C. 228=A.I.R. 1929 Cal. 617 (S.B.).

## —Cl. 28—Scope.

—Clause 28 is limited to such officers and Courts as were subject to reference or revision by the High Court at the time of the grant. The Secretary to the Local Government of Bengal acting under Bengal Act I of 1923 in the Goondas Act even on the assumption of his being a Criminal Court does not come under Cl. 28. (*Graves and Panton, J.J.*). **BHIMRAJ BANIA v. EMPEROR.**

83 I.C. 500=51 Cal. 460=26 Cr. L. J. 20=  
A.I.R. 1924 Cal. 638.

## —Cl. 41—Appeal to Privy Council.

—Whether appeal lies to Privy Council from order on certificate by the Advocate-General was not decided as the Privy Council dismissed the appeal on merits. 25 Mad. 61, *Expt. (Lord Sumner.)* **BARENDRA V. EMPEROR.**

85 I. C. 47=  
29 C.W.N. 181=1925 M.W.N. 26=  
3 Pat. L. R. Gr. 1=6 L. R. P.C. Gr. 1=  
27 Bom. L. R. 148=6 Pat. L. T. 169=  
52 I. A. 40=52 Cal. 197=23 A.L.J. 314=  
41 C.L.J. 240=26 Cr.L.J. 431=26 P.L.R. 50=  
A.I.R. 1925 P. C. 1=48 M.L.J. 543 (P.C.).

—In a criminal case the Court's only power to grant leave to appeal to the Privy Council is under Cl. 41. There is no help if any case does not come under its strict application. 18 O. L. J. 119; 85 Cal. 243; 18 C.L.J. 121 and 7 Bom. H. C. R. 77, *Foll. (Mookerjee and Chatterjee, J.J.)*. **PHILLIP E. BILLINGHURST v. EMPEROR.**

82 I. C. 763=  
38 C. L. J. 406=25 Cr. L.J. 1371=  
A. I. R. 1924 Cal. 338.

## —Cl. 41—Bail.

—High Court has jurisdiction to grant bail, especially when the High Court has declared the case to be a fit one for appeal, or when the Privy Council has granted special leave. (*Sanderson, C.J. and Richardson, J.*). **TULSI TELINI v. EMPEROR.**

72 I. C. 362=24 Cr. L. J. 362=  
50 Cal. 585=A.I.R. 1924 Cal. 64.

## —Lahore (1919).

## —Original criminal jurisdiction.

—According to the Letters Patent the Original criminal jurisdiction of the Lahore High Court is

# LETTERS PATENT—(Madras), (1865), Cl. 10—Misconduct.

co-extensive with that of the Chief Court of the Punjab, which had no original criminal jurisdiction to try any person except the European British subjects. (*Jai Lal, J.*). **FAQIR SINGH v. ALI MOHAMMAD.**

115 I.C. 428=30 Cr. L. J. 460=  
12 A.I. Cr. R. 413=A.I.R. 1929 Lah. 217.

—Unless expressly prohibited by the Letters Patent to take cognizance of a certain offence the High Courts constituted after 1915 have the power to take cognizance of all offences which have been made cognizable by such Courts by the statutory laws in force in India. (*Jai Lal, J.*). **FAQIR SINGH v. ALI MOHAMMAD.**

115 I.C. 428=30 Cr. L. J. 460=  
12 A.I. Cr. R. 413=A.I.R. 1929 Lah. 217.

## —Removal or suspension from practice.

—A conviction under S. 17, sub-S. (1) of the Criminal Law Amendment Act (XIV of 1908) constitutes a reasonable cause within the meaning of Cl. 8, Letters Patent, Lahore, for the removal or suspension from practice of an Advocate or Vakil. Strictly speaking, proceedings under Cl. 8 are neither civil suits nor criminal prosecutions. The High Court exercise a special jurisdiction over legal practitioners in pursuance of the authority conferred upon it by the Letters Patent or an Act of the Legislature and has inherent power to apply such rules of procedure as may ensure a fair trial of the matter requiring adjudication. What is essential is that the parties concerned should have a proper notice and a reasonable opportunity to be heard. The propriety in law or in fact of the conviction cannot be questioned in the proceedings taken by the Court in the exercise of its disciplinary jurisdiction. 22 A. 49 (P.C.), *Ref. Advocate or Vakil* may be struck off the rolls for an offence which has no relation whatsoever to his character as a legal practitioner but the mere circumstance that he has been convicted of an offence does not make it imperative on the Court to remove or suspend him from practice. It is not necessary that the act of a legal practitioner which is relied upon for striking his name off the roll should have subjected him to anything like a general infamy or imputation of bad character. 44 Bom. 418 (F.B.); 49 Cal. 732 and 49 Cal. 845 (P. C.), *Rel. on. (Shadi Lal, C.J., Smith and Abdul Raoof, J.J.)*. *In the matter of* **ABDUL RASHID.**

76 I.C. 385=4 Lah. 271=  
25 Cr. L.J. 161=6 L.L.J. 491=  
A. I. R. 1924 Lah. 123 (S.B.).

## —Madras (1865).

## —Cl. 10—Misconduct.

—*Advocate convicted for perjury in England—Disbarment by Benchers of his Inn—Subsequent good conduct—Admission as Advocate in India—High Court is not bound by the decision of the Benchers—Propriety of conviction cannot be gone into.*

In an inquiry into the conduct of a practitioner under the Letters Patent, the propriety of a conviction and sentence could not be questioned, though the facts of the case might be considered, to see whether the culpability of the individual concerned was such as to disqualify him for his profession.

It is possible that, where the criminal law of the two countries differs in respect of the matters

**LETTERS PATENT—(Madras), (1865), Cl. 26—  
Altering sentence.**

charged, or in a case where it is alleged that there had not been a fair trial in some foreign country, the above rule might be held not to be applicable.

The Madras High Court is not bound to follow the decision of the Benchers of the Inns of Courts. It has, by the Letters Patent, a discretion vested in it, and it must in every case exercise that discretion itself, giving, of course, due weight to the views of the Benchers of Lincoln's Inn in England.

An order for disbarment is not necessarily final or conclusive for all time and it is open to the Court to re-admit a practitioner, after the lapse of time, if it is satisfied that the practitioner has in the interval conducted himself honourably and the sentence of exclusion has had the salutary effect of awakening in the delinquent a higher sense of honour and duty, so that he may be safely entrusted with the affairs of his clients and admitted to an honourable profession, without its suffering degradation; and in such a case, it is open to the proper tribunal to restore a man to the rolls, whether he be a Barrister, Advocate or Attorney. 6 B. & S. 703 and 12 C.L.J. 525, *Ref.*

No different standard of conduct or character is required from a barrister of Indian race to a barrister of English race and also no different standard of honour should be held to exist for a practitioner at the English Bar of whatever race, and the Practitioners of this Court, whether Barristers or Vakils.

In the matter of disciplinary jurisdiction, the English Court cannot be put on the same footing as a foreign Court. (*Schwabe, C. J., Coutts-Trotter and Krishnan, JJ.*). In the matter of AN ADVOCATE.

76 I.C. 873=46 Mad. 903=18 M.L.W. 823=

33 M.L.T. 110=25 Gr.L.J. 281=

A.I.R. 1924 Mad. 265=45 M.L.J. 639 (F.B.).

**—Cl. 26—Altering sentence.**

—The expression "alter the sentence" in Cl. 26 of the Letters Patent includes setting it aside. The High Court can on review not merely reduce the sentence but has the power to set aside the conviction. (*Wallace, Madhavan Nair, Jackson, Ananthakrishna Aiyar and Eddy, JJ.*). C. K. N. SUNDARESA IYER v. EMPEROR. 1930 M.W.N. 249.

**—Cl. 26—"Decision."**

—Held, (*Eddy, J. dissenting*) that the word 'decision' in Cl. 26 includes every mental conclusion on which the judgment or charge is based and not merely matters actually stated at the Bar for the direct decision of the Court. It thus includes directions, misdirections or non-directions, to a jury. (*Wallace, Madhavan Nair, Jackson, Ananthakrishna Aiyar and Eddy, JJ.*). C. K. N. SUNDARESA IYER v. EMPEROR. 1930 M.W.N. 249.

**—Cl. 26—"Point of law."**

—The expression "point of law" in Cl. 26 of the Letters Patent means the same thing as matter of law in S. 418 of the C. P. Code. It includes such misdirection or non-

**LETTERS PATENT—(Rangoon), (1922), Cl. 28—  
Transfer of Criminal cases.**

direction as would permit an appeal against the verdict of a jury. And misdirection includes not only an error in laying down the law by which the jury are to be guided but also a defect in summing up the evidence or in not summing it up or in summing it up erroneously.

Per *Eddy, J. dissenting*.—"A point of law" referred to in Cl. 26 means a point of law submitted to and decided by the trial Judge or any direction as to the law given by him in the course of his summing up to the jury. (*Wallace, Madhavan Nair, Jackson, Ananthakrishna Aiyar and Eddy, JJ.*). C. K. N. SUNDARESA IYER v. EMPEROR.

1930 M.W.N. 249.

**—Patna (1916).**

**—Subordinate Courts.**

—The Letters Patent must be read subject to the special legislation in the form the Regulation V of 1893 which declares that the Courts other than the Sessions Court are not subordinate to the Patna High Court as their High Court. (*Adami and Macpherson, JJ.*). SAILENDRA NATH v. EMPEROR. 108 I.C. 419=7 Pat. 337=9 P.L.T. 468=29 Gr.L.J. 427=A.I.R. 1928 Pat. 241.

**—Cl. 28—Contempt proceedings.**

—The rule for contempt proceedings need not be issued by the Court as an entire body and the whole of its judiciary need not be consulted. A single Judge or Division Bench has jurisdiction to issue the rule. (*Courtney-Terrell, C.J., Adami, Ross, Kulwant Sahay and Fazl Ali, JJ.*). EMPEROR v. MURLI MANOHAR. 117 I.C. 180=

30 Gr.L.J. 741=A.I.R. 1929 Pat. 72 (F.B.).

**—Rangoon (1922).**

**—Cl. 8—Acts not in professional capacity.**

—When an officer committed what might have been adequately corrected by the ordinary punishment for an offence of that nature and the offence was not one which subjected the individual who committed it to anything like general infamy or any imputation of bad character so as to render his remaining in the Court as a practitioner improper.

Held, it was not competent to the Court to inflict upon him a professional punishment for an act which was not done professionally and which act *per se* did not render him improper to remain as a practitioner of the Court.

Although High Court has a very wide discretion in the exercise of its disciplinary powers, nevertheless, in a case where the acts charged were not committed in a professional capacity, and where they involve a criminal offence, it would not ordinarily be convenient for the High Court to exercise those powers until the charges have been investigated in a Criminal Court. (*Rutledge, Heald and May Oung, JJ.*). In the matter of MAUNG BA KYIN. 76 I.C. 827=2 Bur. L.J. 210=25 Gr. L.J. 267=A.I.R. 1924 Rang. 113 (S.B.).

**—Cl. 28—Transfer of Criminal cases.**

—The High Court's power of revision are in express terms limited to those conferred by

# LETTERS PATENT—(Rangoon), (1922) Cl. 36— Transfer of Criminal case.

certain sections mentioned in S. 439. Section 526 is not one of these. The Letters Patent does not confer any power of transfer over and above that conferred by S. 526 since Cl. 28 is qualified by Cl. 36. (*May Oung, J.*). ASHU v. MG. PO KHAN. 77 I.C. 885=1 Rang. 632=2 Bur. L.J. 236=25 Cr. L.J. 485=A.I.R. 1924 Rang. 100.

## —Cl. 36—Transfer of Criminal case.

—The High Court's powers of revision are in express terms limited to those conferred by certain sections mentioned in S. 439. Section 526 is not one of these. The Letters Patent does not confer any power of transfer over and above that conferred by S. 526 since Cl. 28 is qualified by Cl. 36. (*May Oung, J.*). ASHU v. MG. PO KHAN. 77 I.C. 885=1 Rang. 632=2 Bur. L.J. 236=25 Cr. L.J. 485=A.I.R. 1924 Rang. 100.

## LIBEL.

See (1) TORT—DEFAMATION.

(2) PENAL CODE, SS. 499, 500.

# LIMITATION ACT (IX of 1908) (As amended by XXVI of 1920, X of 1922, XXX of 1925, I & IX of 1927 and I of 1929, etc.

## —S. 5—Criminal Appeal.

—Time cannot be extended.

In an application of a criminal nature it would not be proper to extend the time given for the appeal even if the delay arises in consequence of any genuine mistake which could have been averted by a proper enquiry. (*Kennedy, J.C. and Tyabji, A.J.C.*). GIRIMAL v. SHEWARAM. 95 I.C. 316=20 S.L.R. 90=27 Cr. L.J. 780=A.I.R. 1928 Sind 215.

## —S. 5—Inability without fault.

—Delay caused by the appellant not having knowledge of complaint under S. 476, Cr. P. Code, can be excused. (*Fawcett and Mirza, J.J.*). DASA DEVJI v. EMPEROR. 108 I.C. 26=52 Bom. 164=30 Bom. L.R. 76=29 Cr. L.J. 315=9 A.I. Cr. R. 435=A.I.R. 1928 Bom. 64.

## —S. 5—Merits.

—Where the order against which the application for revision is preferred is illegal, the delay which is excusable to a certain extent should not operate as a bar. (*Broadway, J.*). DWARKA DAS v. THE CROWN. 86 I.C. 431=26 Cr. L.J. 799=6 L.L.J. 160=A.I.R. 1924 Lah. 489.

## —S. 5—Mistake in calculation.

—Differing opinions of two Judges about limitations—Appellant probably misled—Time should be extended.

Where there was a case decided by two Judges of the High Court, where one was of opinion that an appeal under S. 476-B, Cr. P. Code, must be treated as an ordinary appeal under the Cr. P. Code, but the other was of opinion that such an

# LIMITATION ACT (1908), S. 12—Judgment other than appealed from.

appeal must be treated as a miscellaneous civil appeal and regulated by O. 41, C. P. Code,

Held, that the difference of opinion between two Judges may afford a reasonable ground for a party to suppose that such an appeal was a civil appeal and he had 90 days' time from the date of the order to prefer on appeal and in such a case extension of time should be granted. (*Suhrawardy and Cammiade, J.J.*). RAJANI KANTA KAYAL v. BISTO MONI DAS. 104 I. C. 456=46 C.L.J. 40=8 A. I. Cr. R. 433=28 Cr. L.J. 840=A.I.R. 1927 Cal. 718.

## —S. 5—Mistake of pleader—Honest mistake.

—The delay in filing an appeal caused by honest mistake of the party's Vakil in calculating the time is sufficient cause for excusing the delay under S. 5. A. I. R. 1925 Mad. 462, *Foll.*; 5 N.L.R. 25, *Dist.* (*Prideaux, A.J.C.*). BABIN v. EMPEROR. 96 I.C. 857=7 A.I. Cr. R. 28=9 N.L.J. 180=27 Cr. L.J. 1001=A.I.R. 1926 Nag. 503.

## —S. 5—Procedure.

—Criminal appeals.

A criminal appeal filed after the expiry of the prescribed period of limitation may be admitted if the Court is satisfied that the appellant had sufficient reason for not preferring the appeal within the period of limitation. But if the appellate Court is not satisfied that the appellant had sufficient reason for the delay, it cannot excuse the delay. If in such a case, the appellate Court desires to help the appellant the proper procedure would be to move the High Court to exercise its powers of revision.

In this case where the lower Appellate Court had extended the period of limitation without being satisfied as to the sufficiency of the grounds for doing so and had admitted the appeal, the High Court in revision refused to interfere as there was no gross miscarriage of Justice occasioned by the lower Court's action. 1 Lah. 508 and A.I.R. 1923 Lah. 662, *Ref.* (*Wallace and Madhavan Nair, J.J.*). JANAKIRAMAYYA v. N. BRAHMAYYA. 88 I.C. 278=26 Cr. L.J. 1110=A.I.R. 1925 Mad. 709=43 M.L.J. 457.

## —S. 5—Proceedings in wrong Court.

—Delay in filing a criminal appeal should be excused under S. 5 of the Limitation Act where it was erroneously filed in another Court since there is no question of a litigant losing a "valuable right." (*Scott-Smith, J.*). SURTA SINGH v. EMPEROR. 59 I.C. 556=22 Cr. L.J. 124=1 Lah. 508.

## —S. 12—Judgment other than appealed from.

—Where an application under S. 476 of the Cr. P. Code was treated as a separate miscellaneous civil case, and given a separate number and was treated quite distinct from the civil suit which gave rise to it and when the Court passed its order according to the approved practice, a formal order was drawn up on the printed form provided for such formal order in miscellaneous cases, embodying the result of the judgment passed in the case,

**LIMITATION ACT (1908), — Art. 154—Applicability.**

*Held*, that time taken for obtaining a copy of the formal order should be deducted under the provisions of S. 12 of the Limitation Act 1920 P. H. C. C. 75, *Foll.* (*Ryves, J.*). DAULAT RAM v. KANHAIYA LAL. 87 I.C. 417=47 All. 452=23 A.L.J. 297=26 Cr.L.J. 961=6 L.R.A. Cr. 109=A.I.R. 1925 All. 419.

**—Art. 154—Applicability.**

—*Petition to Court to make a complaint under Ss. 476-A and 476-B—Appeal against order on—Article 154 applies.*

The scheme of the Ss. 476-A and 476-B is that if the Subordinate Court has neither made a complaint under S. 476 nor rejected an application for the making of a complaint then the Superior Court may take action and make a complaint. But where the Subordinate Court has rejected the application for the making of such complaint, then the procedure, which is contemplated by the Code is by way of an appeal to the Superior Court. Appeal Judge should consider whether the appeal is filed within the time specified in Art. 154. (*Sanderson, C.J. and Panton, J.*). CHUNDER KUMAR SEN v. MATHURIYA DEBYA. 90 I.C. 529=52 Cal. 1009=26 Cr. L. J. 1569=42 C. L. J. 120=29 C. W. N. 1035=A.I.R. 1925 Cal. 1228.

—An application to a higher Court under S. 195 (6) of the Cr. P. Code though akin to an appeal and though treated as an appeal is not an appeal for the purposes of Limitation Act and an application to the appellate Court cannot be time-barred under the Limitation Act. (*Wilberforce, J.*). PUNNA LAL v. JAMITU MAL. 60 I.C. 33=1 Lah. 602=22 Cr. L. J. 177.

**—Art. 154—Extension of time.**

—The delay caused by the fact that an appellant's not knowing that a complaint under S. 476, Cr. P. Code, has been filed till after the thirty days prescribed by Art. 154 have expired, can be excused by the appellate Court under S. 5. (*Fawcett and Mirza, JJ.*). DAGA DEVJI PATIL v. EMPEROR. 108 I.C. 26=30 Bom.L.R. 76=29 Cr. L. J. 315=9 A. I. Cr. R. 435=A.I.R. 1928 Bom. 64.

**—Art. 154—Starting point.**

—Limitation for an appeal under S. 476-B, Cr.P.Code, begins to run for the purposes of Art. 154, Limitation Act from the date when the finding under S. 476, Cr. P. Code, is completed or supplemented by an actual complaint. A.I.R. 1927 Lah. 54, *Foll.* (*Fawcett and Mirza, JJ.*). DAGA DEVJI PATIL v. EMPEROR. 108 I.C. 26=30 Bom. L.R. 76=52 Bom. 164=29 Cr.L.J. 315=9 A.I.Cr.R. 435=A.I.R. 1928 Bom. 64.

**—Art. 155—Application for determining status of convict.**

—An appeal to the High Court in the words of S. 449 read with S. 443 is governed by Art. 155 which is not limited only to appeals to the High Court from the Sessions Courts in the mofussil, or from other Courts from which appeals to the High Court lie direct,

**LUNACY ACT (1912)—Part II—(Ss. 4 to 36)—Procedure.**

An application presented after 60 days from date of conviction for the determination of the status of the prisoner under S. 449 read with S. 443 is out of time. (*C. C. Ghose and Duval, JJ.*). TOMAS v. EMPEROR. 98 I.C. 248=53 Cal. 746=27 Cr.L.J. 1304=A.I.R. 1926 Cal. 1203.

**—Art. 155—Leave to appeal to Privy Council.**

—Cr. P. Code, S. 449 (1) (c)—Application for leave to appeal comes within Art. 155. (*Sanderson, C.J. and Panton, J.*). GALLAGHER v. EMPEROR. 104 I.C. 657=54 Cal. 52=28 Cr.L.J. 481=A.I.R. 1927 Cal. 307.

**—Art. 155—Order under S. 476-B, Cr. P. Code.**

—Cr. P. Code, S. 476-B—Appeal under, to High Court—Limitation Act, Art. 155, applies. A.I.R. 1925 Cal. 1228, *Appl.* (*Suhrawardy and Cammiade, JJ.*). RAJANI KANT KAYAL v. BISTOO MONI DASSI. 104 I. C. 456=46 C.L.J. 40=8 A. I. Cr. R. 433=28 Cr. L. J. 840=A.I.R. 1927 Cal. 718.

—The limitation for an appeal under S. 476 B against an order refusing to file a complaint under S. 195 is the one provided by Art. 155 and not Art. 156. (*Daniels, J.*). SHEO PRASAD v. SHEO BANS RAI. 93 I.C. 831=24 A.L.J. 368=7 L.R.A.Cr. 80=A.I.R. 1926 All. 211.

**—Art. 179—Criminal case.**

—*Quaere*: Seeing that Art. 179 mentioned only civil cases, is the general rule of limitation of three years contained in Art. 181 to hold good in criminal cases? (*Mookerjee and Chatterjee, JJ.*). PHILLIP E. BILLINGHURST v. EMPEROR. 82 I.C. 763=38 C.L.J. 406=25 Cr. L. J. 1371=A.I.R. 1924 Cal. 338.

**LUNACY ACT (IV of 1912).****—Part. II—(Ss. 4 to 36)—Procedure.**

—*Orders by District Magistrate—Executive and judicial—Executive orders not subject to revision by High Court.*

The Act deals specifically and under separate headings with two branches of proceedings executive and judicial. Any person considering himself aggrieved by an executive order passed by the Dt. Magistrate may apply under Part III for a regular inquisition conducted by a judicial Officer. The result of such inquisition is conclusive and overrides and overrules any order which may have been passed summarily by the executive authority. Under this Act the orders passed by the District Magistrate under Part II are purely executive and cannot form the subject-matter of a revision application to the High Court. (*Abdul Raoof and Harrison, JJ.*). DONAL v. THE CROWN. 73 I. C. 696=4 Lah. 1=24 Cr. L. J. 684=A.I.R. 1924 Lah. 55.



**MADRAS ABKARI ACT (I of 1886).****—Complaint—Procedure.**

For complaints under the Abkari Act or under the Opium Act (I of 1878), the ordinary Criminal Procedure Code, is not applicable, but the procedure contained in those Acts is to be strictly followed; and as complaints by private persons are not provided for by the procedure in those Acts, they must be treated as not properly instituted: A. I. R. 1923 Mad. 339 and 25 M. L. J. 577, Rel. on. (*Odgers, J.*) LAZAR FERNANDO v. AMIRTHAM FERNANDO. 119 I. C. 174 = 2 M. Cr. C. 168 = 52 Mad. 613 = 30 M. L. W. 112 = 1929 M. W. N. 507 = 30 Cr. L. J. 1011 = 1929 Cr. C. 78 = A. I. R. 1929 Mad. 604 = 57 M. L. J. 214.

**—Abkari Act and Opium Act.**

There is no essential difference between the procedure under the Abkari Act and the Opium Act. (*Odgers, J.*) L. FERNANDO v. A. FERNANDO. 119 I. C. 174 = 52 Mad. 613 = 2 M. Cr. C. 168 = 30 M. L. W. 112 = 1929 M. W. N. 507 = 30 Cr. L. J. 1011 = 1929 Cr. C. 78 = A. I. R. 1929 Mad. 604 = 57 M. L. J. 214.

**—Offences both under Abkari Act and Penal Code.**

Where the accused has committed in addition to an offence under the Abkari Act a non-cognizable offence, under the Penal Code, the Police Officer would probably be correct in taking up the more serious offence as the principal offence, that is, the one in which he could arrest without a warrant, namely, S. 55 of the Abkari Act, and in following the provisions of that Act, so far as it can be done, rather than of the Criminal Procedure Code and, if he can follow the provisions of both by ensuring that the accused should appear before the Magistrate it is obviously his duty to do so. The same procedure would be the proper procedure for a Police Officer to adopt when he is confronted with an offender whose offences are both under S. 55 of the Abkari Act and a cognizable offence under the Indian Penal Code. (*Wallace and Madhavan Nair, JJ.*) Y. VENKANA, *In re.* 90 I. C. 436 = 22 M. L. W. 98 = 1925 M. W. N. 396 = 26 Cr. L. J. 1556 = A. I. R. 1925 Mad. 856 = 48 M. L. J. 605.

**—Possession.****—Meaning of.**

In the absence of any indication to the contrary in the Abkari Act, the word "possession" has its ordinary meaning. (*Wallace, J.*) JAYACHANDRA CHETTY *In re.* 100 I. C. 355 = 50 Mad. 745 = 26 M. L. W. 277 = 38 M. L. T. 116 = 1927 M. W. N. 158 = 28 Cr. L. J. 275 = A. I. R. 1927 Mad. 413 = 52 M. L. J. 226.

**—Seizure or detention of liquor—By whom.**

Private individual has no authority to seize or detain liquor which he believes to be liable for confiscation under the Act. Only Officers of a certain rank of the Revenue, Police and Abkari Departments are empowered to enter places where liquor is illicitly sold or stored. (*Spencer, J.*) NARAYANA, *In re.* 82 I. C. 149 = 20 M. L. W. 239 = 25 Cr. L. J. 1221 = A. I. R. 1924 Mad. 816.

**—S. 15—Partnership.**

It is not illegal for persons to enter into a partnership for the purpose of carrying on a toddy shop business, for which they hope at a future date to obtain a license. 24 Mad. 401; 26 Mad. 430; and 43 Mad. 141; Dist. (*Reilly, J.*) NARAYANA MURTI v. MALLAPUDI SUBRAMANYAM. 114 I. C. 655 = A. I. R. 1928 Mad. 1197.

**—S. 30—Arrest.**

Though an officer armed with his own report can arrest a person under S. 31 an officer armed with a

**MADRAS ABKARI ACT (1886).—S. 56—Scope of.** search warrant from the Collector under S. 30 is not authorized under that or any other section to arrest (*Jackson, J.*) PUBLIC PROSECUTOR v. MUNUSAMI MUDALI. A. I. R. 1930 Mad. 448.

**—S. 31—Procedure.**

An offender arrested under S. 31 may be bailed to appear before either a Magistrate or an Abkari Inspector, while one arrested under S. 34 can be sent only before an Abkari Officer. If the offender is sent under either section before an Abkari Officer, there is an enquiry under S. 40 (3) and the offender is sent under S. 50 with a report to the Magistrate for trial. But there is nothing in the Act to indicate what is the procedure to be followed when the offender is sent under S. 31 direct to a Magistrate. (*Wallace and Madhavan Nair, JJ.*) Y. VENKANA, *In re.* 90 I. C. 436 = 22 M. L. W. 98 = 1925 M. W. N. 396 = 26 Cr. L. J. 1556 = A. I. R. 1925 Mad. 856 = 48 M. L. J. 605.

**—S. 55—Breach under.**

A breach under S. 56 (b) is a breach distinct from those provided for in S. 55. Breaches under S. 56 are, from the fact that they do not entail liability to arrest, are of a less heinous kind than those under S. 55. Possession of an illicit quantity of arrack in breach of the license or permit or rule under the Act comes under S. 55 (a) and therefore does not come under S. 56 (b). (*Wallace, J.*) JAYACHANDRA CHETTY *In re.* 100 I. C. 355 = 50 Mad. 745 = 26 M. L. W. 277 = 38 M. L. T. 116 = 1927 M. W. N. 158 = 28 Cr. L. J. 275 = A. I. R. 1927 Mad. 413 = 52 M. L. J. 226.

**—S. 55—Procedure—Applicability of Cr. P. C.**

The Abkari Act is not self-contained in the matter of the procedure for the investigation of offences under S. 55. In such a case the procedure to be followed is laid down in S. 5 (2) of the Criminal Procedure Code to be under that Code. (*Wallace and Madhavan Nair, JJ.*) Y. VENKANA, *In re.* 90 I. C. 436 = 22 M. L. W. 98 = 1925 M. W. N. 396 = 26 Cr. L. J. 1556 = A. I. R. 1925 Mad. 856 = 48 M. L. J. 605.

**—S. 55—Sale—When complete.**

A sale is complete as soon as the price is paid or agreed to be paid for ascertained goods. It is not necessary for a completed sale that there should be an actual delivery of the thing sold. Therefore, taking the money and bringing the bottle of liquor out for the purpose of handing it over, constitutes offence under S. 55 (1) of the Abkari Act. (*Devadoss, J.*) PUBLIC PROSECUTOR v. RAMASUBBAYYA CHETTY. 106 I. C. 716 = 51 Mad. 335 = 1 M. Cr. C. 5 = 29 Cr. L. J. 124 = 27 M. L. W. 84 = A. I. R. 1928 Mad. 179 = 54 M. L. J. 712.

**—S. 55—Transporting—What amounts to.**

Ordering servant to carry arrack to another place amounts to transporting. (*Jackson, J.*) QUADRIAR BADSHA ROWTHER v. EMPEROR. 1927 M. W. N. 212 = 38 M. L. T. 138 = A. I. R. 1927 Mad. 470.

**—S. 56—Constructive offence—Punishment for.**

A constructive offence under S. 56 read with S. 64 is not punishable with imprisonment under the proviso to S. 64. (*Jackson, J.*) QUADRIAR BADSHA ROWTHER v. EMPEROR. 1927 M. W. N. 212 = 38 M. L. T. 138 = A. I. R. 1927 Mad. 470.

**—S. 56—Scope of.**

This section applies to breaches not provided for in other sections. (*Wallace, J.*) JAYACHANDRA CHETTY, *In re.* 100 I. C. 355 = 50 Mad. 745 = 26 M. L. W. 277 = 38 M. L. T. 116 = 1927 M. W. N. 158 = 28 Cr. L. J. 275 = A. I. R. 1927 Mad. 413 = 52 M. L. J. 226.

**MADRAS ABKARI ACT (1886), S. 56—Partnership.****—S. 56—Partnership.**

A partnership formed prior to taking license to trade in today is not illegal where there is no evidence that business was not begun before taking license. (*Anantakrishna Ayyar, J.*) *VAZHUNNI v. NATHAMUNI*. 122 I. C. 342 = A. I. R. 1930 Mad. 361.

**—S. 64—Transportation.**

Persons transporting intoxicating drugs to shop not covered by license are guilty under S. 64 where their action was not *bona fide*. (*Devadoss, J.*) *VENKAYYA v. EMPEROR*. 111 I. C. 849 = 23 M. L. W. 511 =

1928 M. W. N. 788 = 1 M. Cr. C. 293 = 29 Cr. L. J. 929 = A. I. R. 1928 Mad. 1130 = 55 M. L. J. 712.

**MADRAS CANALS AND PUBLIC FERRIES ACT (2 of 1890.)****—Construction.**

Madras Canals and Public Ferries Act gives the Government powers very seriously to restrict the liberty of people and these powers must be strictly construed. (*Reilly, J.*) *ABDUL WAHAB SAHEB v. EMPEROR*. 117 I. C. 728 = 28 M. L. W. 699 =

1 Mad. Cr. C. 269 = 30 Cr. L. J. 827 = A. I. R. 1929 Mad. 50 = 56 M. L. J. 277.

**—S. 8—Validity of notification.**

Government Notification declaring ferry extending over both banks of a river for twelve miles—Notification mentioning five places as limits of ferry—Such notification is not *ultra vires* and Government must be presumed to declare five different ferries and not to prevent up and down navigation. (*Reilly, J.*) *ABDUL WAHAB SAHEB v. EMPEROR*.

28 M. L. W. 699 = 1 Mad. Cr. C. 269 = 117 I. C. 728 = 30 Cr. L. J. 827 = A. I. R. 1929 Mad. 50 = 56 M. L. J. 277.

**MADRAS CITY MUNICIPAL ACT (4 of 1919)****—S. 65—Offence under.****—Giving false name and applying for slip.**

Where a person, appears before the identifying officer, and giving a false name applies for a slip to be used for applying for the ballot paper, but does not enter polling officer's room, only makes preparation to apply for ballot paper is not guilty under S. 65 (2). (*Devadoss, J.*) *SYED HUSSAIN v. MUNIRATHNAM CHETTY*. 115 I. C. 813 = 1929 M. W. N. 505 =

30 Cr. L. J. 528 = 12 A. I. Cr. R. 336 = A. I. R. 1929 Mad. 489.

**—S. 233—Essentials for offence.**

The essence of the offence under S. 233 is the act of constructing or reconstructing and not merely that of maintaining an already constructed building in existence. (*Curguenven, J.*) *M. A. RAZAK v. KING EMPEROR*. 50 Mad. 760 = 25 M. L. W. 613 =

38 M. L. T. 336 = 102 I. C. 218 = 28 Cr. L. J. 522 = 8 A. I. Cr. R. 174 = A. I. R. 1927 Mad. 501 = 52 M. L. J. 620.

**—S. 288—Erection and use.**

**—License fee—Machinery dangerous to the public or a nuisance—Onus of proof—Appeal to Standing Committee.**

A license fee should be paid both for erection of machinery as well as for its use, under S. 288. For erection one has to pay only once while for use every year. When machinery is removed from one place to another and set up at the latter place erection fee must be paid anew. Under S. 288 license is necessary only for machines causing public nuisance or danger. The onus of proving the existence of danger or nuisance lies on the prosecution. An accused's failure to appeal to the Standing Committee against the imposition of the licence fee does not bar him from contending that his case does not fall under the liability imposed by

**MADRAS DISTRICT MUNICIPALITIES ACT (1884) S. 214—Applicability.**

S. 288. (*Krishnan, J.*) *A. E. SMITH, In re*. 81 I. C. 72 = 18 M. L. W. 879 = 33 M. L. T. 185 = 25 Cr. L. J. 584 = A. I. R. 1924 Mad. 389 = 45 M. L. J. 731.

**—S. 288—Exemptions.****—Licenses granted under special Acts.**

By virtue of the special Acts under which the Madras Electric Tramways Ltd. and the Madras Electric Supply Corporation Ltd. have been granted licenses by the Government, they are exempt from the operation of Ss. 288 and 289 of the City Municipal Act empowering the Municipality to issue licenses, the said sections being inconsistent with the powers granted by the Government under the Special Act: *City and Southern London Railway Company v. London County Council*, (1891) 2 Q. B. 513, *Foll. (Waller, J.) CORPORATION OF MADRAS v. MADRAS ELECTRIC TRAMWAYS LTD.* 101 I. C. 396 =

A. I. R. 1927 Mad. 522 = 52 M. L. J. 474.

**—S. 288—Permission—When necessary.**

**—Whether machinery is or is not nuisance is immaterial—Permission has to be obtained.**

The question whether the machinery is or is not a nuisance is one for the Commissioner alone, and if he finds that it is, a nuisance he may refuse permission altogether. Whether it is a nuisance or not is immaterial, permission has to be obtained in either case and may be withheld in the former case. (*Wallace and Madhavan Nair, JJ.*) *P. NATESA MUDALIAR In re*. 99 I. C. 324 = 50 Mad. 733 = 1927 M. W. N. 6 = 28 Cr. L. J. 116 = 38 M. L. T. 166 = 7 A. I. Cr. R. 263 = 26 M. L. W. 890 = A. I. R. 1927 Mad. 156 = 51 M. L. J. 704.

**MADRAS CITY POLICE ACT (3 of 1888.)****—S. 76—Breach by servant—Liability of Master.**

The master is liable for breach by his servant of the conditions of a license issued to him. (*Devadoss, J.*) *CUNNIAH & Co. v. EMPEROR*. 108 I. C. 636 =

51 Mad. 341 = 29 Cr. L. J. 431 = 10 A. I. Cr. R. 93 = 27 M. L. W. 87 = A. I. R. 1928 Mad. 473 = 54 M. L. J. 315.

**MADRAS CRIMINAL RULES OF PRACTICE.****R. 161—Presentation of appeal.****—Memo. of appearance—Vakalat if necessary.**

A vakalat need not be filed in a Criminal Appeal for a proper presentation. A memo. of appearance is sufficient. (*Wallace, J.*) *MANIKONDA LINGAYYA v. EMPEROR*. 75 I. C. 985 = 25 Cr. L. J. 73 =

1924 M. W. N. 51 = 33 M. L. T. 224 = 18 M. L. W. 960 = A. I. R. 1924 Mad. 192 = 45 M. L. J. 683.

**—R. 238—Joinder of Charges.****—Murder and Robbery.**

It is irregular for a Sessions Judge to try charges of robbery and murder together, the first with a jury and the second with jurors sitting as assessors. (*Devadoss and Waller, JJ.*) *MUNIAN, In re* 98 I. C. 488 = 27 Cr. L. J. 1368 = 7 A. I. Cr. R. 450 = A. I. R. 1927 Mad. 243.

**MADRAS DISTRICT MUNICIPALITIES ACT: (4 of 1884.)****—S. 32—Delegation of Powers.**

Where the chairman authorises a person under S. 32 even to lodge a complaint, he need not be specially authorised under S. 280 to complain in respect of offence under the Act. (*Abdur Rahim and Ayling, JJ.*) *KRISHNASAMI NAIDU, In re*. 60 I. C. 1003 =

(1920) M. W. N. 648 = 22 Cr. L. J. 315 = 12 L. W. 427.

**—S. 214—Applicability.****—Wrong heading to section—Effect of.**

Though S. 214, Act IV of 1884, is to be found under a portion of the Act, headed as "Drains," still as the section expressly deals with private latrines and

**MAD. DIST. MUN. ACT, (1920)—Govt. Sanction.** privies, the presence of that heading cannot affect the application of the section to any case to which it otherwise might apply. (*Curgenven, J.*) **MASULIPATAM MUNICIPALITY v. LAKSHMAMMA.**

100 I. C. 645=38 M. L. T. 334=25 M. L. W. 385=  
1927 M. W. N. 726=A. I. R. 1927 Mad. 1125=  
52 M. L. J. 335.

**MADRAS DISTRICT MUNICIPALITIES ACT**  
(5 of 1920.)

—**Govt. Sanction.**

Criminal P. C., S. 196—Offences under Madras Municipalities Act though punishable also under Ch. 9-A, Penal Code, do not require Government sanction. A. I. R. 1924 Mad. 487. Foll. (*Madhavan Nair and Reilly, JJ.*) **NUNE PANAKALU v. R. SUBBA RAO.**

113 I. C. 625=1928 M. W. N. 801=1 M. Cr. C. 328=  
52 Mad. 695=30 M. L. W. 624=11 A. I. Cr. R. 556=  
30 Cr. L. J. 191=

A. I. R. 1928 Mad. 1158=57 M. L. J. 331.

—**S. 3—Reconstruction.**

—*What constitutes.*

In cases where re-construction is partial only the re-erection to constitute "reconstruction" should be done after more than one half of the cubical contents of the building have been taken down or burnt down and it is of no consequence, whether so many walls were rebuilt and such material alterations made that it can be reasonably said that there was a reconstruction of the house. (*Curgenven, J.*) **VENKATA SIVAYYA v. EMPEROR.**

100 I. C. 375=25 M. L. W. 475=  
38 M. L. T. 118=28 Cr. L. J. 295=  
7 A. I. Cr. R. 446=A. I. R. 1927 Mad. 442.

—**S. 52—Municipal Officer.**

—*Chairman of Municipality if a Municipal Officer within S. 52 (2).*

The Chairman of a Municipality is not a Municipal officer within the meaning of S. 52 (2) and cannot be proceeded against under Ss. 52 (2) 56 and 57 as these sections do not apply to him: A. I. R. 1925 Mad. 877, Foll. (*Madhavan Nair and Reilly, JJ.*) **NUNE PANAKALU v. SUBBA RAO.** 113 I. C. 625=30 Cr. L. J. 191=11 A. I. Cr. R. 556=52 Mad. 695=30 M. L. W. 624=1928 M. W. N. 801=A. I. R. 1928 Mad. 1158=

—**S. 54—Offence, what is.** 57 M. L. J. 331.

It is not an offence to say of a candidate that he had failed in getting elected in his own place and came to another place expecting to be elected. (*Venkatashubba Rao, J.*) **SIVAPATHA MUDALIAR v. ABDUL RAZAK.**

81 I. C. 599=1924 M. W. N. 490=  
25 Cr. L. J. 951=A. I. R. 1924 Mad. 815=47 M. L. J. 199.

—**S. 54—Sanction for prosecution.**

—*Chairman committing offences not in his official capacity.*

Although the Chairman of a Municipality is a public servant, if the offences alleged against him were not committed by him in the discharge of his official duties no sanction of the Government under S. 197 (1) is necessary for prosecuting him: A. I. R. 1927 Mad. 566, Foll. (*Madhavan Nair and Reilly, JJ.*) **NUNE PANAKALU v. SUBBA RAO.** 113 I. C. 625=

52 Mad. 695=30 M. L. W. 624=11 A. I. Cr. R. 556=  
30 Cr. L. J. 191=1928 M. W. N. 801=  
A. I. R. 1928 Mad. 1158=57 M. L. J. 331.

—**Cr. P. C., S. 197.**

Chairman of Municipality threatening voter with injury if he did not vote for a particular candidate.

No sanction is necessary for the prosecution of a President of the Municipal Council charged with an offence of threatening a voter with injury to his property with intent to induce such voter to vote for any candidate or to abstain from voting. (*Jackson, J.*) **RAJA RAMA T. RAMASWAMY.** 102 I. C. 347=

**MAD. DIST. MUN. ACT, (1920), S. 180—Encroachment.**

50 Mad. 754=38 M. L. T. 338=25 M. L. W. 608=  
1927 M. W. N. 423=28 Cr. L. J. 539=

8 A. I. Cr. R. 170=A. I. R. 1927 Mad. 566=

—**S. 55—Sanction for Prosecution.** 52 M. L. J. 647. Abatement of an election offence, though forming an offence under S. 171 (a), Indian Penal Code, can be tried without sanction under S. 196, Criminal Procedure Code being obtained. (*Odgers and Wallace, JJ.*) **SESHA AYYAR v. VENKATASUBBA CHETTY.**

77 I. C. 730=19 M. L. W. 201=  
33 M. L. T. 263=1924 M. W. N. 268=  
25 Cr. L. J. 442=A. I. R. 1924 Mad. 487.

—**S. 58—Sanction to Prosecute.**

No sanction is necessary to prosecute a Tahsildar for an offence under S. 58 while acting as a polling officer. (*Madhavan Nair and Curgenven, JJ.*) **S. S. JAGANNADHASWAMI v. T. MANIKYAM.** 106 I. C. 222=27 M. L. W. 81=28 Cr. L. J. 1038=9 A. I. Cr. R. 200=51 Mad. 259=A. I. R. 1928 Mad. 161=54 M. L. J. 570.

—**S. 59—Deposit—Refund of.**

—*Failure to establish complaint.*

Where the complainant fails but is not ordered to pay costs or compensation the deposit should be returned to him. (*Venkatashubba Rao, J.*) **SIVAPATHA MUDALIAR v. ABDUL RAZAK.** 81 I. C. 599=1924 M. W. N. 490=25 Cr. L. J. 951=A. I. R. 1924 Mad. 815=47 M. L. J. 199.

—**S. 59—Object.**

The provisions of S. 59 are introduced into the Act, partly with the object of preventing stories of election offences being invented and worked up at leisure by disappointed candidates or their partizans. Vague complaint should therefore be at once dismissed. (*Madhavan Nair and Reilly, JJ.*) **NUNE PANAKALU v. SUBBA RAO.** 113 I. C. 628=52 Mad. 695=

30 M. L. W. 624=11 A. I. Cr. R. 556=  
30 Cr. L. J. 191=1928 M. W. N. 801=1 M. Cr. C. 328=  
A. I. R. 1928 Mad. 1158=57 M. L. J. 331.

—**S. 180—Encroachment.**

—*Limitation for prosecution.*

Section 362 does not govern encroachment on street. Three months' rule of limitation applies to prosecution both under Sections 362 and 180. (*Krishnan, J.*) **JAGANNATHAM NAIDU v. RAMA RAO.**

85 I. C. 646=26 Cr. L. J. 550=20 M. L. W. 834=  
A. I. R. 1928 Mad. 186=47 M. L. J. 917.

—*Liability of owner or occupier.*

The only object of S. 182 (1) in saying that the chairman may require the owner or the occupier to remove encroachment is to enlarge the class of persons against whom notice may be sent and not to restrict it. Either the owner may be proceeded against or the occupier or both. There is nothing in the use of the word "or" in that section which restricts the municipality to choosing one out of the two persons proceeded against. (*Pandaram, J.*) **PUBLIC PROSECUTOR v. PANDARAM.** 31 M. L. W. 754=

A. I. R. 1930 Mad. 510=58 M. L. J. 622.

—*Title perfected before the Act, effect of.*

No distinction is drawn between projections which became lawful before the commencement of the Act and projections which became lawful after its commencement, and, therefore, a Municipal Council is empowered to remove an encroachment the title to which became perfected before the commencement of the Act. (*Phillips and Odgers, JJ.*) **RANGAYYA v. RAJAHMUNDRY MUNICIPALITY.** 109 I. C. 578=

51 Mad. 318=1928 M. W. N. 231=  
27 M. L. W. 447=A. I. R. 1928 Mad. 447=  
54 M. L. J. 584,

**MAD. DIST. MUN. ACT, (1920) —S. 180—Encroachment.**

—*Title acquired by prescription—Removal of—Object of section.*

The object of the section is not to empower the Municipality to compulsorily acquire a private property, but its scope is limited to authorising the Municipal body, in the public interest, to cause obstructions and encroachments to be removed. If any person has acquired a prescriptive title to an encroachment, still he must observe any order for its removal though he can claim compensation. (*Venkatasubba Rao, J.*) PUBLIC PROSECUTOR V. VARADARAJULU NAIDU. 81 I.C. 894=47 Mad. 716=20 M.L.W. 573=1924 M.W.N.880=25 Cr. L.J. 1070=A.I.R. 1925 Mad. 64=47 M.L.J. 470.

**—S. 195—Structures—Erection of.**

—*Necessity for permission.*

When a person wants to put up roof, verandah or pandal or wall of a building of grass, leaves or mats or other inflammable materials he has to obtain the permission of the Chairman, and if he does not obtain the permission of the Chairman, he is liable to penalty under S. 313. But after he has once obtained permission to put up a structure of the kind mentioned in S. 195, he is not bound to obtain a license from year to year : S. 321, Cl. 7, does not apply. (*Devadoss, J.*) CONJEEVARAM MUNICIPALITY V. NAGESWARA. 109 I.C. 361=81 Mad. 870=1 M. Cr. G. 209=29 Cr. L. J. 537=28 M.L.W. 144=1928 M. W. N. 291=A. I. R. 1928 Mad. 846=54 M. L. J. 642.

**—S. 219—Validity of removal order.**

Where a chairman ordered a tree to be removed as dangerous, on some evidence the Court cannot question the correctness of his opinion. (*Jackson, J.*) CHAIRMAN, MUNICIPAL COUNCIL, CHICKAKOLE V. SEETHARAMAYYA. 90 I. C. 152=21 M. Cr. G. 280=26 Cr. L. J. 1496=A. I. R. 1925 Mad. 584.

**—S. 249—Injunction against prosecution.**

The Municipal Council should not be restrained by an injunction from launching a prosecution against the owners of rice mills if they use their premises without the Chairman's license and except in accordance with the conditions it specifies : A.I.R. 1924 Cal. 334, Ref. (*MacKay, J.*) K. S. RAMA AYYAR V. MUNICIPAL COUNCIL, MADURA. 119 I.C. 465=1929 M.W.N. 172=A.I.R. 1929 Mad. 345.

**—S. 249—Interpretation.**

Municipalities are statutory bodies and they are created by a statute for the benefit of the public ; and it is not proper that any provision of law relating to them should be so construed as to work hardship or injustice. The provisions of Municipal law prescribing periods of limitation under it, should not be understood as if they were articles of the Limitation Act. (*Devadoss, J.*) MUNICIPAL COUNCIL, CHIDAMBARAM V. SUBRAMANIA IYER. 112 I. C. 210=28 M. L. W. 501=1928 M. W. N. 784=1 M. Cr. G. 315=29 Cr. L. J. 994=11 A. I. Cr. R. 263=A. I. R. 1928 Mad. 1157=55 M. L. J. 495.

**—Machinery.**

The machinery contemplated in the Act is machinery worked by power such as steam, water, or electrical power, and should be confined to such forms of machinery as may reasonably be held to be in the same category as combustibles and unwholesome or dangerous trades, but machinery worked by hand such as handlooms or sewing machines is excluded. (*Jackson, J.*) KRISHNAN V. MUNICIPAL PROSECUTOR, CHANNAMORE MUNICIPALITY. 92 I. C. 873=23 M.L.W. 448=27 Cr. L. J. 361=1926 M.W.N. 463=38 I.C. 114=28 A. I. R. 1926 Mad. 430.

—*Dangerous to human life, health or property.*

**MAD. DIST. MUN. ACT. (1920)—S. 249—Licensing power.**

The words "likely to be dangerous to human life, health or property" are to be taken as qualifying each one of the previous clauses in (q) and not merely the last. The object seems to be to bring under municipal control by the method of issuing licenses the keeping or using of things which are dangerous to human life, health or property. Ordinarily any large machinery is dangerous to human life, but one cannot presume it with reference to any particular machinery. The conversion of paddy into rice is an industrial purpose. (*Krishnan, J.*) RAMACHANDRA RAO, *In re* 75 I. C. 691=18 M.L.W. 618=33 M. L. T. 234=1923 M. W. N. 767=25 Cr. L. J. 3=A. I. R. 1924 Mad. 375=45 M. L. J. 555.

**—Selling grain wholesale.**

Sale in large quantities or selling wholesale means selling to retailers or jobbers. (*Oldfield and Krishnan, JJ.*) SESA PRABHU V. EMPEROR. 66 I. C. 429=1922 M. W. N. 79=31 M. L. T. 314=A. I. R. 1921 Mad. 713=42 M. L. J. 149.

**—S. 249—License if necessary.**

—*'Place' meaning of—Permission to construct obtained.*

The word "place" in S. 249 must be taken to include not only a factory, workshop, or work-place as mentioned in S. 250, Cl. 1 (a), but any other place used for the purposes mentioned in Sch. 5.

The places referred to in S. 250 are those of a more important character, and before any person can construct or establish any such factory, he is bound to get the permission of the council to do so. That permission is given solely for the construction, establishment or installation. S. 250 does not deal with user of such places but only with their inception. When the owner wishes to use them, and they are such as come within Sch. 5, Cl. (q), S. 249 becomes applicable and the owner must take out an annual license from the chairman of the council : A.I.R. 1926 Mad. 1131 Appr. 50 M. L. J. 384, A. I. R. 1926 Mad. 576=94 I. C. 411 ; Overruled. (*Phillips, Wallace and Jackson, JJ.*) MUTHU BALU CHETTIAR V. MADURA MUNICIPALITY. 105 I. C. 686=39 M. L. T. 548=1927 M.W.N. 835=28 Cr.L.J. 974=27 M.L.W. 239=9 A.I.Cr. R. 127=A.I.R. 1927 Mad. 961=

**—S. 249—Licensing power.**

53 M. L. J. 638.  
—S. 193—*Madras Local Boards Act—Effect of.*  
Sect. 249 of the District Municipalities Act cannot be held as repealed by reason of the fact that Local Boards have similar power of licensing under S. 193 of the later Madras Local Boards Act (14 of 1920). (*Jackson, J.*) PUBLIC PROSECUTOR V. RANGANAYAKULU CHETTIAR. 101 I. C. 667=50 Mad. 845=25 M. L. W. 768=28 Cr. L. J. 491=38 M. L. T. 373=8 A. I. Cr. R. 140=A. I. R. 1927 Mad. 602=52 M. L. J. 653.

**—Permission to construct obtained—License if necessary.**

The object and scope of Ss. 249 and 250 are entirely different. The former contemplates an annual payment for the use of the machinery, while the latter, a payment once for all for installing it, and therefore permission under S. 250 does not absolve the owner of a rice-mill and engine from taking out licenses under S. 249 ; A.I.R. 1926 Mad. 576, Diss. from. A.I.R. 1924 Mad. 389. Appr. (*Odgers and Madhavan Nair, JJ.*) MUTHU BALU CHETTI, *In re*. 98 I. C. 388=50 Mad. 467=26 M. L. W. 893=1927 M. W. N. 831=27 Cr. L. J. 1316=A. I. R. 1926 Mad. 1131=51 M. L. J. 490.

—The Act clearly intends to draw a distinction between what it describes as "industries" and "factories".

**MAD. DIST. MUN. ACT, (1920)—S. 249—License—Rice.**

ties," and S. 249 applies only to industries. It would be completely anomalous to hold that, after the Council had granted permission for the erection of a mechanical power factory, it is open to the Chairman to refuse a license for its being worked or to impose impracticable conditions on its working. (*Devadoss and Waller, JJ.*) **MADURA MUNICIPALITY v. MUTHU BALU CHETTY.** 94 I. C. 411 =

27 Cr. L. J. 635 = 1926 M. W. N. 651 =  
A. I. R. 1926 Mad. 576 = 50 M. L. J. 384.

**—S. 249—License—Rice.**

"Rice," i. e., paddy without husk and "broken rice" does not come within the meaning of the term "grain" in Cl. (c) of S. 5 of the Act, and so it is not necessary to take out licenses for godowns in which rice and broken rice etc., are stored for the wholesale trade. (*Spencer and Madhavan Nair, JJ.*) **MUNICIPAL COUNCIL, TUTICORIN v. SHUNMUGA MOOPANAR.** 92 I. C. 610 = 49 Mad. 219 = 23 M. L. W. 31 =

1925 M. W. N. 880 =

A. I. R. 1926 Mad. 251 = 51 M. L. J. 62.

**—S. 250—Grant of License.**

S. 249 applies to industries only. After permission to erect factory under S. 250 is granted license for its being worked cannot be refused. (*Devadoss and Waller, JJ.*) **MADURA MUNICIPALITY v. MUTHU BALU CHETTY.** 94 I. C. 411 = 27 Cr. L. J. 635 =

1926 M. W. N. 651 =

A. I. R. 1926 Mad. 576 = 50 M. L. J. 384.

**—S. 321 License—Cancellation of.****—Grounds.**

The Municipality can cancel the license under S. 321 (5) only for contravention of any of its terms and it is not open to it to cancel the license for any reason that it thinks proper. (*Devadoss, J.*) **CHIDAMBARAM MUNICIPALITY v. THIRUNARAYANA.** 110 I. C. 454 = 51 Mad. 876 = 10 A. I. Cr. R. 406 =

1 M. Cr. C. 129 = 29 Cr. L. J. 710 =

28 M. L. W. 218 = 1928 M. W. N. 379 =

A. I. R. 1928 Mad. 847 = 55 M. L. J. 566.

**—S. 321—Structures.**

**—Permission to contract obtained—License if necessary.**

When a person wants to put up roof, verandah or pandal or wall of a building of grass, leaves or mats or other inflammable materials he has to obtain the permission of the Chairman, and if he does not obtain the permission of the Chairman, he is liable to penalty under S. 313. But after he has once obtained permission to put up a structure of the kind mentioned in S. 195, he is not bound to obtain a license from year to year: S. 321, Cl. 7, does not apply. (*Devadoss, J.*) **CONJEEVARAM MUNICIPALITY v. NAGESWARA IYER.** 109 I. C. 361 = 1928 M. W. N. 291 =

28 M. L. W. 144 = 29 Cr. L. J. 537 =

51 Mad. 870 = 1 M. Cr. C. 209 =

A. I. R. 1928 Mad. 846 = 54 M. L. J. 642.

**—S. 338—Jurisdiction.****—Rules—Enquiry into validity.**

It is not within the province of a Criminal Court to determine whether the rules framed under the Act have been validly framed. The matter should be left for determination in Civil Court. (*Phillips, Wallace and Jackson, JJ.*) **MUTHU BALU CHETTIAR v. MADURA MUNICIPALITY.** 105 I. C. 686 = 39 M. L. T. 548 =

1927 M. W. N. 835 = 28 Cr. L. J. 974 = 27 M. L. W. 239 =

9 A. I. Cr. R. 127 = A. I. R. 1928 Mad. 961 =

53 M. L. J. 633 (S.B.).

**—S. 338—License—Cancellation of.**

**—Validity of order of cancellation—Inquiry into validity.**

**MAD. DIST. MUN. ACT, (1920) Sch. 4—Warrant.**

Where the accused has properly obtained a license, the improper or illegal cancellation of it does not deprive him of the license, the terms of which he has not in any way violated. The Criminal Court, in trying the accused in such cases under S. 338, can inquire into the validity of an order of cancellation and, if the order is *ultra vires*, the license can be treated as not cancelled. (*Devadoss, J.*) **CHIDAMBARAM MUNICIPALITY v. THIRUNARAYANA.** 110 I. C. 454 =

51 Mad. 876 = 28 M. L. W. 218 = 1928 M. W. N. 379 =

10 A. I. Cr. R. 406 = 1 M. Cr. C. 129 =

29 Cr. L. J. 710 = A. I. R. 1928 Mad. 847 =

**—S. 338—Scope.**

55 M. L. J. 566.

**—Commission agent.**

A commission agent, who is not merely an auctioneer or crier, selling grain wholesale on account of his customers for commission is also required to take out license. (*Krishnan, J.*) **PUBLIC PROSECUTOR v. KALIA PERUMAL.** 93 I. C. 701 = 49 Mad. 432 =

23 M. L. W. 642 = 27 Cr. L. J. 477 =

A. I. R. 1926 Mad. 722 = 50 M. L. J. 654.

**—S. 347—Notice****—Time for prosecution.**

Where no steps have been taken to enforce the first requisition issued by the Chairman under Ss. 146 and 149, a Chairman is entitled to make a second and to institute a prosecution for failure to comply with it; and a prosecution launched within three months of second notice but beyond three months of the first is not barred: *Jackson, J.*, in Cr. R. C. No. 164 of 1925, (Madras) Foll.; A. I. R. 1925 Mad. 1067, Not Foll. (*Devadoss and Waller, JJ.*) **RAMCHANDRA CHETTY, In re.** 96 I. C. 800 = 49 Mad. 880 = 27 Cr. L. J. 948 =

A. I. R. 1926 Mad. 763 = 50 M. L. J. 557.

**—S. 362—Applicability of.****—Limitation.**

Section 362 does not govern encroachment on street —Three months' rule of limitation applies to both Sections 362 and 180. (*Krishnan, J.*) **JAGANNADHAM NAIDU v. CH. RAMA RAO.** 85 I. C. 646 =

20 M. L. W. 834 = 26 Cr. L. J. 550 =

A. I. R. 1925 Mad. 186 = 47 M. L. J. 917.

**—S. 362—Other material.****—Trees on municipal land when cut.**

Trees which are upon land vested in the Municipal Council are, when cut, "other material" within the meaning of S. 362. (*Krishnan Pandalai, J.*) **VEERARAGHAVA v. MUNICIPAL COUNCIL, VANIYAMBADU.** 1930 M. W. N. 684.

**—Sch. 4, Para 30—Distraint warrant.****—Signature by facsimile—Validity of.**

Where an officer leaves a facsimile stamp of his signature behind him, which the peons continue to use, a warrant issued stamped by such facsimile is quite irregular and invalid. (*Jackson, J.*) **D. MADAR SAHIB v. EMPEROR.** 1930 Cr. C. 335 =

31 M. L. W. 205 = 1930 M. W. N. 172 =

3 M. Cr. C. 90 = 31 Cr. L. J. 639 =

A. I. R. 1930 Mad. 430 = 58 M. L. J. 193.

**—Sch. 4, Para 30—Warrant.****—Signature of Chairman—General Clauses Act 3 (28), Warrant must be issued under sign.**

Under the District Municipalities Act a warrant must bear the signature of the Chairman. Signature must be taken in its accepted sense of sign manual. The fact that in S. 2 (20), C. P. Code sign is used as including stamp has no bearing on the Madras District Municipalities Act. But if the Chairman happens to be illiterate, under S. 3 (29), Madras General Clauses Act, he may affix his mark. (*Jackson, J.*) **D. MADAR SAHIB v. EMPEROR.** 1930 Cr. C. 335 = 31 M. L. W. 205 =



**MAD. DIST. MUN. ACT, (1920) Sch. 4—Distrainment warrant.**

1930 M.W.N. 172=3 M. Cr. C. 90=31 Cr. L. J. 639=  
A.I.R. 1930 Mad. 430=58 M.L.J. 193.

—Sch. 4, Para 31—Distrainment warrant.

—Right to take the front door—Penal Code, Sec. 332.

A distrainer having a warrant has no right to take the front door of a house, and if he threatens to do so, such a proceeding renders the house unsafe calling for immediate defence of private property. Further if the accused resists such attempts he cannot be said to have exceeded his right of self-defence and any conviction under Penal Code, S. 332, is liable to be set aside: 13 Mad. 518, Foll. (*Jackson, J.*) D. MADAR SAHIB v. EMPEROR, 1930 Cr. C. 335=31 M.L.W. 205=1930 M.W.N. 172=3 M. Cr. C. 90=31 Cr. L. J. 639=A.I.R. 1930 Mad. 430=

—Sch. 5—Scope. 58 M. L. J. 193.

—Commission agent—License.

A commission agent who is not merely an auctioneer or crier, selling grain wholesale on account of his customers for commission is also required to take out license. (*Krishnan, J.*) PUBLIC PROSECUTOR v. KALIA PERUMAL NAICKER. 93 I.C. 701=49 Mad. 432=23 M. L. W. 642=27 Cr. L. J. 477=A.I.R. 1926 Mad. 722=50 M. L. J. 654.

—Sch. 5, Cl. (g)—Interpretation.

—'Handloom.'

Handlooms which are worked without steam power or electric power, but only with the hand cannot be called machinery within the meaning of Cl. (g). (*Devadoss, J.*) CANNANORE MUNICIPAL COUNCIL, v. ANANDAN. 108 I. C. 740=51 Mad. 601=27 M.L.W. 728=A.I.R. 1928 Mad. 683=54 M.L.J. 454.

—'Dangerous to human life or health'

(Quære). Whether the words "which is likely to be dangerous to human life or health" in Cl. (g), govern the words "any fuel or machinery." (*Phillips, Wallace and Jackson, JJ.*) MUTHU BALU CHETTIAR v. MADURA MUNICIPALITY. 106 I. C. 686=27 M.L.W. 298=39 M.L.T. 548=1927 M.W.N. 835=28 Cr. L. J. 974=9 A. I. Cr. R. 127=A.I.R. 1927 Mad. 961=53 M. L. J. 633 (S. B.)

—'Dangerous to human life.'

The expression "machinery likely to be dangerous to human life" in Sch. 5 (g) is not confined to machinery dangerous to the outside public as human life means the life of any person whether he be within or without the premises of the factory. (*Jackson, J.*) PUBLIC PROSECUTOR v. RANGANAYAKULU CHETTIAR. 101 I.C. 667=28 Cr. L. J. 491=38 M.L.T. 373=8 A. I. Cr. R. 140=50 Mad 845=25 M.L.W. 768=A.I.R. 1927 Mad. 602=52 M.L.J. 653.

—Sch. 5, Cl. (g)—Machinery.

—Collection of Maggots.

A collection of maggots is not machinery under Sch. 5, (g), and so a license is not necessary for its use. (*Jackson, J.*) KRISHNAN v. MUNICIPAL PROSECUTOR, CANNANORE MUNICIPALITY. 92 I.C. 873=23 M.L.W. 443=1926 M.W.N. 463=27 Cr. L. J. 361=A.I.R. 1926 Mad. 430.

**MADRAS ESTATES LAND ACT (1 of 1908).**

—S. 212—"Distrainment duly made."

The essence of a distrainment is the act of taking out of the possession of the real owner, and such act will be completed, until the taking out of the possession of the real owner is complete. A. I. R. 1925 Mad. 430. (*Wallace, J.*) SATHANARAYANAMURTHI v. RAMAYAN. 93 I. C. 83=80 Mad. 328=

3758 I. J. 4237=1926 M. W. N. 922=

—201 M.L.W. 449=A.I.R. 1926 Mad. 1143=

51 M. L. J. 401.

**MAD. GEN. CLAUSES ACT, (1891)—S. 3—Signature.**

—S. 212—Interpretation.

—"Produce".

The word "produce" in S. 212 (b) should be construed as meaning "produce of the land or trees in the defaulter's holding; it does not include cattle." (*Krishnan, J.*) NARAYANA REDDI v. DYNADEENACHAR. 86 I. C. 813=48 Mad. 505=

21 M. L. W. 580=26 Cr. L. J. 877=A.I.R. 1925 Mad. 578=48 M. L. J. 215.

**MADRAS FOREST ACT (5 of 1882).**

—S. 21—Cattle trespass.

A person cannot be said to permit cattle to trespass into a reserve forest, unless he knows that such trespass is likely to be committed and neglects, with such knowledge, to take measure to prevent it. The essence of the offence consists either in misfeasance, as in the case of one wilfully pasturing cattle, or in a malfeasance as in his neglecting to take proper measures to prevent the cattle trespassing in circumstances from which it may reasonably be inferred that such trespass might have been foreseen or known as the probable consequences of his negligence. The owner of the cattle cannot be found guilty merely because his cattle were found in the reserve forest. But it is not necessary that there should be an overt act on his part to make him guilty.

The onus of proving that he did not "permit" his cattle is not upon the owner. In every case it is for the Magistrate who tries the case to find on the evidence whether the accused by some act or omission or by negligence allowed or permitted the trespass, and if from the prosecution evidence he could presume that the owner failed to take such care as a prudent owner is expected to take, then the onus of proof that he took all reasonable care to prevent cattle trespassing, or that the trespass was in spite of his care, or against his orders, would be on the owner. (*Devadoss and Waller, JJ.*) RAMADAS, *In re.* 96 I. C. 861=49 Mad. 875=1926 M. W. N. 790=

27 Cr. L. J. 1005=A.I.R. 1926 Mad. 1097=51 M. L. J. 502.

—S. 35—Extension of time of permit.

The Central Provinces Government cannot grant passes to authorise the transit of timber, which is already in the Madras Territory. Nor can it extend the time after the expiration of the time fixed in the pass in respect of timber which has reached the Madras Territory already. (*Oldfield and Ramesam, JJ.*) KOTI MALLIKARJUNAYYA v. SECY. OF STATE. 70 I. C. 400=16 M.L.W. 165=

1922 M.W.N. 491=A.I.R. 1922 Mad. 427.

—S. 55—Compensation.

Offence compounded—Insufficiency of compensation taken is no ground for starting fresh prosecution. (*Devadoss, J.*) LATCHMA NAIK *In re.* 115 I.C. 241=

1929 M.W.N. 115=2 M. Cr. C. 54=30 Cr. L. J. 385=A.I.R. 1929 Mad. 252.

—Under S. 55 it is open to the Forest officer, not only to collect the compensation for the offence on account of the prosecution, but also to collect the value of the timber concerned, which he would be entitled to detain and which would be liable to confiscation in case the prosecution succeeded. (*Oldfield and Ramesam, JJ.*) KOTI MALLIKARJUNAYYA v. SECY. OF STATE. 70 I. C. 400=16 M.L.W. 165=

1922 M.W.N. 491=A.I.R. 1922 Mad. 427.

**MADRAS GENERAL CLAUSES ACT (1 of 1891).**

—S. 3—Signature.

Under the District Municipalities Act a warrant must bear the signature of the Chairman. Signature must be taken in its accepted sense of sign, manual. The fact that in S. 2 (20), C. P. Code, sign is used as



**MAD. HIGH COURT RULES—R. 4—Vacation Judge.**

including stamp has no bearing on the Madras District Municipalities Act. But if the Chairman happens to be illiterate, under S. 3 (29), Madras General Clauses Act, he may affix his mark. (*Jackson, J.*)  
D. MADAR SAHIB v. EMPEROR. 124 I.C. 139 =

1930 Cr. C. 335 = 31 M.L.W. 205 =

1930 M.W.N. 172 = 3 M.Gr.C. 90 = 31 Cr.L.J. 639 =

A.I.R. 1930 Mad. 430 = 58 M.L.J. 193.

**MADRAS HIGH COURT RULES.****Appellate Side Rules.****Criminal Rules of Practice.****—Appellate Side Rules.****R. 4—Vacation Judge.**

The powers of the Vacation Judge are not to be looked for in the notification, as though it were a self-contained and exhaustive advertisement to the public of their scope and nature. For it need not and must not be regarded as more than a general statement of the powers, which the Vacation Judge ordinarily will exercise, and cannot be read as derogating from those, which by virtue of Statute and Rules, he possesses and of which he cannot, consistently with them, be deprived. (*Oldfield and Devadoss, JJ.*)  
KUNHAMAD HAJI v. EMPEROR. 72 I. C. 599 =

46 Mad. 382 = 24 Cr. L. J. 439 =

1923 M. W. N. 94 = A. I. R. 1923 Mad. 426 =

44 M. L. J. 450.

**—Criminal Rules of Practice.****—R. 161—Memo of appearance.**

Vakalat need not be filed—Memo of appearance is sufficient. (*Wallace, J.*) MANIKONDA LINGAYYA v. EMPEROR. 75 I. C. 985 = 18 M. L. W. 960 =

33 M. L. T. 224 = 1924 M. W. N. 51 =

25 Cr. L. J. 73 = A. I. R. 1924 Mad. 192 =

45 M. L. J. 683.

**—R. 195—Confessions.**

Rule 195 is not a rule of law, but merely a rule for the guidance of Village Magistrates and, therefore, a confession recorded by a Village Magistrate after the police investigation has begun is admissible apart from the fact whether the Magistrate knew that the investigation had begun. (*Ramesam and Jackson, JJ.*)  
KUPPATHAN v. EMPEROR. 105 I. C. 667 =

1927 M. W. N. 824 = 28 Cr. L. J. 955 =

9 A. I. Cr. R. 148 = A. I. R. 1927 Mad. 974 =

53 M. L. J. 739.

**—R. 196 (2)—Confessions.**

Where the Magistrate, before recording a confession, asked the accused: "Do you understand that you are at liberty to make a confession or not as you like, and are you aware that there is no necessity or compulsion on you to make any such statement or confession which may be used in evidence against you?"

*Held*: that the question satisfied the spirit of R. 196 (2). The specimens of questions suggested in the Criminal Rules of Practice seem to be leading questions suggesting torture or other ill-treatment by the police, and it seems to be undesirable to put such questions in the form mentioned in the rule. The whole object and policy of R. 196 is that a Magistrate should satisfy himself that there is no compulsion by the police or ill-treatment so as to raise the suspicion that the statement of the accused is not a voluntary statement, and so long as the spirit of the rule is satisfied it is undesirable that questions should be put in this form showing a total want of trust in the police. (*Ramesam and Jackson, JJ.*) KUPPATHAN v. KING EMPEROR. 105 I.C. 667 = 1927 M.W.N. 824 =

28 Cr. L.J. 955 = 9 A.I. Cr. R. 148 =

A.I.R. 1927 Mad. 974 = 53 M.L.J. 739.

**MAD. LOCAL BOARDS ACT, (1920)—S. 159—Encroachment.****MADRAS LOCAL BOARDS ACT (XIV of 1920).****—S. 3—Encroachment.**

A public road includes land which lies on either side of the road way up to the boundaries of the adjacent property and includes a road poramboke used for conservancy purposes. Therefore refusal to remove encroachments thereon is an offence punishable under Ss. 159 (1) and 207 (2). (*Madhavan Nair and Reilly, JJ.*) PUBLIC PROSECUTOR v. PALANIYANDI. 106 I.C. 705 = 27 M.L.W. 16 =

29 Cr. L.J. 113 = 51 Mad. 519 = 1 M.Gr.C. 46 =

A.I.R. 1928 Mad. 160 = 54 M.L.J. 261.

**—S. 16—Notice.**

A Local Board being a body corporate is other than and much more than the sum of its individual members. Its business therefore can be transacted only at its duly constituted meetings. Giving notice of resignation under S. 16 is one such business of the Board and can be transacted at a meeting of the Board. By circulating the notice of resignation to each member and upon its receipt by each member, the resignation does not take effect, although acceptance of resignation is not necessary under S. 16.

The President of a Local Board issued notice of his resignation to each member and its receipt was acknowledged by them. The Government also by its order expressed its view that the resignation took effect.

*Held*: that the order of Government was not conclusive but expressed only an opinion of the Government and it did not prevent a Court of law from coming to a contrary conclusion. There was no proper notice of resignation and therefore resignation did not take effect. (*Curgenven, J.*) SIVASANKARAN PILLAI v. EMPEROR. 113 I. C. 462 = 52 Mad. 476 =

28 M. L. W. 695 = 2 M. Gr. C. 49 = 30 Cr. L. J. 164 =

12 A. I. Cr. R. 103 = A. I. R. 1929 Mad. 8 =

56 M. L. J. 157.

**—S. 24—Scope.**

The persons who can be expressly authorized under S. 223 to file complaints are not confined to those to whom the President may delegate his authority under S. 24. (*Wallace, J.*) PUBLIC PROSECUTOR v. RAMAYYA MUDALIAR. 109 I.C. 905 =

28 M.L.W. 140 = 1928 M.W.N. 288 =

29 Cr. L. J. 587 = 1 M. Gr. C. 118 =

10 A. I. Cr. R. 318 = A. I. R. 1928 Mad. 969 =

55 M. L. J. 573.

**—S. 125—Prohibition against filth.**

The failure of a Local Board to provide a drain is not an excuse for letting one's sewage water flow over the neighbouring road. S. 129 which creates the liability is not governed by any condition that the liability shall not exist if there is no drain or cesspool in the street. (*Krishnan, J.*) PUBLIC PROSECUTOR v. PACHIAPPA MUDALI. 75 I.C. 760 = 18 M.L.W. 696 =

33 M. L. T. 166 = 24 Cr. L. J. 54 =

A.I.R. 1924 Mad. 397.

**—S. 159—Encroachment.**

Section 159 of the Act is not very happily worded. The real offence is the wrongful encroachment, that is committed by the person. The notice referred to in the section is in a sense merely in the nature of a condition precedent to the prosecution and all that the Act says is that, no one should be prosecuted straightway simply because he has committed or is deemed to have committed, an act of encroachment but the Act requires that some notice should be given to him and that he should be prosecuted only if even after such notice, he fails to remove the encroachment. It will be against all principle to hold that

**MAD. LOCAL BOARDS ACT (1920) S. 159—****Encroachment on public road.**

even though a person commits an offence by thus disobeying the terms of the notice he should be deemed to commit a fresh offence every time the local authority chooses to give a fresh notice calling upon him to remove the obstruction. (*Srinivasa Aiyangar, J.*) *RAMANUJACHARIAR v. T. V. KAILASAM AYYAR*, 87 I.C. 969=48 Mad. 870=22 M.L.W. 736=

1925 M.W.N. 472=26 Cr. L.J. 1049= A.I.R. 1925 Mad. 1067=49 M.L.J. 386.

**—S. 159—Encroachment on public road.**

**—Notice and complaint by President, District Board—Dismissal of complaint on ground that ownership of road was with Union Board—Fresh notice and complaint by President, Union Board—Validity.**

The accused having made an encroachment on a public road, the President of the District Board gave notice under S. 159, Madras Local Boards Act, directing the removal of the encroachment and subsequently preferred a complaint. The complaint was, however, dismissed on the ground that the ownership of the road was with the Union Board. The President of the Union Board issued a fresh notice under S. 159 and filed a fresh complaint. The accused having been acquitted under S. 403, Cr. P.C., held, that the second complaint was maintainable and that the acquittal was bad in law. (*Krishnan Pandalai, J.*) *UNION BOARD, AYYAMPET v. RAMACHANDRA AYYAR*, 1930 M.W.N. 500.

**—S. 159—Owner.**

In order to make a person liable for disobedience under S. 159 he must be the owner or the occupier of any premises which caused the obstruction or encroachment.

Where the accused had before the date of the notice created a trust in favour of the whole community in respect of the nandavanam and divested himself of all interest in it, the fact that he constructed the compound wall or formed a nandavanam would not be sufficient to make him an owner.

The mere fact that he was a treasurer of some fund of the community would not make him a trustee of the nandavanam, or bring him within the meaning of the term "owner" as used in the Local Boards Act (*Devadoss, J.*) *VADUGU KUMAR NADAR v. EMPEROR*.

110 I.C. 583=51 Mad. 524=28 M.L.W. 73=

10 A.I. Cr. R. 397=1 M. Cr. C. 150=

29 Cr. L.J. 727=A.I.R. 1928 Mad. 485=

55 M.L.J. 206.

**—S. 166—Liability to pay.**

Section 166 (1) is intended to make persons who use the road of a District Board for making money by using motor vehicles upon it pay for that privilege. The first part is intended to make persons who ply a motor vehicle for hire within the limits of the District Board pay for it by taking out a license, and the latter part of it is intended to make persons who pick up passengers at separate fares outside the area of the District Board and who carry those passengers over a road of the District Board also take out a license: A.I.R. 1928 Mad. 166, Dist. (*Beasley, C.J. and Pandalai, J.*) (*SHROFF VEERAPPA v. EMPEROR*).

31 M.L.W. 202=1930 M.W.N. 187=

3 M. Cr. C. 156=31 Cr. L.J. 625=

A.I.R. 1930 Mad. 441.

The licensees are in law responsible for all that their servants do. The principle is that the act of the servant of a licensee is the act of his master, and that the licensee who does everything that is done under cover of the license. It is he who undertakes to conform to the terms of it and to be responsible that

**MAD. LOCAL BOARDS ACT (1920), S. 170—****Applicability.**

no breach of it takes place.

Where, therefore, a conductor of a motor plied the car on a road on which the licensee is prohibited to ply.

Held: that the licensee is liable. (*Wallace, J.*) *SIVARAMA MUDALIAR v. MUTHANNANIENGAR*.

102 I.C. 502=50 Mad. 913=38 M.L.T. 320=

28 Cr. L.J. 566=26 M.L.W. 13=8 A.I. Cr. R. 215=

1927 M.W.N. 925=A.I.R. 1927 Mad. 612=

52 M.L.J. 561.

**—S. 166—Separate fares.**

What is meant by "separate fares" is individual fares as distinguished from a fixed amount for the whole vehicle. (*Beasley, C.J. and Pandalai, J.*) (*SHROFF VEERAPPA v. EMPEROR*, 31 M.L.W. 202=

1930 M.W.N. 187=3 M. Cr. C. 156=

31 Cr. L.J. 625=A.I.R. 1930 Mad. 441.

**—S. 166—Unlicensed plying.**

The act of plying for hire can only be done at the place and time that the hiring is effected. Therefore, a person who lets out his car for hire in M, a town within District T, and which is a municipality, need not obtain a license from the T District Board, if the car travels beyond the Municipal limits and traverses any of the T District Board roads. (*Madhavan Nair and Curgenven, J.J.*) *LOCAL FUND OVERSEER, MAYAVARAM v. PAKKIRISAMI THEVAN*.

106 I.C. 446=51 Mad. 527=1 M. Cr. C. 24=

9 A.I. Cr. R. 289=29 Cr. L.J. 30=27 M.L.W. 66=

A.I.R. 1928 Mad. 166=55 M.L.J. 213.

—The owner and the driver of a bus are both liable for plying without license under S. 166. The contention that the servant is merely obeying the orders of his master is no ground for relieving him of his liability when clearly the section covers the case of a person plying for hire, whether it is his own car or not: 43 Mad. 438, Dist.; A. I. R. 1927 Mad. 612, Foll. (*Devadoss, J.*) *PRESIDENT, DT. BD., ANANTAPUR v. ISMAIL SAHIB*.

27 M.L.W. 28=

A.I.R. 1927 Mad. 1195.

—The fact that the person authorised to grant or refuse the license (in this case, the President, Local Board) did not exercise his discretion reasonably in refusing to grant the license is not one that could afford an answer to a charge that the accused has done something (in this case, plying motor car) for which license was necessary and for which he had no license. (*Krishnan, J.*) *KRISHNASWAMI PILLAI v. EMPEROR*.

86 I.C. 57=26 Cr. L.J. 681=21 M.L.W. 254=

1925 M.W.N. 47=A.I.R. 1925 Mad. 476=

48 M.L.J. 132.

**—S. 170—Applicability.**

A market is a place set apart for the meeting of the general public of buyers and sellers freely open to any such, to assemble together, where any seller may expose his goods for sale and any buyer may purchase.

The word "new" in S. 170 is used in its ordinary signification as "for the first time opened or kept open," and therefore S. 170 does not apply to a market which was not opened after the coming into force of the Local Boards Act of 1920 but was in existence even prior to that Act.

Under S. 170 it is not the owner of the premises but the person who keeps open the market, that is, presumably the person who collects or has collected for him the fees levied in the market for the exposure and sale of the goods, who is punishable. (*Wallace, J.*) *PUBLIC PROSECUTOR v. CHERU KUTTI*.

87 I.C. 973=26 Cr. L.J. 1053=

A.I.R. 1925 Mad. 1095.

**MAD. LOCAL BOARDS ACT (1920), S. 177—Private market.****—S. 177—Private market.**

*Thiruvengkatachiar, J.*—The Board can not refuse to grant a license on the ground that the location of the private market, in the Board's opinion, is detrimental to public health. The Board may give a notice to the owner under S. 176 to carry out such works as may be considered necessary for rendering a private market a suitable one or they should acquire the owner's rights in the private market under the Land Acquisition Act as provided in S. 180. Otherwise, it would be confiscating private rights without compensation, which intention cannot be imputed to the legislature. (*Jackson and Thiruvengkatachiar, JJ.*)

ELLAMAL V. EMPEROR. 106 I.C. 718=  
26 M.L.W. 771=1927 M.W.N. 801=29 Cr. L.J. 126=  
1 M. Cr. C. 96=A.I.R. 1928 Mad. 164=  
53 M.L.J. 810.

**—S. 184—Levy of fee.**

Either under S. 184 or S. 164 fees are not legally leviable for the standing of an omnibus on a stand provided for by the Union Board for that purpose. (*Waller and Pandalai, JJ.*)

RAHEEM SAHIB, *In re*. 118 I.C. 278=52 Mad. 714=2 M. Cr. C. 161=  
30 M.L.W. 181=1929 M.W.N. 515=  
30 Cr. L.J. 911=1929 Cr. C. 56=  
A.I.R. 1929 Mad. 600=57 M.L.J. 317.

**—S. 193, Sch. 7 (j)—Kiln.**

The term "kiln" conveys the idea of an outer structure of a permanent nature within which bricks are burnt. A.I.R. 1922 Cal. 194, Rel. on. (*Ramesam and Jackson, JJ.*)

PUBLIC PROSECUTOR v. VALLAI UDAYAN. 111 I.C. 736=11 A.I. Cr. R. 142=  
1 M. Cr. C. 302=29 Cr. L.J. 928=  
A.I.R. 1928 Mad. 1195.

**—S. 193,—License.**

Where the President of a Local Board thinks that a person should take out a license under S. 193, and that person refuses to do so, and carries on his industry without a license, the proper course is to prosecute him under S. 207 and not to apply under S. 221 for the recovery of the fee for the license. A.I.R. 1926 Mad. 576, Foll.; A.I.R. 1925 Mad. 1015, Commented on. (*Devadoss and Waller, JJ.*)

UNION BD., PARAMAKUDI v. CHELLASWAMI THEVAR. 97 I.C. 947=  
1926 M.W.N. 676=27 Cr. L.J. 1187=  
A.I.R. 1926 Mad. 1068.

**—S. 193—Notification.**

Under S. 193 (1), the authority which is to notify that a license for purposes mentioned in Sch. 7 should be obtained, is the Taluk Board and the license has to be obtained if the business is to be carried on within Union limits, from the President of the Union Board and if the business is to be carried on outside the Union limits but inside the Taluk Board limits, from the President of Taluk Board. Notification by Taluk Board has, therefore, force within Union limits also. (*Devadoss, J.*)

UNION BOARD, POTHANUR v. RAMASUBBA AIYAR. 114 I.C. 824=  
30 Cr. L.J. 367=2 M. Cr. C. 166.

**—S. 193—Power of licensing.**

Madras District Municipalities (Act 5 of 1920) S. 249—Power of licensing is not repealed by similar provision in S. 193. (*Jackson, J.*)

PUBLIC PROSECUTOR v. RANGANAYAKULU. 101 I.C. 667=  
25 M.L.W. 768=28 Cr. L.J. 491=38 M.L.T. 373=  
8 A.I. Cr. R. 140=50 Mad. 845=  
A.I.R. 1927 Mad. 602=52 M.L.J. 653.

**—S. 193—Proper authority to issue.**

Under S. 193 of the Madras Local Boards Act (1920), the authority competent to notify that a license mentioned in Sch. VII should be obtained is the Taluk Board, and the license has to be obtained, if the busi-

**MAD. LOCAL BOARDS ACT (1920), S. 214—Licenses.**

ness is to be carried within Union limits from the President of the Union Board, and if the business is to be carried on outside the Union Limits but inside the Taluk Board Limits, from the President of the Taluk Board. (*Devadoss, J.*)

PRESIDENT, POTHANUR UNION BOARD v. RAMASUBBA IYER. 114 I.C. 824=30 Cr. L.J. 367.

**—S. 193—Unlicensed storage of fish.**

Forwarding agent collecting fish and keeping them in packages in a room before consignment—No license therefor—Conviction for unlicensed storage is justified 29 Bom. 193, Dist.; N.E. Ry. v. Kingston, 55 J.P. 518, Ref. (*Jackson, J.*)

PUBLIC PROSECUTOR v. K. SAIDALI KUTTI. 102 I.C. 211=50 Mad. 752=  
38 M.L.T. 341=25 M.L.W. 655=  
1927 M.W.N. 389=28 Cr. L.J. 515=  
8 A.I. Cr. R. 250=A.I.R. 1927 Mad. 624=  
52 M.L.J. 559.

**—S. 207—Compensation.**

A claim for compensation cannot be made a reason for non-compliance with notice: 21 L. W. 280=A. I. R. 1925 Mad. 584, Foll. (*Curgenvven, J.*)

NARAYANA AIYAR v. SUBRAMANIA CHETTY. 104 I. C. 910=39 M. L. T. 205=  
1927 M. W. N. 346=28 Cr. L.J. 894=  
A. I. R. 1927 Mad. 1113.

**—S. 207—Disobeying the notice.**

Two notices issued—Second disobeyed—Prosecution can be based for disobeying the second. A. I. R. 1926 Mad. 763, Rel on. (*Curgenvven, J.*)

NARAYANA AIYAR v. SUBRAMANI CHETTY, 104 I.C. 910=39 M. L. T. 205=1927 M. W. N. 346=  
28 Cr. L.J. 894=A.I.R. 1927 Mad. 1113.

**—S. 207—Disregarding the summons.**

Houses outside the limits of Union cannot be assessed—Summons issued to owners of houses outside the limits of Union under S. 232—Disregarding the summonses is no offence. (*Reilly, J.*)

PRESIDENT, UNION BOARD v. NARAYANA. 113 I.C. 276=  
28 M.L.W. 657=1 M. Cr. C. 345=30 Cr. L.J. 116=  
12 A.I. Cr. R. 83=A. I. R. 1928 Mad. 1261=  
55 M. L. J. 718.

**—S. 207—Duty of Criminal Court.**

Whatever remedies may be open to the party it is not the province of the criminal Courts to go into the question whether the encroachment exists: A. I. R. 1925 Mad. 1015, Rel. on. (*Curgenvven, J.*)

NARAYANA AIYAR v. SUBRAMANIA CHETTY. 104 I.C. 910=39 M.L.T. 205=1927 M. W. N. 346=  
28 Cr. L. J. 894=A. I. R. 1927 Mad. 1113.

**—S. 212—License.**

*Jackson, J.*—The Board is bound to grant a license and if when it receives the application in due course, it confines itself to saying that it will not grant the license, it is tantamount to passing no order on the application. Refusal to function under the Act is not passing an order under the Act. The order must be *intra vires* and an order *ultra vires* is no order at all. (*Jackson and Thiruvengkata Chariar, JJ.*)

ELLAMAL V. EMPEROR. 106 I. C. 718=  
26 M. L. W. 771=1927 M. W. N. 801=  
29 Cr. L. J. 126=1 M. Cr. C. 96=  
A. I. R. 1928 Mad. 164=53 M. L. J. 810.

**—S. 214—Licenses.**

As S. 214 requires all licenses to be granted in writing, it is not open to the President of the Taluk Board to grant a license orally. (*Devadoss, J.*)

UNION BOARD, THIRUVETTIORE v. ATCHU ACHARY. 111 I. C. 885=28 M. L. W. 508=  
1928 M. W. N. 790=11 A. I. Cr. R. 253=  
1 M. Cr. C. 292=29 Cr. L. J. 935.

**MAD. LOCAL BOARDS ACT (1920). S. 221—Assessment.****—S. 221—Assessment.**

The Magistrate is not competent to inquire into the propriety of assessment which is entirely within the province of the Board. He can only determine the amount if the amount claimed is disputed on the ground that it has been paid wholly or partly, or that some one else is the assessee and not he. When there is a dispute as to the arithmetical calculation of the amount he certainly would be entitled to say whether the amount is correct or not, but that would in no way give him jurisdiction to inquire into the propriety or otherwise of the assessment. (*Devadoss, J.*) **RANGESA RAO v. SWAMINATHA AYYAR.**

108 I. C. 414=27 M. L. W. 320=  
29 Cr. L. J. 389=10 A. I. Cr. R. 53=1 M. Cr. C. 12=  
A. I. R. 1928 Mad. 495.

**—S. 221—Defence under.**

Where an application has been made under S. 221 for collection of a penalty demanded under S. 164 (1) the other party cannot be heard to say that the demand is illegal and all that the Magistrate has to do is to collect the penalty demanded: A.I.R. 1925 Mad. 1015, Foll. (*Devadoss and Waller, J.J.*) **MUSTAFA SAHEB v. UNION BOARD OF KAVERIPATNAM.**

97 I.C. 812=27 Cr.L.J. 1180=  
1926 M.W.N. 678.

**—S. 221—Encroachment.**

The Magistrate, to whom a case is referred under S. 221, for recovering a fine imposed for alleged encroachment, has power to go into the question whether the alleged encroachment was true and therefore justified the imposition of the fine: 49 Mad. 888=91 I.C. 529=A.I.R. 1925 Mad. 1015=108 I. C. 414=A.I.R. 1928 Mad. 425; 104 I.C. 910=A.I.R. 1927 Mad. 1113=97 I.C. 947=A.I.R. 1926 Mad. 1068 and 97 I. C. 812, Overruled. A.I.R. 1928 Mad. 682; A.I.R. 1929 Mad. 600; Cr. Revn. 1089 of 1928 and C.R. Rev. No. 247 of 1929, Confirmed. (*Beasley, C. J., and Anantakrishna Ayyar and Curgenvin, J.J.*) **PILLA RAMASWAMI v. PRESIDENT, TALUK BOARD, TADEPALLI.**

32 M.L.W. 269=1930 Cr. C. 96=  
A.I.R. 1930 Mad. 766=59 M.L.J. 346 (F.B.)

**—S. 221—Failure by Local Board to take steps to compel a person to take out license to carry on trade.****—Effect.**

Complaint for recovery of license fees under S. 221 of the Madras Local Boards Act is not maintainable if the Local Board had not taken steps to compel the person to take out a license for carrying on the trade. (*Wallace, J.*) **HEALTH INSPECTOR, TALUK BOARD, KUMBakonam v. GOVINDA PADAYACHI.**

112 I.C. 591=29 Cr.L.J. 1087.

**—S. 221—Penalty for Encroachment.**

Local Board moving Magistrate to recover penalty for encroachment—Defaulting party cannot plead in defence in Magistrate's Court that there was no encroachment. A. I.R. 1924 Mad. 389 Dist. (*Devadoss and Wallace, J.J.*); **RAMACHANDRA SERVAI v. PRESIDENT, UNION BOARD, KARAIKUDI.**

91 I.C. 529=  
27 Cr.L.J. 97=49 Mad. 888=  
22 M.L.W. 393=1925 M.W.N. 743=  
A.I.R. 1925 Mad. 1015=43 M.L.J. 356.

**—S. 221—Recovery of dues.**

Application under S. 221 for recovery of dues—Other remedies not exhausted as enjoined by Government Orders—Government Orders being merely advisory, Magistrate cannot decline to consider application. (*Pandalai, J.*) **PULAVARTHI LAKSHMANASWAMI v. ABDUL KHUDAYANDE SAHIB GARU.**

126 I.C. 116=1930 Cr.C. 760=

**MAD. LOCAL BOARDS ACT (1920), S. 221—Recovery of dues.**

3 M.Cr.C. 175=1930 M.W.N. 349=  
A.I.R. 1930 Mad. 703.

—One G had erected a pandal without the permission of the Board. No license was applied for or granted before the pandal was erected. The Board, however, instead of taking action under S. 219, took a lenient view of his act and agreed to license the pandal on payment of the fee. A default having been made, the Board moved the Magistrate under S. 221.

*Held*: that there have been no grant of a license the license fee payable under the Act cannot be said to be due within the meaning of S. 221 and that section was inapplicable. (*Phillips and Madhavan Nair, J.J.*) **EMPEROR v. MARIDU GOPAYYA.**

110 I.C. 233=  
57 Mad. 866=1 M.Cr.C. 136=  
29 Cr.L.J. 681=10 A.I.Cr.R. 369=  
28 M.L.W. 342=1928 M.W.N. 319=  
A.I.R. 1928 Mad. 682=55 M.L.J. 27.

—In a proper case under S. 221 the defaulting party can plead by way of defence that no amount is due from him as he had not erected a pandal in contravention of S. 163; A.I.R. 1925 Mad. 1015, Not Foll.; A.I.R. 1926 Mad. 1068, Appr. (*Phillips and Madhavan Nair, J.J.*) **EMPEROR v. MARIDU GOPAYYA.**

110 I.C. 233=51 Mad. 866=  
1928 M.W.N. 319=28 M.L.W. 342=  
10 A.I.Cr.R. 369=1 M.Cr.C. 136=  
29 Cr.L.J. 681=A.I.R. 1928 Mad. 682=  
55 M.L.J. 27.

—The accused were conducting trades which under S. 193 required licenses. They failed to take out license and the Board did not take steps in time to compel them to take out the licenses, but sought to recover the fees for these licenses under S. 221.

*Held*: that fees for licenses are not due unless the licenses had been granted. The grant of a license is *quid pro quo* for the fee. The Board cannot neglect its duty and profit by that neglect: A. I. R. 1928 Mad. 682, Foll. A. I. R. 1925 Mad. 1015, Expl. (*Wallace, J.*) **HEALTH INSPECTOR, TALUK BOARD, KUMBakonam v. GOVINDA PADAYACHI.**

112 I.C. 591=29 Cr.L.J. 1087.

—The term "by virtue of" has not a wider scope than the term "under" used in the previous Act. The new Act does not make any change in this respect. Consequently money due under a contract, such as a lease cannot be recovered summarily in a Magistrate's Court (*Ramesam and Jackson, J.J.*) **M. ALI KHAN v. PRESIDENT, TALUK BOAD, KURNOOL.**

84 I. C. 325=  
1924 M. W. N. 545=25 Cr. L. J. 261=  
A. I. R. 1924 Mad. 898.

—The amount due under a contract of lease of the tolls due to a Local Board is not "any fee, toll, costs, compensation, damages, penalties, charges, expenses or other sums due to a Local Board" within S. 221 and is not recoverable under the warrant of a Magistrate.

The words "other sums" in the section should be read *ejusdem generis* with what precedes them. (*Krishnan and Odgers, J.J.*) **PUNYA SYAMALO, In re.**

17 I.C. 240=41 Mad. 381=  
25 Cr. L.J. 352=A.I.R. 1924 Mad. 669.

—Imposition of fine in addition to recovery of fees due—Order is illegal and can be revised—Court acting under, acts as a Criminal Court—High Court—Revision. (*Wallace, J.*) **PUNYA SYAMALU v. EMPEROR,**

72 I.C. 624=1922 M. W. N. 840=  
24 Cr. L.J. 404=17 M.L.W. 155=  
A.I.R. 1923 Mad. 278.

**MAD. LOCAL BOARDS ACT (1920), S. 221—Scope.**

—S. 221—Scope.  
It is open to a party appearing before a Magistrate under S. 221 to allege and prove that the fee claimed is not due from him "under or by virtue of the Act": A.I.R. 1925 Mad. 1015, *Held* wrongly decided A.I.R. 1928 Mad. 682 and A.I.R. 1926 Mad. 1068, Foll. (*Waller and Pandalai, J.J.*) RAHEEM SAHEB, *In re*.  
118 I.C. 278=52 Mad. 714=2 M. Cr. C. 161=  
30 M.L.W. 181=1929 M.W.N. 515=  
30 Cr. L.J. 911=1929 Cr. C. 56=  
A.I.R. 1929 Mad. 600=57 M.L.J. 317.

**—S. 223—Limitation.**

Board served the accused with a notice in respect of an encroachment. Accused replied that there was no encroachment and invited the Board to make fresh enquiry. Board made further enquiries and issued a fresh notice on the accused.

*Held*: that time under S. 223 would run from the second notice, as in the circumstances both parties should be considered to have ignored the first notice and treated it as inoperative: 29 Bom. 35, Rel. on. (*Waller and Madhavan Nair, J.J.*) RAGHAVACHARIAR v. PRESIDENT, UNION BOARD, TIRUVELLORE.

95 I. C. 600=23 M. L. W. 620=27 Cr. L. J. 824=  
1927 M. W. N. 343=A. I. R. 1926 Mad. 806.  
—It is not within the powers of the Local Board to extend the period of limitation of three months prescribed by S. 223, by giving fresh notice and constituting the disobedience to each of such fresh notices as amounting to an offence under S. 207. The real principle underlying S. 223, is that it should not be within the power or province of a local authority to molest and annoy persons by prosecutions which are not promptly undertaken by the local authority. (*Srinivasa Aiyangar, J.*) RAMANUJACHARIAR v. T. V. KAILASAM AIYAR. 87 I. C. 969=48 Mad. 870=  
22 M. L. W. 736=1925 M. W. N. 472=  
26 Cr. L. J. 1049=A. I. R. 1925 Mad. 1067=  
49 M. L. J. 386.

**—S. 223—Scope.**

The persons who can be expressly authorized under S. 223 to file complaints are not confined to those to whom the President may delegate his authority under S. 24. (*Wallace, J.*) PUBLIC PROSECUTOR v. RAMAYYA MUDALIAR.

109 I. C. 603=  
28 M. L. W. 140=1928 M. W. N. 293=  
29 Cr. L. J. 587=1 Mad. Cr. C. 118=  
10 A. I. Cr. R. 318=A. I. R. 1928 Mad. 969=  
55 M. L. J. 573.

—The license to carry on an offensive trade is granted for one year—the official year. Where the prosecution was for a person's not taking out licenses for the years 1923, 1924, 1925 and 1926.

*Held*: that prosecution having commenced within three months of the expiry of the period for 1925 was valid. Prosecution not having commenced within three months of the expiry of the period for previous years failed. (*Devadoss, J.*) S. ARTHUR v. APPAVU VELAN.

108 I. C. 411=10 A. I. Cr. R. 52=  
29 Cr. L. J. 388=  
1 M. Cr. C. 44.

**—S. 225—Limitation.**

Section 225 does not apply to cases of this kind, but the ordinary law of limitation, namely three years, applies. If the Board is to sue as plaintiff it may be necessary for the President to obtain the sanction of the Board for instituting a civil suit. (*Devadoss, J.*) TALLAMRAJU VENKATSUBBA RAO v. PRESIDENT TALUK BOARD, REPALLI.

111 I. C. 740=  
29 M. L. W. 517=A. I. R. 1928 Mad. 981=  
56 M. L. J. 110.

**MAD. TOWNS NUISANCES ACT (1889), S. 6—Common gaming house.****MADRAS MOTOR VEHICLES RULES.****—Rules.**

Rules as to the place of inspection and the officer in charge of inspection are vague and must be made clear. (*Spencer and Ramesam, J.J.*) SECRETARY OF STATE v. SOMAYYA.

97 I. C. 847=  
24 M. L. W. 378=A. I. R. 1926 Mad. 1084=  
51 M. L. J. 446.

**—R. 30—Annually.**

The word "annually" means once sometime in one year and once sometime in the next year and so on. (*Jackson, J.*) GANAPATHI HEDGE v. EMPEROR.

106 I. C. 110=39 M. L. T. 269=28 Cr. L. J. 1022=  
9 A. I. Cr. R. 163=A. I. R. 1927 Mad. 969.

**MADRAS STATE PRISONERS REGULATION**

(2 of 1819.)

**—Application of.**

Because judicial proceedings are started the regulation does not become inapplicable. Statement in the warrant that the necessary reasons exist in the opinion of the Governor-in-Council is sufficient and conclusive (see S. 2, cl. 3) and it is not open to the High Court to consider the correctness of the statement. (*Ramesam and Wallace, J.J.*) ETAKANDAN KUNHOKKER v. EMPEROR.

76 I. C. 187=  
18 M. L. W. 517=33 M. L. T. 17=1923 M. W. N. 741=  
25 Cr. L. J. 123=A. I. R. 1924 Mad. 372=  
45 M. L. J. 473.

**MADRAS SURVEY AND BOUNDARIES ACT (4 of 1897.)****—S. 13—Powers of Survey officer.**

The Act of 1897 gives no power to the Board of Revenue to fix the limits of the Unions. The Survey Officer has no power to alter the effect of the notifications of 1896 declaring the limits of the Union. (*Reilly, J.*) PRESIDENT, UNION BOARD v. NARAYANA.

113 I. C. 276=28 M. L. W. 657=  
1 M. Cr. C. 345=30 Cr. L. J. 116=12 A. I. Cr. R. 83=  
A. I. R. 1928 Mad. 1261=55 M. L. J. 718.

**—(8 of 1923).****—S. 13—Conclusiveness.**

*Criminal trial—Survey Officer making order determining boundaries of suit land—Criminal Court can go behind such order to determine question of ownership to suit land, if not already decided by civil suit.*

Where no civil suit has been filed to determine the question of the ownership of the land against the order of a Survey Officer under S. 13, or where such suit being brought its result is not known, a criminal court is not debarred from going into the question as to the ownership of the land in respect of which prosecution is launched before the expiry of three years from the date of the Survey Officer's order. (*Devadoss, J.*) PALIMUTHU v. PRESIDENT, UNION BOARD.

112 I. C. 589=28 M. L. W. 653=  
29 Cr. L. J. 1085=1 M. Cr. C. 325=  
52 Mad. 609=A. I. R. 1928 Mad. 1278=  
56 M. L. J. 360.

**MADRAS TOWNS NUISANCES ACT (3 of 1889).****—S. 3—Jurisdiction**

An offence under S. 3 (12) of the Act III of 1889 falls within Cl. 2, R. 1 of the rules for the guidance of Bench Magistrates and the Magistrates have jurisdiction to dispose of the case. (13 Mad. 142 Foll.) (*Krishnan, J.*) RAMASWAMI CHETTIAR v. MUTHUVELU MUDALI.

71 I. C. 238=45 Mad. 843=  
1923 M. W. N. 57=16 M. L. W. 562=31 M. L. T. 420=  
24 Cr. L. J. 110=A. I. R. 1923 Mad. 491.

**—S. 6—Common gaming house.**

The term 'common gaming house' must at least



**MAD. TOWNS NUISANCES ACT (1889), S. 6—Elements of the offence.**

imply that the house was one used as a place of public resort. A common gaming house is one in which a large number of persons are invited habitually to congregate for the purpose of gaming and it makes no difference that the house was not open to all persons who might be desirous of using the same for gaming. (*Venkatasubba Rao, J.*) KRISHNASWAMY NAIDU *In re*

77 I.C. 303=41 Mad. 426=19 M.L.W. 219=  
1924 M.W.N. 237=34 M.L.T. 195=  
25 Cr. L.J. 367=A.I.R. 1924 Mad. 729=  
46 M.L.J. 309.

**—S. 6—Elements of the offence.**

To constitute an offence under Ss. 6 and 7 the house must be proved to be a common gaming house, and to be a common gaming house, a house must be a public place of resort where a number of people are in the habit of resorting as a place well-known to them where they can get what they want in the way of gambling: A.I.R. 1924 Mad. 729, Rel. on. (*Odgers, J.*) RAMASWAMI IYER v. EMPEROR. 119 I.C. 165=

1929 M.W.N. 267=2 M. Cr. C. 155=  
30 Cr. L.J. 1009=1929 Cr. C. 80=  
A.I.R. 1929 Mad. 603.

**—S. 7.—Common gaming house.**

"Common gaming house" means a place of public resort where a number of persons are invited to congregate for the purpose of gaming: A.I.R. 1924 Mad. 729, Rel. on.; 15 Hals. 584, Foll. (*Curgenven, J.*) KANDASAMI CHETTI v. EMPEROR. 122 I.C. 788=

1930 Cr. C. 17=31 Cr. L.J. 459=30 M.L.W. 721=

1929 M.W.N. 793=3 M. Cr. C. 27=

A.I.R. 1930 Mad. 128.

**MADRAS VILLAGE COURTS ACT (I of 1889 as amended by 2 of 1920)****—Procedure.**

The C.P. Code does not apply to proceedings before village Courts and we cannot expect litigants in such Courts to adopt the procedure which it lays down. (*Curgenven, J.*) ARUMUGHA NADAR v. VYAFURI CHETTI. A.I.R. 1930 Mad. 795.

**—S. 5—Judge.**

Village Court executing decree by distraint is Court and the Village Munsif if he himself distrained, is Judge so as to attract provisions of S. 197, Cr. P. Code. (*Jackson, J.*) SUBHA NAIDU v. EMPEROR. 115 I.C. 53=1929 M.W.N. 87=29 M.L.W. 579=

2 M. Cr. C. 59=30 Cr. L.J. 402=

12 A.I. Cr. R. 370=A.I.R. 1929 Mad. 256=

56 M.L.J. 600.

**—S. 76—Revision.**

The High Court cannot interfere with the order of a Panchayat Court under Ss. 435 and 439 of the Cr. P. Code. But under S. 107 of the Government of India Act the High Court has powers of supervision over all the criminal and civil Courts in the Presidency, and when a grave error of a Panchayat Court which is not governed by the provisions of the Cr. P. Code appears on the face of the record the powers given by S. 107 of the Government of India Act could be invoked to correct such error.

Where the judgment of a Panchayat Court convicting a person under S. 426 of the Penal Code, does not mention the value of the amount of loss or damage alleged to have been caused, the High Court will set aside the judgment in the exercise of its powers of superintendence under S. 107 of the Government of India Act. (*Devadoss, J.*) MUNIGADU v. EMPEROR. 88 I.C. 821=1925 M.W.N. 600=

26 Cr. L.J. 1161=

A.I.R. 1925 Mad. 1144.

**MAHOMEDAN LAW—Wakf—Mutwalli—Right of. MADRAS VILLAGE POLICE REGULATION.**

(Mad. Reg. 11 of 1816.)

**—Procedure.**

It is entirely contrary to the spirit of the regulation that a court acting in accordance with it should be required to adopt the ordinary rules relating to conduct of criminal cases, so long as it observes the fundamental dictates of justice, equity and good conscience. (*Curgenven, J.*) SUPPAN CHETTI v. KING-EMPEROR. 105 I.C. 801=26 M.L.W. 555=

39 M.L.T. 450=1927 M.W.N. 786=

28 Cr. L.J. 977=9 A.I. Cr. R. 140=

A.I.R. 1927 Mad. 1022=53 M.L.J. 526.

**—S. 10—Confinement.**

The Village Magistrate has power only to enforce the sentence of confinement in the village choultry and nowhere else. (*Abdur Rahim, J.*) PONNUSWAMI PILLAI, *In re*. 60 I.C. 64=44 Mad. 113=

22 Cr. L.J. 208=A.I.R. 1921 Mad. 410.

**—S. 10—Imprisonment.**

A Village Magistrate can sentence a person for certain offences to confinement in the village choultry for a period not exceeding 12 hours, but such a sentence of imprisonment must be either in the choultry or nowhere at all. Therefore a sentence of imprisonment in village common is illegal: A.I.R. 1921 Mad. 410, Foll. (*Curgenven, J.*) SUPPAN CHETTI v. KING-EMPEROR. 105 I.C. 801=

26 M.L.W. 555=39 M.L.T. 450=

1927 M.W.N. 786=28 Cr. L.J. 977=

9 A.I. Cr. R. 140=A.I.R. 1927 Mad. 1022=

53 M.L.J. 526.

**MAHOMEDAN LAW—Maintenance.****—Divorced wife—Right of.**

A who was married to B applied under S. 488, Criminal P. C., for maintenance. B proceeded to divorce her before Court. The question arose as to whether A could be granted maintenance and for what period.

*Held*, that A could obtain maintenance against B during the period of iddat and was entitled to it for three months: 5 All. 226 and 19 All. 50, Rel. on.; 17 O.C. 260, Dist. (*Stuart, C. J.*) MT. MARIAM v. KADI BAKSH. 6 O.W.N. 442=1929 Cr. C. 625=

A.I.R. 1929 Oudh 527.

**—Wakf—Creation of—User.**

Right to pray on another's land does not exist in absence of express or implied permission by owner. (*Ross, J.*) RAMPRATAP MARWARI v. SHEIKH SATIF.

91 I.C. 76=6 P.L.T. 887=21 Cr. L.J. 44=

1928 P. H. C. C. 64=A.I.R. 1926 Pat. 435.

**—Wakf—Mosque.****—Ahl Hadis—Right to worship.**

Ahl Hadis have a right to worship at the same mosque as other Muhammadans. 15 P. R. 1902 (Cr.); 13 All. 419 and 18 Cal. 448 (P. C.), Foll. (*Daniels, A.J.C.*) ABDUR RAHMAN v. EMPEROR.

62 I.C. 830=8 O.L.J. 282=22 Cr. L.J. 590.

**—Wakf—Mutwalli—Rights of.****—Right to appoint servants of the mosque.**

The *mutwalli* of the mosque, unless he is displaced from his position as such, has power to manage the trust property. As the *mutwalli*, he has the right to appoint a servant of the mosque and if the congregation is not satisfied with the appointment made by him the only course open to them would be to go to the proper Court to have the *mutwalli* removed or to make him adopt the proper and legal mode of managing the *wakf* property. (*Walmsley and Suhrawardy, JJ.*) HAJI MD. ISMAIL v. MUNSHI BARKAT ALI. 71 I.C. 506=26 C.W.N. 904=

24 Cr. L.J. 154=A.I.R. 1922 Cal. 483.



# **MAINTENANCE ORDERS ENFORCEMENT ACT, (1921), S. 7.—Evidence.**

## **MAIMING.**

See PENAL CODE.

## **MAINTENANCE.**

(2) CRIMINAL P. C. S. 488.

# **MAINTENANCE ORDERS ENFORCEMENT ACT (XVIII of 1921.)**

## **—S. 7.—Evidence.**

—General power of taking further evidence is not affected by S. 7.

*Fawcett and Mirza, JJ.*—S. 7 deals with the opportunities to be allowed to the person affected by the provisional order to oppose its confirmation, and naturally, therefore, provides for the call of further evidence being taken when necessary for the purpose of defence, but the general power to call for further evidence in other cases, which is implied by sub-S. (4) S. 3 of the English Act, 1920 is not thereby affected. In a case where the evidence before the Indian Court cannot be tested by cross-examination and introduces matter not mentioned in the evidence on which the provisional order is based, the order of the Magistrate for further evidence is desirable. (*Patkar and Baker, JJ. afterwards Fawcett and Mirza, JJ.*) PANDURANG AND KATTI v. KATTI. 109 I.C. 337=

52 Bom. 262=10 A.I.Cr.R. 179=29 Cr. L.J. 513=

30 Bom. L.R. 350=A.I.R. 1928 Bom. 117.

—Evidence of desertion subsequent to provisional order can be considered.

*Fawcett, J.*—Sub-S. (4), S. 7 contemplates evidence of desertion subsequent to the provisional order for maintenance being taken into consideration, for it is relevant to the question whether there has been a real desertion, and the Court can either refuse to confirm the provisional order or confirm it without modification, or with such modifications as to the Court, after hearing the evidence, may seem just. (*Patkar and Baker, JJ., afterwards Fawcett and Mirza, JJ.*) PANDURANG S. KATTI v. KATTI.

109 I.C. 337=52 Bom. 262=10 A. I. Cr. R. 179=

29 Cr. L.J. 513=30 Bom. L.R. 350=

A.I.R. 1928 Bom. 117.

## **—S. 7.—Revision.**

—Order of Chief Presidency Magistrate confirming order of maintenance is revisable by High Court.

*Patkar and Baker, J.*—The order confirming a provisional order of maintenance of the Chief Presidency Magistrate is a judicial and not merely an executive or administrative order, and the High Court has jurisdiction to interfere with the order of the Chief Presidency Magistrate in revision. (*Patkar and Baker, JJ., afterwards Fawcett and Mirza, JJ.*) PANDURANG S. KATTI v. KATTI. 109 I.C. 337=

52 Bom. 262=10 A.I. Cr. R. 179=

29 Cr. L.J. 513=30 Bom. L.R. 350=

A.I.R. 1928 Bom. 117.

# **MALABAR (RESTORATION OF ORDER) ORDINANCE (I of 1921.)**

## **—Limitation.**

S. 5, Limitation Act under which the Court can excuse delay is not one of the provisions, the application of which is extended by Act X of 1922 to proceedings under a special or local law. (*Oldfield and Ramesam, JJ.*) MITTOOR MOIDEEN HAJEE, *In re.*

71 I.C. 217=16 M.L.W. 764=24 Cr. L. J. 89=

A.I.R. 1923 Mad. 95=43 M.L.J. 561.

## **—S. (4) (2) (b)—Special Magistrates.**

—Who can be appointed.

The only persons, who under Ordinance I of 1922, Sect. 4 (2) (b) can legally be appointed Special Magistrates, are "Magistrates who have exercised the

# **MALICIOUS PROSECUTION—Burden of Proof—**

Test as to.

powers of a First Class Magistrate for not less than two years." Where the Special Magistrate was, on the date of appointment retired Deputy Collector, and had before and up to his retirement exercised first class powers for not less than two years.

*Held*, he had ceased to be a Magistrate and was not one when he was appointed a Special Magistrate under the ordinance. His appointment was therefore invalid. (*Oldfield and Ramesam, JJ.*) HAMED HAJI v. CROWN. 72 I.C. 381=24 Cr. L.J. 381=

17 M.L.W. 426=32 M.L.T. 195=1923 M.W.N. 288=

A.I.R. 1923 Mad. 598=44 M.L.J. 428.

## **—S. 10—Commission Examination.**

S. 10 of the Malabar (Restoration of Order) Ordinance I of 1922 read with S. 503 of the Cr. P. C. does not authorise a special Judge acting under the Ordinance to issue a commission for the examination of witnesses. (*Ayling and Odgers, JJ.*) AYARVALI POKKER. 74 I.C. 952=

18 M.L.W. 899=1923 M.W.N. 758=24 Cr. L.J. 840=

A.I.R. 1924 Mad. 243=45 M.L.J. 305.

## **—S. 11—Appeal.**

—Forum.

Where accused was convicted and sentenced to 4 years' rigorous imprisonment and fine, *held*, that the appeal from the sentence lies to the Special Judge and not the High Court. Since Act X of 1922, S. 12 of the Limitation Act has been made applicable to this act also. (*Oldfield and Ramesam, JJ.*) MITTOOR MOIDEEN, *In re.* 71 I.C. 217=16 M.L.W. 764=

24 Cr. L.J. 89=A.I.R. 1923 Mad. 95=43 M.L.J. 561.

## **MALICE.**

See TORT.

## **MALICIOUS ARREST**

See TORT.

## **MALICIOUS PROSECUTION.**

### **Burden of proof.**

### **Civil Action.**

### **Damages.**

### **Elements to be proved.**

### **Innocence.**

### **Malice.**

### **Prosecution.**

### **Reasonable and probable cause.**

## **—Burden of Proof.**

### **Suit for damages.**

The burden of proving want of reasonable and probable cause is on the plaintiff and the existence of malice should be independently proved and cannot be inferred merely from the absence of probable and reasonable cause. (*Jai Lal, J.*) NURKHAN v. JIWAN DAS. 99 I. C. 638=

A. I. R. 1927 Lah. 120.

## **—Burden of proof—Innocence.**

### **Plaintiff must prove his innocence.**

In an action for malicious prosecution the plaintiff has to prove first that he was innocent and that his innocence was pronounced by the Tribunal before which the accusation was made. 11 Q. B. D. 440 followed. (*Lindsay and Stuart, JJ.*) GOBARDEAN SINGH v. RAM BADAN SINGH. 67 I. C. 65=

44 All. 485=20 A. L. J. 284=A.I. R. 1922 All. 209.

## **—Burden of Proof—Test as to.**

The question is not: "Did the plaintiff commit the offence" or did defendant invent the offence against plaintiff; the two queries exhausting the possibilities of the situation. The question is: Has plaintiff proved that defendant invented and instigated the whole proceedings for prosecution. (*Viscount Dunedin.*) BALBHADDARSINGH v. BADRI SAI. 95 I. C. 329=28 Bom. L. R. 921=

**MALICIOUS PROSECUTION—Burden of Proof—Test as to.**

1 Luck. 215=24 A. L. J. 453=3 O.W.N. 499=  
1926 M. W. N. 482=43 C. L. J. 521=  
30 C. W. N. 866=29 O. C. 163=7 P. L. T. 591=  
13 O. L. J. 743=A. I. R. 1926 P. C. 46=  
51 M. L. J. 42. (P.C.)

—In order to show the absence of reasonable and probable cause, there are minor questions which it is necessary to determine, the burden of proving each of those minor questions lies upon the plaintiffs, just as much as the burden of proving the whole does. "The test" as to the burden or onus of proof whichever term is used, is simply this; to ask oneself which party will be successful if no evidence is given, or if no more evidence is given than has been given at a particular point of the case, for it is obvious that as the controversy involved in the litigation travels on, the parties from moment to moment may reach points at which the Tribunal will have to say that, if the case stops there it must be decided in a particular manner. (*Abdul Raof and Campbell, JJ.*) **ABDUL SHAKUR v. LIPTON & Co.** 72 I. C. 411=

6 L. L. J. 1=A. I. R. 1924 Lah. 1.

**—Civil action.****—Principles governing the right.**

Where damages are sought for the mere bringing and prosecution of a civil suit two main questions emerge. The first question is a question of the remoteness of the damage. The mere institution of the proceedings may, having regard to their character, involve damage to credit or reputation, damage to property in the sense that the defendant is put to expense, or damage to the person in the sense that he is liable to arrest. In such cases that damage is not remote but in any ordinary case the bringing of an ordinary action however maliciously and however great the want of reasonable and proper cause, will not support a subsequent action for malicious prosecution. Injury to plaintiff's business is not a ground for maintaining such a suit. The second question is as to what is meant by malice. There is some authority for the view that it is actionable for one person wilfully to injure a man in his trade if damage results to him, provided that if the real purpose is not to injure another, but to forward or defend one's own trade, then no wrong is committed and no action will lie, although damage to another ensues. In some cases malice is postulated as an element, meaning thereby that the act complained of is wilfully and knowingly done, or that it is done for the purpose of injuring another, but not as connoting personal enmity or spite or some other evil motive. (*Wren v. Weild* (1869). 4 Q.B. 730 and *Sorrell v. Smith* (1925) A. C. 700, Foll. (*Rankin, C. J. and C. C. Ghose, J.*) **IMPERIAL TOBACCO Co. v. ALBERT BONNAN.** 106 I.C. 277=46 C.L.J. 455=A.I.R. 1928 Cal. 1.

**—Acquittal on appeal no bar.**

Conviction by the trial Court but acquittal by the Court of appeal do not conclusively show that the charge by the defendant against the plaintiff was a *bona fide* charge and is no bar to a suit for malicious prosecution. (*Mukerji, J.*) **MADHO SINGH v. MANGAL SINGH.** 79 I.C. 1023=5 L.R.A. (Civ.) 375=

**—Civil action—When lies. A.I.R. 1924 All. 536.****—Sanction proceedings.**

How far, proceedings for sanction to remove the bar to the institution of a prosecution instituted by the defendant, disclose a sufficient cause of action to found a claim of damages in malicious prosecution is a matter of considerable doubt. (*Mukerji, J.*) **NAGENDRA NATH v. BASANT DAS.** 57 Cal. 25=

A.I.R. 1930 Cal. 392.

**MALICIOUS PROSECUTION—Civil action—When lies.****—Dismissal under S. 203, Cr. P. C.**

Where a complaint is dismissed under S. 203, Criminal P. C., before proceedings are commenced against the accused, no action for malicious prosecution lies as the subject matter of the suit has not reached the stage of the prosecution. The mere fact that the accused was present and cross-examined the witnesses on behalf of the complainant does not alter the character or the proceeding: 38 Cal. 880, Rel. on.; 17 C.W.N. 554, Dist. (*Das and Wort, JJ.*) **SUBHAG v. NAND LAL.** 118 I.C. 133=8 Pat. 285=10 P.L.T. 415=A.I.R. 1929 Pat. 271.

**—Dismissal under S. 107, Cr. P. C.**

Where the petition was one praying for action under S. 107 of the Criminal P. C., and was dismissed without issuing any notice to plaintiff, there was no prosecution of plaintiffs and consequently no action for damages for malicious prosecution would lie. (*Coutts-Trotter, C. J. and Viswanatha Sastry, J.*) **SANJEEVI REDDI v. KONERI REDDI.** 93 I.C. 8=

49 Mad. 315=23 M.L.W. 327=

A.I.R. 1926 Mad. 521=50 M.L.J. 460.

**—Prosecution initially bona fide.**

A prosecution may not be *mala fide* in the beginning; but the continuance of such prosecution after it was discovered that the facts upon which it was based were not true may give rise to a claim for damages for malicious prosecution: *Fitzjohn v. Mackinder*, (1861) 30 L.J.C.P. 257; 30 Bom. 37; 30 All. 525 and 12 C.L.J. 410. Rel. on. (*Suhrawardy and Garlick, JJ.*) **RABINDRA NATH v. JOGENDRA CHANDRA.** 114 I.C. 796=56 Cal. 432=

48 C.L.J. 339=33 C.W.N. 79=

**—Confession.**

A.I.R. 1928 Cal. 691.

A person is liable for prosecution starting on account of his implicating another man in a confession made by him though he himself did not lay any complaint. (*Dalai, J. C. and Cuming, A. J. C.*) **BADRI SAH v. BALBHADDAR SINGH.** 79 I.C. 697=

10 O.L.J. 468=A.I.R. 1924 Oudh 145.

**—Wrongful Civil Suit.**

Where the bringing of an action does, as a necessary consequence, involve an injury to property which cannot be compensated by the grant of costs in the action, a subsequent action for damages by defendant is not barred. Defendant, after agreeing to have the dispute as to the property with plaintiff decided by the award of a competent arbitrator, resiled after the award had been made, and instituted a suit against plaintiff in consequence of which she was deprived for a certain period of all rights to enforce the payment of certain debts due to her deceased husband with the result that their payment in certain instances became impossible owing to the action of the law of limitation:

*Held* she could not recover compensation by way of costs or under S. 144, C. P. C. The suit was therefore not barred. 42 C. 550 Diss. (*Stuart and Kanhaiya Lal, JJ.*) **ARJUN SINGH v. PARBATI.**

69 I.C. 173=20 A. L. J. 636=

44 All. 687=A.I.R. 1922 All. 465.

**—Sanction proceedings.**

The maintainability of a suit for malicious prosecution does not depend on there having been a prosecution in the sense in which the term is used in the Code of Criminal Procedure. The application for sanction is a preliminary or initial stage in a criminal prosecution and it is immaterial that this is done as the law required in a Civil and not a Criminal Court. 37 Cal. 358; 38 Cal. 880, Dist. The allegation that the defendant maliciously and without just, reasonable

**MALICIOUS PROSECUTION—Damages—Assessment.**

and probable cause instituted proceedings for sanction and that the plaintiff was obliged to defend the cases, are sufficient to disclose a cause of action. (*Teunon and Newbold, JJ.*) NARENDHRANATH DE v. JYOTISH CHANDRA PAL. 67 I. C. 705 = 49 Cal. 1035 = 27 C.W.N. 387 = A.I.R. 1922 Cal. 145.

**—Damages—Assessment.****—Principles governing.**

In a suit for damages for malicious prosecution where it is found that the plaintiff has not spent anything towards the expense of defence, the amount being paid by another person and there being no legal liability to repay the amount so provided, no damages can be awarded, the plaintiff having failed to prove that he had sustained any damages as the result of prosecution. So also no claim for damage can be made on ground that plaintiff's shop was shut during trial when no damage is proved from that cause. A mere statement that plaintiff pays a certain income-tax does not show that any part of it was earned in trading on a particular shop and does not serve as basis for damages. (*Young and Sen, JJ.*) GYASIRAM v. KISHORE. 122 I.C. 185 = A.I.R. 1930 All. 165.

**—Principles governing.**

Damages for malicious prosecution are awarded to compensate the plaintiff for expenses incurred in the prosecution, pain to mind and body, and the loss of reputation, etc., which he has actually suffered, and not for injuries which he might have suffered, if he had been convicted. (*Kendall, J.*) SUKH NANDAN SAROOP v. FAZUL HUSAIN. 100 I.C. 449 = A.I.R. 1927 All. 412.

—In awarding damages to the successful plaintiff in a suit for malicious prosecution all legitimate expenses incurred by him or by her for establishing his or her innocence in the criminal case can be allowed. (*Kinkhede, A. J. C.*) VITHOBA V. BHIMAI.

82 I.C. 1014 = A.I.R. 1925 Nag. 216.

**—Elements to be proved.****—Action for—Elements.**

The first thing a plaintiff suing for damages for malicious prosecution must do is to show that he was acquitted of such charge. If he is found guilty by the Court before whom he was prosecuted, it cannot be said that he was maliciously prosecuted. 1 Luck, 215 (P.C.), Ref. to. (*Misra and Pullan, JJ.*) MATA PRASAD V. SECRETARY OF STATE FOR INDIA. 5 Luck 157.

**—Falsity of Charge.**

In a suit for damages for malicious prosecution the plaintiff has not to prove that the charge brought against him was false: A. I. R. 1926 P. C. 46, Foll. (*Dalal, J.*) RAMADHAR PANDE v. AMARAJI. 117 I. C. 368.

—In an action for malicious prosecution the plaintiff has to prove: (1) that he was prosecuted by the defendant; (2) that the prosecution terminated in his favour; (3) that it was instituted without any reasonable and probable cause; and (4) that it was due to a malicious intention of the defendant. It is not at all incumbent upon the plaintiff to prove that he was innocent of the charge upon which he was tried. But, if the defendant pleads that his complaint was true and leads evidence to substantiate it, the question of the truth or falsity of the complaint may arise at the instance of the defendant. And, when such facts are professed to be within the knowledge of the defendant, the question of the truth or falsity of the complaint may also determine the question of want of reasonable and probable cause. The judgments of the criminal Courts are conclusive for the

**MALICIOUS PROSECUTION—Elements to be proved.**

purpose of showing that the prosecution terminated in favour of the plaintiff, but the findings of the criminal Courts by themselves are not evidence of malice or want of reasonable and probable cause. It is for the civil Court to go into all the evidence and decide for itself whether such malice or cause existed or not: 10 A.L.J. 423; 11 A.L.J. 125; A. I. R. 1924, All. 536; A. I. R. 1928 P. C. 46, Rel. on.; 12 C. L. J. 410, and 21 All. 26, Dist. (*Sulaiman and Kendall, JJ.*) SHUBRATI v. SHAMSUDDIN. 110 I. C. 413 = 50 All. 713 = 26 A. L. J. 439 = A. I. R. 1928 All. 337.

—In a suit for malicious prosecution even though the plaintiff has not to prove innocence still he has to prove not only that the criminal proceedings terminated in his favour but also that the defendant (complainant) acted without reasonable and probable cause: A. I. R. 1926 P. C. 46, Foll. (*Harrison, J.*) PARTAP SINGH v. HARI SINGH. 108 I. C. 397 = 29 P. L. R. 366 (Lah.)

**—Wicked Motive.**

In the class of actions to which a claim of damages for malicious prosecution belongs the state of the defendant's mind at the time when he did the act is most important. The plaintiff cannot succeed unless he can show either guilty knowledge or some wicked or indirect motive in the defendant. The general principle of the Common Law is that an action for malicious prosecution lies whenever one man puts the process of the law in motion against another maliciously and without reasonable and probable cause. Even in cases in which personal element constitutes the essence of the offence there may be certain facts which may afford an answer to the prosecution and on determination of such facts, will depend the answer to the question as to whether there was or was not reasonable and probable cause for the prosecution: A. I. R. 1926 P. C. 46, Foll.; (1889) A. W. N. 189 and 11 A. L. J. 125, not Foll. (*Wazir Hasan, J.*) SHIVARATAN v. RAM SAMRAN. 101 I. C. 274 = 2 Luck. 487 = 4 O. W. N. 270 = A. I. R. 1923 Oudh 145.

—To succeed in a case for malicious prosecution, the plaintiff must prove (1) that he was prosecuted by the defendant; (2) that the proceedings complained of terminated in favour of the plaintiff, if from their nature they were capable of so terminating; (3) that the prosecution was instituted against him without any reasonable and probable cause; and (4) that it was due to a malicious intention of the defendant and not with a mere intention of carrying the law into effect: A.I.R. 1926 P.C. 46, Foll.; 8 L.B.R. 78, held no good law. (*Baguley, J.*) U. SOE v. MAUNG NGWE THA. 106 I. C. 654 = 5 Rang. 705 = A. I. R. 1928 Rang. 51.

—In an action for malicious prosecution the plaintiff has to prove that he was prosecuted by the defendant; that the proceedings complained of terminated in favour of the plaintiff if from their nature they were capable of so terminating, that the prosecution was instituted against him without any reasonable and probable cause and that it was due to a malicious intention of the defendant, and not with a mere intention of carrying the law into effect.

A prosecution comes to an end even when a Magistrate declines to commit. (*Viscount Dunedin*) BALBHADDARSINGH v. BADRI SAH. 95 I.C. 329 = 1 Luck. 215 = 24 A.L.J. 453 = 3 O.W.N. 499 = 28 Bom. L.R. 921 = 1926 M.W.N. 482 = 43 C.L.J. 521 = 30 C.W.N. 866 = 29 O. C. 163 = 7 P.L.T. 591 = 13 O.L.J. 749 = A. I. R. 1926 P.C. 46 = 51 M.L.J. 42. (P.C.)

**MALICIOUS PROSECUTION—Elements to be proved.**

—In a suit for malicious prosecution the plaintiff has to prove: first, that he was innocent and that his innocence was conclusively made out; secondly, that there was no reasonable or probable cause for the prosecution; and lastly, that the proceedings were instituted with a malicious spirit and not in furtherance of justice. (*Fawcett and Madgavkar, JJ.*) **ALAMKHAN v. BANEMIYA.** 95 I.C. 39=28 Bom. L.R. 459=

**A.I.R. 1926 Bom. 306.**

—In a case of damages for malicious prosecution the plaintiff must prove the absence of reasonable and probable cause: 8 O.L.J. 147. *Foll. (Wazir Hasan, A.J.C.) NAND LAL v. DEBI DIN.* 91 I.C. 223. (Oudh) —*Proof of the former alone is not sufficient.*

To succeed in an action for malicious prosecution the plaintiff must allege and establish both (a) absence of reasonable and probable cause and (b) malice, and must fail altogether if he fails to establish both. The malice necessary to be established is not, even malice in law, such as may be assumed from the intentional doing of a wrongful act, but malice in fact; *malus animus* indicating that the party was actuated either by spite or ill-will towards any individual or by indirect or improper motives though these may be wholly unconnected with any uncharitable feeling towards anybody. (*Abdul Raof and Campbell, JJ.*) **ABDUL SHAKUR v. LIPTON & CO.** 72 I.C. 411= 6 L.L.J. 1=

**A.I.R. 1924 Lah. 1.**

—Plaintiff has to prove in a malicious prosecution suit (1) prosecution by defendant, (2) plaintiff's innocence, (3) want of reasonable and probable cause, (4) malicious intention of the defendants.

Grounds raising suspicion about plaintiff's guilt that would be sufficient to save plaintiff from conviction are not sufficient in a civil suit. (*Dalal, J. C. and Cuming, A.J.C.*) **BADRI SAH v. BALBHADDAR SINGH.** 79 I.C. 5697=10 O.L.J. 468=A.I.R. 1924 Oudh 145.

—To succeed in an action for malicious prosecution the plaintiff must prove the following four essentials:—(1) that the defendant instituted criminal proceedings against him before a judicial officer; (2) that in so doing he acted without reasonable and probable cause; (3) that in so doing he acted maliciously; and (4) that the proceedings terminated in the plaintiff's favour. If at the commencement of the prosecution, reasonable and probable cause was in existence or is not shown to have been absent, the action for malicious prosecution must fail. (*Wazir Hasan, A.J.C.*) **KAZIM HUSAIN v. BASIT HUSAIN.** 61 I.C. 970=

8 O.L.J. 147=A.I.R. 1921 Oudh 1.

**—Good faith—Plea of.**

A shop was closed by Sub-Inspector of Police and remained closed pending the criminal trial against the shop-keeper. Application was made to the Court to release the shop alleging the shop was in the possession of the Sub-Inspector, but consideration of such application was postponed till the disposal of the case with the consent of the applicant.

*Held*: that the applicant who subsequently brought a suit for malicious prosecution against the Sub-Inspector knew that the shop was under the control of the Court and he being lax in obtaining its release, the Sub-Inspector of Police who was found to have acted in good faith was not responsible for the loss caused by the shop being closed. (*Jackson, A.J.C.*) **KARAN SINGH v. NANDKISHORE,** 1929 Cr. C. 590=

**A.I.R. 1929 Nag. 334.**

**—Innocence.**

—*Burden of Proof of innocence.*

In a suit for malicious prosecution plaintiff should not be required to prove that he was innocent of the

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charge upon which he was tried. To throw the burden of proof on the plaintiff to prove that the charge brought by the defendant against him was false is tantamount to putting the plaintiff to the proof of his innocence without giving him the benefit of acquittal obtained by him in the criminal Court. The burden of proof shifts to the defendants that the charge disbelieved by the criminal Court was true: **A.I.R. 1926 P. C. 46 and 25 Bom. 332, Rel. on. (Dalal, J.) KISHUN MAL v. SAKAL RAJ.** **A.I.R. 1929 All. 878.**

The first thing that the plaintiff in a suit for damages for malicious prosecution has to prove is his innocence. Where the information to the Magistrate which led to proceedings under S. 107, Criminal P.C. being taken against the plaintiffs included more than one specific accusation.

*Held*: that the fact that one of these accusations had not been supported by evidence was no ground for giving the plaintiffs a decree for damages for malicious prosecution, when the case as a whole had not been found to have been laid without reasonable and probable cause. (*Ross, J.*) **HARIHAR SINGH v. DAS-RATH AHIR.** 85 I.C. 476=A.I.R. 1925 Pat. 469.

**—Malice.**

—*Conspiracy to prosecute plaintiff—Suit against all defendants.*

In a suit for damages for malicious prosecution the finding was that all the three defendants conspired to prosecute the plaintiff maliciously and without reasonable and probable cause and that in furtherance of their design one of the defendants figured as the complainant in a cognizable offence of which information was lodged by him to the police and the latter prosecuted the plaintiff on the faith of such information. Evidence, in the case, was given by all the three.

*Held*: that under these circumstances, all the three defendants, including the police officer were rightly considered by the trial Court to have prosecuted the plaintiff so as to entitle the latter to sue them for compensation for malicious prosecution: 30 All. 525 (P.C.): **A.I.R. 1926 P. C. 46, Rel. on. (Sen and Niamatullah, JJ.) MD. SHARIF v. NASIR ALL.** **A.I.R. 1930 All. 742.**

—*False accusation to knowledge of prosecutor—Inference of malice—Malice means indirect or improper motive.*

Where the accusation is false and false to the knowledge of the prosecutor, absence of reasonable and probable cause is obvious. The inference of malice is likewise irresistible where the object of launching a false prosecution is to provide defence in a connected case in which the prosecutor is the accused. In this connection malice does not necessarily mean enmity or hatred but any indirect or improper motive. Prosecuting another person on a groundless charge for the purpose of establishing false defence in another case is actionable. (*Niamatullah, J.*) **BANSI v. HUKAM SINGH.** **A. I. R. 1930 All. 216,**

—*Proof of—Engaging Counsel in Criminal Case.*

Where the police investigate a case and sends it up for trial, in the absence of proof that the informant intentionally gave false information, it cannot be said that he acted maliciously merely because he was told by some persons that the person complained of was innocent nor because the informant engaged a counsel in the criminal case. (*Brown, J.*) **YE NAM LOW v. MAUNG PE-WUN.** 117 I.C. 62=

**A.I.R. 1929 Rang. 63.**

—*Maliciously bringing a civil suit—Action may lie but not if the object is to defend one's own trade.*

**MALICIOUS PROSECUTION—Malice.**

Where damages are sought for the mere bringing and prosecution of a civil suit two main questions emerge. The first question is a question of the remoteness of the damage. The mere institution of the proceedings may, having regard to their character, involve damage to credit or reputation, damage to property in the sense that the defendant is put to expense, or damage to the person in the sense that he is liable to arrest. In such cases that damage is not remote but in any ordinary case the bringing of an ordinary action however maliciously and however great the want of reasonable and proper cause, will not support a subsequent action for malicious prosecution. Injury to plaintiff's business is not a ground for maintaining such a suit. The second question is as to what is meant by malice. There is some authority for the view that it is actionable for one person wilfully to injure a man in his trade if damage results to him, provided that if the real purpose is not to injure another, but to forward or defend one's own trade, then no wrong is committed and no action will lie, although damage to another ensues. In some cases malice is postulated as an element, meaning thereby that the act complained of is wilfully and knowingly done, or that it is done for the purpose of injuring another but not as connoting personal enmity or spite or some other evil motive. *Wren v. Weild* (1869) 4 Q. B. 730 and *Sorell v. Smith* (1925) A. C. 700, Foll. (*Rankin, C. J. and C. C. Ghose, J.*) *IMPERIAL TOBACCO Co. v. ALBERT KONNAN*. 106 I.C. 277 = 46 C.L.J. 455 = A.I.R. 1928 Cal. 1.

**—Proof of malice—Getting up false evidence.**

In a suit for malicious prosecution the fact that defendant lodged his complaint and got up false evidence in support of it, shows not merely that he had not sufficient and reasonable cause but that he was actuated by malice. (*Fawcett and Madgavkar, J.J.*) *ALAMKHAN v. BANEMIYA*. 95 I.C. 39 = 28 Bom. L.R. 459 = A.I.R. 1926 Bom. 306.

**—Prosecution bona fide in origin malicious subsequently.**

A prosecution need not be malicious from the very commencement of it. It may have been undertaken at the instance of a Judge or Magistrate or it may have been commenced under *bona fide* belief in the guilt of the accused. But it may subsequently become malicious in any of the stages through which it has to pass, if the prosecutor having known subsequently of the innocence of the accused perseveres *malo animo* in the prosecution with the intention of procuring a conviction of the accused. But in any case the foundation of an action for malicious prosecution is malice and this malice may exist at any time in the course of the enquiry. (*Kinkhede, A. J. C.*) *VITHOBA v. MT. BHIMAI*. 82 I.C. 1014 = A.I.R. 1925 Nag. 216.

**—Protecting one's own interest does not imply malice.**

The mere institution of a prosecution without reasonable and probable cause is not sufficient to justify a decree in a suit for malicious prosecution, if the defendant honestly believed that the accused (plaintiffs) had committed a criminal offence; it is further necessary to find that the prosecution was malicious.

To protect one's own interest is not necessarily malicious and is not incompatible with a real desire to serve the ends of justice. Where a prosecution is obviously false and not instituted in good faith, the Courts will infer malice but where a prosecution has been instituted under a *bona fide* belief that the accused has committed an offence, even though that

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belief is mistaken, the plaintiff's cannot obtain a decree unless the prosecution is malicious as well, even if inquiry would have shown that no offence had been committed. 1901 A. C. 495 Foll. (*Pratt, J.*) *MAUNG SET KHAING v. MAUNG TUN NYEIN*. 92 I.C. 512 = 4 Bur. L.J. 69 = 3 Rang. 82 = A.I.R. 1925 Rang. 221.

**—Anger and haste contra indicate malice.**

If there was an honest belief in the plaintiff's guilt neither anger nor hastiness on the part of the defendant would evidence malice, and anger so far from being a wrong or indirect motive is one of the motives on which the law relies to secure the prosecution of offenders, while hastiness in the defendant's conclusion as to the plaintiff's guilt although it might account for his coming to a wrong conclusion, does not show the presence of any indirect motive. (*Abdul Raoof and Campbell, J.J.*) *ABDUL SHAKUR v. LIPTON AND CO.*

72. I.C. 411 = 6 L.L.J. 1 = A.I.R. 1924 Lah. 1.  
**—False allegations to the knowledge of the prosecutor indicate malice and advice of Counsel is no justification for the prosecution where true facts are not laid before Counsel.**

By an agreement between the parties plaintiff contracted with the defendant to take on lease a cinema which was to be constructed by the defendant. There was time limit for the building in the contract which was on four sheets of paper bearing a certain original date. The solicitor of both the parties added a fresh front sheet on a stamp paper each time the contract period was altered and it was signed and initialled by the parties. Owing to quarrels due to a desire to alter the contract in a particular way on the side of both parties, the defendant applied for prosecution of the plaintiff for cheating and forgery on the ground that the plaintiff took the new front sheet, attached to it the remaining back sheets of the original agreement and tried to have the documents so prepared registered. The result of this prosecution was acquittal in the Sessions. Plaintiff sued for damages for malicious prosecution, held, that as it was the intention of the parties that the new front sheet was to be a part of the document, the prosecution of the plaintiff was without reasonable and probable cause and was also malicious since the object of the defendant was to take undue advantage on account of a pending prosecution of the plaintiff. No doubt where true facts are laid fairly before the legal adviser and on his advice prosecution is started a party is ordinarily protected but not where facts are not fairly laid before the adviser. (*Schwabe, C. J., and Ramesam, J.*) *W. H. NURSE v. RUSTOMJI DORABJI*. 77 I.C. 787 = 19 M.L.W. 397 = 34 M.L.T. 25 = 1924 M.W.N. 382 = A.I.R. 1924 Mad. 565 = 46 M.L.J. 383.

—Where there was no reasonable and probable cause for instituting the prosecution, and malice could be inferred from the circumstances, plaintiff is entitled to damages. (*Macleod, C.J., and Fawcett, J.*) *JAMNADAS SHIVRAM v. CHUNILAL HAMBIRMAL*. 59 I.C. 520 = 45 Bom. 227 = A.I.R. 1921 Bom. 144.

—Measure of Damages.

The fact that criminal proceedings end without even the issue of a process against the accused person will be an element for consideration on the question of the measure of damages for malicious prosecution. (*Wazir Hasan and Gokarnath Misra, J.J.*) *GUR SARAN DAS v. ISRAR HAJDAR*. 105 I.C. 553 = 1 L.C. 492 = A.I.R. 1927 Oudh 471.

**—Prosecution.**

—Application under Criminal P.C. S. 436 is prosecution.



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The word 'prosecution' has a very wide significance and does not merely mean an actual trial or an enquiry which may result in a conviction and the imposition of imprisonment or fine. Therefore, an application in revision under S. 436, Criminal P.C., for ordering an enquiry or a retrial is a prosecution: 17 C.W.N. 554; 19 C.W.N. 935; 41 All. 503 and A.I.R. 1922 Cal. 145, Rel. on. (*Sulaiman and Niama-tullah, JJ.*) B. MADAN MOHAN SINGH v. B. RAM SUNDAR SINGH. 1930 A.L.J. 885 =

A.I.R. 1930 All. 326.

—Correct information to police—Prosecution thereon—Defendant not liable.

In India the police have special powers in regard to the investigation of criminal charges, and it depends very much on the result of their investigation whether or not further proceedings are taken against the person accused. If, therefore, a complainant does not go beyond giving what he believes to be correct information to the police, and the police without further interference on his part (except giving such honest assistance as they may require), think fit to prosecute, it would be improper to make him responsible in damages for the failure of the prosecution. But if the charge is false to the knowledge of the complainant; if he misleads the police by bringing suborned witnesses to support it; if he influences the police to assist him in sending an innocent man for trial before the Magistrate, it would be equally improper to allow him to escape liability because the prosecution has not technically been conducted by him.

Therefore, it is impossible to hold that the defendant is liable for damages where there is not an iota of evidence to suggest that he ever went beyond giving a true information of the occurrence regarding a theft in his house and also a true statement of the fact that he suspected the plaintiff: 30 All. 525 (P.C.), *Foll.* (*Mukerji, J.*) NAGENDRA NATH v. BASANTA DAS.

57 Cal. 25 = A.I.R. 1930 Cal. 392.

—Prosecution is not commenced till summons is issued (*obiter*). *Yates v. Queen*, (1885) 14 Q.B.D. 648, Rel. on. (*Mukerji, J.*) NAGENDRA NATH v. BASANTA DAS. 57 Cal. 25 = A.I.R. 1930 Cal. 392.

—Proceedings before police are proceedings anterior to "Prosecution"—*Semble*.

*Semble*—In the decision of the Judicial Committee in the case of *Balbhaddar Singh v. Badri Sah* (A.I.R. 1926 P.C. 46) there is sufficient to indicate that proceedings before the police are proceedings anterior to "prosecution." There is also enough in the decision of the Judicial Committee in the case of *Gaya Prasad v. Bhagat Singh* (30 All. 525) to indicate that police proceedings are distinct from a "prosecution" for the purpose of a suit for malicious prosecution. (*Mukerji, J.*) NAGENDRA NATH v. BASANTA DAS.

57 Cal. 25 = A.I.R. 1930 Cal. 392.

—Prosecution in the sense of the Criminal Procedure Code—No condition precedent.

A suit for malicious prosecution is not a statutory suit and if the facts alleged disclose a cause of action, notwithstanding that the suit has been named or described as such, that cause must be tried. For there are certain wrongs akin to malicious prosecution which entitle the person aggrieved to sue, as for instance, malicious abuse of the process of the Court, malicious arrest, malicious search and malicious execution. These kindred suits are sometimes treated as being suits for malicious prosecution and this is the origin of the dictum "that the maintainability of a suit for malicious prosecution does not depend on there having been a prosecution in the sense in which that term is used in the Criminal Procedure Code."

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The dictum is perfectly correct so long as it is meant to apply to these kindred suits: 38 Cal. 880, Rel. on. (*Mukerji, J.*) NAGENDRA NATH v. BASANTA DAS.

57 Cal. 25 = A.I.R. 1930 Cal. 392.

—Application under Sec. 195, Cr. P. C. is prosecution.

The definition of 'prosecution' is not confined to prosecution before a Magistrate or a Criminal Court. If a Judicial Tribunal is moved which has the power to take criminal action against the person charged the requirement of the law is satisfied and a claim for damages for malicious prosecution will arise. The word "prosecution" includes such civil actions as may be the subject of a suit for malicious prosecution: (Case-law discussed.) A.I.R. 1922 Cal. 145, Rel. on. (*Sukrawardy and Garlick, JJ.*) RABINDRA NATH v. JOGENDRA CHANDRA. 114 I.C. 796 = 56 Cal. 432 =

48 C.L.J. 339 = 33 C.W.N. 79 =

A.I.R. 1928 Cal. 691.

—The institution of proceedings under S. 145, Criminal P. C., amounts to a malicious prosecution: 17 C.W.N. 55; 41 All. 503, Rel. on. (*Kendall, J.*) SUKH NANDAN SAROOP v. FAZAL HUSAIN.

100 I.C. 449 = A.I.R. 1927 All. 412.

—Giving information leading to prosecution is "prosecution."

In any country, where, as in India, prosecution is not private, an action for malicious prosecution in the most literal sense of the word, could not be raised against any private individual. But giving information to the authorities which naturally leads to prosecution is just the same thing. And if that is done and trouble is caused, an action will lie. (*Viscount Dunedin*). BALBHADDAR SINGH v. BADRI SAH. 95 I.C. 329 =

1 Luck. 215 = 24 A.L.J. 453 = 3 O.W.N. 499 =

28 Bom. L.R. 921 = 1926 M.W.N. 482 =

43 C.L.J. 521 = 30 C.W.N. 866 = 29 O.C. 163 =

7 P.L.T. 591 = 13 O.L.J. 749 =

A.I.R. 1926 P.C. 46 = 51 M.L.J. 42 (P.C.)

—Prosecution does not start until process is issued.

Defendant filed a complaint before the Presidency Magistrate, George town, Madras, charging the plaintiff with a criminal offence, *viz.*, criminal breach of trust. The Magistrate held an enquiry himself presumably under S. 202 of the Criminal P. C., after issuing notice to the plaintiff and giving him an opportunity to attend the enquiry. He did attend the enquiry and the result of it was that the Magistrate dismissed the charge.

*Held*: that in law there was no "prosecution" of the plaintiff by the defendant and as there was no prosecution in law the plaintiff's claim for damages for malicious prosecution must fail: A.I.R. 1926 Mad. 521; and 37 Mad. 181, *Foll.* (*Beasley, J.*) A. A. ARUNACHELLA MUDALIAR v. K. CHINNAMUNUSAMY. 97 I.C. 351 = 24 M.L.W. 22 =

1926 M.W.N. 527.

—Mere setting of law in motion, no test—Conduct considered.

In a case for malicious prosecution the mere setting of law in motion is not the test to find out who the prosecutor really was. The conduct of the complainant before and after making the charge must be taken into account. Therefore if the complainant has not done anything beyond merely giving what he believed to be correct information to the police and if without further interference on his part the police have thought fit to prosecute, it is not proper to hold him liable in damages if the prosecution results in failure; but if to the knowledge of the complainant the charge was false and if he misled the police by bringing



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suborned witnesses to support it and if the police were influenced by him to send an innocent man for trial before a Magistrate it will not be proper to allow him to escape the liability to pay damages simply on the ground that the prosecution was technically not conducted by him. (*Kinkhede, A. J. C.*) **VITHOBA v. BHIMAI.** 82 I.C. 1014 = A.I.R. 1925 Nag. 216.

—Active participation in prosecution started already.

Where the deft. had taken a most active part in carrying on the prosecution against the plff. engaging a pleader at great expense to assist the Prosecuting Inspector and through the pleader conducting the examination and cross-examination of witnesses and where the prosecution would not have gone so far as it had done without him.

*Held* that though technically the prosecution had not been started by him yet he was liable as the real prosecutor. (30 All. 525 P. C. Foll.) (*Neave and Daniels, J.J.*) **RADHA KISHAN v. KEDAR NATH.**

80 I.C. 874 = 46 All. 815 = 22 A.L.J. 761 = 5 L.R.A. Civ. 536 = A.I.R. 1924 All. 845.

—A suit for damages is maintainable against a person who supplied the information on which prosecution was launched though he may not have himself figured as the complainant in the Criminal Court. 42 Mad. 880, Foll.; 26 Mad. 362, not Foll. (*Sadasiva Aiyar and Spencer, J.J.*) **SHANMUGA UDAYAR v. KANDASWAMI ASARI.** 59 I.C. 973 = 12 L.W. 170.

—Information to Police—Police prosecution on suspicion—Informant not liable.

Deft. in whose premises burglary was committed gave intimation to the police and the police on suspicion arrested plff, search his house, and found a great number of articles belonging to the deft. The deft. declared the articles were stolen from his premises and that the police may take such action as they thought admissible. *Held*, that deft. should not be said to have prosecuted the plff, or taken part in the conduct of the prosecution so as to render him liable for damages for malicious prosecution. The fact that he was examined as a witness for the prosecution is immaterial. 10 L.W. 235, Dist. (*Wallis, C.J. and Krishnan, J.*) **RAJAGOPALA NAICK v. SPENCER AND CO., LTD.** 59 I.C. 218 = 12 L.W. 87 = 28 M.L.T. 298.

—“Prosecution”—Meaning of.

Complaint dismissed without issue of process—Mere institution of criminal proceedings is sufficient prosecution giving the accused a cause of action to sue for damages.

The word “prosecution” does not bear any technical meaning in this connexion but only its natural meaning, *viz.*, the institution of criminal proceedings: 30 All. 525 (P.C.); 20 C. L. J. 518; 28 Bom. 226 and *Fitzjohn v. Makinder* (9 C. B. N. S. 505), Rel. on: 37 Mad. 181; 37 Cal. 358; and 38 Cal. 880; Expl. and Dis. from. (*Wasir Hasan and Goharan Nath Misra, J.J.*) **GUR SARAN DAS v. ISRAR HAIDAR.**

105 I.C. 553 = 1 L.C. 492 = A.I.R. 1927 Oudh. 471.

—Reasonable and probable cause.

—Mixed question of law and fact.

In malicious prosecution the existence of reasonable and probable cause is a question for the Judge and not for the jury. In India the balance of authorities is in favour of the view that the question is a mixed one of law and fact and the inference deducible from proved facts may be examined by the High Court on second appeal: 16 C. W. N. 540; 12 C. L. J. 410 and 28 Cal. 591, Ref. (*Mukherji, J.*) **NAGENDRA NATH v. BASANTA DAS.** 57 Cal. 25 = A.I.R. 1930 Cal. 392.

**MALICIOUS PROSECUTION—Reasonable and probable cause.**

The plaintiff, a servant of the defendant's neighbour, was earning Rs. 7 a month. About 14 years ago, he was imprisoned for six months on a conviction of theft. Thereafter, about 10 years ago, he stole some money by opening a trunk. He had the reputation of a “dagi” in the village. Quite recently there was an inquiry preliminary to the starting of a case under Criminal P.C., S. 110, in which proceedings the defendant had taken a prominent part. There was a theft in the defendant's house and the next day, in his information to the police, the defendant stated that he suspected the plaintiff in connexion with the theft. Upon this information the police arrested the plaintiff, kept him in *hajat*, and eventually, finding no evidence connecting him with theft, submitted a final report on which the plaintiff was discharged. The plaintiff brought a suit for malicious prosecution.

*Held*: that in view of all these facts it was exceedingly difficult to hold that there was want of reasonable and probable cause on the part of the defendant in suspecting the plaintiff and mentioning about this suspicion in the information of the occurrence that he lodged with the police. (*Case law considered.*) (*Mukerji, J.*) **NAGENDRA NATH v. BASANTA DAS.** 57 Cal. 25 = A.I.R. 1930 Cal. 392.

—Acquittal raises presumption of reasonable and probable cause.

When a person comes to Court after acquittal in the criminal Court, he has not positively to prove his innocence but only want of reasonable and probable cause before he would be entitled to claim damages. The proof of a want of reasonable and probable cause is not tantamount to proof of innocence. When a person has been acquitted, there would be a presumption of want of reasonable and probable cause in an occurrence when there was no scope for surmise and the evidence was given by the defendant of what he actually saw: A.I.R. 1926 P. C. 46 Appl. (*Dalal, J.*) **MAHOMAD DAUD KHAN v. JAI LAL.** 110 I.C. 852 = A.I.R. 1929 All. 265.

—A certain person made charges against another which were false to his knowledge. He was sued for malicious prosecution.

*Held*: that he had absolutely no reasonable and probable cause for bringing the charges and therefore was liable. (*Raza, J.*) **GAJRAJ v. CHANDRIKA PRASAD.** 114 I.C. 501 = 5 O.W.N. 1039.

—Complaint under S. 212, Madras Estates Land Act, gives no cause of action for damages.

—A suit claiming damages for malicious prosecution in respect of a complaint of an offence under S. 212, Estates Land Act, in which it was alleged that the act amounted to robbery, will not lie, there being no scandal or damage to fair name therein. Plaintiff must prove want of probable and reasonable cause. The tenants cannot be held to be aware of the strictly legal rights of landlord: 31 M.L.J. 479, Foll. (*Phillips and Odgers, J.J.*) **NAGANNA NAIDU v. VENKATARAYULU NAIDU.** 117 I.C. 797 = A.I.R. 1929 Mad. 286.

—Test.

Even in cases in which personal element constitutes the essence of the offence there may be certain facts which may afford an answer to the prosecution and on determination of such facts, will depend the answer to the question as to whether there was or was not reasonable and probable cause for the prosecution: A. I. R. 1926, P. C. 46, Foll. (1889) A. W. N. 189 and 11 A.L.J. 125, not Foll. (*Wasir*

**MALICIOUS PROSECUTION—Reasonable and probable cause.***Hasan, J.) SHIVARATAN v. RAM SAMRAN.*

101 I.C. 274=2 Luck. 487=4 O.W.N. 270=

A.I.R. 1928 Oudh 145.

—*Honest belief in accused's guilt is reasonable and probable cause.*

"Reasonable and probable cause" means "an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds of the existence of the state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed: *Hicks v. Faulkner*, (1882) 8 Q.B.D. 167, Foll. (*Wadegaonkar, A.J.C.*) *BAFUJI v. KISAN*.

89 I.C. 432=A.I.R. 1926 Nag. 175.

—*Plaintiff acquitted on appeal—Presumption is against absence of reasonable and probable cause.*

If the plaintiff has been convicted in the first instance and ultimately acquitted on appeal the presumption is against the absence of reasonable and probable cause unless the original conviction is proved to have proceeded on evidence known by the defendant to be false or on the wilful suppression by him of material facts: *A. I. R. 1923 Patna 344*; 21 All. 26 and 12 C. L. J. 410, Appr.

The defendant had impounded plaintiff's cattle, plaintiff was required to pay Rs. 14-14 to the pound-keeper to have his cattle released from the cattle-pound, and this amount was extorted from defendant by the plaintiff by wrongfully confining him. Plaintiff was thereupon convicted under S. 384, I. P. C., by the trial Court, but ultimately acquitted. Plaintiff then filed a suit for damages for malicious prosecution.

*Held*: that the prosecution was neither malicious nor was there absence of reasonable and probable cause. (*Wadegaonkar, A. J. C.*) *BAFUJI v. KISAN*.

89 I. C. 432=A. I. R. 1926 Nag. 175.

In an action for malicious prosecution the question whether the prosecution was instituted against the plaintiff without any reasonable or probable cause is a question of fact. 25 Bom. 332 and 28 Cal. 591, Foll. (*Dalal, Ag. J. C.*) *MAHADEO PRASAD v. CHUNNILAL*. 86 I. C. 596=12 O. L. J. 88=2 O. W. N. 62=

28 O. C. 387=A. I. R. 1925 Oudh 369.

—*Meaning.*

Reasonable and probable cause means on honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed. (*Abdul Raoof and Campbell, JJ.*) *ABDUL SHAKUR v. LIFTON & Co.*

72 I. C. 411=6 L. L. J. 1=

A.I.R. 1924 Lah. 1.

—*Acquittal in appeal—Presumption is against the absence of reasonable and probable cause.*

The true rule is that if the plaintiff has been convicted in the first instance and ultimately acquitted on appeal the presumption is against the absence of reasonable and probable cause unless the original conviction is proved to have proceeded on evidence known by the defendant to be false or on the wilful suppression by him of material information. (*Das*

**MALICIOUS PROSECUTION—Suit for—Essentials.** and *Kulwant Sahay, JJ.*) *JAGNARAIN DUBEY v. BIDAPET DUBEY*. 72 I. C. 409=4 P. L. T. 202=

1 P. L. R. 332=A.I. R. 1923 Pat. 344.

—*Test.*

The determination of the issue as to the absence of existence of a 'reasonable and probable cause' depends entirely on the circumstances of each case. The only possible rule to guide is 'that there must have existed a state of circumstances upon which a reasonable and discreet person would have acted. The rule prescribes not a standard of absolute rectitude and certainty but of reasonableness and probability in relation to a defendant's mind. The question whether or not a reasonable man would or would not act upon the information given by another must depend in a great degree upon the opinion to be formed of the position and circumstances of the informant, and the amount of credit which may be due under those circumstances to the person who thus conveyed the information. In an action for a malicious prosecution where a person is proved to have acted upon the information of a trustworthy informant he cannot be said to have proceeded without reasonable and probable cause because he had not made inquiry of some one else who could have repeated and confirmed what was told him. The defendant's persistence in pursuing the accusation by filing the petition for revision would certainly be evidence of malice, but it is no evidence of the absence of reasonable and probable cause. (*Wazir Hasan, A. J. C.*) *KAZIM HUSAIN v. BASIT HUSAIN*. 61 I. C. 970=

8 O. L. J. 147=A. I. R. 1921 Oudh 1.

—*Suit for*

A suit for malicious prosecution is not a statutory suit and if the facts alleged disclose a cause of action notwithstanding that the suit has been named or described as such, that must be tried. For there are certain wrongs akin to malicious prosecution which entitle the person aggrieved to sue, as for instance, malicious abuse of the process of the Court, malicious arrest, malicious search and malicious execution. These kindred suits are sometimes treated as being suits for malicious prosecution and this is the origin of the dictum "that the maintainability of a suit for malicious prosecution in the sense in which that term is used in the Criminal Procedure Code." The dictum is perfectly correct so long as it is meant to apply to these kindred suits: 38 Cal. 880, Rel. on. (*Mukerji, J.*) *NAGENDRA NATH v. BASANT DAS*. 57 Cal. 25=

A. I. R. 1930 Cal. 392.

—No action to claim damages for malicious prosecution can lie until there has been acquittal in the first Court. (*Viscount Dunedin*). *OSUMANYAWA YAW EWNA v. NANA SIR OFORI ATTA*.

A.I.R. 1930 P.C. 260. (P.C.)

—A suit for malicious prosecution can lie in respect of proceedings under S. 107 of the Criminal P. C. 17 A. L. J. R. 776 and 17 C. W. N. 554, Foll.; 13 M. L. J. 370, Not Foll. (*Tudball and Rafique, JJ.*) *CHIRANJI SINGH v. DHARMSINGH*. 19 A.L.J. 491=

43 All. 402=A.I.R. 1921 All. 173.

—*Suit for—Essentials.*

It is not necessary, in order to succeed in an action for malicious prosecution, for the plaintiff to prove that he has suffered any special pecuniary loss through the conduct of the defendant. The unwarranted charge brought against him of criminal misconduct must of itself injure his reputation; it might lead to an arrest for which he would be entitled to further compensation. (*Wazir Hasan and Gokaran Nath*

**MASTER AND SERVANT—Master's Liability.**  
*Misra, J.J.*) GUR SARAN DAS v. ISRAR HAIDAR.  
 105 I.C. 553=1 L.C. 492=A.I.R. 1927 Oudh 471.

**MASTER AND SERVANT** See also TORT.

**Master's Liability.**

**Offence by Servant.**

**—Master's Liability.**

**—Temporary lending of servant—Liability of temporary master.**

Where one person lends a servant to another for particular employment, the servant, for anything done in that particular employment, must be dealt with as the servant of the man to whom he is lent although he remains the general servant of the person who lent him : *Rourke v. White Moss Colliery Co.*, (1877) 2 C. P. D. 205 and *Donovan v. Laing, Wharton and Down Construction Syndicate*, (1893) 1 Q. B. 629, Rel. on. (*Rangnekar, J.*) KONDIVA GOPAL v. MESKREJEAN. 109 I. C. 191=30 Bom. L. R. 162=A.I.R. 1928 Bom. 91.

—A servant has no implied authority to engage a stranger to do work on behalf of his master, so as to render the master liable for the stranger's acts or defaults except perhaps in a case of necessity, which term comprises only well known exceptional cases : (Case law discussed). (*Mukherji J.*) INDRA MOHAN ROI v. EMPEROR. 110 I. C. 326=47 C. L. J. 460=10 A.I. Cr. R. 414=29 Cr. L. J. 684=A.I.R. 1928 Cal. 410.

**—Offence by Servant.**

**—Criminal liability for servant's acts.**

Where a particular intent or state of mind is not of the essence of an offence a master can be criminally liable for his servant's acts if an act is expressly prohibited but not otherwise and he cannot be so made liable if the Act provides for liability for permitting and causing a certain thing unless it can be shown that the act was done with the master's knowledge and assent express and implied. (*Greaves and Duval, J.J.*) YARAJ LALL v. EMPEROR. 82 I.C. 137=51 Cal. 948=28 C.W.N. 584=25 Cr. L.J. 1209=A.I.R. 1924 Cal. 985.

## MAXIMS.

**—Actio personalis moritur cum persona**  
**—Maxim does not apply to proceedings in respect of non-cognizable offences.**

In a case of non-cognizable offence instituted upon a complaint the axiom of *actio personalis moritur cum persona* in civil law confined to torts does not apply and the trying Magistrate has discretion in proper cases to allow the complaint to continue by a proper and fit complaint if the latter is willing: 20 Cal. W. N. 862, Appl. (*Marten and Madgavkar, J.J.*) MAHOMED AZAM v. EMPEROR. 93 I.C. 891=28 Bom. L.R. 288=27 Cr. L.J. 491=A.I.R. 1926 Bom. 178.

**—Ignorance of law is no excuse.**

Ignorance of the law is ordinarily very much of an excuse as it leads to a reduction of the sentence though it may not be ground for an acquittal. (*Hallifax, A. J. C.*) SITARAM KUNBI v. EMPEROR. 109 I.C. 234=24 N.L.R. 110=11 N.L.J. 46=10 A.I.Cr.R. 216=29 Cr. L.J. 506=A.I.R. 1928 Nag. 188.

**—Nemo debet-bis Vexari.**

A witness made two conflicting statements in a trial before a Sessions Judge who made a complaint to the District Magistrate stating that the second of the two statements was false; the Magistrate framed a

**MERCHANT SHIPPING ACT (1923)—S. 103 (4)—**

**Trial under-**  
 charge in respect of the second statement only and convicted the accused : On appeal which was heard by the same Sessions Judge, re-trial was ordered.

*Held* : that the accused is entitled to a decision from a Judge who approaches his case with an open mind ; and that the proceedings should be quashed on the ground that the complainant and the Appellate Court were one and the same and it would not be illegal but most inadvisable to submit the accused to a fresh trial because of the initial mistake of the Court in not framing the charge in the alternative and the principle of *nemo debet bis vexari* applies in the spirit if not in the letter. (*Harrison, J.*) SAI v. EMPEROR. 106 I.C. 342=8 Lah. 496=28 P.L.R. 688=29 Cr.L.J. 6=A.I.R. 1927 Lah. 671.

## MEDICAL CERTIFICATE.

See EVIDENCE ACT, S. 74.

## MEDICAL DEGREES ACT (VII of 1916)

**—S. 6—Offence Under.**

**—Addition of initials like M.D.B. or L.M.H. is no offence.**

Styling oneself M.D.B. i. e., Doctor of Bio-Chemic Medicines or L.M.H. i.e., Licentiate of Homoeopathic Medicines does not by itself constitute an offence.

*Query* : Whether assumption of a title "Doctor" is an offence under Section 6. (*Kennedy, J.C. and Raymond, A.J.C.*) ATAL RAI KISHENCHAND v. EMPEROR. 81 I.C. 197=17 S.L.R. 344=25 Cr. L.J. 709=A.I.R. 1925 Sind 71.

## MEDICAL EVIDENCE.

See (1) EVIDENCE.

(2) EVIDENCE ACT, S. 73.

## MENS REA.

See TORT.

## MENTAL STATE.

See PENAL CODE.

## MERCHANDISE MARKS ACT (IV of 1889).

**—S. 15—Offence.**

**—"Offence" means the offence charged—Time of the original infringement is immaterial.**

The offence specified in S. 15 is the particular offence charged and it makes no difference whether the original infringement took place two or five or ten years ago. The words "first discovery" mean when the complainant first discovered the offence and he is to take action within one year from that time. (*Chotzner and Gregory, J.J.*) AKHOY KUMAR v. EMPEROR. 114 I.C. 131=30 Cr. L.J. 252=12 A.I.Cr. R. 136=32 C.W.N. 699=A.I.R. 1928 Cal. 498.

## MERCHANT SHIPPING ACT (XXI of 1923).

**—S. 103 (4)—Essence.**

The essence of S. 103 (4) is assault. (*Rankin and Chotzner, J.J.*) ALFRED LAIRD v. EMPEROR.

99 I.C. 1033=31 C.W.N. 195=28 Cr. L.J. 233=7 A.I. Cr. R. 386=A.I.R. 1927 Cal. 224.

**—S. 103 (4)—Trial under.**

**—Conviction under Calcutta Police Act, S. 68—Trial under Merchants Shipping Act, S. 103 (4) on the same facts is barred.**

Where the accused, an officer of a steamship, was convicted under S. 68 of the Calcutta Police Act on a charge of drinking and disorderly conduct creating a disturbance by assaulting the Captain of the vessel and sentenced to pay a fine, and the Captain subsequently

**MOTOR VEHICLES ACT (1914)—Interpretation.**  
filed a complaint on the same facts under S. 103 (4) of the Merchants Shipping Act charging the accused with having assaulted him and he was convicted under the said section and sentenced.

*Held*: that the substantial charge under the Police Act being "assault" Criminal P. C. S. 403 (1), 2nd part, is a bar to a second conviction upon the same facts under a different enactment, namely, the Merchants Shipping Act. (*Rankin and Chotzner, JJ.*)  
**ALFRED LAIRD v. EMPEROR.** 99 I.C. 1033 =

31 C.W.N. 195 = 28 Cr. L.J. 233 =

7 A.I. Cr. R. 386 = A.I.R. 1927 Cal. 224.

### MISAPPROPRIATION.

See PENAL CODE.

### MISCARRIAGE.

See PENAL CODE.

### MISCHIEF.

See PENAL CODE, Ss. 425-440.

### MISDIRECTION.

See CR. P. CODE Ss. 297, 298 AND 307.

### MISTAKE OF FACT.

See PENAL CODE, S. 52.

### MOTIVE.

See (1) CRIMINAL TRIAL.

(2) PENAL CODE, Ss. 300-302.

### MOTOR VEHICLES ACT, (VIII of 1914.)

#### —Interpretation.

—U. P. Rules, R. 32—Words "if any person is injured" in R. 32 govern whole clause.

Rule 32 was made in order to provide for cases where people are injured and the words "if any person is injured" in R. 32 govern the whole of the rest of the clause and the other construction of R. 32, *vis.*, on the occurrence of any accident, if there is no police officer present, the driver or person in charge of the motor vehicle shall report the accident without delay at the nearest police station, though possible, cannot be accepted as correct. (*Young, J.*) **MANSA SINGH v. EMPEROR.** 119 I.C. 370 =

1929 A.L.J. 1044 = 10 L.R.A. Cr. 137 =

30 Cr. L.J. 1085 = 51 All. 996 =

12 A.I. Cr. R. 337 = 1929 Cr. C. 385 =

A.I.R. 1929 All. 750.

#### —Offence under.

—Offence under—S. 562, Criminal P.C., does not apply.

Section 562 (1) (a) only applies to a certain limited class of cases such as theft and so on under the I.P.C., but does not apply to an offence under a totally different Act such as the Motor Vehicles Act. (*Marten and Madgavkar, JJ.*) **EMPEROR v. PANDU RAMAJI.** 93 I.C. 992 = 28 Bom. L.R. 297 =

27 Cr. L.J. 528 = A.I.R. 1926 Bom. 230.

#### —Plying for hire.

—Punjab Motor Vehicles plying for hire Rules (1922), Rr. 3 and 7—Plying for hire—Meaning of.

"To ply for hire" means to exhibit a vehicle in such a way as to invite those who may desire to do so to hire it or to travel in it on payment of the usual fares and also to offer its use on payment to any member of the public thereby soliciting custom: A.L.R. 1928 Mad. 166. *Foll.*; English Cases considered. (*Zafar Ali and Jai Lal, JJ.*) **SARDUL SINGH v. EMPEROR.** 116 I.C. 885 = 30 Cr. L.J. 700 =

10 Lah. 505 = 13 A.I. Cr. R. 123 = 31 P.L.R. 95 =

A.I.R. 1929 Lah. 422.

#### —Liability.

The person in charge of the car, though he may not be the owner, to whose orders the driver is in fact submitting at the time of the accident, or immediately thereafter, is amenable to this section.

### MOTOR VEHICLES ACT, (1914)—S. 5—Dangerous driving.

(*Walsh and Banerji, JJ.*) **EMPEROR v. RAMANJAI SINGH.** 108 I.C. 230 = 26 A.L.J. 331 =

9 A.I. Cr. R. 341 = 9 L.R. A.Cr. 49 = 29 Cr. L.J. 337 =

A.I.R. 1928 All. 261.

#### —S. 4—Police officer.

—Police officer stopping vehicle need not be one engaged in regulating traffic.

Part (a) of the section requires that a driver should stop in three sets of circumstances, firstly that traffic may be regulated, secondly that a name and address may be obtained with a view to prosecution, and thirdly for the purpose of enforcing any of the provisions of the Act, such as checking the license and inspecting a bus where it is suspected to be overloaded and it is not necessary that the police officer stopping the vehicle should be engaged in regulating traffic. (*urgenvven, J.*) **RAMANUJAM NAIDU v. EMPEROR.** 30 M.L.W. 468 = 2 M. Cr. C. 210 = 1929 M.W.N. 596 =

31 Cr. L.J. 639 = A.I.R. 1930 Mad. 445 =

57 M.L.J. 457.

#### —S. 5—Convictions.

—Rules under R. 27-A—Conviction for breach of R. 27-A—Subsequent conviction under S. 5 on same facts is not illegal.

The accused driving a motor car while under the influence of liquor, ran into another motor car and damaged it. He was tried under R. 27-A framed under S. 16 and convicted on his plea of guilty, and he was again tried for rash and negligent driving on the same facts under S. 5 and was convicted.

*Held*, that a breach of the R. 27-A would be committed the moment the accused was driving the car in an intoxicating state and the act of rashness in regard to which he was convicted was a subsequent event, and that, therefore, there was nothing illegal in his being separately charged and tried for each of the two offences. (*Fawcett and Mirza, JJ.*) **EMPEROR v. RAMA DEOJI.** 112 I.C. 101 = 11 A.I. Cr. R. 224 =

29 Cr. L.J. 981 = 30 Bom. L.R. 636 =

A.I.R. 1928 Bom. 231.

#### —S. 5—Dangerous driving.

Two cars were going under 15 miles per hour along the road from South to North, and while another car came in the opposite direction from North to South, G's baby car, passed the two cars going towards the North. G was going about 25 miles per hour. The road was at the place 40 to 50 feet wide as would give ample room for 4 cars to pass abreast with any amount of room to spare. There was no traffic of any kind on the road at the time except the 4 cars. G was not shown to be over the wrong side of the road.

*Held*, that there would be ample room for a very small car like that of G to pass without trenching on the right hand side of the road. Even if he did go slightly over the middle line the car coming in the opposite direction had 20 feet in which to swing to its left. G's driving could not therefore be assumed to be reckless or negligent; an estimate speed of 25 miles per hour could not be regarded as anything out of the ordinary, on that road. (*Baguley, J.*) **S. GAN-GULI v. EMPEROR.** 115 I.C. 900 = 30 Cr. L.J. 539 =

12 A.I. Cr. R. 342 = A.I.R. 1929 Rang. 14.

—Under S. 5 the accused is bound not to drive in a manner which would be dangerous to the public. In determining whether the manner of driving was dangerous to the public or not regard must be had to all the circumstances of the case and the amount of traffic which actually was at the time in the place. (*Shah and Fawcett, JJ.*) **KHODABUX v. EMPEROR.** 97 I.C. 973 = 28 Bom. L.R. 1666 = 27 Cr. L.J. 1213 =

A.I.R. 1928 Bom. 564.

**MOTOR VEHICLES ACT, (1914)—S. 5—Dangerous driving.**

Where the accused saw another car approaching him on its proper side of the road and where he ought to have drawn in behind the water-cart passing in the same direction as the accused and not have attempted to force his way past it in front of the oncoming car,

*Held*: that such conduct on the part of the accused came within the purview of S. 5 of the Motor Vehicles Act, and that the conviction was a proper one. (*Banerji, J.*) **CHARAN SINGH v. EMPEROR.**

88 I.C. 998=23 A.L.J. 790=26 Cr. L.J. 1254=

6 L.R.A. Cr. 150=

A.I.R. 1925 All. 798.

*Fine should be proportionate to means of accused—In case of professional drivers the best course is to exercise powers under S. 18 (2).*

The general rule is that the fine imposed on an accused person should not be excessive, having regard to his pecuniary means. The best way to stop dangerous driving by persons, who earn their livelihood by driving motor vehicles, is for the Court, on conviction of the offender, to exercise its powers under Sub-S. (2) of S. 18, under which such Court "shall cause particulars of the conviction to be endorsed" on any license held by the accused, and may (1) cancel or suspend that license, or even (2) declare the accused disqualified for obtaining a license either permanently or for such period as it thinks fit. The exercise of that power will have a very deterrent effect, especially in the case of persons who earn their livelihood by driving motor vehicles. (*Fawcett and Madgavkar, JJ.*) **EMPEROR v. BASAPPA RACHAPPA.**

90 I.C. 320=26 Cr. L.J. 1536=27 Bom. L. R. 1056=

A.I.R. 1925 Bom. 528.

The accused was driving on a wrong side of the road at a sharp corner entering into a thoroughfare of considerable traffic with the result that he came into collision with a motor bicycle, the side-car of which was damaged. It was due to the presence of mind of the person who was riding the motor bicycle that no further damage occurred.

*Held*, that an offence under Section 279, Penal Code, was committed. The offence of the accused was more serious than that contemplated by Section 5 of Act VIII of 1914. That section refers to a person who is driving a car in a manner which would in ordinary circumstances be proper, but owing to the special condition of the road at the time he is riding on it, is improper. (*Kennedy, J. C. and Madgavkar, A. J. C.*) **YAR MOHAMAD v. EMPEROR.**

84 I.C. 253=16 S.L.R. 147=26 Cr. L.J. 253=

7 A.I. Cr. R. 803= A.I.R. 1921 Sind 97.

**—S. 5—License.**

Where the accused had been driving cars regularly for about 13 years and had obtained a large number of good certificates from a variety of masters, and where he had never before had a conviction for bad driving.

*Held*: that the verdict that he was unfit to hold a license because he was not a good driver was ridiculous in view of his record and must be cancelled. (*Banerji, J.*) **CHARAN SINGH v. EMPEROR.**

88 I.C. 998=23 A.L.J. 790=26 Cr. L.J. 1254=

6 L.R.A. Cr. 150= A.I.R. 1925 All. 798.

**—S. 5—Summons.**

*Summons under the Act is to be in the form prescribed under S. 68, Criminal P. C.*

The procedure of issuing summonses by the Magisterial Courts purporting to charge motorists, owners or drivers of offences under the Act without giving the slightest particulars of the offence alleged is not just.

**MOTOR VEHICLES ACT, (1914)—S. 8—Driver.**

defined by law. S. 68, Criminal P. C., incorporates the form of summons, which is a statutory form contained in Sch. 5 to the Code, which summons is to be issued to accused persons. (*Walsh and Banerji, JJ.*) **EMPEROR v. RANJAI SINGH.**

108 I.C. 230=

26 A.L.J. 331=9 A.I. Cr. R. 341=9 L.R.A. Cr. 49=

29 Cr. L.J. 357= A.I.R. 1928 All. 261.

**—S. 6—Liability.**

*Motor driven without owner's knowledge by an unlicensed driver—Owner is not liable—Nor is he liable even if his licensed driver had permitted the unlicensed driver to drive.*

Where a particular intent or state of mind is not of the essence of an offence, a master can be made criminally liable for his servant's acts if an act is expressly prohibited, but not otherwise; and he cannot be so made liable if the act provides for liability for permitting and causing a certain thing unless it can be shown that the act was done with the master's knowledge and assent, express or implied.

Where a motor bus is driven by a person who has no license, without the knowledge of the owner, the owner cannot be convicted. Nor can he be convicted on the ground that his licensed driver had given the unlicensed driver permission to drive: A.I.R. 1924 Cal. 985, Rel. on: 38 Cal. 415 and 45 Cal. 430, Dist. (*Mukerji, J.*) **INDRA MOHAN ROY v. EMPEROR.**

110 I.C. 326=47 C.L.J. 460=

10 A.I. Cr. R. 414=29 Cr. L.J. 694=

A.I.R. 1928 Cal. 410.

**—S. 6—License.**

A motor-bus owner allowing his driver to drive his omnibus without a license cannot plead in defence that the expiry of the driver's license was not known to him. (*Jackson, J.*) **CROWN PROSECUTOR v. KADIR MOHIDEEN.**

105 I.C. 674=26 M.L.W. 568=

1927 M.W.N. 852=28 Cr. L.J. 462=

A.I.R. 1927 Mad. 1080=33 M.L.J. 757.

**—S. 7—"To ply for hire."**

*Expression "to ply for hire" means to exhibit*

*vehicle so as to invite public to travel in it.*

The expression "to ply for hire" ordinarily means to exhibit a vehicle in such a way as to invite those who may desire to do so to hire it or to travel in it on payment of the usual fares, and also to offer its use on payment to any member of the public, thereby soliciting custom. The owner of a bus driving it on a private errand cannot therefore be said to have been using it as a motor vehicle plying for hire: A.I.R. 1928 Mad. 166 and A.I.R. 1929 Lah. 422, Rel. on. (*Mirza and Broomfield, JJ.*) **GANESH RAMCHANDRA v. EMPEROR.**

32 Bom. L.R. 337= A.I.R. 1930 Bom. 161.

**—S. 8—Applicability**

Sections 8 and 9 do not apply to permits under R. 24, United Provinces Motor Vehicles Rules of 1924, but to the driving license prescribed by S. 6 of the Act and Rr. 20-22. Consequently failure of a driver of a public motor vehicle to produce on demand a permit issued to him under R. 24 is not an offence. (*Dalal, J.*) **HASAN AHMAD v. EMPEROR.**

111 I.C. 127=50 All. 876=

10 A.I. Cr. R. 334=9 L.R.A. Cr. 124=

29 Cr. L.J. 799=26 A.L.J. 1381=

A.I.R. 1928 All. 492.

**—S. 8—Driver.**

No person is a driver within the meaning of S. 8 unless driving. Further, it is only a Police Officer who can demand the license, and an order requiring the driver to attend a Magistrate's house or Court with his license is illegal. (*Ashworth, J.*) **EMPEROR v. SITARAM.**

101 I.C. 668=40 All. 754=

25 A.L.J. 574=8 L.R.A. Cr. 69=



**MOTOR VEHICLES ACT, (1914)—S. 8—License.**  
 7 A.I. Cr. R. 443=28 Cr. L.J. 492=  
 A.I.R. 1927 All. 478.

—S. 8—License.

—*Right to demand license not restricted to a public place.*

Section 8 does not contemplate that police officer cannot ask a driver of a motor vehicle for his license in the private grounds of a private person and that he can only do so when a car is actually being driven by the person, whose license is demanded, whilst on the public road. (*Bucknill, J.*) AKLU v. EMPEROR.

97 I.C. 48=7 A.I. Cr. R. 154=  
 7 P.L.T. 542=27 Cr. L.J. 1072=  
 A.I.R. 1926 Pat. 446.

—Non-production of license when demanded by police is a trivial and technical offence under S. 8 of the Act. There is no prohibition against the driving of a car by a properly licensed person who has not got his license with him and it is no offence to do so. The order of suspension under S. 18 (2) along with the fine, if any is a part of the sentence and is appealable. (*Hallifax, A.J.C.*) WHEKIA KUNBI v. EMPEROR.

66 I.C. 425=23 Cr. L.J. 73=  
 A.I.R. 1922 Nag. 71.

—*Driver must carry licence always with him.*

It is compulsory upon a driver of a motor vehicle to carry his license with him; he is bound to produce it at once, directly a police constable calls upon him to do so, and failure to produce immediately upon such demand is punishable under the Act. (*Tudball, J.*) EMPEROR v. MADAN MOHAN. 43 All. 123=  
 A.I.R. 1921 All. 277.

—S. 10—Certificate.

—*Bombay Motor Vehicles Rules of 1915 as amended by Rules of 1918—Rule 6 (1) (B) and Schedule D—Ultra vires—Fixing of time limit of the certificate is ultra vires.*

It is *ultra vires* of the local Government to fix a time limit in the registration certificate and to make a corresponding change in the Schedule D as no power was given by S. 11 of the India Motor Vehicles Act to make rules for that purpose. Rule 6 of the Bombay Motor Vehicle Rules as amended is invalid and inoperative. (*Macleod, C.J. and Shah, J.*) J. D. SHERSTON v. EMPEROR. 65 I.C. 633=46 Bom. 646=  
 24 Bom. L.R. 50=23 Cr. L.J. 169=  
 A.I.R. 1922 Bom. 42.

—S. 11—Accident.

—*Madras Rules under—R. 27(c) providing for report of accidents to police is not ultra vires—"Accident" meaning.*

Rule 27 (c) which provides that the driver of the motor vehicle shall promptly report all occurrences of accidents to the nearest police station is intended to apply only to accidents happening to the car which one is driving and which results in some injury, annoyance or danger to the public or of danger or injury to public property or obstruction to traffic and so understood it is not *ultra vires*.

The petitioner was driving his car when on the way the car went out of control and jumped over a culvert, the parapet of which was only nine inches high, and fell into a channel. As a result of the accident, the front axle of the car was bent and some chunam was knocked off on the eastern side of the culvert. Those who were in the car received slight injuries; but they were able to return to their homes in the same car:

*Held:* that the incident is not an accident within the meaning of the rule.

*Reilly, J.*—An accident which makes the control of the vehicle impossible in the usual way or more difficult than usual, may be a source of danger to other users

**MOTOR VEHICLES ACT, (1914), S. 16—Liability.**  
 of the road and a rule requiring the driver to report such an accident would be within the rule-making power under the Act. (*Madhavan Nair and Reilly, J.J.*) NAGARAJA MOOPANAR v. EMPEROR.  
 108 I.C. 909=29 Cr. L.J. 461=51 Mad. 504=  
 1 M. Cr. C. 119=27 M.L.W. 425=9 A.I. Cr. R. 419=  
 A.I.R. 1928 Mad. 364=55 M.L.J. 320.

—S. 11—Rules under Scope.

—*U.P. Government Rules, R. 22.*

Rule 22 applies only to a person licensed to drive in another province and not licensed in the United Provinces. (*Ashworth, J.*) EMPEROR v. SITA RAM.

101 I.C. 668=49 All. 754=25 A.L.J. 574=  
 8 L.R.A. 69=7 A.I. Cr. 443=28 Cr. L.J. 492=  
 A.I.R. 1927 All. 478.

—S. 16—Applicability.

—*U.P. Motor Vehicles Rules, R. 11—R. 11 is not applicable to cars registered outside United Provinces.*

There is nothing in the wordings of these rules to show that R. 11 applies to cars registered outside the United Provinces. It is clear from the definition of "Registering Authority" in R. 3 that this expression, as used in R. 11, means the authority who had registered the car under the rules in force in the United Provinces. Where therefore the applicant's car is not registered in the United Provinces, but brought there for a short period, R. 11 has no application to his case. (*Sen, J.*) P.C. CHAUDHRI v. EMPEROR. 120 I.C. 272=  
 1930 Cr. C. 50=31 Cr. L.J. 40=  
 1930 A.L.J. 527=A.I.R. 1930 All. 34.

—S. 16—Conviction.

The fact that an unlicensed person was charged with driving a motor car without a license and pleaded guilty to that charge is not sufficient to justify a Court in convicting the motor driver of having allowed him to drive, where he was not specifically charged with that offence under Motor Vehicles Act, S. 16.

(*Barlee, J.C.*) MAHOMED JAMAL v. EMPEROR.  
 119 I.C. 536=30 Cr. L.J. 1077=  
 A.I.R. 1930 Sind 64.

—S. 16—Defect.

Omission in a summons to specify the sections of the Motor Vehicles Act, or rules made thereunder for breach of which a person was being prosecuted is a serious defect; A.I.R. 1928 All. 261, Rel. on.

(*Datal, J.*) HASAN AHMAD v. EMPEROR.

111 I.C. 127=50 All. 876=10 A.I. Cr. R. 334=  
 9 L.R.A. Cr. 124=26 A.L.J. 1381=  
 29 Cr. L.J. 799=A.I.R. 1928 All. 492.

—S. 18—Exemption from.

There is no authority for the proposition that a motor-car which carries mails, and also carries passengers, is exempt from the operation of the ordinary rules about license for drivers and those restricting the number of passengers to be carried under the permit: (1890) Rat. Unrep. Cr. C. 512, Dist. (*Patkar and Baker, J.J.*) AHA APPA DHARAWADE v. EMPEROR. 100 I.C. 1053=  
 29 Bom. L.R. 191=28 Cr. L.J. 397=  
 A.I.R. 1927 Bom. 154.

—S. 16—Interpretation.

Oudh Government Rules—R. 79—The word "ply" in the permit form F must be read to mean "ply for hire." (*Stuart, C.J.*) EMPEROR v. MOHAMMAD HANIF.  
 7 O.W.N. 464=A.I.R. 1930 Oudh 251.

—S. 16—Liability.

—*Punjab Motor Vehicles Plying for Hire Rules (1922), S. 3—Owner is guilty of offence even though not present in case of breach of road certificate.*

Where the driver of a motor lorry does not use the lorry in conformity with the conditions specified in the road certificate, the owner of the lorry is guilty



**MOTOR VEHICLES ACT, (1914), S. 16—Liability.** of an offence under S. 16, Motor Vehicles Act read with R. 3, Punjab Motor Vehicles Plying for Hire Rules, 1922, even though he is not present when the breach of the condition takes place.

Where, therefore, a driver was found carrying 17 (when only ten could be carried under the road certificate) and one passenger was sitting on mudguard, which was prohibited,

*Held*; that there being clear breach of the road certificate, the owner was liable under R. 3, Punjab Motor Vehicles Plying for Hire Rules, 1922, although he was not present: 38 Cal. 415; 45 Cal. 430 and A. I. R. 1924 Cal. 985, Rel. on; 27 P. R. 1918; A. I. R. 1928 Cal. 410 and A. I. R. 1924 Rang. 63, Dist. (Addison, J.) *DEVI DAYAL v. EMPEROR.*

A. I. R. 1930 Lah. 865.

—*Patna Motor Vehicles Rules—R. 12—Person responsible for fixing board is the owner,*

The person responsible for having a board fixed upon the vehicle under R. 12 is owner and not the person who, from time to time, may have the use of the car.

Where a car is purchased by an estate for the use of its manager the manager cannot be said to be the owner under R. 12. (Bucknill, J.) *AKLU v. EMPEROR.*

97 I. C. 48 = 7 P. L. T. 542 =  
27 Cr. L. J. 1072 = 7 A. I. Cr. R. 154 =  
A. I. R. 1926 Pat. 446.

—*Calcutta Rules 3 and 16.*

Absent master is not criminally liable for fast driving where he had cautioned the driver not to exceed the regulation speed and to drive with due care and caution. (Greaves and Duval, JJ.) *VARAJ LALL v. EMPEROR.*

82 I. C. 137 = 51 Cal. 948 =  
28 C. W. N. 854 = 25 Cr. L. J. 1209 =  
A. I. R. 1924 Cal. 985.

—*Burma Motor Vehicles Rules 1915, R. 26 (3).*

Owner of a Motor car is not criminally liable for negligence of the driver in driving the car without properly illuminated rear light, if the owner has made provision for such illumination. 36 C. 415 and 45 C. 430, Dist. (May Oung, J.) *MAHOMED SURTY v. KING EMPEROR.*

76 I. C. 564 = 1 Rang. 600 =  
2 Bur. L. J. 201 = 25 Cr. L. J. 196 =  
A. I. R. 1924 Rang. 63.

—**S. 16—License.**

—*Calcutta Motor Vehicles Rules, R. 28—Construction.*

Conditions of the permit apply to the licensed vehicles for the period of the license irrespective of whether it was in use at the time as a carriage standing or plying for hire or the use was gratuitous: *Hawkins v. Edwards*, 2 K. B. 169, Ref. (Courtney Terrell, C. J., and Dhole, J.) *EMPEROR v. RAM TAHAL SINGH.*

9 Pat. 169 = 1929 Cr. C. 282 =  
A. I. R. 1929 Pat. 522.

—**S. 16—Offence under.**

There is no such thing as an offence under S. 16, Motor Act, at all and, in the second place, there is no offence in the Motor Vehicles Act of failing to give notice to the police that the accused driver has killed a boy. S. 16 is a penalty clause and prescribes the penalties which may be inflicted upon anybody who contravenes any of the provisions of the Act or any rule made under the Act. (Walsh and Banerji, JJ.) *EMPEROR v. RANANJAI SINGH.*

108 I. C. 230 =  
26 A. L. J. 331 = 9 A. I. Cr. R. 341 =  
9 L. R. A. Cr. 49 = 29 Cr. L. J. 357 =  
A. I. R. 1928 All. 261.

**NORTHERN INDIA CANAL AND DRAINAGE ACT (1873), S. 70.**

—**S. 16—R. 41—Overloading.**

Suspension of a permit for an offence of overloading a motor cannot be permitted. (Wort, J.) *SHEODATT ROY v. EMPEROR.*

110 I. C. 803 =  
29 Cr. L. J. 771 = 11 A. I. Cr. R. 43 =  
10 P. L. T. 429 = A. I. R. 1929 Pat. 64.

—**S. 16—Proof.**

(Patna) Motor Vehicles Rules, R. 13—Time at which car was found driven without proper lights must be accurately proved. (Bucknill, J.) *AKLU v. EMPEROR.*

97 I. C. 48 = 7 P. L. T. 542 =  
27 Cr. L. J. 1072 = 7 A. I. Cr. R. 154 =  
A. I. R. 1926 Pat. 446.

—**S. 16—Rules under—R. 19—Tax.**

Municipalities outside Calcutta cannot tax motor vehicles plying for hire. (Newbould and B. B. Ghose, JJ.) *SUDHAMONY DAS v. CHAIRMAN, KRISHNAGAR MUNICIPALITY.*

88 I. C. 1045 =  
41 C. L. J. 566 = 26 Cr. L. J. 1269 =  
7 A. I. Cr. R. 502 =  
A. I. R. 1925 Cal. 1026.

**MOVEABLE PROPERTY.**

See PENAL CODE.

**MUKHTEAR.**

See LEGAL PRACTITIONER.

**MUNICIPALITY.**

See LOCAL ACTS.

**MURDER.**

See PENAL CODE, Ss. 299—304-A.

**NEGLIGENCE.**

See (1) PENAL CODE, S. 304-A.

(2) TORT.

**NORTHERN INDIA CANAL AND DRAINAGE ACT VIII of (1873.)**

—**S. 20—Presumption.**

—Where a water-course is thirty years old a Court will be entitled to draw a presumption that it was started by agreement or action was taken under S. 20 or S. 21. (Dalal, J.) *GANGA SAHAI v. EMPEROR.*

116 I. C. 785 = 1929 A. L. J. 463 =  
10 L. R. A. Cr. 89 = 12 A. I. Cr. R. 19 =  
30 Cr. L. J. 669 = A. I. R. 1929 All. 271.

—**S. 70—Distribution.**

"Internal distribution" in a village by the village community is not an authorised distribution within S. 70 (4) as it is not formally approved or sanctioned by any canal authority; where they have merely accepted the distribution made by the villagers and disturbing the arrangement of the village community does not justify conviction. (Chevis and Dundas, JJ.) *EMPEROR v. PAKHAR SINGH.*

60 I. C. 59 =  
22 Cr. L. J. 203 = 1 Lah. 604.

—**S. 70—Offence under.**

Where the petitioner was never told what rule he had violated and where though violation about rules of taking turns of water was alleged yet no authorised warabundi was produced:

*Held*: that merely a general accusation of breach of rules made under S. 70 was wholly inadequate.

(Johnstone, J.) *SANDHI v. EMPEROR.* 123 I. C. 530 =  
1930 Cr. C. 22 = 31 Cr. L. J. 528 =  
A. I. R. 1930 Lah. 54.

**NOTICE.**

See (1) CR. P. CODE, Ss. 195, 437 & 530.

**OATHS ACT (1873), S. 1—False statement..  
NUISANCE.**

- (1) CR. P. CODE, S. 133 etc.  
(2) PENAL CODE, Ss. 290-291.

**OATH. See OATHS ACT.  
OATHS ACT (X of 1873.)****—S. 1—False statement.**

Evidence given under special oath is conclusive only as against the person who offers to be bound by it; but does not prevent the court from attempting to establish that a particular statement made by the appellant was false in fact and false to his knowledge. (*Shah Ag. C.J. and Fawcett, J.*) RAMDAS VISHNU-DAS, *In re.* 82 I.C. 359=26 Bom. L.R. 713=25 Cr. L.J. 1287=A.I.R. 1924 Bom. 511.

**—S. 1—Special Oath.**

Evidence given under special oath is conclusive only as against the person who offers to be bound by it; but does not prevent the Court from attempting to establish that a particular statement made by the appellant was false in fact and false to his knowledge. (*Shah, Ag. C.J. and Fawcett, J.J.*) RAMDAS VISHNU-DAS, *In re.* 82 I.C. 359=26 Bom. L.R. 713=26 Cr. L.J. 1287=A.I.R. 1924 Bom. 511.

**—S. 4—False Evidence.**

Though the Act extends to the territories of Native Princes and States in alliance with His Majesty so far as regards the subjects of His Majesty, the Vyara Court in the Baroda State cannot be treated as a Court within the meaning of Ss. 4 and 14 of the Act, in relation to proceedings which were held before that Court entirely under the law of that State, and which had nothing to do with any proceedings in British India or under the law in force in British India. (*Shah and Khajji, J.J.*) RAMBHARTHI HIRABHARTHI, *In re.* 47 Bom. 907=25 Bom. L.R. 772=25 Cr. L.J. 333=A.I.R. 1924 Bom. 51.

**—S. 5—Applicability.**

Section 5 was intended to apply to an accused person while he is under trial. (*Sanderson, C. J. and Panton, J.*) GALLAGHER v. EMPEROR. 101 I. C. 637=54 Cal. 52=28 Cr. L. J. 481=A.I.R. 1927 Cal. 307.

**—S. 5—Child.**

A child of tender years should be examined as a witness only after the Court has satisfied itself that the child is intellectually sufficiently developed to enable it to understand sufficiently what it has seen and afterwards inform the Court thereof. If the Court is satisfied that the child has such intelligence, it should comply with the provisions of S. 6 of the Indian Oaths Act. (*Kalumat Pahlumal, A. J. C.*) SYED RASUL v. EMPEROR. 120 I.C. 514=31 Cr. L. J. 114.

**—S. 11—Conclusive Evidence.****—Scope of.**

The fact that a case was decided on the oath of the defendant is not a sufficient ground for refusing the defendant an opportunity to prove to the satisfaction of the Court that the claim had been brought on a false document, to support an application under S. 476, Cr.P. Code. (*Daniels, J.*) KING-EMPEROR v. RAM NARAIN. 96 I.C. 877=7 L.R.A. Cr. 130=27 Cr. L.J. 1021=A. I. R. 1926 All. 577.

**—S. 13—Irrregularity.**

Section 13 cures the form of the oath and even an entire omission to take the oath, but does not cure the absence of authority in the officer administering the oath. (*Madgavkar and Baker, J.J.*) GANPET DEVAJI v. EMPEROR. 116 I.C. 248=31 Bom. L.R. 144=30 Cr. L.J. 593=A.I. Cr. R. 14=A.I.R. 1929 Bom. 136.

**OBSCENE PUBLICATION.**

See PENAL CODE, S. 292.

**OPIUM ACT (1878), S. 9—Interpretation.  
OBSTRUCTING—Public servant.**

See PENAL CODE.

**—Right of way.**

- See (1) CR. P. CODE, S. 133.  
(2) PENAL CODE, Ss. 186, 283, 290.

**OCTROI.**

See U. P. ACT (I OF 1900).

**OFFENCE.**

- See (1) LOCAL ACTS.  
(2) PENAL CODE.

**OFFICER.****—Bad motive.**

If an officer has a power, the fact of his using it from a bad motive does not invalidate the exercise of that power. (*Fawcett and Mirza, J.J.*) SHIVBAT v. EMPEROR. 109 I. C. 487=52 Bom. 238=30 Bom. L. R. 382=29 Cr. L. J. 551=10 A. I. Cr. R. 308=A. I. R. 1928 Bom. 162.

**OFFICIAL ACTS.**

EVIDENCE ACT, S. 114.

**ONUS OF PROOF.**

See EVIDENCE ACT, S. 101.

**OPINION—Evidence.**

See EVIDENCE ACT, Ss. 45, 51.

**OPIUM ACT (1 of 1878).****—Procedure.**

For complaints under the Abkari Act or under the Opium Act (1 of 1878), the ordinary Criminal Procedure Code, is not applicable, but the procedure contained in those Acts is to be strictly followed; and as complaints by private persons are not provided for by the procedure in those Acts, they must be treated as not properly instituted: A.I.R. 1923 Mad. 339 and 25 M.L.J. 577, Kel. on. (*Odgers, J.*) LAZAR FERNANDO v. AMIRTHAM FERNANDO. 119 I.C. 174=52 Mad. 613=2 M. Cr. C. 168=30 M.L.W. 112=1929 M.W.N. 507=30 Cr. L.J. 1011=1929 Cr. C. 78=A.I.R. 1929 Mad. 604=57 M.L.J. 214.

—There is no essential difference between the procedure under the Abkari Act and the Opium Act. (*Odgers, J.*) LAZAR FERNANDO v. AMIRTHAM FERNANDO. 119 I.C. 174=52 Mad. 613=2 M. Cr. C. 168=30 M.L.W. 112=1929 M.W.N. 507=30 Cr. L.J. 1011=1929 Cr. C. 78=A.I.R. 1929 Mad. 604=57 M.L.J. 214.

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**—S. 3—Morphia.**

—*Morphia* is not included in the definition of opium under the Act and the sale or transport of *Morphia* without a license, though contrary to the rules, is not an offence under the Act. (*Martineau, J.*) SITARAM v. EMPEROR. 59 I.C. 40=1 Lah. 443=22 Cr. L.J. 8=2 Lah. L.J. 711.

**—S. 5—Keeping of accounts—Rules.**

Where a person to whom a license has been granted for selling opium omits to write up the accounts as soon as the transactions of each day are over he commits a breach of Rule 25 framed by Local Government of Oudh under S. 5 of Opium Act, and is liable to punishment under S. 9 (g) of the Act. (*Dalal A.J.C.*) HAZARI v. KING-EMPEROR. 89 I.C. 250=12 O.L.J. 283=2 O.W.N. 303=26 Cr. L.J. 1306=A.I.R. 1925 Oudh 350.

**—S. 9—Interpretation.**

The word "preparation" designates a completed or manufactured article and not an article in process of manufacture, the test being whether the stage has been reached at which it can be used. The word "admixture" refers only to a completed article and can only be applied after the mixing has been finished, and not earlier. The articles designated by

**OPIUM ACT, (1878), S. 9—Joint possession.**

both words only come within the scope of their respective definitions when they have been prepared or mixed as the case may be. (*Harrison, J.*) *MT, HAMIRI v. THE CROWN.* 73 I.C. 700=4 Lah. 12=24 Cr. L.J. 668=A.I.R. 1924 Lah. 99

**—S. 9—Joint possession.**

If it is proved that a person is in possession on behalf of others as also of himself of opium the total quantity of which is less than all the joint owners are entitled to possess he would not be guilty of any offence.

Two persons were found in possession of 9 mashas of chandu, the amount allowed by law to each person being 6 mashas *i.e.* they were in joint possession of less than the two of them could have held separately.

*Held:* that neither of them could be convicted of an offence under Opium Act: 34 P. R. 1905 Cr. and 31 P. R. 1902 Cr. *Rel. on*; 10 P. R. 1901 Cr. *Ref*; 13 P. R. 1897 Cr. *Dist.* (*Shadi Lal, C.J.*) *ZANIN KHAN v. EMPEROR.* 121 I.C. 292=31 Cr. L.J. 240=31 P.L.R. 140=A.I.R. 1930 Lah. 342.

—Two brothers were the joint owners of the shops from which illicit opium was recovered. The elder brother had possession of opium under a license previously.

*Held:* that the presumption might safely be made that the possession of the opium was that of the elder brother and that the younger brother should not be held guilty. (*Broadway, J.*) *NAND LAL v. CROWN.* 88 I.C. 1044=6 Lah. 311=26 P.L.R. 493=26 Cr. L.J. 1268=A.I.R. 1925 Lah. 477.

—S. 9—Offence.

Accused convicted for having possessed opium in excess of quantity shown in the stock register and hidden in the premises—Cakes of opium supplied by the treasury proved to be often of overweight—Excess cannot be assumed to be due to selling under weight—Conviction was set aside. (*Mukerji, J.*) *NARAYANCHANDRA v. EMPEROR.* 112 I.C. 901=11 A.I. Cr. R. 400=30 Cr. L.J. 37=A.I.R. 1928 Cal. 324.

—S. 9—Possession.

—Temporary custody—If amounts to,

Mere temporary custody does not amount to possession within the meaning of S. 9 (e) of the Opium Act. (*Findlay, J.C.*) *RAM LAL LODHI v. EMPEROR.* 117 I.C. 212=30 Cr. L.J. 727.

—The term "possession" implies knowledge on the part of the alleged possessor, and before the accused person is required to account for opium there must be proof that such opium has been in his possession or under his control: (1872-92) L.B.R. 573, Foll. (*Maung Ba, J.*) *SHWE KYO v. EMPEROR.* 117 I.C. 248=7 Rang. 11=30 Cr. L.J. 753=A.I.R. 1929 Rang. 121.

—S. 9—Smuggling.

Where a person under a pretended name consigned from Kotah, a native state, into Cawnpore in British India, bags of maize containing a considerable quantity of opium which was detected at Cawnpore and searched in his presence,

*Held:* that the offence under S. 9 was committed. (*Walsh and Ryves, J.J.*) *GOBIND RAM v. EMPEROR.* 81 I. C. 100=46 All. 146=5 L. R. A. Cr. 46=A.I.R. 1924 All. 558=25 Cr. L. J. 612.

**—S. 9—Sugar-mixed pills.**

Mere preparation of sugar-mixed opium pills is no offence though prepared with intent to sell. (*Harri-son, J.*) *JIWNA RAM v. THE CROWN.* 81 I. C. 154=6 L. L. J. 206=25 Cr. L. J. 666=A. I. R. 1924 Lah. 529.

**—S. 7—Scope.****—S. 11—Procedure—Owner.**

Improper conduct of owner of the vessel—Neither imputed nor proved—He should be given opportunity to be heard before confiscation of vessel. (*Sanderson, C. J. and Pearson, J.*) *MOHAMAD KESHAB v. EMPEROR.* 91 I. C. 703=30 G. W. N. 240=27 Cr. L. J. 127=A. I. R. 1925 Cal. 1021.

**—S. 14—Procedure.****—Seizure.**

Under Ss. 14, 15 and 16 it is only search that has to be carried out in accordance with the rules for searches under Cr.P. Code, and the rules have no bearing on seizures. (*Baguley, J.*) *MAUNG SAN MYIN v. EMPEROR.* 121 I.C. 716=7 Rang. 771=31 Cr. L.J. 303=A.I.R. 1930 Rang. 49.

—The provisions of S. 103 of the Cr.P. Code, are applicable to searches made under S. 14 of the Opium Act, but not to searches in an open place under the provisions of S. 15. (*Mya Bu, J.*) *KALI KUMAR DE v. KING, EMPEROR.* 100 I.C. 980=6 Bur. L.J. 11=28 Cr. L.J. 372=7 A.I. Cr. R. 549=A.I.R. 1927 Rang. 170.

—S. 90—Meaning of possession.

Possession implies knowledge, and there would be no possession when there is no knowledge on the part of the ostensible occupant of the cabin or room as the case may be. Possession without knowledge can hardly have been meant since in that case the element of criminal intention or knowledge would be entirely wanting.

Where there is undoubtedly ground for grave suspicion regarding possession against the accused, but the element of reasonable doubt is not excluded, it would not be safe to conclude that the accused had the knowledge which is necessary to convict him of the offence. The *onus* of proving that knowledge is upon the prosecution, and relying solely upon the bare fact that the opium was found in the accused's cabin without proof of any additional or extraneous facts to establish any connexion between him and the opium is not sufficient to discharge that *onus*. (*Graham and Pancridge, J.J.*) *CYRIL C. BAKER v. EMPEROR.* A.I.R. 1930 Cal. 668.

**ORAL EVIDENCE, ADMISSIBILITY.**

See EVIDENCE ACT, S. 92.

**ORIGINATING SUMMONS.**

See CALCUTTA HIGH COURT RULES.

**ORDINANCE.**

See MARTIAL LAW—ORDINANCE.

**—S. 14—Irregularity.**

No objection was taken to the original selection of the jurors, eight of whom were present in the Court, and instead of conducting a second ballot, as required by R. 14, Ch. 5, Oudh Criminal Rules, the Judge chose five out of the eight present. The Judge asked the accused whether they had any objection to this selection but they had none,

*Held:* that the irregularity was covered by S. 537, Cr. P. Code, and did not vitiate trial: 8 Cal. 739, Foll.; 33 All. 385, Not. Foll. [But see A.I.R. 1927 Cal. 242.] (*Rasa and Pullan, J.J.*) *RAM ADHIN v. EMPEROR.* 114 I.C. 814=6 O.W.N. 97=30 Cr. L.J. 384=A.I.R. 1929 Oudh 154.

**—S. 7—Scope.****—Ordinary original jurisdiction.**

Though it may be conceded that according to S. 7 the Chief Court of Oudh has original jurisdiction in civil matters over certain classes, yet it cannot be considered to be Court of "ordinary" original civil

**ODDH COURTS ACT, (1925)—S. 40—Applicability.**

jurisdiction as required by S. 195 (3), Cr. P. Code, because jurisdiction conferred by S. 7 is not an "ordinary" original civil jurisdiction. (*Wazir Hasan, J.*) **PANCHU v. JUMMAN.** 121 I.C. 90 = 6 O.W.N. 848 = 1929 Cr.C. 589 = 31 Cr.L.J. 205 =

A.I.R. 1929 Oudh 515.

**—S. 40—Applicability.**

A District Judge may transfer to any Subordinate Judge under his administrative control any appeals pending before him from the decrees or orders before him. But an order of a Munsif under S. 476 refusing to prosecute a person under S. 193, Penal Code, is not an order of a Munsif within the meaning of S. 40, and the District Judge to whom the appeal from that order is preferred has no jurisdiction to transfer it, to be decided by a Subordinate Judge. (*Stuart, C.J., and Raza, J.*) **BISMILLAH KHAN v. SHAKIR ALI.**

114 I.C. 812 = 5 O.W.N. 882 = 4 Luck. 155 =

30 Cr. L.J. 382 =

A.I.R. 1928 Oudh 494.

**PARTNERSHIP.****—Partners.**

**—Absent partner—Breach of license by one partner—Liability of absent partner—Nature of partnership liability.**

Two excise licensees J. and T. who were partners in a country liquor shop license had been convicted under S. 64 (c) of the U.P. Excise Act 1910 of committing a breach of the conditions of the license by selling liquor out of the prescribed hours and also by selling adulterated liquor. T. was present at the shop when these offences were detected. J. the other licensee was not present and there was no suggestion that he knew anything about the irregular sales.

**Held:** that J's. conviction was right, he being equally guilty as T. (24 B. 423 and 9 A.L.J. 288 Ref.) The real test so far as agency is concerned is not the nature of the act but the nature of the business. The nature of the act is the test which decides the criminality. The law of partnership is merely a breach of the law of agency just like the law of master and

**PATNA HIGH COURT RULES AND CIVIL CIRCULAR ORDERS—Ch. 17, R. 5-A—Criminal Case.**

servant, and for this purpose two partners stand to one another in the same relation as master and servant. (*Walsh, J.*) **JWALA PRASAD v. KING-EMPEROR.** 82 I.C. 139 = 45 All. 642 =

25 Cr.L.J. 1211 = A.I.R. 1924 All. 101.

**PATNA HIGH COURT RULES AND CIVIL CIRCULAR ORDERS.****—R. 83—Grounds for report.**

The accused were caught in the act of taking away thatching grass which another person had cut earlier. On that person remonstrating accused struck him with lathi. The Magistrate convicted each of them under S. 379 and some under S. 323. Sessions Judge recommended to the High Court to set aside conviction on the ground that no theft was established and further also under S. 323 as the injuries were trifling. Evidence of the Civil Surgeon showed that hurt was actually caused.

**Held:** that the Magistrate had not committed any error of law in either of his convictions so as to justify a report under R. 83, Part 1, General Rules and the Circular Orders of the High Court and, there was no reason for interfering with decision of the trial Court. (*James, J.*) **KISHUN KUMAR SINGH v. EMPEROR.**

117 I.C. 646 = 30 Cr.L.J. 842.

**—Ch. 17, R. 5-A—Criminal Case.**

**—Entering appearance by an Advocate—Unnecessary.**

It has been the invariable practice in Patna High Court to allow advocates to appear and act for accused persons in criminal cases without any authority in writing. The new R. 5-A of Chapter 17 of the High Court Rules makes it obligatory for an advocate of the Patna High Court to file an appointment in writing in civil cases; but it does not in any way interfere with the practice in criminal cases. (*Ross and Kulwant Sahay, JJ.*) **SUBDU SANTAL v. EMPEROR.**

94 I.C. 714 = 7 P.L.T. 524 = 1926 P.H.C.C. 125 =

27 Cr. L.J. 666 = A.I.R. 1926 Pat. 296.

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## PENAL CODE (1860).

### —Construction.

*Natural meaning to be given.*

The criminal law of India is prescribed by and so far as it goes is contained, in the Indian Penal Code; accordingly (as the Code itself shows) the criminal law

### PENAL CODE (1860)—Construction.

of India and that of England differ in sundry respects; and the Code has first of all to be construed in accordance with its natural meaning and irrespective of any assumed intention on the part of its framers to leave unaltered the law as it existed before, (*Lord Sumner.*)



**PENAL CODE (1860)—Corporation.**

**BARENDRA v. EMPEROR.** 35 I.C. 47=  
29 C.W.N. 181=1925 M.W.N. 26=  
3 Pat. L.R. Cr. 1=6 L. R. P. C. Cr. 1=  
27 Bom. L.R. 143=6 Pat. L.T. 169=52 I.A. 40=  
52 Cal. 197=23 A.L.J. 314=41 C.L.J. 240=  
26 Cr. L.J. 431=26 P. L. R. 50=  
A.I.R. 1925 P. C. 1=48 M.L.J. 543 (P.C.).

**—Corporation.****—Damage to reputation—Not to mind or body.**

A corporation cannot well suffer damage in mind or body. An incorporated company may have a reputation for the good conduct of the business or undertaking of the company and the company's reputation may be quite distinct from that of any. (*Richardson and Suhrawardy, JJ.*) SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. MANMATHA BHUSAN CHATTERJEE. 84 I.C. 554=  
51 Cal. 250=28 C.W.N. 160=26 Cr. L.J. 330=  
A.I.R. 1924 Cal. 495.

**—Imprisonment.****—Meaning of.**

Punishment by imprisonment under Penal Code means that the offender shall go to jail and imprisonment till the rising of Court is evading the statute. (*Jackson, J.*) KUNHI BAVA v. EMPEROR.  
114 I.C. 234=1929 M.W.N. 114=29 M.L.W. 673=  
2 M. Cr. C. 75=30 Cr. L.J. 247=  
12 A. I. Cr. R. 215=A.I.R. 1929 Mad. 226=  
56 M.L.J. 550.

**—Right to prosecute.****—Not taken away by other statutes.**

If there exists a right to prosecute under the Penal Code, such right cannot be impliedly taken away by the provisions of another statute: 22 Cal. 131, Dist. (*Wallace, J.*) MOLAIAPPA GOUNDAN v. EMPEROR. 115 I.C. 242=30 Cr. L.J. 432=  
52 Mad. 76=28 M.L.W. 621=1 M. Cr. C. 317=  
A.I.R. 1928 Mad. 1235=55 M.L.J. 715.

**—Scope.****—Code complete in itself—Earlier case law may throw light but cannot add to.**

The Indian Penal Code is meant to be a codifying statute, as a statute intended to be complete in itself with regard to the subject-matter with which it deals. No doubt a codifying statute does not exclude reference to earlier case-law on the subject covered by the statute for the purpose of throwing light on the true interpretation of the words of the statute where they are, or can be contended to be, open to rival constructions, but it cannot be argued that matter outside of the statute can be invoked, not by way of construing its provisions but of adding something to it which is admittedly not to be found within it. (*Coutts-Trotter, C. J., Phillips, Krishnan, Beasley and Madhavan Nair, JJ.*) TIRUVENGADA MUDALI v. TRIPURASUNDARI AMMAL. 96 I.C. 978=  
49 Mad. 728=25 M.L.W. 207=  
1926 M.W.N. 606=27 Cr. L.J. 1026=  
A.I.R. 1926 Mad. 906=51 M.L.J. 112 (F.B.).

**—S. 2—Native state.****—Offence in and by subject of.**

A subject of the Native State, who is guilty of retaining stolen property within the Native State is not liable to be punished under the I. P. C.: 9 All. 523, Foll. (*Banerji, J.*) GUNJRA v. EMPEROR. 96 I.C. 655=48 All. 687=24 A.L.J. 767=  
7 L. R. A. Cr. 142=27 Cr. L.J. 991=  
A.I.R. 1927 All. 80.

**—S. 2—Scope.****—To be read with S. 5.**

Section 2, which provides that every person shall be liable to punishment "under this Code and not other-

**PENAL CODE (1860), S. 4—Offence in British ship.** wise" for every act or omission contrary to the provisions thereof of which he shall be guilty, must be read subject to S. 5 which clearly makes a reservation with regard to offences specified therein. (*Jailai, J.*) FAQIR SINGH v. ALI MAHOMED. 115 I.C. 428=  
30 Cr. L.J. 460=12 A.I. Cr. R. 413=  
A.I.R. 1929 Lah. 217.

**—S. 4—Completion in India.****—Foreigner—Triability.**

Where a foreigner is charged with an offence under Penal Code, it is immaterial whether the accused person is bodily present in British India where the offence was completed, or whether his presence there is derived by process and intendment of law; in either case he is present in British India committing an offence under Penal Code, and that being so his character as a foreigner cannot avail him: 36 Bom. 524, Foll.: *Rex v. De Marry*, (1907) 1 K. B. 388; *Rex v. Oliphant*, (1905) 2 K. B. 67; *Rex v. Keyn* (1876) 2 Ex. D. 63; and *Reg. v. Rogers*, (1877) 3 Q. B. D. 28; Rel. on.; *Macleod v. Attorney-General for New South Wales*, (1891) A. C. 455; 25 Cal. 20; 7 S. L. R. 17; and 7 S. L. R. 128; Dist. (*Wild, J. C. and Aston, A. J. C.*) E.C.D. *WHEELER v. EMPEROR.* 112 I.C. 673=29 Cr. L.J. 1089=  
A.I.R. 1928 Sind 161.

**—S. 4—False Complaint in Foreign Court.****—No offence.**

There is no provision in the Code which constitutes it an offence to lodge a false complaint in a foreign Court (in this case the Court in Baroda State) or to give false evidence before such Court where the oath is not administered under the provisions of law in force in British India, but under the law of that state in relation to proceedings before that Court.

No offence under S. 182, Indian Penal Code, can be made out where it is not suggested that false information was given to a public servant as defined by the Indian Penal Code, quite apart from the consideration that it was given without and beyond British India. (*Shah and Kajiji, JJ.*) RAMBHARTHI HIRABHARTHI, *In re.* 77 I.C. 189=  
47 Bom. 907=25 Bom. L.R. 772=  
25 Cr. L.J. 333=A.I.R. 1924 Bom. 51.

**—S. 4—Foreigner.****—Brought over under Fugitive Offenders Act—Trial in British India not illegal.**

A foreigner cannot be said to be brought illegally in British India in consequence of proceedings taken in England under the Fugitive Offenders Act, which were perfectly regular.

Where a man is in British India and he is charged before a Magistrate with an offence under the Penal Code, it will not avail him to say that he was brought there illegally from a foreign country: 35 Bom. 225, Foll.; *Queen v. Nelson and Brand In re Parisot*, (1889) 5 T.L.R. 344; *Ex parte Scott*, (1829) 9 B. & C. 446, Rel. on. (*Wild, J. C. and Aston, A. J. C.*) E. C. D. *WHEELER v. EMPEROR.* 112 I.C. 673=  
29 Cr. L.J. 1089=A.I.R. 1928 Sind 161.

**—S. 4—In Foreign Territory.****—Offence by Br. Indian subject—Triability.**

Where crime has been committed by a British Indian subject in a foreign territory, British Court has jurisdiction to try him. (*Stuart, C. J. and Raza, J.*) EMPEROR. v. BANDE ALI. 106 I.C. 580=  
4 O.W.N. 1121=29 Cr. L.J. 68=  
A.I.R. 1927 Oudh 627.

**—S. 4—Offence in British Ship.****—By British Subject—Triability.**

A Court in British India has jurisdiction under S. 1 of 12 and 13, Victoria Chap. 96 to try a British subject

**PENAL CODE (1860), S. 5—Interpretation.**

for an offence under the Penal Code committed during voyage on a British ship. (*Waller and Madhavan Nair, JJ.*) SENGEDAI VANNAN v. EMPEROR. 192 I.C. 351=38 M.L.T. 361=

1927 M.W.N. 276=28 Cr.L.J. 343=  
8 A.I.R. Cr. 182=A.I.R. 1927 Mad. 688.  
53 M.L.J. 161.

**—S. 5—Interpretation.**

—"Special or local law" does not refer to English Common Law.

The types of the law covered by the phrase "special or local law" are such as the Opium Act, or the Gambling Act, and not a vast system like the English Common Law. (*Rutledge, C. J. and Brown, J.*) T.F.R. McDONNELL v. EMPEROR. 92 I.C. 737=  
27 Cr. L.J. 321=4 Bur. L.J. 147=3 Rang. 524=  
A.I.R. 1925 Rang. 345.

**—S. 5—Offence punishable by special law.**

Where the abatement of an offence is punishable by a special law such as the Salt Act the Court cannot impose punishment under S. 117, I.P.C. (*Hasan, C.J. and Pullan, J.*) OUDH BAR ASSOCIATION, LUCKNOW, In re. 7 O.W.N. 885.

**—S. 19—Judge.**

Who is.

A person other than one who is officially designated as a Judge and who is empowered to give a definitive judgment, is a Judge only when he is exercising jurisdiction in a suit or in a proceeding. (*Jwala Prasad and Macpherson, JJ.*) RAMCHANDRA MODAK v. EMPEROR. 93 I.C. 963=5 Pat. 110=7 P.L.T. 304=  
27 Cr.L.J. 499=A.I.R. 1926 Pat. 214.

**—S. 19—Legal proceedings.**

Meaning of.

Legal proceeding in S. 19 means a proceeding regulated or prescribed by law in which a judicial decision may or must be given. (*Reilly, J.*) ABOY NAIDU v. KANNIAPPA CHETTIAR. 114 I.C. 817=  
30 Cr.L.J. 365=2 M. Cr. C. 143=  
A.I.R. 1929 Mad. 175.

**—S. 21—Convict Warder.**

If a convict warder accepts gratification from a prisoner for smuggling certain papers with some person outside the jail he commits an offence under S. 161, (*Macleod, C.J. and Shah, J.*) SAIFIN RASUL v. EMPEROR. 83 I.C. 342=26 Bom. L.R. 267=  
25 Cr. L.J. 1382=A.I.R. 1924 Bom. 385.

**—S. 21—Finger Print Bureau.**

Police Officer in—Is a public servant.

A Sub-Inspector of Police belonging to the Finger Print Bureau and in the service and pay of Government, is a public servant within S. 21 (ix) even if he is not performing the ordinary duties of a police officer. It is a part of the duties of such officer to give evidence in Court in relation to an offence under Police Finger Print Bureau Manual part II, Cl. (b), Para 3. (*Abdul Qadir, J.*) KARUN CHAND v. EMPEROR.

69 I.C. 445=A.I.R. 1924 Lah. 355.

**—S. 21—Municipal Committee.**

Not a public servant—Members are.

A Corporation such as a Municipal Committee, is not a public servant though the members forming the corporation are public servants. (*Staples, A.J.C.*) NANHE v. MUNICIPAL COMMITTEE, JUBBULPORE. 122 I.C. 258=25 N.L.R. 194=1930 Cr. C. 89=  
12 N.L.J. 127=31 Cr.L.J. 382=A.I.R. 1930 Nag. 33.

Criminal P.C., S. 439—Manager in Municipal Committee—Whether he is a public servant is a question of fact.

Whether a manager in the office of a Municipality is a public servant is a question of fact and should not be raised for the first time in revision. (In this case he

**PENAL CODE (1860), S. 23—"Wrongful".**

was assumed to be a public servant.) (*Wallace, J.*) VANU RAMACHANDRIAH v. EMPEROR.

105 I.C. 829=51 Mad. 86=39 M.L.T. 615=  
26 M.L.W. 529=1927 M.W.N. 764=  
28 Cr. L.J. 1005=9 A.I. Cr. R. 180=  
A.I.R. 1927 Mad. 1011=53 M.L.J. 723.

**—S. 21—Municipal Conservancy Officer.**

A conservancy officer of the Corporation of Calcutta is a public servant within the meaning of S. 21, I.P.C. and as such on the written complaint of such officer made in the discharge of his official duties it is not necessary to examine the complainant before issuing process. (*Cuming, J.*) S. C. NANDI v. CORPORATION OF CALCUTTA. A.I.R. 1930 Cal. 665.

**—S. 21—P. W. D. Lascar.**

A P.W.D. lascar distributing water according to agreement between two villages from public irrigation channels is a public servant acting within his duties within the meaning of Ss. 21 and 353 of the Penal Code. 12 Bom. H.C.R. 1, not Foll; 7 Mad. 18 Dist. and 28 Cal. 344 Foll. (*Wallace and Madhavan Nair, JJ.*) PUBLIC PROSECUTOR, MADRAS v. K. ANNAM NAIDU. 91 I.C. 385=27 Cr. L.J. 81=  
21 M.L.W. 704=48 Mad. 867=  
A.I.R. 1925 Mad. 1093=49 M.L.J. 192.

**—S. 21—Taluk Board,  
Member of.**

A member of a Taluk Board is a public servant under S. 21, Penal Code, and cannot therefore be prosecuted without the sanction of the Government. (*Curgenvin, J.*) SIYASANKARAM PILLAI v. EMPEROR. 113 I.C. 462=28 M.L.W. 695=2 M. Cr. C. 49=  
30 Cr. L.J. 164=52 Mad. 446=  
12 A.I. Cr. R. 103=A.I.R. 1929 Mad. 8=  
56 M.L.J. 157.

**—S. 21—Warder of Jail.**

Warder of a jail is a public servant. (*Hilton, J.*) MAULO BAKSH v. EMPEROR. 119 I.C. 762=  
30 Cr. L.J. 1103=1929 Cr. C. 190=  
A.I.R. 1929 Lah. 631.

**—S. 22—Mortgage bond.**

Simple mortgage bond is moveable property for the purpose of procedure for attachment—(Case law discussed) 15 All. 134; 26 Bom. 305; 18 P.R. 1909; 37 Mad. 51; 50 I.C. 157 Foll. (*Walsh, A. C. J. and Boys, J.*) LAL UMRAO SINGH v. LAL SINGH. 80 I.C. 890=5 L.R.A. Civ. 674=22 A.L.J. 840=  
46 All. 917=A.I.R. 1924 All. 796.

**—S. 22—Standing trees.**

Standing teak trees must be held to be immovable property. (*Baguley, J.*) U. KA DOE v. EMPEROR. 8 Rang. 13=A.I.R. 1930 Rang. 158.

**—S. 23—"Wrongful".**

Forcible entry—Right to use force must be present—Mere legal right to enter—Not sufficient.

Per Marten, J.—The word "wrongful" does not involve the idea that the dispossession has no legal right to the possession of the property. Even a rightful owner, for instance, a landlord who is entitled to possession in a case where his tenant is wrongfully holding over, can only take possession peaceably. If his possession is opposed, however wrongfully, then the landlord has no right to break down the doors, to assault the inmates and to turn them *vi et armis* out of the building. He must go to the civil Court and get the necessary warrants or ejectment orders to enable, if necessary, the proper authorities to effect a forcible entry or a forcible ejectment according to law. There is clear distinction between forcible entries which are rightful and forcible entries which are wrongful; and that depends on whether the person entering was entitled to use force, and not merely on

**PENAL CODE (1860), S. 24—Dishonestly.**

Per *Pratt, J.*—The phrase "forcibly and wrongfully" has the same meaning as forcible entry without due warrant of law under the English statute. A forcible entry must be wrongful unless it is in execution of a legal process. The word "wrongfully," therefore, means no more than "otherwise than in due course of law" in S. 9 of the Specific Relief Act. (*Fawcett and Madgavkar, JJ.*) *BAI JIBA v. CHANDU LAL.* 94 I.C. 709=27 Bom. L.R. 1353=27 Cr. L. J. 661=A.I.R. 1926 Bom. 91.

**—S. 24—Dishonestly.**

**—Securing acquittal—By using forged document—Section applies.**

Section 471 does not necessarily contemplate user for producing material gain or material loss to another as explained in S. 24 but it does apply to user for the purpose of securing an acquittal. Neither the acquisition nor the deprivation of property is an essential ingredient of the intent in an offence under S. 471. The obtaining of an acquittal is very distinctly the obtaining of an advantage and brings the case within the definition of "dishonestly" in S. 24. (*Courtney-Terrell, C. J.*) *BAJU GHA v. EMPEROR.* 113 I.C. 712=9 P.L.T. 800=30 Cr. L.J. 236=12 A.I. Cr. R. 236=A.I.R. 1929 Pat. 60.

**—Not exhaustively defined—Intention to cause loss or gain.**

Section 24 is not an exhaustive definition of the word "dishonestly." The section does not say that the word "dishonestly" is applicable only when there is an intention of causing wrongful gain to one person or wrongful loss to another person but properly construed means that cases of intention of causing such wrongful gain or loss are to be considered as coming within the wider class of dishonest actions. (*Courtney-Terrell, C. J.*) *BAJU GHA v. EMPEROR.* 110 I.C. 712=9 P.L.T. 800=30 Cr. L.J. 236=12 A.I. Cr. R. 236=A.I.R. 1929 Pat. 60.

**—The word "dishonestly" does not necessarily imply wrongful gain to accused himself. (*Dalal, J. C.*) F. S. HAY v. EMPEROR. 88 I.C. 833=2 O.W.N. 469=28 O.C. 230=26 Cr. L. J. 1217=A.I.R. 1925 Oudh 469.**

**—S. 24—'Gain.'**

"Gain" must be taken to mean material gain. (*MacColl, J. C.*) *NGA BA THEIN v. EMPEROR.* 76 I.C. 225=25 Cr. L.J. 129=4 U.B.R. 174=A.I.R. 1925 Rang. 9.

**—S. 24—Intention to cause loss.**

Loss is not an ingredient of the offence under S. 406 as the intention to cause wrongful loss by itself amounts to dishonesty. 28 P.R. 1916 Cr. Ref. (*Shadi Lal, C. J.*) *ABDUL HAQ v. EMPEROR.* 69 I.C. 631=A.I.R. 1924 Lah. 353.

**—S. 25—Fraudulent use.**

A man can use a document fraudulently even though it is used for the purpose of supporting a good title. (*Newbould and B. B. Ghose, JJ.*) *EMPEROR v. BANSI SHEIKH.* 83 I.C. 504=51 Cal. 469=26 Cr. L.J. 24=A.I.R. 1924 Cal. 718.

**—S. 25—Intent to defraud.**

**—Deprivation of property—Not a necessary element.**

The expression "intent to defraud" implies deceit and consequent injury or intended injury, i.e., the infringement or intended infringement of some legal right possessed by the person deceived. It does not necessarily imply that the person deceived should be deprived of property. It includes deceit which causes or is likely to cause any damage or harm to the person deceived, in respect of his property or otherwise. (*Jai*

**PENAL CODE (1860) S. 27—Possession and Custody.**

*Lal, J.*) *RAMCHAND GURVALA v. KING-EMPEROR.* 98 I.C. 599=27 Cr. L.J. 1383=A.I.R. 1926 Lah. 385.

**—Causing loss not necessary.**

In order to do a thing fraudulently it is not necessary that the person doing it should intend, or the doing of it should have the necessary consequence of, causing wrongful loss to any person. It is sufficient if the doing of it is intended to defraud some one without ultimately acquiring unlawful gain or causing wrongful loss. (*Devadoss and Waller, JJ.*) *SIVANANDA MUDALI, In re.* 96 I.C. 850=7 A.I. Cr. R. 58=27 Cr. L.J. 994=A.I.R. 1926 Mad. 1072.

**—Meaning of.**

The expression "intent to defraud" in S. 25, I.P.C. means intent to deceive in such a manner as to expose any person to loss or the risk of loss, and loss means not only a deprivation of property but covers the infringement of any right possessed by a person. (*Shadi Lal, C. J. and Moti Sagar, J.*) *ROBINSON v. EMPEROR.* 63 I.C. 617=22 Cr. L.J. 681 (Lah.)

**—S. 25—Intent to gain unfair advantage.**

If a man intends to gain an unfair advantage by deceitful means and uses a false document for that purpose, his conduct is fraudulent. (*Case Law considered.*) (*Devadoss and Waller, JJ.*) *SIVANANDA MUDALI In re.* 96 I.C. 850=7 A.I. Cr. R. 58=27 Cr. L.J. 994=A.I.R. 1926 Mad. 1072.

**—S. 27—Joint family house.**

**—Presumption as to possession of any one member.**

Where the portion of a house in which an article is found is not in the exclusive possession of any one member of the joint family, but is used by or accessible to, all the members of the family there is no presumption that the article is in the possession or control of any person other than the house-master or the head of the family. But it is open to the prosecution to prove that the possession was with some other member of the family, and that member would then be liable to account for it: 15 All. 129, Foll. (*Shadi Lal, C. J. and Agha Haidar, J.*) *DALA SINGH v. EMPEROR.* 109 I.C. 209=9 Lah. 531=10 A.I. Cr. R. 235=29 Cr. L.J. 481=10 L.L.J. 408=29 P.L.R. 629=A.I.R. 1928 Lah. 272.

**—S. 27—Possession.**

**—Must be possession with knowledge.**

Whether the possession is that of the owner or of another person, it is clear that the person who is said to possess the thing must have knowledge of the existence of that thing. In other words, possession to be punishable under the Criminal Law must be possession with knowledge. (*Shadi Lal, C. J. and Agha Haidar, J.*) *DALA SINGH v. EMPEROR.* 109 I.C. 209=9 Lah. 531=10 A.I. Cr. R. 235=29 Cr. L.J. 481=10 L.L.J. 408=29 P.L.R. 629=A.I.R. 1928 Lah. 272.

**—S. 27—Possession and Custody.**

**—No distinction—English Law distinguish- ed.**

The expression "possession" in S. 27, shows that the Indian law does not recognize the distinction which the English law makes between "possession" and "custody." In the English law a moveable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need. The word "custody" means such a relation towards the thing as would constitute possession if the person

**PENAL CODE (1860), S. 22—Letters on trees.**  
having custody had it on his own account. (*Shadi Lal, C.J. and Agha Haidar, J.*) DALA SINGH v. EMPEROR. 109 I.C. 202=9 Lah. 531=10 A.I. Cr. R. 235=29 Gr. L.J. 481=10 L.L.J. 408=29 P.L.R. 629=A.I.R. 1928 Lah. 272.

—**S. 29—Letters on trees.**  
—*Imprinted by Forest department.*

Letters imprinted on the trees and intended to be evidence that the trees had been passed by the Forest Ranger, and so could be removed from the place where they were lying in the forest are a 'document' within the meaning of S. 29. (*Macleod, C. J. and Coyajee, J.*) EMPEROR v. KRISHNAPPA KHANDAPPA. 87 I.C. 838=27 Bom. L.R. 599=26 Gr. L.J. 1014=A.I.R. 1925 Bom. 327.

—**S. 30—Counterfoil of Bank pay slip.**

A counterfoil of a paying in slip purporting to be an acknowledgment of receipt of a sum of money by the bank is a document within the definition of valuable security in S. 30. (*Walmsley and Mukerji, JJ.*) A. H. TURNER v. EMPEROR. 89 I.C. 243=29 C.W.N. 868=26 Gr. L.J. 1304=A.I.R. 1926 Cal. 425.

—**S. 30—Document about immovable property.**  
—*Prima facie creating right—Sufficient.*

The use of the words "which is" or "purports to be" in S. 30 indicates that a document which, upon certain evidence being given, may be held to be invalid, but on the face of it creates, or purports to create, a right in immovable property, although a decree could not be passed upon the document, is contemplated within the purview of that section. (*Banerji, J.*) RAM HARAKH PATHAK v. EMPEROR. 90 I.C. 913=48 All. 140=23 A.L.J. 990=6 L.R. A. Cr. 181=26 Gr. L.J. 1617=A.I.R. 1926 All. 57.

—**S. 30—Kabuliat.**

—*Referring to a barred right.*  
A Kabuliat is a valuable security, though it relates to a period which has passed away, and though a suit thereon would be barred by time; because, it can even then be used, at any rate to show the lessor's right to possession and the contract of tenancy during these years between him and the lessee. (*Baker, J. C.*) ISMAIL PANJU v. KING-EMPEROR. 88 I.C. 283=26 Gr. L.J. 1115=A.I.R. 1925 Nag. 337.

—**S. 32—Illegal omission—Criminal negligence.**

The amount of negligence that would make a man criminally responsible cannot be defined. The question is one entirely of fact in each case. (*Kennedy, J. C. and Rupchand Bilaram, A. J. Cs.*) FRANK CROSSLEY WOODWARD v. CROWN. 92 I.C. 433=18 S.L.R. 199=27 Gr. L.J. 257=A.I.R. 1925 Sind 233.

—**S. 32—Illegal omission—Gross neglect.**

—*Extent of neglect necessary to incriminate.*

The expression "gross neglect" finds no place in the Indian Criminal Codes. The codified criminal Law of India does not render a mere casual inadvertence of duty criminal, but such neglect of duty as either directly results in loss of life or injury to person (Ss. 304-A, 337 and 338, I.P.C. and in certain special cases) or such neglect as endangers life or property (Ss. 279 to 289, I. P. C. Ss. 102 and 128 of the Indian Railways Act). (*Kennedy, J. C. and Rupchand Bilaram, A. J. Cs.*) FRANK CROSSLEY WOODWARD v. CROWN. 92 I.C. 433=18 S.L.R. 199=27 Gr. L.J. 257=A.I.R. 1925 Sind 233.

—**S. 33—Omission.**

A "criminal act" includes an omission to act, for example, an omission to interfere in order to prevent a murder being done, before one's very eyes. (*Duck-*

**PENAL CODE (1860), S. 34—Applicability.**  
*Duckworth and Maung Gyi, JJ.*) MAUNG TWA v. EMPEROR. 95 I.C. 603=5 Bur. L.J. 12=27 Gr. L.J. 827.

—**S. 34—Applicability.**

Section 34 has no application in the construction of S. 398. (*Mirza, J.*) EMPEROR v. MABIBUX KARIM-BUX MULLA. 107 I.C. 705=52 Bom. 168=30 Bom. L.R. 88=29 Gr. L.J. 383=10 A.I. Cr. R. 11=A.I.R. 1928 Bom. 52.

—Section 34 deals with the doing of separate acts similar or diverse by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all as if he had done them himself for "that act" and "the act" in the latter part of the section must include the whole action covered by a criminal act in the first part. A.I.R. 1925 P. C. 1, Foll. (*Zafar Ali, J.*) MIAN KHAN v. EMPEROR. 109 I.C. 122=10 A.I. Cr. R. 234=10 L.L.J. 366=29 Gr. L.J. 474.

—*Offence under S. 304, Part II, I. P. C.*

Although to constitute an offence under S. 304, Part 2, there must be no intention of causing death or such injury as the offender knew was likely to cause death, there must still be a common intention to do an act with the knowledge that it is likely to cause death though without the intention of causing death. Each of the assailants may know that the act, they are jointly doing, is one that is likely to cause death but have no intention of causing death, yet they may certainly have the common intention to do that act and therefore S. 34 can apply to a case under S. 304, Part 2. (*Cuming and Gregory, JJ.*) ADAM ALI v. EMPEROR. 100 I.C. 718=45 C.L.J. 131=31 C.W.N. 314=28 Gr. L.J. 334=7 A.I. Cr. R. 546=A.I.R. 1927 Cal. 324.

—*Does not apply to S. 397, I. P. C.*

Section 34 does not apply to S. 397, so that if one in a party of dacoits carries a deadly weapon it cannot be said that it would increase the gravity of the offence in the case of his associates who were not similarly armed: A. I. R. 1923 Lah. 104, Foll.; 16 P. R. 1901 and 15 P. R. 1901, not Foll. (*Agha Haidar, J.*) BACHAN v. EMPEROR. 99 I.C. 49=28 Gr. L.J. 17=A.I.R. 1927 Lah. 149.

—*No application to in construing S. 397, I.P.C.*

All the High Courts in India have now taken the same view as to the applicability of S. 34 in dealing with punishment which may be awarded under S. 397, Penal Code. It is now finally established that S. 34 has no application in the construction of S. 397. (*Fforde, J.*) ABDULLAH v. EMPEROR. 96 I.C. 501=8 L.L.J. 453=27 P.L.R. 627=7 A.I. Cr. R. 26=27 Gr. L.J. 949.

—*No application to Ss. 397 and 398, I. P. C.*

Both Ss. 397 and 398 of the Penal Code are what may be styled individualistic. They only apply to the person actually armed, and cannot be utilized as against companions, who themselves were not armed with deadly weapons at the time when the substantive offence in question was committed. (*Duckworth, J.*) NGA PU v. EMPEROR. 98 I.C. 181=5 Bur. L.J. 103=27 Gr. L.J. 1285=A.I.R. 1926 Rang. 207.

—Section 34 deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention; each person is liable for the result of them all, as if he had done them himself: (*Duckworth and Maung Gyi, JJ.*) MAUNG TWA v. EMPEROR. 95 I.C. 603=5 Bur. L.J. 12=27 Gr. L.J. 827.

**PENAL CODE (1860), S. 34—Applicability.***Penal Code.*

The doing to death of one person at the hands of several by blows or stabs under circumstances in which it can never be known which blow or blade actually extinguished life, if indeed one only produced that result is common in criminal experience and the impossibility of doing justice, if the crime in such case is the crime of attempted murder only has been generally felt.

S. 34 deals with the doing of separate acts similar or diverse by several persons; if all are done in furtherance of a common intention each person is liable for the result of them all as if he had done them himself, for "that act" and "the act" in the latter part of the section must include the whole action covered by "a criminal act" in the first part because they refer to it. A.I.R. 1923 Cal. 453 : 40 All. 103, 21 and 24 P. R. 1919 Cr. overruled. (*Lord Sumner.*) **BARENDRA v. EMPEROR.** 85 I.C. 47=29 C.W.N. 181=1925 M.W.N. 26=3 Pat. L.R.Gr. 1=6 L.R.P.Gr. 1=27 Bom. L.R. 148=6 P.L.T. 169=52 I.A. 40=52 Cal. 197=23 A.L.J. 314=41 C.L.J. 240=26 Gr.L.J. 431=26 P.L.R. 50=A.I.R. 1925 P.C. 1=48 M.L.J. 543 (P.C.).

—Several persons intend one act—One or more do a different act—No application.

S. 34 refers to cases in which several persons both do an act and intend to do that act: it does not refer to cases where several persons intend to do one act and some one or more of them do an entirely different act. In the latter type of cases S. 149 may apply but S. 34 cannot apply. (*Walmsley and Mukerji, JJ.*) **ANIRUDDHA MANA v. EMPEROR.** 86 I.C. 475=26 Gr. L.J. 827=A.I.R. 1925 Cal. 913.

—No application to S. 304, Part 2, I.P.C.

S. 34 which is based on a common intention cannot possibly be used with the second part of S. 304 which expressly excludes intention. (*Walmsley and Mukerji, JJ.*) **ANIRUDDHA MANA v. EMPEROR.** 86 I.C. 475=26 Gr. L.J. 827=A.I.R. 1925 Cal. 913.

—The words of S. 397 are not such as to exclude the operation of Ss. 114 and 34 of the Code. (*Hallifax, A.J.C.*) **SHEKH GHASSU v. KING-EMPEROR.** 82 I.C. 45=25 Gr.L.J. 1181=A.I.R. 1925 Nag. 136.

—S. 34 has no materiality when the Court is construing the meaning of Ss. 397 and 398. (*Page, J.*) **EMPEROR v. ALI MIRZA.** 81 I.C. 800=81 Cal. 265=25 Cr.L.J. 1024=A.I.R. 1924 Cal. 643.

—S. 34—Carrying deadly weapons.

—One member carrying weapon—Others not liable unless proved that the carrying was in furtherance of common object.

Where an act is committed by a person which is not an essential ingredient of the offence which is intended to be committed by a body of persons, no doubt the other persons composing the body would not be liable for the act of a single individual; he does it on his own account. But, where the carrying of a deadly weapon cannot but be in prosecution of the common object, it cannot be said that the other persons composing the unlawful assembly cannot be punished under S. 148 read with S. 149.

If a deadly weapon is carried without the knowledge of the other members of the assembly for the private ends of a particular individual, no doubt the other persons would not be guilty under S. 148. But where that fact is not made out, but it is shown that one or more of the members of the assembly carried a deadly weapon it cannot be said that the weapon was not carried in prosecution of the common object; and, therefore, all the members of the assembly are guilty under S. 148 : 22 Cal. 276, Expl. (*Devadoss, and*

**PENAL CODE (1860), S. 34—Death by injuries.**

*Waller, J.J.*) **MUDURUPALAGADU In re.**

96 I.C. 158=27 Gr.L.J. 894=A.I.R. 1926 Mad. 741=50 M.L.J. 559.

—S. 34—"Criminal Act done by several persons."

—Expression explained.

Per *Cuming J.*—It is impossible to conceive two individuals doing identically the same act. Such a thing is impossible. Therefore to have any meaning, the expression "Criminal act done by several persons" must contemplate an act which can be divided into parts each part being executed by a different person, the whole making up the criminal act which was the common intention of all. To put it in another way, the one criminal act may be regarded as made up of a number of acts done by the individual conspirators, the result of their individual acts being the criminal act which was the common intention of them all. The expression "criminal act done by several persons" includes the case of a number of persons acting together for a common object and each doing some act in furtherance of the final result, which various acts make up the final act. (*Mookerjee, Richardson, C. C. Ghosh, Cuming and Page, JJ.*) **EMPEROR v. BARENDRA KUMAR GHOSE.**

81 I.C. 353=28 C.W.N. 170=38 C.L.J. 411=25 Gr. L.J. 817=A.I.R. 1924 Cal. 257 (F.B.).

—S. 34—Dacoity.

—By some only of an unlawful assembly.

—Conviction of the others—When sustainable.

The charge framed against the accused was, that of being members of an unlawful assembly whose common object was mischief and hurt. In the course of evidence it appeared that some two or three of the accused beat some of the prosecution witnesses, entered their houses and carried off some articles. On this the accused were convicted of dacoity under Section 395, Indian Penal Code.

Held that on the facts of the case a conviction for dacoity can be sustained only by the application of Sections 34 and 149, Indian Penal Code and it was necessary to charge and prove that the assembly as a whole had for its common object the committing of dacoity or that each of the members knew that dacoity was likely to be committed in the prosecution of their common object; and that there having been no such charge the conviction for dacoity was bad and illegal. (*Odgers and Wallace, JJ.*) **KOTTOORA THEVEN In re.** 77 I.C. 444=34 M.L.T. 307=1924 M.W.N. 238=25 Cr.L.J. 396=A.I.R. 1924 Mad. 584=19 M.L.W. 211=46 M.L.J. 311.

—S. 34—Death by injuries.

—Joint attack—Who dealt fatal blow not known—All are liable.

Where the accused, in furtherance of their common intention, struck the deceased with lathis and a fracture of the skull resulting in death is caused by, one of the blows, the accused are guilty of an offence under S. 304, even though it cannot be ascertained which of the blows was fatal : 52 Cal. 957 and A.I.R. 1925 P.C. 1, *Foll.* (*Lindsay, J.*) **CHANDAN v. EMPEROR.** 94 I.C. 363=7 L.R. A. Cr. 97=27 Cr.L.J. 619 (All.)

—Joint attack—Immaterial which blow proved fatal.

If two or more persons are found to have had a common intention of causing such bodily injury as is likely to cause death and such bodily injury is caused resulting in death all of them are guilty of the offence of culpable homicide not amounting to murder. It is immaterial which of those persons caused the particular injury which directly led to the death of



**PENAL CODE (1860), S. 34—Death in assault.**  
the injured man. 40 A 686; 25 A. 506; 35 A. 560 Ref.  
(Wazir Hasan, A.J.C.) KEDAR v. EMPEROR.

**83 I.C. 636=26 Cr. L.J. 76=A.I.R. 1925 Oudh. 284.**

**—S. 34—Death in assault.**

**—Unlawful assembly—Immaterial which of them gave the fatal blow.**

Where in an assault by an unlawful assembly death is caused in furtherance of its common object, and the evidence cannot disclose who of the participants was the actual person to inflict the injuries which caused the death, the culpability can be brought home to all the persons taking part in the fight. (Stuart C.J.) GURDIN v. EMPEROR. 95 I.C. 766=13 O.L.J. 204=6 O.W.N. 1146=27 Cr. L.J. 836=1 Luck. 180=A.I.R. 1927 Oudh 102.

**—S. 34—Deaths in single combats.**

**—Joint responsibility not applicable.**

Where a fight in response to a challenge resolves itself into two single combats and results in death of a person and injuries to the other the accused are individually responsible for their own act, there being no common intention but only single intention on the part of each of the accused to fight with his own opponent and the principles of joint responsibility provided for in S. 34 cannot be applied in such case. One accused cannot therefore be held responsible for the act of the other. (Tapp, J.) DHANWANT SINGH v. EMPEROR. A.I.R. 1930 Lah. 495.

**—S. 34—Essentials of applicability.**

The crime of conspiracy is completely committed the moment two or more have agreed that they will do, at once or at some future time certain things. It is not necessary in order to complete the offence that any one thing should be done beyond the agreement. It is complete when they agreed. An offence under S. 34, I.P.C. is committed only when there is a common intention to commit a particular Act. (Crump, J.) EMPEROR v. SHAFI AHMAD. 31 Bom. L.R. 515.

**—Common intention—Aiding or abetting by presence or otherwise in furtherance of—Liable for offence.**

The question whether a particular criminal act may be properly held to have been "done by several persons" within the meaning of the section cannot be answered regardless of the facts of the case. In order to convict a person for an offence with the aid of the provisions of S. 34 it is not necessary that that person should actually with his own hand commit the criminal act. If several persons have the common intention of doing a particular criminal act and if in furtherance of that common intention all of them join together and aid or abet each other in the commission of the act, then although one of these persons may not actually with his own hand do the act, but if he helps by his presence or by other acts in the commission of the act, he would be held to have done that act within the meaning of S. 34. A. I. R. 1924 Cal. 257, Foll. (Kulwant Sahay, J.) HARIHAR SINGH v. EMPEROR 90 I.C. 154=26 Cr. L.J. 1498=A.I.R. 1926 Pat. 182.

**—If conviction under Ss. 149 and 325 is not possible, conviction under Ss. 34 and 325 is less possible—A conviction under S. 34 is not sustainable without a clear finding as to the accused having acted in furtherance of a common intention.**

In order to bring the accused within the scope of S. 34, it is necessary to come to a definite finding that the accused were acting in furtherance of the common intention of all.

Where the common object charged was quite different, and where it was found that conviction

**PENAL CODE (1860), S. 34—Grievous hurt.**  
would not follow under S. 325 read with S. 149 of the I.P.C.

**Held:** that a conviction under S. 325 read with S. 34 would not be sustainable without a clear finding that the accused were acting in furtherance of a common intention. (Sen, J.) BHABATARAM MAHTO v. EMPEROR. 90 I.C. 705=7 P.L.T. 388=26 Cr. L.J. 1601=1925 P.H.C.G. 278=A.I.R. 1925 Pat. 706.

**—Common intention—Acts though several are all done in furtherance of.**

Per Mookerjee and Richardson, JJ.—To justify the application of S. 34 it is necessary to prove what may be briefly described as a common act and a common intention which will define the expression "a criminal act is done" when there is more than one person who has contributed to the result. It is not possible to frame a universal formula which will comprehend all imaginable combinations of circumstances.

Per Richardson, J.—S. 34 regards the act done as the united act of the immediate perpetrator and his confederates present at the time and the language used is susceptible of that meaning.

To put it differently, an act is done by several persons when all are principals in the doing of it, and it is immaterial whether they are principals in the first degree or principals in the second degree, no distinction between the two categories being recognised.

Per C. C. Ghose, J.—When a criminal act is done, that is, brought about or carried out by several persons in furtherance of the common intention of all, each of such persons is liable for that act, in the same manner as if it were done or brought about or carried out by him alone. (Mookerjee, Richardson, C.C., Ghosh, Cuming, and Page, JJ.) EMPEROR v. BARENDRA KUMAR GHOSE. 81 I.C. 353=28 C.W.N. 170=38 C.L.J. 411=25 Cr. L.J. 817=A.I.R. 1924 Cal. 287 (F.B.)

**—S. 34—Grievous hurt.**

**—Common intention to cause hurt—Joint attack—All liable—Conviction of one under S. 325 illegal.**

Where it is found that all the accused persons joined in inflicting injuries upon the complainant and that grievous hurt to him was caused in furtherance of the common intention of all, the Court can apply S. 34, I.P.C. and find all the accused guilty of an offence under S. 325, I.P.C. But one of the accused cannot be convicted under S. 326, I.P.C., if the evidence shows that he caused only one injury which was in itself grievous hurt and the grievous hurt was the result of the aggregate of 26 injuries caused by all the accused. (Curgenven, J.) SANNA REDDI, In re. 113 I.C. 455=30 Cr.L.J. 167.

**—Result of several simple injuries—All are liable for the major offence.**

Where several persons join in inflicting injuries upon a man and grievous hurt is caused to him in furtherance of the common intention of all, they are all guilty of causing him grievous hurt under S. 325, although the grievous hurt is the result of the aggregate of several simple injuries. S. 34, can be rightly applied in such a case. (Curgenven, J.) SANNA REDDI v. EMPEROR. 113 I.C. 455=30 Cr.L.J. 167=2 M. Cr. C. 74=12 A.I.Cr.R. 70.

**—No proof as to who caused—All are liable.**

Where a party of men acting together with one purpose beat the complainants and inflicted on them many severe injuries, which appeared to be the result of blows with a cutting weapon, and it was not proved who used the cutting weapon.

**Held:** that the accused must be held constructively



**PENAL CODE (1860), S. 34—Grievous hurt.**

guilty of causing grievous hurt unless they can prove that their action was in the circumstances legitimate. (Coldstream, J.) LAL V. EMPEROR. 99 I.C. 90=

28 Cr.L.J. 58=A.I.R. 1927 Lah. 831.

—Common intent of forcible abduction—Arms carried—All are liable.

When a number of persons join together to forcibly carry off a girl while she is actually sleeping in her own house, and proceed to do so armed with dangs or chhavis, it is quite justifiable to assume that all of them had the knowledge that it might be necessary to use the dangs and chhavis they were armed with, and that the use of such weapons would in all probability result in grievous hurt being caused to persons attempting to prevent the girl being carried off, and therefore, if, as a matter of fact, in the course of the attempt, grievous hurt is caused to victims, friends and relatives, all the accused must be regarded as being responsible for the grievous nature of the hurt caused. (Broadway, J.) ALLAH RAKHA V. EMPEROR. 88 I.C. 273=

26 Cr.L.J. 1105=A.I.R. 1925 Lah. 565.

**—S. 34—Intention.**

—Common intention and common object distinguished.

There is a difference between object and intention; for though the object of an unlawful assembly is common, the intentions of the several members may differ and indeed may be similar only in the respect that they are all unlawful while the element of participation in action which is the leading feature of S. 34, is replaced in S. 149 by membership of the assembly at the time of the committing of the offence. Both sections deal with combinations of persons, who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap, but S. 149 cannot at any rate relegate S. 34 to the position of dealing only with joint action by the commission of identically similar criminal acts a kind of case which is not in itself deserving of separate treatment at all. (Lord Sumner.) BARENDRA V. EMPEROR. 85 I.C. 47=29 C.W.N. 181=

1925 M.W.N. 26=3 Pat. L.R. Cr. 1=

6 L.R.P. Cr. 1=27 Bom. L.R. 148=

6 Pat. L.T. 169=52 I.A. 40=52 Cal. 197=

23 A.L.J. 314=41 C.L.J. 240=26 Cr.L.J. 431=

26 P.L.R. 50=A.I.R. 1925 P.C. 1=43 M.L.J. 543.(P.C.)

**—S. 34—Interpretation.**

—Common intention and common object distinguished.

The words "common intention" in S. 34 have not the same meaning as "common object" in Ss. 146 and 149. The object of an assembly as a whole may not be the same as the intention which several persons may have when in pursuance of that intention they perform a criminal act and it may well be that the object of the assembly was lawful whereas the intention common to those of the assembly who jointly committed a criminal act was in itself criminal and joint criminal act must be equally imputed to all of them. 52 Cal. 197 (P.C.), Rel. on. (Courtney-Terrill, C. J. and Adams, J.) BHANDU DAS V. EMPEROR. 113 I.C. 676=7 Pat. 758=

30 Cr.L.J. 205=12 A.I. Gr. R. 6=

11 P.L.T. 111=A.I.R. 1929 Pat. 11.

**—S. 34—Joint Liability.**

—Murder pre-arranged—Accused kept away intruders—Plea that he struck no blow will not avail.

Where all accused come on the spot armed before the murder is completed and the murder is a pre-arranged matter and the accused has part assigned to him from before-hand such as keeping away the

**PENAL CODE (1860), S. 34—Murder.**

intruders, it is of no avail to him to say that he struck no blow on the deceased nor can his presence be considered accidental: A. I. R. 1925 P. C. 1. Foll. (Courtney-Terrill, C. J. and Rowland, J.) BHIKARI PATI V. EMPEROR. A.I.R. 1930 Pat. 545.

—Rule explained.

The doing to death of one person at the hands of several by blows or stabs under circumstances in which it can never be known which blow or blade actually extinguished life, if indeed one only produced that result is common in criminal experience and the impossibility of doing justice, if the crime in such case is the crime of attempted murder only has been generally felt. It is not often that a case is found where several shots can be proved and yet there is only one wound but even in such circumstances it is obvious that the rule ought to be the same as in the wider class unless the words of the code clearly negative it. Of course questions arise in such cases as to the extent to which the common intention and the common contemplation of gravest consequence may have gone and participation in a joint crime as distinguished from mere presence at the scene of its commission is often a matter not easy to decide in complex states of fact, but the rule is one that has never left the Indian Courts in much doubt. 21 A. 263, 29 C. 495, 35 Cal. 659, 35 A. 329, 41 C. 154, Appr. (Lord Sumner, J.J.) BARENDRA V. EMPEROR.

85 I.C. 47=29 C.W.N. 181=1925 M.W.N. 26=

3 Pat. L.R. Cr. 1=6 L.R.P. Cr. 1=27 Bom. L.R. 148=

6 Pat. L.T. 169=52 I.A. 40=52 Cal. 197=

23 A.L.J. 314=41 C.L.J. 240=26 Cr.L.J. 431=

26 P.L.R. 50=A.I.R. 1925 P.C. 1=43 M.L.J. 543.(P.C.)

**—S. 34—Murder.**

—Mere presence at the commission—Constructive liability.

Where four persons are accused of having committed murder and have been proved to have been present at the time of the commission of the offence, all of them are guilty. Even if two of them are alleged to have taken no active part in the affair, yet they are constructively liable on the application of S. 34: A.I.R. 1925 P.C. 1. Rel. on. (Broadway and Tapp, J.J.) EMPEROR V. SADA SINGH.

A.I.R. 1930 Lah. 388.

—Joint attack—Common intention not proved—None liable.

In a case of murder in the absence of a finding of common intention on the part of several accused persons, none of them can be found to be guilty of murder without finding that he is the man who actually struck the fatal blows. (Percival, J.C. and Barlee, A.J.C.) NURKHAN V. EMPEROR.

120 I.C. 520=31 Cr.L.J. 117=A.I.R. 1930 Sind 99.

—Of one who was running away from the scene of Dacoity—Common intention—Not probable.

It can hardly be natural that the common intention of all the persons who took part in the robbery was to murder not only persons who resisted them in the execution of the robbery but also to murder the persons who ran away from the scene of the robbery and therefore a murder of a person running from the scene of robbery cannot be said to be in furtherance of the common intention of dacoits, (Harrison and Dalip Singh, J.J.) KARAM DIN V. EMPEROR. 115 I.C. 1=30 Cr.L.J. 385=

A.I.R. 1929 Lah. 338.

—Common intention to kill—Not necessary to find who dealt the fatal blow.

Where two or more people bind themselves together for the express purpose of taking a man's life, it is not necessary to be able to prove which accused

**PENAL CODE (1860), S. 34—Murder.**

delivered the particular blow which proved fatal, to pass the death sentence upon them, if the circumstances otherwise merit it. (*Countess-Trotter, C. J. and Walsh, J.*) *TIRUMALIGADU v. EMPEROR.*

116 I.C. 135=52 Mad. 147=29 M.L.W. 387=  
1929 M.W.N. 181=2 M. Cr. C. 62=30 Cr. L.J. 628=  
13 A.I. Cr. R. 32=A.I.R. 1929 Mad. 342=  
56 M.L.J. 194.

—Common intention, to rob and if necessary to kill—All are liable.

Four persons went to the house with the common intention to rob, and if necessary to kill, the inmates of the house or any other person who might raise an alarm or obstruct them in carrying out their design. In furtherance of this common intention two women were put to death.

Held: each of them was guilty of murder: A.I.R. 1925 P.C. 1, Foll. (*Tekchand and Coldstream, J.J.*) *SHER MAHOMED v. EMPEROR.* 104 I.C. 630=

28 P.L.R. 583=9 A.I. Cr. R. 56=28 Cr. L.J. 854=  
A.I.R. 1927 Lah. 765.

—Intention that one should kill—All are guilty.

Where four persons took a woman out with the knowledge and with the purpose that one of their number should murder her and one of their number did murder her, then that murder is done in furtherance of the common intention of all and all the four men are guilty of the crime as principals under S. 34. (*Kincaid, J.C. and Rupchand Bilaram, A.J.C.*) *BUKSHAN v. EMPEROR.* 98 I.C. 113=

27 Cr. L.J. 1265=A.I.R. 1927 Sind 85.

—Robbery—Arms carried—All liable for death caused.

Where the culprits went armed with fire-arms to commit robbery, and death was caused by the shot of one of them in the commission thereof;

Held: that they were all responsible for what was done by one of them in prosecution of the common intention of all: A.I.R. 1925 P.C. 1, Foll. (*Shadilal, C.J. and Zafar Ali, J.*) *SAID NUR v. EMPEROR.*

89 I.C. 719=26 Cr. L.J. 1407=  
A.I.R. 1926 Lah. 140.

—Common intention to thrash—Use of spear by one—Others not liable for.

Where a joint attack was made by three persons who were influenced by the common idea of giving a thrashing and one of them used a spear and the wound caused by the spear resulted in death.

Held: that the use of the spear by one of them was outside of and inconsistent with the common object and the other assailants were not guilty of murder but only under S. 323 of the Penal Code. (*Dalal, J.C. and Neave, A.J.C.*) *RAMJAN ALI v. KING-EMPEROR.*

86 I.C. 150=12 O.L.J. 54=26 Cr. L.J. 710=  
A.I.R. 1925 Oudh 322.

—Pursuit with fire arms—Common intention to be proved—All are liable.

Where the evidence showed that four men armed with deadly weapons pursued the deceased and set upon him and killed him;

Held: that their common intention was to cause his death or to cause such bodily injury as was likely to cause death and under these circumstances all those who took part in the murderous assault upon him were guilty of murder. (*Scott-Smith, and Harrison, J.J.*) *BHAG SINGH v. EMPEROR.*

69 I.C. 449=A.I.R. 1924 Lah. 415.

—S. 34—Omission.

—Harmless injury originally intended—Grievous acts were suffered to be done—Omission to interfere renders one liable.

—If a man joins with another to assault a person,

**PENAL CODE (1860), S. 40—Interpretation.**

even though the original intention may be merely to inflict relatively harmless injuries, and he sees his companion in a course of action which may reasonably be expected to bring about the death of the deceased and takes no steps to interfere with that action or to assist the deceased, such an act is an act or omission which renders him liable under S. 304; A. I. R. 1925 P. C. 1, Foll. (*Courtney-Terrell, C. J. and Adami, J.*) *BHAGWAT SINGH v. EMPEROR.*

114 I.C. 222=9 P.L.T. 826=30 Cr. L.J. 276=  
12 A.I. Cr. R. 150=A.I.R. 1929 Pat. 65.

—S. 34—Presumption of common intention.

—Joint assault with deadly weapons—Common intention is presumed.

There was a quarrel over a turn of water in which several persons arrived with *Chhavis* and assaulted A who died of the injuries caused to him. It was not certain as to who inflicted the fatal blow. All the accused were convicted under S. 326 with S. 34 and inflicted equal punishment.

Held that considering the nature of the assault and the nature of the weapons, it cannot be said with regard to any one of them that he did not mean to cause serious injuries and S. 34, makes them equally responsible in such cases and each one of them was rightly given the same sentence. (*Abdul Qadir, J.*) *INDER SINGH v. EMPEROR.* 72 I.C. 513=

24 Cr. L.J. 401=A.I.R. 1924 Lah. 216.

—S. 34—Subsequent assistance.

—Constitutes common object.

The accused, five in number, had gone to complainant's house with the object of asking the complainant to get his son to divorce a certain woman. The complainant refused to take any steps in the matter when a quarrel ensued and one of the accused called his companions to beat the complainant.

Held: that the joining of the other accused in beating constituted a common object showing their common responsibility for the crime. (*Kanhaiya Lal, J.C.*) *MIAN JAN v. EMPEROR.* 73 I.C. 61=

24 Cr. L.J. 525=26 Cr. L.J. 67=83 I.C. 627=  
A.I.R. 1924 Oudh 248.

—S. 35—Distinct offences.

Attempting to stop people from proceeding by a train and throwing stones at them after the train has started are distinct offences. (*Moti Sagar, J.*) *ALLAH DITTA v. EMPEROR.* 77 I.C. 723=

25 Cr. L.J. 435=A.I.R. 1924 Lah. 585.

—S. 37—Joint attack.

—Joint attack—All are equally guilty.

If several persons jointly attack the deceased with lathis fracturing his skull and inflicting a number of other injuries they are all equally guilty even though it may not be possible to prove which of them actually inflicted the fatal blow. 35 All. 506, Ref. (*Daniels, J.*) *GHULAM HUSSAIN v. KING-EMPEROR.* 73 I.C. 769=

24 Cr. L.J. 673=A.I.R. 1924 All. 78.

—S. 38—Separate sentences.

Separate sentences cannot be passed under Ss. 323 and 326 in the case of an assault upon a single person. Where it is found as a matter of fact, that one of the accused attacked with a spear and the others inflicted blows on legs and arms with lathis, it is not necessary to find that all the accused are guilty of an offence under S. 326. In such a case each accused should be convicted for the offence of which he is actually found to be guilty. (*Pullan, J.*) *DEVI SAHAI v. EMPEROR.* 103 I.C. 198=28 Cr. L.J. 652=1 L. C. 199=

A.I.R. 1927 Oudh 313.

—S. 40—Interpretation.

(*Per Baguley, J.*—In the order of reference)—S. 40 refers to the definition of the word "offence" and it

**PENAL CODE (1860), S. 40—'Offence'.**

in no way refers to the punishment of the offence.

(*Rutledge, C. J. and Maung Ba and Heald, JJ.*)

EMPEROR v. MAUNG PU KAI. 118 I.C. 637=

7 Rang. 329=30 Cr. L. J. 961=1929 Cr. G. 177=

A.I.R. 1929 Rang. 203 (F.B.).

**—S. 40—'Offence'.**

—'Offence' in S. 441 includes offence under S. 24.

Entering the cattle pound with intent to commit an offence under S. 24, Cattle Trespass Act amounts to criminal trespass within the meaning of S. 447 and entering the pound with intent to intimidate the person in charge of the pound amounts to an offence under S. 447. (*Fforde and Addison, JJ.*) EMPEROR v. BHOLA. 103 I.C. 201=8 Lah. 331=

28 Cr. L. J. 665=28 P.L.R. 519=

8 A.I. Cr.R. 293=9 L.L.J. 354=

A.I.R. 1927 Lah. 495.

**—S. 43—'Illegal'.**

The word "illegal" has an extensive meaning, including anything and everything which he prohibited by law which constitutes an offence and which furnishes the basis for a civil suit ending in damages.

(*Sen, J.*) BHAGWAN DIN v. EMPEROR.

120 I.C. 205=11 L. R. A. Cr. 8=31 Cr. L.J. 12=

1930 A.L.J. 242=13 A. I. Cr. R. 126=

1929 Cr. C. 663=A.I.R. 1929 All. 935.

—Threatening to ask complainant, in Criminal Trial, scandalous and indecent questions amounts to offence under S. 385.

The word "illegal" has been given in S. 43 a very wide meaning and it has the same meaning as unlawful. To constitute an offence under S. 385 the threat need not necessarily be of some conduct which might either constitute an offence in Criminal Law or which might be made the basis of a Civil action.

F, a Mukhtar who appeared on behalf of an accused S who was being tried for theft, threatened the prosecutor H to put questions to H and the ladies of his household in cross examination which were entirely irrelevant to the matters at issue, which were scandalous and indecent and intended to insult and annoy H, unless H paid him some money, in which case the case would be withdrawn.

Held, that F was guilty under S. 385 as he threatened in order to extort money, to do an act prohibited by law. (*Terrell, C. J. and Macpherson, J.*) EMPEROR v. FAZLUR RAHMAN. 9 Pat. 725.

—What is—Distribution of a pamphlet causing provocation is illegal.

The publication of a pamphlet (which leaves no doubt as to the persons defamed) written in a provocative and defamatory style, furnishing the persons defamed a ground for civil action is illegal under S. 43. The distribution of such a pamphlet renders the person concerned liable under S. 153. (*Shah and Hayward, JJ.*) RAHMATALLI v. EMPEROR.

62 I.C. 401=22 Cr. L.J. 513=22 Bom. L. R. 166.

**—S. 43—"Unlawful."**

Per *Fawcett, J.*—The word "unlawful" is not defined in the Court but may be taken to correspond with the word "illegal" which is defined in S. 43.

(*Fawcett and Coyajee, JJ.*) VALLABH RAM v. EMPEROR. 94 I.C. 881=27 Bom. L.R. 1391=

27 Cr. L.J. 689=A.I.R. 1926 Bom. 122.

**—S. 53—Imprisonment and fine.**

The offender convicted under S. 420 "shall be punished with imprisonment and shall also be liable to fine." This means that some sentence of imprisonment must be given and the Court has a discretion to add or refrain from adding a fine, for, to the latter an offender is only "liable." (*Boys and Sen, JJ.*)

**PENAL CODE (1860), S. 63—Capacity to pay.**

EMPEROR v. DURG.

114 I. C. 733=

1929 A.L.J. 400=10 L.R.A. Cr. 59=

30 Cr. L. J. 340=11 A. I. Cr. R. 422=

A. I. R. 1929 All. 260.

—Offence punishable with imprisonment and fine—Fine need not necessarily be imposed.

Where the Indian Penal Code directs that in addition to substantive sentence of imprisonment there shall also be a sentence of fine, it does not mean that a fine must be tacked on to a sentence of imprisonment. The correct interpretation is that in such a case punishment of fine alone cannot be awarded, but there must be a sentence of substantive imprisonment. (*Dalat, J. C.*) MUNWA v. EMPEROR.

83 I.C. 481=26 Cr. L.J. 1=

A.I.R. 1925 Oudh 298.

**—S. 53—Maximum punishment.**

The maximum sentence whether of fine or of imprisonment, provided for by law, represents the sentence to be inflicted in extreme cases. Because a man may easily pay a fine is no ground for ordering him to pay the maximum fine fixed by law, if the nature of the offence committed by him is not of the most serious character, having regard to the description of the offence itself. (*Mukerji and Niamatullah, JJ.*) GANGA SAGAR v. EMPEROR.

120 I.C. 435=

1930 A.L.J. 26=31 Cr. L.J. 88=1929 Cr. C. 647=

A.I.R. 1929 All. 919.

**—S. 53—Punishment, what is.**

—Order under S. 562 is not a punishment.

An order under S. 562 directing release upon probation of good conduct cannot be said to be a punishment. It is not one of the various kinds of punishments described in S. 53, Penal Code. Under S. 562 the sentence of punishment is postponed and something which is not a punishment is substituted therefor. (*Kotval, A. J. C.*) BALU v. EMPEROR.

74 I.C. 66=22 N.L.R. 166=24 Cr. L.J. 738=

A.I.R. 1924 Nag. 37.

**—S. 60—Applicability.**

—Offence under S. 459, I.P.C.—Substantial sentences of imprisonment—Sentence of fine in addition—Propriety.

Four men were convicted under S. 459 of I.P.C., and sentenced to long term of imprisonment and fine. It appeared that the accused belonged to an humble walk of life. Held, that under those circumstances it was not necessary to impose fines in addition to substantial sentences of imprisonment. (*Harrison, J.*) JANU v. EMPEROR. 117 I.C. 802=

30 Punj. L.R. 125=30 Cr. L.J. 838=

11 L. L. J. 230.

**—S. 63—Capacity to pay.**

—Sentence of imprisonment and fine—Accused belonging to humble walk of life, fine unnecessary.

Where a sentence of imprisonment and fine was passed against persons belonging to a very humble walk of life, held in revision that the sentences of fine were unnecessary considering the position in life of the accused. (*Harrison, J.*) SOHAN v. CROWN.

30 Punj. L.R. 168.

—A fine should not be imposed on an accused person which it is wholly impossible for him to pay, without ruining himself and inflicting great hardship on his family: A.I.R. 1924 Lah. 81, Foll. (*Broadway, J.*) DIP CHAND v. EMPEROR. 93 I.C. 704=

8 L.L.J. 143=27 P.L.R. 199=27 Cr. L.J. 480.

—Sentence of fine—Ability to pay should be considered—Imprisonment to be preferred.

However serious may be the offence, a fine should not be imposed which it is wholly impossible, for the

**PENAL CODE (1860), S. 64—Enhancement.**

accused person to pay without ruining himself and inflicting great hardships upon his family, and the maximum fine to be imposed upon any individual should depend in every case upon his position in life, especially because no option is allowed under the Penal Code and the liability to pay the fine is not terminated by the serving of the sentence of imprisonment. If the offence is of an aggravated type a sentence of imprisonment is obviously more suitable than a fine. (*Harrison, J.*) **ABDULLA v. EMPEROR.**

71 I.C. 998=5 L.L.J. 271=24 Cr. L.J. 278=  
A.I.R. 1924 Lah. 81.

**—S. 64—Enhancement.**

*Sentence—Imprisonment in default of fine can't be increased to exceed the aggregate punishment awarded in lower Court.*

Where the accused was sentenced to rigorous imprisonment for two months and to a fine of Rs. 50 or in default one month's rigorous imprisonment, and on appeal sentence was changed to one of one month's rigorous imprisonment and fine of Rs. 200 or in default to two months' rigorous imprisonment.

*Held:* that the latter sentence amounted to an enhancement of the sentence passed by the trial Court for if the fine was not paid the accused would have to undergo three months rigorous imprisonment and still be liable to the fine. The imprisonment in default of payment of fine of Rs. 200 was reduced to rigorous imprisonment for one month in default. 23 All. 497, Foll. (*Adami and Bucknill, JJ.*) **BHOLA SINGH v. KING-EMPEROR.**

82 I.C. 50=  
3 Pat. 638=5 P. L.T. 622=25 Cr. L.J. 1186=  
A.I.R. 1924 Pat. 563.

**—S. 65—Applicability.**

The provisions of Ss. 65 and 67 of the Penal Code equally apply to punishments inflicted under a special law like the Gambling Act: 22 Mad. 238 and 2 Bom. L. R. 1081, Rel. on. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) **EMPEROR v. RADHO.**

91 I.C. 394=20 S.L.R. 31=27 Cr. L.J. 90=  
A.I.R. 1926 Sind 144.

**—S. 65—Proportion of Imprisonment.**

For an offence punishable with one year's imprisonment the infliction of five months' imprisonment in default of payment of fine is not legal in view of S. 65. (*Kendall, A. J. C.*) **NUR-UD-DIN v. KING-EMPEROR.**

81 I.C. 985=25 Cr. L.J. 1161=A.I.R. 1925 Oudh 109.

**—S. 71—Fresh sentence.**

*Accused already sentenced for dacoity—Sentence under S. 400 is not barred.*

A conviction can be had under S. 400 even where no actual commission of a dacoity is proved. The element of the offence is association with the knowledge that it is formed for the purpose of committing dacoities habitually. Hence where sentence is already passed for the offence of committing dacoity there is no bar to the passing of a sentence under S. 400. (*Dalal and Neave, A. J. Cs.*) **MURLI BRAHMAN v. KING-EMPEROR.**

89 I.C. 836=27 O.C. 385=  
26 Cr. L.J. 1412=A.I.R. 1925 Oudh 374.

**—S. 71—Grievous hurt.**

Violence being an essential element in an offence under S. 459, separate convictions and sentences under Ss. 323 and 325 should not be passed. (*Harrison, J.*) **JANU v. EMPEROR.**

117 I.C. 802=  
11 L.L.J. 230=30 P.L.R. 125=30 Cr. L.J. 838

**—S. 71—House breaking and theft.**

Separate sentences cannot be passed under S. 457 and S. 380 of the Indian Penal Code for housebreaking followed immediately by theft. 2 W.R. (Cr.) 63; 8 W.R. (Cr.) 31; 6 W.R. (Cr.) 49; 6 W.R. (Cr.) 92 and 5 W.R. (Cr.) 49; Foll. (*Ross and Redwant*

**PENAL CODE (1860), S. 71—Unlawful assembly.**

*Sahay, JJ.*) **MAKHRU DUSADH v. EMPEROR.**

86 I.C. 528=5 Pat. 464=27 Cr.L.J. 976=  
7 P.L.T. 794=7 A.I.Cr.R. 3=A.I.R. 1926 Pat. 387.  
—*Criminal P. C. S. 35—Offences under Ss. 380 and 457 can be separately punished at one trial so as to justify consecutive sentences.*

There is nothing in S. 71 of the Indian Penal Code that in any way restricts the power of Court under S. 36, of the Code of Criminal Procedure of 1923. Therefore separate sentences can be passed under S. 35, as amended for an offence of housebreaking at night with intent to commit theft under S. 457 of I.P.C., and of theft of ornaments from that house under S. 380 of I.P.C. and the sentences of imprisonment can be made to run one after another. (*Newbould and B. B. Ghose, JJ.*) **KANCHAN MOLLA v. EMPEROR.**

88 I.C. 997=26 Cr.L.J. 1253=  
41 C.L.J. 563=A.I.R. 1925 Cal. 1015.

**—S. 71—No separate sentences.**

Where there is one offence punishable with two different provisions of law, one punishment only can be lawfully imposed. (*Fforde and Addison, JJ.*) **BHAGAT SINGH v. EMPEROR.**

121 I.C. 726=31 P.L.R. 73=  
31 Cr.L.J. 290=A.I.R. 1930 Lah. 266.

—Consecutive sentences in respect of convictions under Ss. 394 and 397, are illegal, if they are based on the same set of facts. (*Fforde, J.*) **MAMREZ v. EMPEROR.**

89 I.C. 390=25 Cr.L.J. 1350=  
A.I.R. 1926 Lah. 47.

**—S. 71—Separate dacoities.**

The offence under S. 120-B with S. 396 is a separate offence from the offence of participation in a particular dacoity or the dishonest reception of property stolen in a dacoity knowing it to be stolen. Separate sentence can be awarded to run consecutively for participation in separate dacoities and to these can also be added a consecutive sentence of participation in conspiracy. (*Stuart, C. J. and Raza, J.*) **HAZARI BERIA v. EMPEROR.**

115 I.C. 276=  
5 O.W.N. 985=12 A.I.Cr.R. 252=30 Cr.L.J. 473=  
A.I.R. 1928 Oudh 507.

**—S. 71—Separate sentences.**

*Offences under Ss. 376 and 366 — Separate sentences can be passed.*

A charge under S. 366 involves different elements and different questions of fact from a charge under S. 376, and therefore separate sentences for offences under Ss. 366 and 376 are not against the provisions of S. 71, I. P. C. : 8 Bom. L.R. 120, Foll. (*Broadway, J.*) **GHULAM MAHOMED v. EMPEROR.**

99 I.C. 344=7 Lah. 484=27 P.L.R. 802=  
28 Cr.L.J. 136=A.I.R. 1927 Lah. 88.

**—S. 71—Unlawful assembly.**

Where the common object of a member of an unlawful assembly was the very hurt which was perpetrated by the accused the offence comes within provisions of S. 71 and separate sentences for offences under Ss. 147 and 324 therefore cannot stand. (*Wort, J.*) **RAMDARSAN MAHTON v. EMPEROR.**

116 I.C. 523=  
10 P.L.T. 136=30 Cr. L.J. 634=13 A. I. Cr. R. 59=  
A.I.R. 1926 Pat. 206.

—Separate sentences under S. 147 and 325 read with S. 149 are illegal in view of the provisions of S. 71 : A.I.R. 1924 Cal. 771, Foll. (*Suhrwardy and Cammiade JJ.*) **BASIRUDDIN v. EMPEROR.**

101 I.C. 660=8 A.I.Cr.R. 163=31 C.W.N. 532=  
28 Cr.L.J. 484=A.I.R. 1927 Cal. 931.

—To convict for rioting and voluntarily causing hurt, where the only violence which formed the act of rioting was the hurt itself, offends against the provisions of S. 71 : A.I.R. 1922 Lah. 405 and Mad. Cr. Rev. Pet. No. 209 of 1924, Rel. on. (*Gurgenyan, J.*) **KUN.**

**PENAL CODE (1860), S. 71—Unlawful assembly.**  
**NAMMAL MAYAN v. KING-EMPEROR** 105 I.C. 828 =

28 Cr.L.J. 1004 = A.I.R. 1927 Mad. 970 =  
 23 M.L.J. 656.

—Accused can be convicted both under S. 325 and S. 149, I.P.C., at one trial: 16 Cal. 442, Foll. (Findlay, J.O.C.) DEOJI v. EMPEROR. 95 I.C. 606 =

27 Cr. L.J. 830 = A. I. R. 1926 Nag. 459.

—Separate sentences for rioting and causing hurt are legal when each person has taken individual part in assault. 40 Cal. 511, Foll., A.I.R. 1923 Cal. 408 Dist. (Newbould and B. B. Ghose, JJ.) KAPIL MANDAL v. RABBANI SHEIKH. 89 I.C. 241 =

41 C.L.J. 471 = 26 Cr. L.J. 1297 =  
 A.I.R. 1925 Cal. 1039.

—Separate sentences under S. 342 read with S. 149 are illegal. (Sanderson, C.J. and Walmsley, J.) AMIRUDDIN v. EMPEROR. 92 I.C. 216 =

40 C.L.J. 396 = 27 Cr. L.J. 232 =  
 A.I.R. 1925 Cal. 217.

—Preparation for committing dacoity and assembling for doing it are distinct offences.

Making preparations for committing dacoity and assembling for the purpose of committing dacoity when done at different times and on different occasions are distinct offences and though separate sentences can be awarded, the practice is to award concurrent sentences. (Fforde, J.) GHULAM RASUL v. EMPEROR. 81 I.C. 168 = 25 Cr. L.J. 680 =

A.I.R. 1925 Lah. 119.

—Separate sentences under S. 147 and under S. 325 read with S. 149 are legal when they are made to run concurrently—Order of the sentences is not material in deciding the legality of the respective sentences, (contra Sanderson C.J.)

An accused was sentenced to two years' rigorous imprisonment under S. 147, I.P.C. and a further 3 years under S. 325 read with S. 149 and both sentences were to run concurrently.

Held (Per Sanderson, C.J.)—That the infliction of separate punishments for the two offences was illegal under para 1 of S. 71, I.P.C. and it did not make any difference that the sentences were directed to run concurrently. The sentence under S. 325 read with S. 149 must therefore be set aside 16 C. 442 F.B. foll.

(Per Cuming, J.)—Where two separate sentences have been passed the illegality does not necessarily attach to the sentence which is passed second in point of time. Obviously this would possibly reduce the question as to what sentence the accused would get to a lottery depending on the order in which the Judge or Magistrate passed the sentences and result in a serious miscarriage of justice. The prohibition in S. 71, I.P.C. against punishing an accused with the punishment of more than one of the offences is obviously met by making all the sentences which have been imposed run concurrently. (Sanderson, C.J. and Cuming, J.) KIAMUDI KARIKAR v. EMPEROR. 81 I.C. 593 =

51 Cal. 79 = 28 C.W.N. 347 =  
 25 Cr. L.J. 943 = A.I.R. 1924 Cal. 771.

—Where the common object of the unlawful assembly is theft the accused cannot be separately convicted and sentenced under the two sections. Section 379 and 143 or Section 144, (Adami and Sen, JJ.) PRAYA GOPE v. THE KING-EMPEROR.

82 I.C. 284 = 3 Pat. 1015 = 5 P.L.T. 571 =  
 1924 P.H.C.C. 247 = 25 Cr. L.J. 1276 =  
 A.I.R. 1924 Pat. 764.

#### —S. 73—Applicability.

Section 73 applies only where a person has been convicted of an offence under the Indian Penal Code and is not applicable to convictions under other laws,

**PENAL CODE (1860), S. 75—Considerations under,** unless expressly made so, and therefore an order for solitary confinement for failure to furnish security under S. 110, Cr. P. C., is without jurisdiction. (Sulaiman, J.) EMPEROR v. PHAKKAR.

102 I.C. 342 = 8 L.R.A. Cr. 74 = 7 A.I.Cr.R. 516 =  
 28 Cr.L.J. 534 = A.I.R. 1927 All. 472.

#### —S. 73—Scope and Applicability.

—Solitary confinement cannot be ordered under Criminal Tribes Act.

Under S. 73 there is no authority for imposing a sentence of solitary confinement when a person is convicted under some other Criminal Act. The Criminal Tribes Act (No. III of 1911) makes no provision for imposing a sentence of solitary confinement on persons convicted under that Act. (Sulaiman, J.) EMPEROR v. BIDHA. 81 I.C. 142 =

46 All. 114 = 21 A.L.J. 914 = 5 L.R.A. Cr. 19 =  
 25 Cr.L.J. 654 = A.I.R. 1924 All. 319.

—Solitary confinement cannot be awarded for convictions under Arms Act.

Solitary confinement cannot be awarded for offences under Special or Local Acts. 17 P. R. 1889, (Cr.); 20 P. R. 1870 (Cr.), 4 P. R. 1875 (Cr.), 24 P. R. 1879 (Cr.), Ref. *Petitioner was not represented.* (Abdul Raoof, J.) EMPEROR v. NAZIR SINGH. 76 I.C. 184 =

25 Cr.L.J. 120 = A.I.R. 1924 Lah. 667.

#### —S. 75—Absence of charge.

Where the Magistrate frames a charge against an accused under S. 392 and does not charge him specifically under S. 75, though he admits previous convictions, but eventually holding the offence to fall more properly under S. 369 convicts the accused under S. 369 without amending the original charge. S. 238 (2), Criminal P.C., cannot be applied as an offence under S. 369 can scarcely be held to be a minor offence in relation to S. 392, the circumstances attending the two kinds of offences having considerable elements of difference between them. The accused cannot also be convicted under Ss. 379-75 in such a case, there being no formal charge under S. 75. (Currie, J.) MANGLOO v. EMPEROR. A.I.R. 1930 Lah. 544.

#### —S. 75—Applicability.

Section 75 does not apply to attempts punishable under S. 511. (Coldstream, J.) MOHAMMED HUSAIN v. EMPEROR. 106 I.C. 340 = 9 A.I.Cr.R. 323 =

29 P.L.R. 54 = 29 Cr.L.J. 4.

—Under S. 75 only when an accused is convicted of an offence under Ch. XII or Ch. XVII of the Penal Code he is liable under the circumstances set out in that section to enhanced punishment. Where the conviction is for an attempt to commit an offence under those chapters, the accused is not liable to enhanced punishment. (Banerji, J.) BRIJ BEHARI LAL v. EMPEROR. 88 I.C. 724 = 23 A.L.J. 926 =

6 L.R.A. Cr. 156 = 26 Cr.L.J. 1204 =  
 A.I.R. 1926 All. 44.

—Section 75 does not apply to an accused who commits second offence after the date of the first offence but before his conviction for the latter: 5 B.H.C. (Cr.) 36, Appr. (Marten and Madgavkar, JJ.) SAYAD ABDUL v. EMPEROR. 95 I.C. 54 =

28 Bom.L.R. 484 = 27 Cr.L.J. 726 =  
 A.I.R. 1926 Bom. 305.

#### —S. 75—Considerations under.

—Reason for reducing or enhancing of punishment indicated.

In considering either the enhancement or reduction of sentence the mere fact that an offence is not of a serious nature cannot form a special reason. It must be something apart from the nature of the offence such as youth, age, illness or sex and the interval of time which has lapsed between the accused person



**PENAL CODE (1860), S. 75—Conviction to be considered.**

coming out of prison after serving the last sentence and the commission of the offence.

Where therefore a period of about eight years had lapsed between serving the last punishment and commission of offence, the punishment was reduced from transportation to seven years: *A.I.R. 1926 Mad. 1165, Ref. (Beasley and Cornish, JJ.) KARUPPA THEVAN v. EMPEROR.* 53 Mad. 80 =

30 M.L.W. 710 = 2 M.Gr.C. 305 =  
1929 Cr.C. 609 = A.I.R. 1929 Mad. 841  
57 M.L.J. 743.

**—S. 75—Conviction to be considered.**

**—Previous conviction in non-British Indian Court—Whether can be taken into account.**

A previous conviction of the accused in a non-British Indian Court like that of a Magistrate in a native state cannot be proved in a British Indian Court for purposes of S. 75, I.P.C. If however on information given by the police the Magistrate questions the accused as regards the previous conviction and the accused admits the same the court may consider the same in awarding sentence. (*Jackson, J.*) *SYED KHADER SAHIB v. EMPEROR.* 1930 M.W.N. 173.

—Where a person is convicted for the first time under S. 379, and under S. 403 for the second time, at the time of enhancing the punishment of the same person convicted under S. 379 for the third time, only the first conviction can be taken into consideration, the offence under S. 403 not being punishable with imprisonment for a term of three years or more. (*Coldstream, J.*) *KHANU v. EMPEROR.*

110 I.C. 804 = 29 Cr. L.J. 772 = 11 A.I. Cr. R. 8.  
—**Enhanced convicted under S. 326, Penal Code—Previous conviction under the same section—Magistrate can take into consideration the previous conviction at the time of awarding sentence independently of S. 75.**

In many cases in which the law does not prescribe enhanced maximum punishment for a second conviction, it is nevertheless necessary to pass a severe sentence because the offender has been previously convicted of a similar offence or some other offence indicating moral turpitude.

It is the duty of a Court, whenever a previous conviction not coming under S. 75 is brought to its notice, to consider the nature of the conviction and if it is of opinion that it constitutes a proper ground for passing a severer sentence than the Court would otherwise pass for the offence for which the accused is being tried, it should take evidence as to the previous conviction and it may enter the previous conviction in the charge in order that the accused may understand that it will be taken into consideration in passing the sentence. But the Court should not refer to S. 75 unless the Court is competent to give enhanced punishment under S. 75. (*Rutledge, C.J. Carr, Cunliffe and Das, JJ.*) *EMPEROR v. NGA BASHIM.* 111 I.C. 453 =

6 Rang. 391 = 29 Cr. L.J. 869 =  
11 A.I. Cr. R. 126 = A.I.R. 1928 Rang. 200 (F.B.)

—It seems somewhat anomalous that previous convictions of an accused for theft and burglary should be taken into account in increasing his sentence where the subsequent offence is cheating by personation under S. 419. (*Addison, J.*) *QAIMI v. EMPEROR.* 100 I.C. 536 = 28 Cr. L.J. 312 =

A.I.R. 1927 Lah. 220.

—Previous conviction under S. 360—Subsequent conviction under S. 448—S. 75 is not applicable. (*Poster, J.*) *THAKUR PRASAD SINGH v. KING-EMPEROR.* 84 I.C. 346 = 2 Pat. L.R. Cr. 205 =

26 Cr. L.J. 282 = A.I.R. 1924 Pat. 665.

**PENAL CODE (1860), S. 75—Proof of previous conviction.****—S. 75—Duty of Court.**

In cases where S. 75, Penal Code is to be applied a great deal more care should be given to the inquiry and trial than is usually given to them. An accused person though he has several convictions behind him is entitled to have his case treated as if it was not a foregone conclusion that he is guilty. (*Boys and Young, JJ.*) *GOLI v. EMPEROR.* 120 I.C. 202 =

1930 A.L.J. 82 = 1930 Cr. C. 33 = 31 Cr. L.J. 8 =  
A.I.R. 1930 All. 17.

**—S. 75—Habitual criminal.**

One previous conviction does not necessarily mean that the convict is an habitual criminal though a subsequent offence, shortly upon release from jail, is certainly a matter which entitles the trial Court to impose a more severe sentence than would be the case if there has been no other conviction. (*Fforde, J.*) *LABH SINGH v. THE CROWN.* 94 I.C. 365 =

8 L.L.J. 146 = 27 Cr. L.J. 621 = 27 P.L.R. 267 =  
A.I.R. 1926 Lah. 336.

**—S. 75—Old Conviction.**

Previous conviction 18 years old is no good ground for heavy sentence. (*Rupchand and Barlee, A.J. Cs.*) *MURIDO v. EMPEROR.* 1930 Cr. C. 122 =  
A.I.R. 1930 Sind 58.

—A previous conviction which took place a considerable time before a subsequent offence does not warrant the application of S. 75 which is directed against habitual offenders. (*Fforde, J.*) *KUNJ LAL v. EMPEROR.* 114 I.C. 719 = 30 P.L.R. 52 =

30 Cr. L.J. 376 = A.I.R. 1929 Lah. 278.

—An old offender cannot be sentenced to enhanced punishment as an old offender until there is some proof or admission by him before the Court that he is the person who committed the previous offences, Practice of the Presidency Magistrate's Court, Madras to accept a police certificate to the effect of an accused being an old offender was therefore deprecated. (*Wallace, J.*) *EMPEROR v. ABDUL MALIK.*

121 I.C. 762 = 52 Mad. 795 = 30 M.L.W. 180 =  
2 M.Gr.C. 201 = 1929 Cr. C. 337 =

A.I.R. 1929 Mad. 744 = 57 M.L.J. 470.

—An enhanced sentence should not be passed when the previous offence took place as much as 12 years before the present one and there was only one previous offence. (*Dalip Singh, J.*) *ALLAH DIN v. EMPEROR.* 106 I.C. 448 = 9 A. I. Cr. R. 309 =

29 P.L.R. 59 = 29 Cr. L.J. 32.

—Long time passed since previous conviction—Court may not enhance sentence. (*Dalip Singh, J.*) *KHUSHDIL v. EMPEROR.* 99 I.C. 416 = 28 Cr. L.J. 160 =  
A.I.R. 1927 Lah. 647.

—Conviction before 12 years—Section does not apply. (*Fforde, J.*) *ISHAR SINGH v. EMPEROR.* 96 I.C. 400 = 27 Cr. L.J. 944 =  
A.I.R. 1926 Lah. 617.

**—S. 75—Proof of previous conviction.**

—Previous convictions should be proved according to S. 511, Criminal P. C., and not merely by admission of accused. (*Fforde and Dalip, JJ.*) *DAYARAM v. EMPEROR.* 119 I.C. 429 =

30 P.L.R. 530 = 30 Cr. L.J. 1082 = 1929 Cr. C. 465 =  
A.I.R. 1929 Lah. 768.

—Mode of proving previous conviction indicated.

Where an accused is charged under the provisions of S. 75, it is absolutely essential that the previous conviction in question should be clearly and legally proved. The proper way to prove such a conviction is either (1) by an extract certified under the hand of the officer in whose custody are the



**PENAL CODE (1860), S. 75—Same facts.**

records of the Court which convicted; or (2) by a certificate under the hand of the officer in charge of the jail in which the punishment or any part thereof was undergone, or else by production of the actual warrant of commitment under which the punishment was suffered. In every case there must be evidence as to the identity of the accused person with the person so convicted. (*Fforde, J.*) **FEROZE KHAN v. EMPEROR.** 105 I.C. 673=26 P.L.R. 843=28 Cr.L.J. 961=A.I.R. 1928 Lah. 107.

**—S. 75—Same Facts.**

—Where two sentences were passed in respect of two offences which appeared to arise out of the one and the same act it was doubted whether the sentences were justified but as the total sentence did not exceed the sentence which could legally be inflicted under the rival sections or which were not in excess of the powers of the trial Magistrate the High Court did not interfere. (*Macleod, C. J. and Shah, J.*) **SAIFIN RASUL v. EMPEROR.** 83 I.C. 342=26 Bom.L.R. 267=25 Cr. L.J. 1382=A.I. R. 1924 Bom. 385.

**—S. 75—Scope.**

—Practice (Criminal)—Previous convictions can be used in determining quantum of sentence even in cases where it is not intended or possible to exceed Penal Code limits. (*Wallace, J.*) **SUBAN SAHIB v. EMPEROR.** 115 I.C. 483=29 M.L.W. 194=2 M. Cr. C. 65=52 Mad. 358=1929 M.W.N. 393=30 Cr.L.J. 471=12 A. I. Cr. R. 256=A.I.R. 1929 Mad. 306=56 M.L.J. 595.

**—S. 75—Security order.**

—Enhancement of sentence should not rest on previous security bond when accused is not questioned about it. (*Rupchand. and Barlee, A. J. Cs.*) **MURID v. EMPEROR.** 1930 Cr. C. 122=A.I.R. 1930 Sind. 58.

—A security order under S. 110, Criminal P. C. is irrelevant for the purpose of S. 75. (*Coldstream, J.*) **KHANU v. EMPEROR.** 110 I.C. 804=29 Cr. L.J. 772=11 A.I. Cr. R. 8.

**—S. 75—Trivial offence.**

For an offence trivial in nature in itself, greatly enhanced punishment should not be inflicted, merely because there have been previous convictions against the offender. (*Fforde, J.*) **HARNAM DAS v. EMPEROR.** 1930 Cr. C. 73=31 P.L.R. 333=A.I.R. 1930 Lah. 100.

—That a man has been convicted several times is no reason for passing a heavy sentence on him for an offence which is trivial in itself: *R. v. Taylor*, 18 Cr. App. Rep. 143, Foll. (*Fforde and Dalip Singh, JJ.*) **MAULU v. EMPEROR.** 121 I.C. 419=1929 Cr. C. 419=11 Lah. 115=31 Cr. L.J. 264=31 P.L.R. 217=A.I.R. 1929 Lah. 787.

—Subsequent offences trivial—Previous convictions are not reasons for sentencing to transportation for life.

When an accused person has had a certain number of previous convictions against him, it is not in accordance with enlightened ideas of the administration of criminal justice to sentence him to transportation for life for the commission of a subsequent offence which is trivial in itself though of course the previous record of the prisoner is an element which the Court should take into consideration in substantially increasing the punishment for a subsequent offence. The nature of the subsequent offence itself is the main element. (*Fforde and Dalip Singh, JJ.*) **DAYA RAM v. EMPEROR.** 119 I.C. 429=30 P.L.R. 530=30 Cr. L.J. 1082=1929 Cr. C. 465=A.I.R. 1929 Lah. 768.

**PENAL CODE (1860), S. 84—Applicability.****—S. 76—Applicability.**

—Accused's belief with regard to age is immaterial.

Section 361 is framed in such terms as to make it immaterial what the offender took the age of the girl or victim to be. S. 76 has no application in such a case. (*Dhavle and Fazl Ali, JJ.*) **KRISHNA MAHARANA v. EMPEROR.** 1929 Cr. C. 379=A.I.R. 1929 Pat. 651.

**—S. 76—Mistake of fact.**

Police officer arresting a wrong person under a warrant under a mistake of fact is not liable, but is protected by section. (*Macleod, C. J. and Crump, J.*) **EMPEROR v. GOPALIA KALLAIYA.** 81 I.C. 317=26 Bom. L.R. 133=25 Cr. L.J. 797=A.I.R. 1924 Bom. 333.

—Where, under an order of the Commissioner of Police which was published in the Calcutta Police Gazette and which had been in force for a considerable time, the Dy. Commissioner made an order for the confinement of a Head Constable and it was afterwards discovered the order published in the Gazette had not been granted the leave required under S. 9 of the Calcutta Police Act. *Held*, in a complaint by the Head Constable against the Dy. Commissioner for wrongful confinement, that the accused must be acquitted. (*Sanderson, C.J. and Walmesley, J.*) **PRAMATHA NATH v. P. C. LAHIRI.** 59 I.C. 37=22 Cr. L.J. 5=47 Cal. 818.

**—S. 79—"Act justified."**

The act of a mother-in-law in abducting her daughter-in-law and compelling her to marry against her will, which falls within S. 366, is not one which she is justified by law in doing and S. 79 can afford no protection to her. (*Tekchand and Agha Haidar, JJ.*) **SANT RAM v. EMPEROR.** 30 P.L.R. 573=1929 Cr. C. 305=A.I.R. 1929 Lah. 713.

**—S. 79—Mistake of fact.**

Where accused assaulted a man believing him to be a ghost and the assault proved fatal:

*Held*: that he was neither guilty under S. 302 nor S. 304, nor S. 304-A: 11 P. R. 1888 Cr., Expl. (*Jai Lal and Dalip Singh, JJ.*) **WARYAM SINGH v. EMPEROR.** 99 I.C. 71=28 Cr. L.J. 39=A.I.R. 1926 Lah. 554.

**—S. 79—Teacher and Pupil.**

Child below 12 years—School master inflicting corporal punishment necessary for school discipline is protected under Ss. 79 and 89—Extent of school-master's control over a pupil depends upon circumstances of each case. (*Brown, J.*) **EMPEROR v. MG BA THAUNG.** 94 I.C. 412=27 Cr. L.J. 636=3 Rang. 659=A.I.R. 1926 Rang. 107.

**—S. 80—Accident.**

B with some companions went into a jungle to shoot pig. He took up his position and waited, while his companions proceeded to beat a pig towards him. In due course a boar was driven in his direction and B fired at him. B, however, missed the boar and hit A causing him injuries which resulted in his death.

*Held*: that the act of B in firing was neither negligent nor rash within the meaning of S. 304-A, I.P.C. (*Broadway, J.*) **BASANT SINGH v. EMPEROR.** 29 P.L.R. 45=9 L.L.J. 482=A.I.R. 1927 Lah. 880.

**—S. 82—Capital sentence—Exemptions.**

Beyond the provisions of Ss. 82 and, 83 the Penal Code does not say anything about there being any age limit for the capital sentence. (*Wallace and Ananta-krishna Aiyar, JJ.*) **KOLANDA NATAKAN v. EMPEROR.** (1930) M.W.N. 681=32 L.W. 220.

**—S. 84—Applicability.**

—Knowledge that an act is wrong along with

**PENAL CODE (1860), S. 84—Evidences of proof.**  
*unsound mind is not covered by S. 84.*

Where the accused was of a unsound mind at the time of committing the murder but he knew perfectly well that he was doing a wrong thing, *held*, that S. 84 did not apply to the case but that capital sentence should not be passed. The proper course is to sentence him to transportation for life so that he could be kept under observation. If the accused continues in a stage of apparent sanity for a sufficiently long period the local Government can pass such orders as clemency may suggest upon satisfactory medical report. (*Mears C.J., and Stuart, J.*) LACHMAN v. EMPEROR.

81 I.C. 171=46 All. 243=22 A.L.J. 116=  
 5 L.R.A. Cr. 67=25 Cr. L.J. 683=  
 A.I.R. 1924 All. 413.

**—S. 84—Burden of proof.**

The onus of proof where the plea of insanity is taken on behalf of the accused lies on him and it must be proved affirmatively that the accused was insane at the time when he committed the act in question. (*C. C. Ghose and Jack, JJ.*) BAZLUR RAHMAN v. EMPEROR.

115 I.C. 561=48 C.L.J. 307=  
 33 C.W.N. 136=31 Cr. L.J. 494=  
 A.I.R. 1929 Cal. 1.

—Where the evidence as to the insanity of accused is conflicting, the accused should be convicted as on him lies the burden of proving insanity which in the case of conflicting evidence cannot be said to be sufficiently discharged. (*Daniels, J.*) CHANDU LAL v. THE CROWN.

77 I.C. 236=21 A.L.J. 776=  
 4 L.R.A. Cr. 234=25 Cr. L.J. 348=  
 A.I.R. 1924 All. 186.

**—S. 84—Degree of insanity.**

*Unsoundness of mind—Insanity to amount to unsoundness of mind within S. 84 must be such that the person is incapable of understanding the nature of the act.*

The mere presence of five circumstances, *viz.*: (1) the absence of any motive, (2) the absence of secrecy, (3) multiple murders, (4) want of pre-arrangement, and (5) want of accomplices does not fulfil the requirements of S. 84. A man may be suffering from insanity in the sense in which the words would be used by an alienist, but may not be suffering from unsoundness of mind as defined in S. 84. The law recognizes nothing but incapacity to realize the nature of the act, and presumes that where a man's mind or his faculties of ratiocination are sufficiently clear to apprehend what he is doing he must always be presumed to intend the consequences of the action he takes: (*Harrison and Dalip Singh, JJ.*) MANI RAM v. EMPEROR.

99 I.C. 328=8 Lah. 114=  
 8 L.L.J. 566=27 P.L.R. 823=28 Cr. L.J. 120=  
 A.I.R. 1927 Lah. 52.

**—S. 84—Essentials for Applicability.**

*Insanity—Defence of—Quantum of proof.*

To establish a defence on the ground of insanity it must be clearly proved that at the time of committing the act, the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know that what he was doing was wrong. If the accused was conscious that the act was one which he ought not to do and if that act was at the time contrary to the law of the land, he is punishable. The standard to be applied is whether according to the ordinary standard adopted by reasonable men the act was right or wrong. (*C. C. Ghose and Jack, JJ.*) BAZLUR RAHMAN v. EMPEROR.

115 I.C. 561=48 C.L.J. 307=  
 33 C.W.N. 136=30 Cr. L.J. 494=  
 A.I.R. 1929 Cal. 1.

**PENAL CODE (1860), S. 84—Grounds for inference.**

—The accused's disease of the mind must have been formed before the act was done. (*C. C. Ghose and Jack, JJ.*) BAZLUR RAHMAN v. EMPEROR.

115 I.C. 561=48 C.L.J. 307=33 C.W.N. 136=  
 30 Cr. L.J. 494=A.I.R. 1929 Cal. 1.

—*Insanity—Plea of Prior and Subsequent Conduct—Relevancy.*

In considering the plea of insanity the antecedents and the subsequent conduct of the man are no doubt relevant to show what was the state of the mind of the accused at the time the act was committed, but the state of the mind at the time of doing the act is the chief thing to be taken into consideration.

Where the evidence given did not go to the length of showing that the accused could not be conscious of the nature of the act he was doing at the time of the occurrence, but only proved that the accused was in a bewildered state of mind a day or two before the day of the occurrence:

*Held*: the case did not come within the purview of S. 84. (*Jwala Prasad and Ross, JJ.*) JOHN DOW LAT MOON v. EMPEROR.

108 I.C. 424=  
 29 Cr.L.J. 393=10 A.I. Cr.R. 94=  
 A.I.R. 1928 Pat. 363.

—Accused must be insane at the time of the act complained of—He must be unable to know the nature and quality of the act—Antecedent and subsequent mental condition is not *per se* sufficient—It is relevant only to show that at the time of the act he was mentally incapable. (*Zafar Ali and Tek Chand, JJ.*) TOLARAM v. EMPEROR.

102 I.C. 774=  
 8 Lah. 684=28 Cr.L.J. 598=29 P.L.R. 104=  
 A.I.R. 1927 Lah. 674.

**—S. 84—Grounds for Inference.**

A person is not entitled to claim relief under S. 84 simply for the reasons that he is ailing for some time before commission of an offence, that he does not take food for some days and that there is no apparent motive for committing the offence: 17 C.P.L.R. 113, Appl. (*Subhedar, A. J. C.*) MOHAMMAD SARWAR v. EMPEROR.

120 I.C. 733=31 Cr.L.J. 164=  
 1930 Cr.C. 151=A.I.R. 1930 Nag. 63.

—Uncontrollable impulse co-existing with the full possession of the reasoning powers is no defence in law nor is moral insanity, *i.e.*, existence of delusions which indicate a defect of sanity such as will relieve a person from criminal responsibility, and defence in law. (*C.C. Ghose and Jack, JJ.*) BAZLUR RAHMAN v. EMPEROR.

115 I.C. 561=48 C.L.J. 307=  
 33 C.W.N. 136=30 Cr.L.J. 494=  
 A.I.R. 1929 Cal. 1.

—It is not mere eccentricity or singularity of manner that will suffice to establish the plea of insanity; it must be shown that the prisoner had no competent use of his understanding so as to know that he was doing a wrong thing in the particular act in question. (*C. C. Ghose and Jack, JJ.*) BAZLUR RAHMAN v. EMPEROR.

115 I.C. 561=48 C.L.J. 307=  
 33 C.W.N. 136=30 Cr. L.J. 494=  
 A.I.R. 1929 Cal. 1.

—From absence of apparent motive in committing crime conclusion of madness cannot be drawn. (*C.C. Ghose and Jack, JJ.*) BAZLUR RAHMAN v. EMPEROR.

115 I.C. 561=48 C.L.J. 307=  
 33 C.W.N. 136=30 Cr.L.J. 494=  
 A. I. R. 1929 Cal. 1.

—*Evidence of premeditation and design or resistance of arrest—Negative plea of insanity.*

If there is evidence of premeditation and design or evidence that the prisoner after the act in question tried to resist arrest, the plea of insanity may be negatived. A prisoner trying to resist arrest after he

**PENAL CODE (1860), S. 84—Grounds for inference.**

had committed that act in question shows that he is well aware that he has committed an act which in law is criminal: *Per Erle, C. J. R. v. Leigh*, (1866) 4 F & F 915, Foll. (C. C. Ghose and Jack, JJ.) **BAZLUR RAHMAN v. EMPEROR.** 115 I.C. 561=

48 C.L.J. 307=33 C.W.N. 136=30 Cr. L.J. 494= A.I.R. 1929 Cal. 1.

—Mere want of motive for the crime is not sufficient to base an inference of unsoundness of mind—Onus is on the accused to prove that he was incapable of knowing the nature of his act. (*Fforde and Agha Haidar, JJ.*) **EMPEROR v. BAHADUR.** 106 I.C. 796= 9 Lah. 371=29 Cr. L.J. 204= A.I.R. 1928 Lah. 796.

—Motive—Apparent absence—No ground for inference.

The circumstance of an act being apparently motiveless is not a ground from which the existence of a powerful and irresistible influence of homicidal tendency can be safely inferred. The law recognizes nothing but incapacity to realize the nature of the act and presumes that where a man's mind or faculties of ratiocination are sufficiently clear to apprehend what he is doing, he must always be presumed to intend the consequences of the action he takes: *Reg v. Hayanes*. 1 F. and F. 666; 40 P. R. 1905 Cr.; and A. I. R. 1927 Lah. 52; Foll.; 23 C. W. N. 621, Rel. on. (*Zafar Ali and Jai Lal, JJ.*) **INAYAT v. EMPEROR.** 112 I.C. 222=29 Cr. L.J. 1006=

11 A. I. Cr. R. 267 (Lah.)

—The fact that an accused is a person of weak inhibitions does not make him insane. It is not every kind of frantic humour or something unaccountable in a man's action that points him out to be a mad man to be exempted from punishment. It must be a man who is totally deprived of his understanding and memory and does not know what he is doing. The circumstance of the convict having acted under an irresistible influence to the commission of the offence is no defence if at the time he committed the act he knew he was doing what was wrong. Mere absence of motive for the crime is not sufficient to bring him under S. 84. (*Addison, J.*) **SARDARA v. EMPEROR.** 111 I.C. 331=29 Cr. L.J. 827 (Lah.)

—In order to get an exemption from criminal liability, the accused must prove that he was suffering from any such mental infirmity or disease as would prevent him from distinguishing between right and wrong or that what he was doing was contrary to law.

The medical expert gave an opinion that the accused was a "a little weak-minded."

*Held*: that it was not sufficient to prove an exemption from criminal liability. (*Shadi Lal, C. J. and Agha Haidar, J.*) **ISMAIL v. EMPEROR.** 109 I.C. 364=10 A.I.Cr.R. 212=

29 Cr. L.J. 540 (Lah.)

—Accused a smoker of ganja, setting fire to a building and running away—Accused pleading insanity—His act was held not exempted under S. 84.

In a case of mischief by setting fire to a thatched building the facts were that the accused took a torch from the kitchen, ran to the building, put into the thatch and then threw it on the roof of the kitchen and ran away. The thatch caught fire and the school building was completely destroyed. The accused pleaded insanity, on the ground of his being a smoker of ganja. It was proved that he used to threaten his father and children and used to beat his wife and run away in forest and used to throw away his food.

*Held*: that the facts were not strong enough to give him exemption from the criminality of his conduct under S. 84, and that the fact that he ran

**PENAL CODE (1860), S. 84—Grounds for inference.**

away after putting the torch to the thatch showed that at the time he committed the offence he was conscious that what he was doing was wrongful. (*Madhavan Nair and Cornish, JJ.*) **PUBLIC PROSECUTOR v. DEVASIKAMANI.** 106 I.C. 559=

27 M.L.W. 77=29 Cr. L.J. 63=9 A.I.Cr.R. 280=

1 M. Cr.C. 80=A.I.R. 1928 Mad. 196=

55 M.L.J. 228.

—Weakness of intellect or emotion is not sufficient.

The fact that the physical and mental ailments from which a man suffered had rendered his intellect weak and had affected his emotions and will cannot be sufficient to prove that his cognitive faculties had been impaired to a degree which is described in the last part of S. 84.

It is not every kind of frantic humour or something unaccountable in a man's actions that points him out to be such a mad man as is to be exempted from punishment; it must be a man that is totally deprived of his understanding and memory and doth not know what he is doing, no more than an infant, than a brute or a wild beast; In re *Edward Arnold*: 16 St. Tr. 695, Foll. (*Zafar Ali and Tekchand, JJ.*) **TOLA RAM v. EMPEROR.** 102 I.C. 774=8 Lah. 684=28 Cr. L.J. 598=

29 P.L.R. 104=A.I.R. 1927 Lah. 674.

—Even if it be proved that an accused charged of murder was conceited, odd and irascible, and his brain was not quite all right, it cannot be said that he was incapable of knowing that murder was wrong, so as to exempt him from criminal liability under S. 84. (*Broadway and Skemp, JJ.*) **ABDUL RASHID v. EMPEROR.** 103 I.C. 59=28 Cr. L.J. 638=

8 A.I.Cr.R. 261=A.I.R. 1927 Lah. 567.

—Absence of motive is evidence of insanity.

Absence of sane motive is one of the indicia of the act being done by some kind of insane impulse.

The accused asked N. and his wife to give him some water and after it was given he remained there and behaved in an extraordinary manner muttering that those were the people who had spoilt him. In the same afternoon the accused murdered N. and his wife when they were returning home. There was also absence of motive. The accused was held, in the circumstances of the case, to suffer from homicidal mania at the time he did the act. (*Krishnan and Wallace, JJ.*) **SUBBIGADU v. EMPEROR.** 91 I.C. 78= 27 Cr. L. J. 46=22 M.L.W. 550=1925 M.W.N. 649=

A.I.R. 1925 Mad. 1238=49 M.L.J. 598.

—Insanity of accused to be determined from circumstances.

In a case of murder by an insane person the circumstances were: There was no motive for the murder, the appellant made no attempt to disappear after the murder, or to offer any explanation in extenuation of his crime. His words at the time of arrest were "Arrest me, I have shed blood". He took no interest in the inquiry prior to committal and the very first time the Medical Officer saw him he was found to be quite insane. For months prior to the occurrence he had shown symptoms of insanity and it was after a stay of nearly a year in the Lunatic Asylum that he was considered to be in a fit state to undergo his trial.

*Held* that the inference seemed irresistible that the appellant had been in a continuous state of insanity and whatever act he did, he did in an irresponsible way and did not know the nature thereof or that it was wrong if it happened to be a wrong act according to law. (*Dalal, A. J. C.*) **BHAGWATI PRASAD v. EMPEROR.** 74 I.C. 69=24 Cr. L.J. 741=

A.I.R. 1924 Oudh 190

**PENAL CODE (1860), S. 84—Jury.****—S. 84—Jury.**

It is for the jury to determine whether the prisoner, when he committed the offence with which he stood charged, was incapable of distinguishing right from wrong or under the influence of any delusion which rendered his mind at the moment insensible of the nature of the act he was about to commit, since in that case he would not be legally responsible for his conduct. (*C. C. Ghosh and Jack, JJ.*) KAZI BAZLUR RAHMAN v. EMPEROR. 115 I.C. 561=48 C.L.J. 307=33 C.W.N. 136=30 Cr. L.J. 494=A.I.R. 1929 Cal. 1.

It is a mistake to suppose that in order to satisfy a jury that the plea of insanity is well-founded, scientific evidence must be adduced. If the existence of facts is such as to indicate an unsound state of mind, that is quite sufficient: Per *Bret, L. J. R., v. Dart*, (1878) 13 Cox C.C. 143, Foll. (*C. C. Ghose and Jack, JJ.*) BAZLUR RAHMAN v. EMPEROR. 115 I.C. 561=48 C.L.J. 307=33 C.W.N. 136=30 Cr. L.J. 494=A.I.R. 1929 Cal. 1.

**—S. 84—Test.**

To ascertain a person is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law, a very common test is to ask, in the circumstances, whether the man would have committed the act if a policeman would have been at his elbow. (*Rankin, C. J. and Chotzner, JJ.*) KARMA URANG v. EMPEROR. 114 I.C. 159=

30 Cr. L.J. 247=32 C.W.N. 342=A.I.R. 1928 Cal. 238.

**—S. 84—'Unsoundness of mind'.**

A man may be suffering from some form of insanity in the sense in which the words would be used by an alienist but may not be suffering from unsoundness of mind as defined in S.84 Penal Code. The law recognises nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently clear to apprehend what he is doing, he must always be presumed to intend the consequences of the action he takes: A.I.R. 1927 Lah. 52, Foll. (*Broadway and Agha Haidar, JJ.*) JALAL V. EMPEROR. 119 I.C. 270=30 Cr. L.J. 1024.

**—S. 85—Drunkenness.**

*Drunkenness to be defence must be such as to result in incapacity to intend—Firing at particular individual is not necessary to constitute crime under Penal Code, S. 300, Cl. 4.*

Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his act. And even if he did not intend to fire at any particular individual at the time but merely fired at the general mass of villagers and killed some of them his act would still come within the category of murder as defined in Cl. 4. S. 300 of the Penal Code. (*Fforde and Hilton, JJ.*) BISHAN SINGH v. EMPEROR. 116 I.C. 707=30 P.L.R. 387=

30 Cr. L.J. 662=1929 Cr. C. 188=13 A.I. Cr. R. 75=A.I.R. 1929 Lah. 637.

*Voluntary drunkenness is no reason for not inflicting death sentence.*

The reasons justifying the infliction of the lesser penalty under S. 361 (5) must be such as are in accord with established legal principles; unless drunkenness either amounts to unsoundness of mind so as to enable insanity to be pleaded by the way of defence, or the degree of drunkenness is such as to establish incapacity in the accused to form the intent necessary

**PENAL CODE (1860), S. 89—Chastisement by Teacher.**

to constitute the crime, drunkenness is neither a defence nor a palliation and is not a reason for inflicting a sentence of transportation for life instead of the death sentence: 38 P.R.(Cr.) 1917, Expl. (*Harrison and Fforde, JJ.*) WARYAM SINGH v. THE CROWN.

95 I.C. 284=7 Lah. 141=27 P.L.R. 332=27 Cr. L.J. 764=A.I.R. 1926 Lah. 428.

*Evidence merely establishing that the accused was a drunkard is not sufficient.*

Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by drink, so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his act: 28 P.R. Cr. 1917, Dist.: *Director of Public Prosecutions v. Beard*, (1920) A.C. 479, Foll. Where the accused proceeded to the scene of the incident, declared their intention of assaulting the deceased, and walked about a mile, pursued their victim, and inflicted upon him a large number of blows, but were careful enough not to deal a deadly blow on the head or any other vital part of the body.

*Held*: that the attack was a premeditated one and that the mere fact that they had taken some liquor should not be regarded as a sufficient reason for not imposing the penalty of death. (*Shadi Lal, C.J. and Le Rossignol, J.*) SHERU V. EMPEROR. 94 I. C. 406=7 Lah. 50=27 P.L.R. 294=27 Cr. L.J. 630=A.I.R. 1926 Lah. 232.

**—S. 86—Absence of intent.**

Evidence of drunkenness falling short of proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. *Director of Public Prosecutions v. Beard*, (1920) A.C. 479, Ref. (*Adami and Chatterji, JJ.*) JUDAGI MALLAH v. EMPEROR.

121 I.C. 452=8 Pat. 911=31 Cr. L.J. 243=A.I.R. 1930 Pat. 168.

**—S. 86—Intention.**

If the accused knew what the natural consequences of his acts were, ordinarily he must be deemed to have intended to cause them. Though ordinarily intention is to be inferred from knowledge, there may be cases where intent must be found as a fact and cannot be assumed, in which cases voluntary drunkenness may be relied on to show that the required 'intent' is absent: 38 Mad. 479, Rel. on. (*Madhavan Nair and Cornish, JJ.*) PUBLIC PROSECUTOR v. DEVASIKAMANI. 106 I.C. 559=27 M.L.W. 77=29 Cr. L.J. 63=9 A.I. Cr. R. 280=1 M.C.G.C. 80=A.I.R. 1928 Mad. 196=55 M.L.J. 228.

**—S. 86—"Intoxicated".**

Ordinary drunkenness makes no difference to the knowledge with which a man is credited and if an accused knew what the natural consequences of his act were, he must be presumed to have intended to cause them: 38 Mad. 479, Foll. (*Adami and Chatterji, JJ.*) JUDAGI MALLAH v. EMPEROR. 121 I.C. 452=8 Pat. 911=31 Cr. L.J. 243=A.I.R. 1930 Pat. 168.

**—S. 89—Chastisement by Teacher.**

Child below 12 years—School master inflicting corporal punishment necessary for school discipline is protected under Ss. 79 and 89—Extent of school-master's control over a pupil depends upon circumstances of each case.

The infliction of chastisement by way of parental

**PENAL CODE (1860), S. 94—Applicability.**

discipline by the parent or guardian would come within the scope of S. 89 provided it was inflicted in good faith for the benefit of the child. And when a child is sent by its parent or guardian to a school, the parent or guardian must be held to have given an implied consent to the infliction of such reasonable punishment as may be necessary for the purposes of school discipline. Limits within which the power of the school-master extends to inflict punishment for offences committed out of school depend largely on the facts of each case whether the school-master had authority to act : *Cleary v. Booth*, (1893) 1 Q. B. 465, Appl.

A school-master was charged under S. 323 for caning one of the school-boys who the master believed had assaulted another school-boy. The circumstances were that the school was closed for two days. The boys, but for an accident, would have actually been attending night school at the time the assault was committed and the boy who was assaulted was on the scene because he had been called by another boy to visit his master, and it was presumably as pupils of the school that the boys had collected together on the road, and a direct complaint was made to the school-master by the mother of the boy who was assaulted.

*Held* : in the circumstances it was a reasonable inference that the implied consent of the parents of the boy to his being under the discipline and control of the school-master extended to the alleged offence for which the school-master found it necessary to punish him, and that the boy must be held at the time to have been under the authority of the school-master. (*Brown, J.*) **EMPEROR v. MAUNG BA THAUNG.**

94 I.C. 412 = 27 Cr.L.J. 636 = 3 Rang. 656 = A.I.R. 1926 Rang. 107.

**—S. 94—Applicability.**

Accused helping removal of dead body from his master's house—Master threatening to kill accused if help refused—Accused is guilty under S. 201, but is protected by S. 94. (*Walsh and Sulaiman, JJ.*) **EMPEROR v. AUTAR.**

86 I.C. 52 = 26 Cr.L.J. 676 = 47 All. 366 = 23 A.L.J. 25 = 6 L.R.A.Cr. 68 = A.I.R. 1925 All. 345.

**—S. 94—Extent of protections.**

Compulsion by threats of instant death is good defence except for "murder" and offences against state—"Murder" in the above does not include abetment thereof punishable under S. 109. (*Newbould and B. B. Ghose, JJ.*) **UMADASI DAS v. EMPEROR.**

83 I.C. 491 = 52 Cal. 112 = 40 C.L.J. 143 = 28 C.W.N. 1046 = 26 Cr.L.J. 11 = A.I.R. 1924 Cal. 1031.

**—S. 95—Defamation.**

**—Imputation of being outcaste.**

Imputation to a Hindu that he is an outcaste is defamatory and is not covered by S. 95. (*Dalal, J.*) **MOHAN LAL v. RAM CHARAN.**

108 I.C. 690 = 29 Cr.L.J. 451 = 9 L.R.A.Cr. 44 = 9 A.I.Cr.R. 298 = 26 A.L.J. 361 = A.I.R. 1928 All. 213.

**—S. 95—Exchange of abuse.**

Prosecution should not lodge a complaint where it is simply a case of exchanging abuse in a public street. (*Harrison, J.*) **THE CROWN v. ATMA SINGH.**

94 I.C. 888 = 8 L.L.J. 82 = 27 P.L.R. 176 = 27 Cr.L.J. 696 = A.I.R. 1926 Lah. 412.

**—S. 95—Exchange of words.**

Complainant's counsel S cited an authority but he could not find his book at the time of argument. Complainant asked him to search for the book in the accused's books thinking that it might be mixed up

**PENAL CODE (1860), S. 96—Causing death.**

with them. Accused who heard the suggestion, re-sented it and said to S that he was not in the habit of stealing like him. S filed a complaint under S. 500 :

*Held* : that the accused's reply was not defamation because he did not mean to call him a habitual thief. It is at the most akin to abuse. The matter was too petty to be brought into the criminal Court. (*Jai Lal, J.*) **JAS RAJ JAGGA v. EMPEROR.**

115 I.C. 72 = 30 Cr. L.J. 379 = A.I.R. 1929 Lah. 234.

**—S. 95—Harmless statement.**

Statement in a newspaper that another newspaper has borrowed a certain sum and the lender is "leading the paper by the nose" is not defamation under S. 499, but is covered by S. 95. (*Heald, J.*) **MAUNG SEIN v. KING-EMPEROR.**

99 I.C. 347 = 4 Rang. 462 = 28 Cr. L.J. 139 = A.I.R. 1927 Rang. 43.

**—S. 95—Obstruction.**

The charge of obstructing peons of municipality is very slight, so slight that no person of ordinary sense and temper would complain of such harm, and where the municipality has not been active in proving the other offences of gravity, namely, evasion of octroi duty and causing hurt to peons the complaint against the accused should be dismissed. (*Dalal, J.*) **ABDUL RASHID v. HARISH CHANDRA.**

120 I.C. 121 = 30 Cr. L.J. 1153 = 1930 A.L.J. 218 = 11 L.R.A.Cr. 25 = 1929 Cr. C. 668 = A.I.R. 1929 All. 940.

**—S. 96—Applicability.**

**—Assembly unlawful from beginning—Question of self-defence does not arise.**

Where the object of an assembly was from the very outset unlawful and every one of the accused was clearly a member of an unlawful assembly, no question of self-defence arises in the case : 20 All. 459, Appr. (*Kinkhede, A. J. C.*) **MOHAMAD IBRAHIM v. EMPEROR.**

112 I.C. 902 = 30 Cr. L.J. 38 = 11 A.I. Cr. R. 526 = A.I.R. 1929 Nag. 43.

**—S. 96—Causing death.**

**—Offence under S. 149 cannot be sustained where a person has a right to a certain thing and where it is not unlawful for him to prevent others obstructing that right.**

People of the village S having assembled, proceeded to cut the bandh. People of village K resisted but were turned back. Meanwhile a large crowd collected on both sides, armed with lathis, spears, and garases. People of K, seeing that the people of S were not likely to listen to their remonstrances, proceeded in a body to prevent them from cutting the bandh and to drive them away. A free fight ensued ; one man from village S. received mortal injuries and died on his way to the hospital. The Sessions Judge convicted the accused who were residents of K under S. 302 read with Ss. 147, 148 and 149, L.P.C.

*Held* : that the people of S had no right to cut the bandh under the circumstances mentioned and when they actually proceeded to destroy it the people of K had certainly a right to prevent them from doing so.

*Held* : further that the people of K had erected a Bandh in their own village and at the time of the occurrence they were in possession of the bandh and there had been no lawful order passed by any competent Court directing them or authorising people of K to remove the bandh. This being so it was not unlawful on the part of the appellant to prevent the people of S. from forcibly cutting the bandh, and that consequently their convictions under Ss. 147, 148 and 149, could not be sustained.

*Held* : also that under the circumstances of the case



**PENAL CODE (1860), S. 9C—Causing death.**

and keeping in view the fact that mortal injuries were caused to the deceased in a free fight and in the exercise of the right of private defence of person and property, the conviction of the accused appellants under S. 302 could not be sustained, especially when the deceased had received injuries from several other assailants. The conviction was therefore altered to one under S. 326, and the sentence of transportation for life passed was reduced to one of three years' rigorous imprisonment. (*Curiney-Terrell, C. J. and Fazal Ali, J.*) **TILAK KOHAR v. EMPEROR.**

1929 Cr.C. 253 = A.I.R. 1929 Pat. 523.

— *Accused first hitting—Then running away from attack with lathis—Accused striking in self-defence—Death—Accused is justified.*

Where the accused had picked the quarrel and tried to hit another but ran for his safety from the subsequent attack with *lathis* and after running some distance, the accused found that he could not very well make his escape and turned round and hit a blow, **Held:** that it must be held that he hit in self-defence.

**Held:** further, that an attack with *lathis* was likely to create reasonable fear of grievous hurt being caused to the accused and he would be justified in striking with a *lathi* in self-defence to the extent of causing grievous hurt or even death. (*Mukerji, J.*) **RAM SEWAK v. EMPEROR.** 85 I.C. 382 = 23 A.L.J. 131 = 6 L.R.A. Cr. 58 = 26 Cr. L.J. 542 = A.I.R. 1925 All. 313.

— *Where one party was in possession of land and in the scuffle that resulted from another party trying to oust the former by force, a member of the party in possession killed one of the aggressive party who had struck his companion with a lathi on his head, held, that the right of private defence obtained and was not exceeded. (Mookerjee and Chatterjee, JJ.) EMPEROR v. AKBAR MOLLA.* 81 I.C. 261 = 25 Cr.L.J. 773 = 51 Cal. 271 = 38 C.L.J. 379 = A.I.R. 1924 Cal. 449.

**—S. 96—Duties of Magistrate.**

Magistrates should not, in their zeal to suppress crimes of violence, overlook the importance of the provisions of law as regards the right of private defence. (*Agha Haidar, J.*) **AHMAD DIN v. EMPEROR.**

100 I.C. 124 = 28 Cr.L.J. 252 = 7 A.I.Cr. R. 401 = A.I.R. 1927 Lah. 194.

**—S. 96—Exceeding right.**

Where in a marpit brought about by the illegal act of the dead person himself the accused while resisting the attack of the deceased happens to hit him on the head, rather harder than perhaps he intended to have done and thus kills him, he cannot be said to be exceeding his right of self-defence and should not be convicted. (*Young, J.*) **CHATTAR v. EMPEROR.**

1929 Cr.C. 489 = A.I.R. 1929 All. 897.

**—S. 96—Existence of right.**

Whether a person accused of an offence has or has not justified the commission of that offence by proving that it was committed in the course of his defending himself is a matter which has to be decided on the facts. (*Broadway and Zafar Ali, JJ.*) **NUR MUHAMMAD v. EMPEROR.** 86 I.C. 465 = 6 L.L.J. 623 = 26 Cr.L.J. 817 = A.I.R. 1925 Lah. 276.

**—S. 96—Extent of right.**

— *Person inflicting wounds in defending himself is not guilty.*

The law does not require a citizen to behave like a weak coward on any occasion. The right of self-defence as defined by law must be fostered in the citizens of every free country. If a man is attacked he need not run away and he would be perfectly justified

**PENAL CODE (1860), S. 97—Applicability.**

in the eye of law if he holds his ground and delivers a counter attack to his assailants provided always that the injury which he inflicts in self-defence is not out of proportion to the injury with which he is threatened.

Where the accused is attacked by a party of men armed with dangs and having no alternative but to defend himself to the best of his ability retaliates, he acts in private defence although in doing so he inflicts injuries some of which prove fatal. (*Aga Haidar, J.*) **MAHANDI v. EMPEROR.** 1930 Cr.C. 104 = A.I.R. 1930 Lah. 93.

**—S. 99—Intent.**

Where both parties have come down armed with a full determination to settle their quarrel by force, no right of private defence exists. 20 A. 459 Foll. (*Daniels J. C.*) **MULLA v. EMPEROR.** 89 I.C. 158 = 12 O.L.J. 337 = 2 O.W.N. 332 = 26 Cr.L.J. 1284 = 25 O.C. 92 = A.I.R. 1925 Oudh. 438.

**—S. 99—Omission of plea.**

Even if the accused did not plead self-defence, it is open to the Court to consider such plea if the prosecution evidence would support it. (*Devadoss and Waller, JJ.*) **JOGATE BHAIGO NAIKS, In re.** 94 I.C. 558 = 21 Cr.L.J. 1128 = A.I.R. 1927 Mad. 97.

**—S. 99—Riot.**

— *Impending attack by one faction on another—Members of latter collecting together to resist—Riot—Latter party were held to act in self-defence.*

There were two factions, A and B, in a certain village. A member of group A was severely beaten and hurt by the members of B. Two days later, the members of A gathered together to take revenge on B. On hearing the news, the members of B also collected together. The members of A marched against B and in the result there was a riot. One of the members of A used a fire-arm whose shot brought down a member of B. A member of B thereupon shot the man in A who had used the fire-arm.

**Held:** that if the members of B had a reasonable apprehension that if they separated they would be individually pursued and punished; they were justified in remaining together and resisting the attack.

**Held:** further, that considering the state of feeling between the parties, this was the fact and that B were justified in resisting the attack of A and that a member of their group was justified in shooting the man who had shot another member of their party. (*Mears C. J. and Sulaiman, J.*) **AJUDHIA PRASAD v. EMPEROR.** 87 I.C. 597 = 26 Cr.L.J. 997 = 6 L.R.A. Cr. 81 = A.I.R. 1925 All. 662.

**—S. 96—Scope.**

There can be no room for a plea of self-defence against persons who carry no arms. The suggestion that the persons were approaching the house of the assaulter is not a sufficient basis for a plea of defence of property. (*Dawson Miller C. J. and Foster, J.*) **PAREHU DUSUDH v. EMPEROR.** 104 I.C. 708 = 28 Cr. L.J. 868 = A.I.R. 1928 Pat. 46.

**—S. 97—Another's property.**

Property of even another person can be protected and right of private defence can be claimed against an act which is theft, robbery or criminal trespass or an attempt to commit theft, robbery or criminal trespass. (*Sulaiman, J.*) **DALGANJAN v. EMPEROR.**

77 I.C. 881 = 22 A.L.J. 81 = 5 L.R.A. Cr. 61 = 25 Cr. L.J. 481 = A.I.R. 1924 All. 696.

**—S. 97—Applicability.**

Owners while carrying away their tree, attacked by a party armed with dangs—Former have a right of private defence. A.I.R. 1923 All. 194, Foll. (*Agha Haidar, J.*) **UJAGAR SINGH v. EMPEROR.** 102 I.C. 769 = 8 A.I.Cr.R. 243 = 26 Cr.L.J. 598 = A.I.R. 1927 Lah. 790.



**PENAL CODE (1860), S. 97—Burden of proof.****—S. 97—Burden of proof.**

Plea of private defence—Accused must prove justifying circumstances. (*Cuming and Gregory, JJ.*)  
**ADAM ALI v. EMPEROR.** 100 I.C. 718=  
 45 C.L.J. 131=31 C.W.N. 314=28 Cr. L.J. 334=  
 7 A.I.Cr.R. 546=A.I.R. 1927 Cal. 324.

—Onus lies on the person bringing the plea of self-defence. (*Tekchand, J.*) **HAFURA SINGH v. EMPEROR.** 104 I.C. 454=28 Cr. L.J. 838=  
 A.I.R. 1927 Lah. 786.

—Where a plea of private defence of property is raised, the burden of proving that the property belonged to them, is on the accused. (*Ross and Kulwant Sahay, JJ.*) **FARMAN KHAN v. EMPEROR.**

98 I.C. 394=5 Pat. 520=27 Cr. L.J. 1322=  
 8 P.L.T. 319=A.I.R. 1926 Pat. 433.

**—S. 97—Co-owners.**

Where one joint-owner was collecting rent from tenants of joint-land to the exclusion of the other owner.

*Held*, the other co-owner was justified in using force in preventing this wrongful act being done by the former. (*Wazir Hasan, J. C.*) **MAHESH SINGH v. KING-EMPEROR.** 84 I.C. 942=11 O.L.J. 743=  
 26 Cr. L.J. 398=A.I.R. 1925 Oudh 251.

**—S. 97—Evidence.**

In order to establish the right of private defence of property the accused need not prove his possession affirmatively but may rely on the presumption of continuance or possession arising in his favour. (*Ross, J.*) **JAINATH v. EMPEROR.** 100 I.C. 383=  
 28 Cr. L.J. 303=A.I.R. 1927 Pat. 181.

**—S. 97—Exceeding of right.**

In the excitement and confusion of a fight or scuffle, it is too much to expect that an average man would weigh the means that he intends to adopt at the spur of the moment for self-defence, though, of course, the counter attack should not be out of all proportion to the form employed in the original attack. (*Agha Haidar, J.*) **AHMAD DIN v. EMPEROR.**

100 I.C. 124=28 Cr. L.J. 252=  
 7 A.I. Cr. R. 401=A.I.R. 1927 Lah. 194.

—The question of exceeding the right of private defence does not always depend upon the amount of injuries caused. (*Jwala Prasad, J.*) **UDIT SINGH v. EMPEROR.**

86 I.C. 938=6 P.L.T. 838=  
 26 Cr. L.J. 924=A.I.R. 1925 Pat. 762.

**—S. 97—Exercise of right.**

—Where A finds his stolen animals in B's possession and to recover them drives his as well as B's cattle along with his, B's right of private defence of property arises. (*Campbell, J.*) **KARAM ALI v. EMPEROR.**

103 I.C. 798=9 L.L.J. 260=  
 28 P.L.R. 299=28 Cr. L.J. 750=8 A.I.Cr. R. 412=  
 A.I.R. 1927 Lah. 355.

—Defence cannot be nicely modulated—Retiring, because violence is expected, is not compulsory—Assembly can be guilty of exceeding right of private defence against criminal force.

Where, possession is undisputed or where there is no time to seek assistance of the authorities there is no obligation upon a person, entitled to exercise the right of private defence and to defend his person, or his property, to retire the field merely because his assailant threatens him with violence. A man acting under an apprehension of death cannot be expected to judge too nicely the force of his own blow; and the common law of England, which is substantially also the law in India on this topic, says that he is not bound to modulate his defence step by step according to the attack before there is reason to believe that the attack is over; he is not obliged to retreat but may pursue

**PENAL CODE (1860), S. 97—Possession of property.**

his adversary till he finds himself out of danger and if in a conflict between them he happens to kill, such killing is justifiable. *Obiter*—The law is that if the members of an assembly act with the common object of exceeding the right of private defence, then they are not only all generally guilty of rioting but also of the particular offence constituted by such excess of user. An assault is a crime except under certain special circumstance. But in one sense criminal force is a continuing wrong and there is a limit where the plea of justification ceases to operate and the liability to punishment revives; if one member in prosecution of the common object of an assembly exceeds that limit every other member shares with him the guilty of his act. 13 C. W. N. 1180, Foll. 39 Cal. 896; 35 Cal. 368 Dist. (*Mullick and Adami, JJ.*) **NARSHI SINGH v. EMPEROR.**

82 I.C. 156=2 Pat. 595=6 P.L.T. 87=  
 25 Cr. L.J. 1228=3 Pat. L.R. Cr. 163=  
 A.I.R. 1924 Pat. 388.

**—S. 97—Illegality in search.**

In the course of lawful search by a Police Inspector he illegally laid hands on a woman. The accused, a near relation of her's, having come to her assistance, an altercation ensued, in the course of which he was struck with a stick; he then snatched it and struck the Police Inspector two blows on the head. The Police Inspector died as a result of the injury.

*Held* that there was no voluntary causing of death and the accused was protected by the right of private defence. (*Boys and Ashworth, JJ.*) **EMPEROR v. PARAM SUKH.**

91 I.C. 43=23 A.L.J. 1037=  
 6 L. R. A. Cr. 173=27 Cr. L. J. 11=  
 A.I.R. 1926 All. 147.

**—S. 97—Parties determined to fight.**

—Right of private defence is not available to parties determined to fight.

According to the Penal Code no right of private defence arises in circumstances such as those when both parties arm themselves for a fight to enforce their right or supposed right and deliberately engage in very large numbers in a pitched battle killing one man and wounding others: 35 Cal. 368, Foll.; 40 Bom. 105; 20 All. 459; A.I.R. 1925 Oudh 438, Ref.; 10 O. C. 196; A.I.R. 1923 All. 194; 17 O. C. 21; A.I.R. 1923 Oudh 167 and A.I.R. 1925 Oudh 425, Dist. (*Nanavutti, J.*) **IQBAL HUSAIN v. EMPEROR.** 7 O.W.N. 449=  
 A.I.R. 1930 Oudh 252.

—*Obiter*: When a body of men are determined to vindicate their rights or supposed rights, by unlawful force, and when they engage in a fight with men who, on the other hand, are equally determined to vindicate by unlawful force their rights or supposed rights, no question of self-defence arises. Neither side is trying to protect itself, but each side is trying to get the better of the other: A.I.R. 1926 Patna 433 and 20 All. 459 Foll. (*Kinaid, J. C. and Rupchand, Bisharam, A. J. C.*) **EMPEROR v. SULLEMAN KHAN.**

98 I.C. 467=21 S. L. R. 141=27 Cr. L. J. 1347=  
 A.I.R. 1927 Sind. 92.

**—S. 97—Possession of property.**

Right of private defence does not exist in cases in which there is time to have recourse to the protection of public authorities and, therefore, to a person, who dispossessed of land, can claim no right of defence of property as against the complainant assuming him to be a trespasser who had just entered the land: A. I. R. 1924 Pat. 143, Foll. (*Broadway, J.*) **PHULA SINGH v. EMPEROR.**

104 I.C. 464=28 Cr. L.J. 848=  
 A.I.R. 1927 Lah. 708.

**PENAL CODE (1860), S. 97—Possession of Property.**

—Decree-holder given possession of property in execution of his decree—Judgment-debtor only permitted to remove his crops—Judgment-debtor is not competent to resist decree-holder's entry on the plea of private defence. (*Jai Lal, J.*) **LAJJA v. EMPEROR.**

100 I.C. 232=9 L.L.J. 209=28 Cr. L.J. 264=28 P.L.R. 273=A.I.R. 1927 Lah. 193.

—*Right of private defence of property—Person setting up must show that he was in peaceful possession—Mere right to possession is not sufficient.*

Before an accused person can set up a right of private defence of property, he must show that the property was his property and that he actually was in peaceful possession of it: A.I.R. 1926 Patna 433, Foll.

The mere right to have possession restored by a civil Court does not justify an individual in taking the law into his own hands: 10 Bom. L. R. 285, Foll.

(*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*) **EMPEROR v. SULLEMAN KHAN.** 98 I.C. 467=

21 S.L.R. 141=27 Cr. L. J. 1347=A.I.R. 1927 Sind 92.

—Where neither party was in possession of the land in dispute and the accused was found to be at tempting to obtain possession even when the dispute was pending in Rev. Court and the deceased while obstructing the accused was struck dead by the accused:

*Held:* that he was not protected by the right of private defence. (*Simpson, A. J. C.*) **SHEO SHANKAR v. EMPEROR.** 91 I.C. 238=27 Cr. L.J. 62=

2 O.W.N. 862=A.I.R. 1926 Oudh 148

**—S. 97—Seizure of cattle.**

—*Injury caused to complainant while rescuing cattle led by accused to cattle pound—Accused have the right of private defence.*

Some cattle belonging to the complainant were doing damage to the accused's field. They consequently seized them and were taking them to the pound. In the meantime the complainant and his men came and began to rescue the cattle by the use of force. The accused, however, succeeded in taking some of the cattle to the pound. But the accused's party inflicted some injuries on the party of the complainant.

*Held:* that the act of the complainant in rescuing the cattle was unlawful and therefore the accused were protected by their right of private defence. (*Jwala Prasad, J.*) **UDIT SINGH v. EMPEROR.** 86 I.C. 988=6 P.L.T. 838=26 Cr. L.J. 924=A.I.R. 1925 Pat. 762.

—The complainant's party had no right to seize the cattle of the accused after the cattle had left the field and the accused were consequently entitled to the right of private defence of property. *Held,* on these findings, it cannot be held that the accused constituted an unlawful assembly. The only person who can be convicted is the one who actually inflicted the mortal wound and thus exceeded his rights of private defence and no person other than him can be held to be guilty. 25 P.R. 1914 (Cr.), Rel. on. (*Shadi Lal, J.*) **AHAMAD v. EMPEROR.** 66 I.C. 185=

1 Lah. L.J. 245=23 Cr. L.J. 249=26 P.W.R. 1919=97 P.L.R. 1919.

**—S. 97—Self-defence, what is.**

In a fight between two parties the accused insulted the deceased. The deceased then struck the accused. The accused retaliated with a heavier blow which caused his opponent's death.

*Held,* that the accused was protected by his right of self-defence. (*Harrison, J.*) **IMAM DIN v. EMPEROR.** 86 I.C. 218=26 P.L.R. 14=26 Cr. L.J. 730=26 P.L.R. 14=26 Cr. L.J. 730=A.I.R. 1926 Lah. 514.

**PENAL CODE (1860), S. 99—Amount of force.****—S. 97—Test.**

—*Accused causing death under situation brought by himself—Offence of culpable homicide, not murder.*

In considering a plea of self-defence it is not the triviality of the injuries inflicted upon the accused that has to be taken into consideration nor is it a question whether the accused had any injuries at all on him. But the question is whether the accused had any reasonable apprehension of grievous hurt or death to himself. Where the evidence showed that it was the accused who used violence first and that after the deceased fled from the spot he pursued him and thereupon the deceased attacked him with a knife and the accused then killed him with a knife, *held,* that the accused having put the deceased in that position, he cannot be exonerated from all liability, because of the plea of self-defence, and that he was liable to be convicted for culpable homicide though not for murder. (*Wallace and Anantakrishna Aiyar, JJ.*) **KESAVALU NAIDU v. EMPEROR.** 1930 M.W.N. 502.

**—S. 97—Threat of extortion.**

—*Threat amounting to attempt to commit extortion—Person using threat physically capable of carrying out threat—Right of private defence arises.*

Where threat uttered constituted an offence of an attempt to commit extortion either by intentionally putting the accused in fear of injury or by attempting to put him in fear of injury in order to the committing of an extortion and it was clear from the facts proved that as between the accused and the person using threat, the latter was stronger of the two, and his threat was accompanied by a preparation to take or extort money from the accused by declaration to him that he would not be relieved unless the money were paid.

*Held:* there was sufficient ground for the accused to believe that his life was in danger and that he was entitled to use his right of private defence. (*Kinkhede, A. J. C.*) **SITARAM v. EMPEROR.** 85 I.C. 731=

26 Cr. L.J. 587=A.I.R. 1925 Nag. 260.

**—S. 99—Against dacoits.**

—*Dacoits about to break into house—Accused firing at them which caused death of one—Right of private defence.*

Certain dacoits, with the intention of committing dacoity, were about to break into the house of the accused, but the owner of the house, the accused, hearing some noise noticed two or three persons, and fired at them owing to which one of them fell down and died:

*Held:* that the firing was in the right of private defence of property against intended robbery and house-breaking by night, and there was no reason to believe that more than necessary harm was inflicted. (*Dalal, J.*) **DHERAM v. EMPEROR.** 115 I. C. 609=

1929 A.L.J. 148=10 L.R.A. Cr. 31=11 A.I. Cr. R. 258=30 Cr. L. J. 504=

A.I.R. 1929 All. 299.

**—S. 99—Amount of force.**

A person on whom *lathi* blows were being showered is justified in striking the assaulter with a spear and he does not exceed his right of self-defence. (*Zafar Ali and Jailal, JJ.*) **SURAIN SINGH v. EMPEROR.**

110 I.C. 787=10 A. I. Cr. R. 575=29 Cr. L.J. 785=A.I.R. 1928 Lah. 900.

—The deceased assaulted the appellant and was about to hit him with a clod of earth when the appellant struck him two violent blows with a hatchet which he held in his hand and thereby caused his

**PENAL CODE (1860), S. 99—Amount of force.**  
death. The deceased was of a stronger physique than the appellant.

*Held:* that the accused was not under apprehension of grievous hurt and thus he exceeded his right of private defence in causing the death of his assailant. (*Dalip Singh, J.*) GULAM RASUL v. EMPEROR.

95 I.C. 276=8 L.L.J. 435=27 P.L.R. 430=  
27 Cr. L.J. 756.

—The accused were lawfully engaged in irrigating their fields when the complainant's party came on and molested them and forcibly stopped the irrigation: a fight followed in which the accused's party used *lathis* and severe injuries were sustained.

*Held:* that the force which the accused were justified in using in their self-defence could not be gauged exactly and that no excessive force could be held to have been employed. (*Wazir Hasan, A. J. C.*) BAIJNATH v. KING-EMPEROR.

85 I.C. 353=  
27 O.C. 292=26 Cr. L.J. 513=  
A.I.R. 1925 Oudh 425.

### —S. 99—Assault.

#### —*Right of private defence.*

An amin assisted by a karinda, the karinda's master and accompanied by the police and some servants who were probably employed as lathials of the zamindar went to attach a crop. The party went in some force because they had information that the attachment would be resisted with violence, and was in fact resisted with violence. The zamindar was struck to the ground and received several injuries. Thereupon the zamindar's men rushed on his assailants and severely beat two, with some minor injuries to one or more. The two men severely beaten were the man whose crop was to be attached and his father, they being also the two who were said to have commenced the attack on the attaching party. Both these two severely injured men died.

*Held:* that the fact that the assailants did not actually succeed in assaulting anyone but the zamindar did not show anything by way of intention of assailants in the light of the fact that the counter-attack by the zamindar's men in defence of the zamindar was probably instantaneous and zamindar's men were entitled to plea of right of private defence. (*Boys, J.*) CHHOTAY v. EMPEROR.

1930 Cr. C. 888=A.I.R. 1930 All. 596.

### —S. 99—Burden of proof.

#### —*Prosecution must prove that accused exceeded right of private defence.*

Where it is quite as likely and as consistent with the evidence that the deceased commenced by attacking the accused and the accused armed themselves with pieces of wood to retaliate the attack and the accused had thus caused the death in the exercise of their private defence.

*Held:* that the accused were entitled to acquittal unless it was proved that they exceeded the right of their private defence. (*Daniels, J.C.*) PAHLAD v. EMPEROR.

83 I.C. 589=11 O.L.J. 50=  
26 Cr. L.J. 61=A.I.R. 1924 Oudh 334.

### —S. 99—Conditions of exercise.

Matter not urgent and sufficient time available to have recourse to authorities—No right of private defence of property arises. A.I.R. 1925 Lah. 516 Foll. (*Agha Haidar, J.*) UJAGAR SINGH v. EMPEROR.

102 I.C. 769=8 A. I. Cr.R. 243=28 Cr. L.J. 593=  
A.I.R. 1927 Lah. 740.

### —S. 99—Drunken men.

Even though drunken men are entitled to the protection of the law, if they break the law and attack

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**PENAL CODE (1860), S. 99—Illegal acts of public servants.**

either the person or the property of the people, any member of the public is entitled to exercise the right of private defence provided that he does no more harm than the necessities of private defence require. (*Heald, J.*) MANI KARKI v. KING EMPEROR.

101 I.C. 477=5 Bur. L.J. 223=28 Cr. L.J. 445=  
A.I.R. 1927 Rang. 121.

### —S. 99—Extent of Right.

—*Test—Extent—Person assaulted is entitled to carry on his defence till he finds himself out of danger—In cases of dangerous assaults allowance should be made if the right is a little exceeded—Possibility of carrying out the threat should always be considered.*

Where right of private defence is pleaded the essence of the case should be to ascertain who was the aggressor and whether the accused party acted in the exercise of his or their right of private defence or otherwise. But man who is assaulted is not bound to modulate the defence step by step according to the attack before there is reason to believe that the attack is over. He is entitled to secure his victory as long as the contest is continued. He is not obliged to retreat, but may pursue his adversary till he finds himself out of danger; and if in any conflict between them he happens to kill, such killing is justifiable. And of course, where the assault assumed a dangerous form every allowance should be made for one who with the instinct of self-preservation strong upon him, pursues his defence a little further than to a perfectly cool bystander would seem absolutely necessary. The question in such cases will be not whether there was an actually continuing danger, but whether there was any reasonable apprehension of such danger. It must, however, be remembered that every attempt or threat to commit the offence would not, much less an idle threat would, entitle a man to take up arms. He must pause and reflect whether the threat is intended to be put into execution immediately because there are many threats which people use as a form of abuse, but which are never intended to be taken seriously, and, still others, of which the persons saying them, have not the capacity to put into immediate execution for it is only against a danger present and imminent that the right of private defence avails. Under proper circumstances exaggeration of the danger that the accused was facing will not be unreasonable and law will always make just allowance for the sentiment of a person placed in situation of peril, who has no time to think. His blood is then hot and his sole object is to strike a decisive blow so as to ward off the danger. But Courts should not at the same time forget that the right of private defence is a very limited right. It cannot be converted into a right of reprisal. (*Kinkhede, A. J. C.*) SITARAM v. EMPEROR.

85 I.C. 731=26 Cr. L.J. 587=A.I.R. 1925 Nag. 260.

### —S. 99—Illegal acts of public servants.

If without any emergency for arrest contemplated by S.151, a police officer arrests or attempts to arrest a person, the arrest or the attempt to arrest is not only not strictly justifiable by law but is illegal and the person who is arrested or attempted to be arrested, is entitled to offer resistance. If further, such person apprehends hurt at the hands of armed constables sent for the arrest, and such constables use criminal force towards such person, who retaliates it causing them simple injury it cannot be said that he has exceeded his right of private defence: 24 Cal. 320 and A.I.R. 1926 Lah. 19; Rel. on. (*Zafar Ali and Bhide, JJ.*) GAMAN v. EMPEROR. 121 I.C. 734=

**PENAL CODE (1860), S. 99—Illegal acts of public servants.**

31 P.L.R. 285=31 Gr.L.J. 294=  
A.I.R. 1930 Lah. 348.

—There is no right of private defence against the arrest effected by a constable acting under colour of his office even though such arrest is not strictly justified by law. (*Tek Chand, J.*) **MUNSHI SINGH v. EMPEROR.** 106 I.C. 581=29 Gr. L.J. 69=9 A.I.Cr.R. 287 (Lah.)

—A person beating a public servant entrusted with the duty of executing a warrant of attachment though the warrant be illegal is guilty under S. 323 and is not justified in beating under S. 99. (*Shad Lal, C. J.*) **THABA SINGH v. EMPEROR.** 105 I.C. 684=28 P.L.R. 290=28 Gr. L.J. 972=

A.I.R. 1927 Lah. 851.

—Under S. 99, I.P.C., the right of private defence against an injury apprehended to be done by a public servant extends only to those cases in which there is a reasonable cause of apprehension of death or of grievous hurt being caused, by the act of such public servant. (*Tek Chand, J.*) **RANGHA MAL v. EMPEROR.** 105 I.C. 817=9 L.L.J. 424=

28 Gr.L.J. 993=A.I.R. 1927 Lah. 706.

—Public servant acting illegally in the discharge of his duty, S. 99 applies—Income-tax officer acts illegally in forcibly entering a firm to inspect account.

Although an Income-Tax officer is empowered under S. 22 (4) of the Income-Tax Act to serve the proprietors of a firm with a notice to produce their accounts, there is no provision of law by which he can insist on their producing the accounts if they decline to comply with the notice. He has no authority under the Act to enter the firm's premises in order to inspect the accounts, or to remain on the premises for that purpose against the will of the proprietors, and if he does so he commits criminal trespass and the proprietors have a right to forcibly turn him out as S. 99, Penal Code, would not deprive them of their right of private defence. (*Martineau, J.*) **ACHHRU RAM v. EMPEROR.** 95 I.C. 308=

7 Lah. 104=27 P.L.R. 298=27 Gr.L.J. 772=  
A.I.R. 1926 Lah. 326.

—Public servant acting without jurisdiction—Section does not apply.

A police officer found the accused at night time carrying a *kulhari*. He suspected that the accused was going to kill a certain person with whom he had enmity and demanded the *kulhari* but the accused refused to give. Thereupon the officer tried to snatch it from the accused. The accused assaulted the officer.

*Held*: that the action of the Sub-Inspector was wholly without jurisdiction, and therefore Section 99 was not applicable.

*Held*: also that the circumstances did not give rise to any right of private defence on the part of the accused. (*Scott-Smith, J.*) **HAQ DAD v. THE CROWN.** 90 I.C. 927=6 Lah. 392=

26 Gr.L.J. 1631=26 P.L.R. 808=  
A.I.R. 1926 Lah. 19

—Even if the arrest by police is wholly illegal, yet the person arrested or the persons who assist the arrested person are not entitled to use more force than is necessary for protection against illegal arrest. (*Kincaid, J. C. and Kennedy, A. J. C.*) **HARDAYAL SINGH v. EMPEROR.** 94 I.C. 404=20 S.L.R. 85=

27 Gr.L.J. 628=A.I.R. 1926 Sind 190.

—Section 99 applies to acts where jurisdiction is wrongly exercised not where there is complete absence of jurisdiction. (*Greaves and Duval, J.J.*) **ZOGENDRA**

**PENAL CODE (1860), S. 99—Purpose of exercise.**  
**NATH LASKAR v. HIRALAL CHANDRA PODDAR.**

83 I.C. 481=51 Cal. 902=39 C.L.J. 452=  
26 C.L.J. 2=A.I.R. 1924 Cal. 959.

—S. 99—Killing burglar.

—Right of killing offender found committing burglary given by S. 103 is subject to provisions of S. 99.

The right in exercise of right of private defence of property of killing of offender who is found committing burglary given by S. 103 is subject to the provisions of S. 99.

Where the deceased was found committing house-breaking and was set upon by the owner of the house and his son when he was coming out of the hole and was beaten to death with *lathi* blows.

*Held*: that the accused were guilty of an offence under S. 304. The Exception (2) to S. 300 applied to their case: The accused had no intention of committing more harm than was necessary for the purpose of their defence of private defence of property, but without premeditation they in fact exceeded their right of private defence of property as the deceased was at their mercy while coming out of the hole and he could have been easily overpowered and secured. It was not necessary to beat him to death with *lathi* blows.

But as the accused were villagers who hardly realized that in killing a thief caught *flagrante delicto* they were committing any serious offence, severe punishment was not called for: A. I. R. 1925 Oudh 425; A. I. R. 1926 Lah. 28 and A. I. R. 1923 All. 194, Dist. (*Raza and Nanavutty, J.J.*) **MAHABIR v. EMPEROR.** 7 O.W.N. 797=1930 Gr. C. 948=

A.I.R. 1930 Oudh 408.

—S. 99—Omission to raise plea.

The plea of private defence, though not taken before the trying Court where the accused altogether denied the offence is open to them in Appellate Court, but such plea will not assist them if their object was not to save a third party, but to beat his assailants and when for defending him it was not necessary to inflict the injury actually caused: 40 All. 284 and 11 M.L.T. 251, Foll. (*Baker, J. C.*) **RAHMAUSHAH v. EMPEROR.** 90 I.C. 400=26 Gr. L.J. 1552=

A.I.R. 1926 Nag. 202.

—S. 99—Pre-arranged fight.

No question of self-defence arises in a pre-arranged fight. (*Shadi Lal, C.J., and Campbell, J.*) **MADAT KHAN v. EMPEROR.** 92 I.C. 459=7 L.L.J. 628=

27 P.L.R. 47=27 Gr. L.J. 283=  
A.I.R. 1926 Lah. 221.

—S. 99—Public servant not known as such.

A right of private defence exists in a case where the alleged offender does not know and has no reason to believe that the person doing the act was a public servant. (*Mukherji, J.*) **EMPEROR v. KISHAN LAL.** 85 I.C. 245=22 A.L.J. 501=5 L.R.A. Cr. 177=

26 Gr.L.J. 501=A.I.R. 1924 All. 645.

—S. 99—Purpose of exercise.

—Force can be used to defend possession of property but not for recovery.

Every one has got a perfect right to employ force within limits for the purpose of protecting his property against forcible invasion and also to say that he purports to do so in the event of a threatened forcible invasion taking place. But he is not entitled to resort to the use of force for the purpose of recovering his property. His remedy in the latter case lies in a Civil Court where he can sue to recover possession or to get his possession confirmed. (*Hallifax, A. J. C.*) **EMPEROR v. MT. FHUTAIYA.** 81 I.C. 933=

25 Gr. L.J. 1109=A.I.R. 1925 Nag. 142.

**PENAL CODE (1860), S. 99—Recourse to authorities.****—S. 99—Recourse to authorities.**

Where the matter is not urgent and no serious loss of property is threatened, and there is ample time to have recourse to the authorities, the accused cannot be said to have been acting in the exercise of the right of private defence of property. (*Le Rossignol, J*)  
DATA RAM v. EMPEROR. 91 I.C. 39=

26 P.L.R. 267=27 Cr. L.J. 7=

A.I.R. 1926 Lah. 516.

—The law does not intend that when a person is attacked while doing a lawful act, he is not entitled to stand his ground and defend himself, but must run away. Where the accused are molested and attacked while they are engaged in doing a legal act they need not abandon the enjoyment of their legal rights and run away to seek the protection of the authorities. (*Wazir Hasan, A.J.C.*) BAIJNATH v. KING-EMPEROR. 85 I.C. 353=27 O.C. 292=26 Cr. L.J. 513= A.I.R. 1925 Oudh 425.

**—S. 99—Self-defence against drunkard.**

Even though drunken men are entitled to the protection of the law, if they break the law and attack either the person or the property of the people, any member of the public is entitled to exercise the right of private defence provided that he does no more harm than the necessities of private defence require. (*Heald, J.*) MANIKARKI v. EMPEROR. 101 I.C. 477= 5 Bur. L.J. 223=28 Cr. L.J. 445= A.I.R. 1927 Rang. 121.

**—S. 99—Wrong-doer.**

The law does not require that when a person is being wrongfully deprived of property of which he is in possession he should leave the thief alone and run to a thana at a distance of a kos to seek redress from the police and such person has right of private defence, but the wrong doer has no such right. (*Zafar Ali and Bhide, J.J.*) HAR CHAND v. EMPEROR. 120 I.C. 600=31 Cr. L.J. 129= A.I.R. 1930 Lah. 314.

**—S. 100—Amount of force.**

In the heat of the moment, and while defending oneself from a man armed with a stick it is practically impossible to calculate with accuracy the exact force which one is entitled to employ in self-defence. (*Harrison, J.*) IMAM DIN v. EMPEROR. 86 I.C. 218= 26 P.L.R. 14=26 Cr. L.J. 730= A.I.R. 1925 Lah. 514.

**—S. 100—Apprehension of death.**

—*Fight in self-defence—Gun levelled against accused—Accused stabbing—No offence is committed.*

Where the accused was one of a party escorting ladies according to the latters' wish and where there was a fight due to the party being obstructed in its progress, and where the accused stabbed the person obstructing, who had levelled a gun against the accused.

*Held:* the accused was not guilty of murder. (*Walsh and Sulaiman, J.J.*) RAMZANI v. EMPEROR.

86 I.C. 45=23 A.L.J. 68=26 Cr. L.J. 669=

6 L.R.A.Gr. 97=A.I.R. 1925 Al. 319.

—*Accused obnoxious to assailants—Assailants armed with sticks and knives trying to break accused's house—Accused is justified in his private defence in firing at his assailants and causing death of some of them.*

Where a person who was obnoxious to his assailants has his house attacked and the assailants armed with sticks and knives try to break into his house there is every reason for the owner of the house to suppose that he would be roughly handled or even murdered

**PENAL CODE (1860), S. 100—Extent of Right.**

and under the circumstances he is justified in firing at his assailants and in continuing to fire if the attack went on. Facts unknown to the person assailed at the time of the attack, but proved before the Court at the trial should not be taken into account and made the basis for finding against the plea of self-defence. The law does not require that the person placed in such circumstances should weigh the arguments for and against "in golden scales." It is unnatural to expect a man to do so and the law in fact does not require any such thing from such person. The question to be asked is not what a perfectly cool by-stander would think absolutely necessary but whether there was reasonable apprehension of danger to life or property on the part of the accused having regard to all the circumstances: 28 Mad. 454; A.I.R. 1925 Lah. 49, Ref. (*Wallace and Ananthakrishna Ayyar, J.J.*) KUPPU-SAMIER v. EMPEROR. 1929 M.W.N. 511=

1929 Cr. C. 330=2 M.Cr.C. 193=

A.J.R. 1929 Mad. 748.

**—S. 100—Apprehension of grievous hurt.**

Grievous hurt apprehended—Death caused in self-defence is no offence. (*Zafar Ali.*) MANGAL SINGH v. CROWN. 89 I.C. 249=7 L.L.J. 167=

26 P.L.R. 496=26 Cr. L.J. 1305=

A.I.R. 1925 Lah. 370.

**—S. 100—Assault.**

—*Accused striking deceased after latter struck former and accidentally causing death, is entitled to the benefit of the section.*

The accused along with his father, uncle and cousin was proceeding to the threshing floor in order to get the half share of the produce claimed by them from the deceased. He had in his hand a *wahola* such as Zemindars usually carry. The other three had no weapon with them. On seeing them coming the deceased came out with a *dang*, and struck a blow on the head of the accused which fell on his shoulder. The accused retaliated by striking on the head of the deceased with the *wahola* which he was carrying. This blow fractured his skull and resulted in his death.

*Held* that the assault committed by deceased was such as might reasonably cause to accused the apprehension that death or grievous hurt would result to him if he did not strike, and therefore he is clearly entitled to the benefit of S. 100. (*Scott-Smith, J.*) MUHAMMAD AKBAR v. EMPEROR. 72 I.C. 520=

24 Cr. L.J. 408=A.I.R. 1924 Lah. 227.

—*Person attacked by another with "slang" can cause death of assailant.*

A "slang" (fork with a long handle) is no less formidable weapon than a *dang*. A person therefore attacked with a "slang" is entitled to the right of private defence extending to the causing of death of the assailant. (*Bhide, J.*) BISHEN SINGH v. EMPEROR.

120 I.C. 185=30 P.L.R. 97=11 L.L.J. 80=

31 Cr. L.J. 47=1929 Cr. C. 2=A.I.R. 1929 Lah. 443.

**—S. 100—Defending possession.**

—*Causing death in defending possession from opponents is protected.*

Where one party was in possession of land and in the scuffle that resulted from another party trying to oust the former by force, a member of the party in possession killed one of the aggressive party who had struck his companion with a lathi on his head, *held*, that the right of private defence obtained and was not exceeded. (*Mookerjee and Chatterjee J.J.*) EMPEROR v. AKBAR MOLLA. 81 I.C. 261=

51 Cal. 271=38 C.L.J. 379=25 Cr. L.J. 773=

A.I.R. 1924 Cal. 449.

**—S. 100—Extent of Right.**

—*Right of private defence arises only when*



**PENAL CODE (1860), S. 100—Extent of Right.**

*there is no recourse for safe. Accused must not be the creator of necessity for self-defence—No right of self-defence exists when both parties are determined to vindicate their rights by show of criminal force.*

Before a person can avail himself of the defence, that he used a weapon in defence of his life, he must satisfy the Court that that defence was necessary, that he did all he could to avoid it and that it was necessary to protect his own life or to protect himself from such serious bodily harm as would give him a reasonable apprehension that his life was in immediate danger. A man cannot, in any case, justify killing another by pretence of necessity unless he were wholly without fault in bringing that necessity upon himself. When a body of men are determined to vindicate their rights, or supposed rights, by unlawful force, and when they engage in a fight with men who on the other hand are equally determined to vindicate by unlawful force their rights or supposed rights, no question of self-defence arises. (*Ross and Kulwant Sahay, JJ.*) **FARMAN KHAN v. EMPEROR.** 98 I.C. 394= 5 Pat. 520=27 Cr.L.J. 1322=8 P.L.T. 819= A.I.R. 1926 Pat. 433.

—Extent of right of private defence depends not on actual danger but on reasonable apprehension of such danger—Though accused and his party are engaged in an action amounting to civil trespass, accused is not guilty, if he is firing his double barrel gun when he is attacked by a number of men armed with lathis. (*Scott Smith and Fforde, JJ.*) **BAGH SINGH v. EMPEROR.** 81 I.C. 113=25 Cr.L.J. 625= A.I.R. 1925 Lah. 49.

**—S. 100—Proof of right.**

In order to establish the exercise of the right of private defence, it is absolutely necessary to detail the exact circumstances which led the accused to strike the blow in question. Obviously such a defence can seldom, if ever, successfully be made out when the accused's case is that he did not strike the blow at all. (*Cuming and Lort Williams, JJ.*) **AJGAR SHAIKH v. EMPEROR.** 117 I.C. 596=30 Cr. L.J. 799= 48 C.L.J. 138=32 C.W.N. 839= A.I.R. 1928 Cal. 700.

**—S. 102—Amount of force.**

An offence is excused only so far as the right of private defence is rightly exercised. (*Sulaiman, J.*) **UMRAO v. EMPEROR.** 81 I.C. 181=5 L.R.A. Cr. 43= 25 Cr. L.J. 693=A.I.R. 1924 All. 441.

**—S. 102—Continuance of right.**

*Trespasser out of property—No right of private defence exist against him.*

One Jamuna Prasad was irrigating his Jagir land at spot A when the accused who were servants of Tikari Raj came up in a mob of whom the two petitioners carried swords, and directed him to desist as they would take the water to Punawan; when he refused

**PENAL CODE (1860), S. 105—Cattle trespass.**

he received a sword blow on his right arm from Ritlal. He ran away but was pursued by the mob who surrounded him in another field; there he was struck by the accused with their swords, by Tilkoi on the left arm and by Ritlal on the head, and then the whole mob assaulted him with swords and lathis till he was unconscious. *Held*: that the right of defence of property had come to an end when Jamuna fled away from the field. (*Macpherson, J.*) **RITLAL SINGH v. KING-EMPEROR.** 74 I.C. 717= 5 P.L.T. 198=24 Cr. L.J. 813= A.I.R. 1924 Pat. 275.

**—S. 103—Killing burglar.**

Where the accused found a burglar in his house at midnight and struck him during the scuffle which ensued between the accused and the burglar.

*Held* that the accused did not exceed his right of private defence as he had every reason to suppose that either the burglar had committed theft or was going to do so and that if he met him he would presumably strike him. (*Harrison, J.*) **ISMAIL v. THE CROWN.** 91 I.C. 70=6 Lah. 463=27 Cr. L.J. 38= 26 P.L.R. 719=A.I.R. 1926 Lah. 28.

**—S. 103—Prevention of theft.**

*—Right of private defence is available also while preventing the entry of theft.*

Under S. 103 the right of private defence of property to the extent of causing death arises not only when the house is broken into but when an attempt is made to break into the house. It is not the intention of the law that the right to defend property is available only when the thief has already effected entry, for property may be protected by attacking the thief inside the house as much as by preventing his entry into it.

A person who, under a mistake of fact kills a person while that person is attempting to enter the accused's house, thinking him to be a burglar while he is not a burglar, does not exceed his right of private defence of property and he is not guilty of any offence. 1 Holes P.C. 42, Fol. (*Sahrawardy and Duval, JJ.*) **ALI MEA v. EMPEROR.** 98 I.C. 183= 43 C.L.J. 532=27 Cr. L.J. 1287= A.I.R. 1926 Cal. 1012.

**—S. 105—Cattle trespass.**

*—Right of private defence—Trespass by cattle—Cattle can be chased even outside the fields trespassed.*

Certain cattle belonging to accused trespassed a field where they were grazing. An attempt was made by the owner of the field to seize them in order to take them to cattle pound. The cattle ran towards the field of the accused where the chasers followed them. The accused inflicted mortal injuries on one



**PENAL CODE (1860), S. 105—Extent of right.**

of the chasers, who consequently died. It was urged that the chaser had no right to pursue out of the field trespassed and the accused were entitled to a right of private defence.

*Held:* that notice of trespass being taken at once, the mere fact that the cattle had left the land, before they could be seized, did not deprive the owner of the field of the right of seizure conferred upon him by S. 10, Cattle Trespass Act, and no case for private defence was proved: A.I.R. 1925 Nag. 50, Dist (Shadilal, C. J.) WARYAMI v. EMPEROR.

116 I.C. 463=30 Cr. L.J. 627=

13 A.I. Cr. R. 39=A.I.R. 1928 Lah. 692.

**—S. 105—Extent of right.**

*—Right of private defence of property ceases after the offender has effected his retreat, or before the retreat, property is recovered, or assistance of public authority is obtained—After retreat is effected the right cannot again revive whenever the property is traced.*

As soon as the offender has effected his retreat with the property, no right of private defence of that property against theft subsists but, until the offender has so completed his retreat the right of private defence of that property continues until the property has been recovered, i.e., during the retreat of the offender, or until the assistance of the public authorities is obtained. Right of defence cannot be revived so as to allow stolen property, whenever seen again in the possession of anybody, may be taken by owner from that person by the use of all the violence not extending to the causing of death which may be found necessary. The reason why a person is permitted to take the law into his own hands during the retreat of a thief with stolen property is that there is no doubt regarding the identity of the thief and the right to the property; also because the owner of the property is entitled to maintain his possession and to prevent the completion of the removal of the property from his possession. A very different state of things, however, arises if the owner of a stolen article be permitted to take the law into his own hands at any subsequent time and to use violence against any person who may or may not be an innocent holder in order to retrieve from his possession similar article which may or may not be the one stolen. If serious disorders are to be avoided the right of private defence must be strictly confined within the limits fixed by statute. 3 N.L.R. 177, Dissented. (*Le Rosignol and Fforde, J.J.*) MIR DAD v. CROWN.

96 I.C. 385=7 Lah. 21=

27 Cr. L.J. 929=27 P.L.R. 280=

A.I.R. 1926 Lah. 74.

**—S. 107—Abetment, what is.**

*—Husband looking on while wife beats daughter-in-law—No conspiracy proved—Husband is not guilty of abetment.*

Although it may be a moral duty of a person who sees a second person beat a third, to interfere, it is not a legal duty in the sense that the omission to do so is punishable. A private person is entitled to interfere to prevent the commission of an offence, but he is not in general legally bound to do so, and it is only in the case of a non-cognizable and non-bailable offence that he is entitled of his own motion to arrest the offender. (*Daniels, J. on Difference between Walsh, A. C. J. and Ryves, J.*) EMPEROR v. CHANDA.

85 I.C. 150=26 Cr. L. J. 470=

6 L.R.A. Gr. 161=A.I.R. 1925 All. 126.

**—S. 107—Conviction.**

It is not open to a Court to find a man guilty of abetment of an offence on a charge of the offence

**PENAL CODE (1860), S. 107—Personation.**

itself: 11 Bom. H. C. R. 240, Foll. (*Pullan, J.J.*) MAHABIR PRASAD v. EMPEROR. 97 I.C. 430=

24 A.L.J. 988=7 L.R.A. Gr. 180=27 Cr. L.J. 1118=

49 All. 123=A.I.R. 1927 All. 36.

**—S. 107—Driving without license.**

Where a motor driver allows an unlicensed person to drive the motor car, who injures passengers by upsetting the car and who thereby is convicted for an offence under S. 337, the motor driver cannot be convicted as an abettor under S. 107 as it cannot be said that he intended the car should be driven rashly and negligently. (*Barlee, J. C.*) MAHOMED JAMAL v. EMPEROR. 119 I.C. 536=30 Cr. L.J. 1077=

A.I.R. 1930 Sind 64.

**—S. 107—Essentials.**

Mere knowledge or standing while an offence under S. 379 is being committed by others cannot be covered by the definition of abetment. It may well be that there is neither conspiracy nor instigation nor intentional aid by some act or illegal omission. (*Rupchand Bilaram, and De Souza, A. J. Cs.*) MATARO v. EMPEROR. 111 I.C. 732=23 S.L.R. 5=

29 Cr. L.J. 924=A.I.R. 1929 Sind 9.

—If the person who lends his support does not know or has no reason to believe that the act which he is aiding or supporting was in itself a criminal act it cannot be said that he intentionally aids or facilitates the doing of the offence: A. I. R. 1925 All. 230, Foll.

Abetment by omission would only be punishable if the omission were an illegal omission: 9 Bom. L. R. 159, Foll.

In order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but in some way or other it is absolutely necessary to connect him with those steps of the transaction which are criminal: 20 W. R. Cr. 41, Foll. (*Kinkhede, A. J. C.*) MT. SHEVANTI v. EMPEROR. 109 I.C. 497=29 Cr. L.J. 561=

10 A.I. Cr. R. 353=A.I.R. 1928 Nag. 257.

**—S. 107—Evidence of.**

Admission of a person, who is not a licensed vendor that he, at the request of licensed vendor, made endorsement on and entries in sale register in respect of, stamps sold by the latter is not sufficient evidence to hold that he abetted the offence of a breach of R. 11, framed under S. 74, Stamp Act, within the meaning of S. 107, Penal Code. (*Percival, J. C. and Rupchand, A. J. C.*) NENUMAL VISHINDAS v. EMPEROR.

118 I.C. 206=30 Cr. L.J. 831=1929 Cr. C. 104=

A.I.R. 1929 Sind 118.

**—S. 107—Master and servant.**

Where a riot is committed by some persons for the benefit of their master the latter cannot be convicted of abetment of the riot merely on suspicion. (*Baker, J.C.*) RAJMAL MARWADI v. EMPEROR. 88 I.C. 13=

26 Cr. L.J. 1069=A.I.R. 1925 Nag. 372.

**—S. 107—Personation.**

A person, who identified another, who intended to cheat the Treasury Officer by personation, made the identification on the assurance of another in whom he had confidence, but did not tell the Treasury Officer that he identified only on such assurance, could not be convicted of abetting the offence unless it is definitely proved that he knew that the offence was being committed; that is to say, that the man whom he identified was not the same. (*Jwala Prasad and James, J.J.*) RADHA KISHUN v. EMPEROR. 116 I.C. 753=

30 Cr. L.J. 642=10 P.L.T. 657=13 A.I. Cr. R. 133=

A.I.R. 1929 Pat. 157.

**PENAL CODE (1860), S. 107—Principal offence not proved.**

—S. 107—Principal offence not proved.

It is not a general proposition that in every case where an abettor and principal are tried together the abettor if charged with having abetted the principal in the commission of an offence must be acquitted if the principal is acquitted. In the majority of cases this would necessarily follow but there might be exceptions to the general rule. (*Newbould and B. B. Ghose, JJ.*) **UMADASI DAS v. EMPEROR.**

83 I.C. 491=52 Cal. 112=40 C.L.J. 143=  
28 C.W.N. 1046=26 Cr. L.J. 11=  
A.I.R. 1924 Cal. 1031.

—If the principal offence is not substantiated, the charge of abetment falls through. (*Sanderson, C. J. and Mukerjee, J.*) **RAJA KHAN v. EMPEROR.**

61 I.C. 800=22 Cr. L.J. 448=32 C.L.J. 478.

—S. 107—Unintentional aiding.

—Unintentionally aiding is no abetment.

A mere giving of an aid will not make the act an abetment of an offence, if the person who gave the aid did not know that an offence was being committed or contemplated. The intention should be to aid an offence or to facilitate the commission of an offence. If the person who lends his support does not know or has no reason to believe that the act which he was aiding or supporting was by itself a criminal act, it cannot be said that he intentionally aids or facilitates the doing of the offence. (*Mukerji, J.*) **RAM NATH v. EMPEROR.**

84 I.C. 714=47 All. 268=  
22 A.L.J. 1106=26 Cr. L.J. 362=6 L.R.A. Gr. 25=  
A.I.R. 1925 All. 230.

—S. 109—Cheating.

—Sending false claim papers as to quantity of paddy burnt amounts to attempt.

The appellant had insured his stock of paddy which was burnt by fire; he made a claim on the basis that 75,040 baskets of paddy were stored. It was found that the mill godowns could not accommodate more than 15,000 baskets.

*Held*, that the claim was not a mere exaggeration but was a false statement as to the quantity stored: that the 1st appellant having sent the notice of the fire and also the claim papers, must be regarded as having gone beyond the mere stage of preparation to the stage of attempt.

Where A let B use his mill for storing paddy and his cover notes on the mill and stated to witnesses that 75,000 baskets of paddy were in the mill when it was burnt knowing that the capacity of his mill was only 15,000 baskets, and further having stocked paddy refuse in the godowns pretended it was paddy.

*Held*: A had aided and abetted the attempt to cheat under the second clause of S. 107 I.P.C. (*May Oung, J.*) **Mg. Po HMYIN v. KING-EMPEROR.**

82 I.C. 39=2 Rang. 53=3 Bur. L.J. 1=  
25 Cr. L.J. 1178=A.I.R. 1924 Rang. 241.

—S. 108—Breach of bye-law.

The abetment of a breach of the bye-laws framed by a District Council under the authority of the Burma Rural Self-Government Act is not punishable under S. 109, I.P.C., as it is not an abetment of an offence within the meaning of that section: 23 P.R. 1894 Cr., Rel. on. (*Mya Bu, J.*) **MA KHWEY KYI v. EMPEROR.**

115 I.C. 684=6 Rang. 791=  
30 Cr. L.J. 809=12 A.I. Cr. R. 307=  
A.I.R. 1929 Rang. 75.

—S. 109—Conviction.

A person charged under S. 379 cannot be convicted under S. 109 for abetment of theft, if he is not charged with abetment. 33 Mad. 264 Foll. (*Ross, J.*) **DARBARI**

**PENAL CODE (1860), S. 114—Applicability.**

**CHOWDHURY v. EMPEROR.**

60 I.C. 999=

22 Cr. L.J. 311. (Pat.)

—S. 109—Interpretation.

—“Punishment provided for the offence”—  
Meaning.

Although a Penal law must be interpreted as far as possible in favour of the subject still the Court is not justified in adding at the end of the section a qualifying or explanatory phrase which is not to be found in the section itself. That being so the Court is not justified in saying that the words “punishment provided for the offence” in S. 109 mean punishment provided for the offence either in the Penal Code or in some special or local law: 7 L. B. R. 63, Discussed and not Appr. (*Rutledge, C. J., Maung Ba and Heald, JJ.*) **EMPEROR v. MAUNG PU KAI.**

118 I.C. 637=  
7 Rang. 329=30 Cr. L.J. 961=1929 Cr. C. 177=  
A.I.R. 1929 Rang. 203 (F.B.).

—S. 108—Master and Servant.

Where a person orders his men to beat the other party and in consequence of that order the people of that party are beaten and as a result some men are killed, that person is guilty of abetment of murder. A. I. R. 1928 Pat. 100, Foll. (*C. C. Ghose and Jack, JJ.*) **NAWABALI v. EMPEROR.**

116 I.C. 372=  
30 Cr. L.J. 621=13 A.I. Cr. R. 61=  
A.I.R. 1928 Cal. 752.

—S. 108—Murder.

It was found that two accused and the approver conspired to commit theft and in pursuance of that conspiracy to kill H in order to enable them to commit theft but there was no direct evidence as to who dealt the fatal blow.

*Held*: that the accused are guilty of abetment of murder under S. 302 read with S. 109. (*Adami, J.*) **SHEO BARI v. EMPEROR.**

A.I.R. 1930 Pat. 164.

—S. 108—Offence not committed.

Assistance in the preparation of an offence which ultimately was not committed cannot amount to an abetment either under Section 109 or under Section 511 of the Penal Code. (*Wazir Hasan and Pullan, A. J. Cs.*) **SURAT BAHADUR v. KING-EMPEROR.**

81 I.C. 986=25 Cr. L.J. 1162=11 O.L.J. 640=  
A.I.R. 1925 Oudh 158.

—S. 114—Applicability.

To come within S. 114, Penal Code the abetment must be complete apart from the presence of the abettor at the scene of offence: 42 Cal. 422: A. I. R. 1925 Mad. 364, Foll. (*Madhavan Nair, J.*) **VIJAYARANGA NAIDU v. KING-EMPEROR.**

106 I.C. 584=39 M.L.T. 589=26 M.L.W. 649=  
29 Cr. L.J. 72=A.I.R. 1927 Mad. 1115=  
53 M.L.J. 760.

—Abettor present at the time of the offence and abetting at the time.

When a person who abets the commission of an offence is present and helps in the commission of the offence he is guilty of the offence and not merely of abetment except in a few cases like rape or bigamy where the person committing the offence alone can be guilty of the offence. S. 114 applies to a case where a person abets the commission of an offence some time before it takes place and happens to be present at the time when the offence is committed, and is not applicable to a case where the abetment is at the time when the offence takes place and the abettor helps in the commission. (*Devadoss and Waller, JJ.*) **JOGALI BHAIGO NAIKS In re.**

97 I.C. 958=27 Cr. L.J. 1198=  
A.I.R. 1927 Mad. 97.

—Abetment is a crime in itself while along with presence it is an offence under S. 114,

**PENAL CODE (1860), S. 114—Applicability.**

S. 114, is a provision which is only brought into operation when circumstances amounting to abetment of a particular crime have first been proved and then the presence of the accused at the commission of that crime is proved in addition. Abetment does not in itself involve the actual commission of the crime abetted. It is a crime apart. The section is evidentiary not punitive. Because participation *de facto* may sometime be obscure in detail, it is established by the presumption *juris et de jure* that actual presence plus prior abetment can mean nothing else but participation. The presumption raised by S. 114 brings the case within the ambit of S. 34. (*Lord Sumner*.)

**BARENDRA v. EMPEROR.** 85 I.C. 47 = 29 C.W.N. 181 = 1925 M.W.N. 26 = 3 Pat. L.R. Cr. 1 = 6 L.R.P.C. Cr. 1 = 27 Bom. L.R. 148 = 6 Pat. L.T. 169 = 32 I.A. 40 = 52 Cal. 197 = 23 A.L.J. 314 = 41 C.L.J. 240 = 26 Gr. L.J. 431 = 26 P.L.R. 50 = A.I.R. 1925 P.C. 1 = 48 M.L.J. 543 (P.C.)  
—The words of S. 397 are not such as to exclude the operation of Ss. 114 and 34 of the Code.

(*Hallifax, A. J. C.*) **SHEKH GHASSU v. EMPEROR.** 82 I.C. 45 = 25 Cr. L.J. 1181 = A.I.R. 1925 Nag. 136.

**—S. 114—Applicability and Scope.**

—The section deals with a person whose abetment is complete apart from his presence and defines liability of such a person if he was present at the time when offence was committed.

S. 114 deals with a person whose abetment is complete apart from his presence, that is, the person who would be guilty of abetment independently of any act done when the offence was committed and the section defines the liability of such a person if he was present at the time of the offence. (*Venkatasubba Rao, J.*) **ANNAVI v. EMPEROR.** 82 I.C. 262 = 21 M.L.W. 19 = 25 Cr. L.J. 1254 = A.I.R. 1925 Mad. 364.

**—S. 114—Conspiracy.**

—Cr. P. Code, S. 221—Where conspirator is sought to be made liable as principal under S. 114, I.P.C., that section must be mentioned with the main offence in the charge.

Where a conspirator is present at the commission of the offence he may under the provisions of Section 114, I.P.C., be deemed to have committed the offence, but if that is the way in which the accused is to be made responsible for the offences he should be specifically charged with such offence as read with the provisions of S. 114, I.P.C.

Where the only evidence of the accused being a conspirator was his presence at the commission of the offence, there may arise a further question, viz., whether it would be permissible to infer conspiracy from mere presence, and again to make him liable as principal by taking into account the fact that he was present at the commission of the offence. (*Walmsley and Mukherji, J.J.*) **ALIMUDDI NASKAR v. KING-EMPEROR.** 85 I.C. 231 = 40 C.L.J. 531 = 29 C.W.N. 173 = 52 Cal. 253 = 26 Gr. L.J. 487 = A.I.R. 1925 Cal. 341.

—S. 114—Conviction.

In the absence of a definite charge of abetment being framed against an accused which he had no opportunity to meet, his conviction for abetment of murder under S. 302 read with S. 114, Penal Code, is wholly illegal. (*Staples and Subhedar, A.J.Cs.*) **KISAN DAS v. EMPEROR.** 118 I.C. 473 = 1929 Cr. C. 529 = 30 Cr. L.J. 944 = A.I.R. 1929 Nag. 325.

—S. 114—Instigation by approval.  
Where, when some zamindars were maltreating a

**PENAL CODE (1860), S. 114—Sentence.**

tenant for the purpose of committing extortion, the accused instigated the commission of the offence by expressing his approval of the conduct of the zamindars and suggesting that the tenant having lost their heads they should be given a sound beating and in pursuance of this some blows were inflicted,

**Held:** that the accused was guilty under S. 114 read with 330. (*Iqbal Ahmad, J.*) **NAZIR AHMAD v. EMPEROR.** 100 I.C. 537 = 25 A.L.J. 149 = 7 A.I. Cr. R. 201 = 8 L.R.A. Cr. 28 = 28 Cr. L.J. 313 = A.I.R. 1927 All. 730.

**—S. 114—Liability as principal.**

A person, who is punishable under the particular section of the Code read with S. 114, is punishable not as an abettor but as a principal and is guilty of the substantive offence and not merely of abetment of that offence: 10 Bom. L.R. 26 Discussed and Doubtful. (*Rutledge C.J., Maung Ba and Heald, J.J.*) **EMPEROR v. MAUNG PU KAI.** 118 I.C. 637 = 7 Rang. 329 = 30 Cr. L.J. 961 = 1929 Cr. C. 177 = A.I.R. 1929 Rang. 203 (F.B.)

**—S. 114—Murder.**

If certain persons assist an accused to commit murder whether by themselves assaulting the deceased or by preventing his friends from assisting him they are guilty of the same offence as the accused, whereas if they merely go to the spot with some innocent intention and the accused suddenly commits a murder without their assistance, and possibly contrary to their wishes, they can only be guilty of the offence, if any, which they themselves commit. (*Wasir Hasan and Pullan, J.J.*) **JADUNANDAN BRAHMAM v. EMPEROR.** 104 I.C. 242 = 2 Luck. 605 = 4 O.W.N. 699 = 28 Cr. L.J. 802 = A.I.R. 1927 Oudh 321.

—Where a woman was at the time of murder sitting on a charpoy at a distance of about eight yards, and was urging the assailants to kill their victim,

**Held:** her act amounted to an abetment of the offence of murder, and she can be convicted under S. 302 read with S. 114. (*Shadi Lal, C.J. and Jai Lal, J.*) **DHANI v. EMPEROR.** 99 I.C. 117 = 8 L.L.J. 509 = 27 P.L.R. 716 = 28 Cr. L.J. 85.

**—S. 114—Scope.**

—Presence makes abettor liable as principal but is punished only once as principal.

Per Richardson, J.—S. 114 would appear to serve two purposes. Firstly, it marks the fact that where it can be proved that the accused, if absent, would be liable as an abettor, his mere presence when the offence is committed is, without more sufficient proof of common intention, to make him an accessory at the fact or principal. Secondly, it marks the fact that in those circumstances the accused cannot be punished twice, once for the abetment and once for being present as an accessory at the fact. The section remembers S. 34 in this, that it rather regulates procedure and punishment than creates an offence. (*Mookerjee, Richardson, C.C. Ghosh, Cuming and Page, J.J.*) **EMPEROR v. BARENDRA KUMAR GHOSH.** 81 I.C. 353 = 28 C.W.N. 170 = 38 C.L.J. 411 = 25 Cr. L.J. 817 = A.I.R. 1924 Cal. 257 (F.B.)

**—S. 114—Sentence.**

Four accused were sent up for trial, under S. 302. Two of them were convicted under S. 302, and were sentenced to transportation for life. The other two were found guilty of abetment and were found to be present when offence was committed and were sentenced to imprisonment for seven years.

**Held:** that the sentence of seven years in respect of two of the accused was illegal. The two accused

**PENAL CODE (1860), S. 114—Sentence.**

were liable to receive either the capital sentence or one of transportation for life. (*Broadway and Tap, J.J.*) **EMPEROR v. SADA SINGH.**

**A.I.R. 1930 Lah. 338.**

—If a person is convicted of an offence under a particular section of the Code read with S. 114 and if the offence under the particular section of the Code renders the offender liable to whipping in lieu of or in addition to any other punishment either under the Whipping Act or under Burma (Amendment) Act (8 of 1927), the person so convicted is punishable with whipping in lieu of or in addition to any other punishment; 7 L.B.R. 63, Appr. and Dist. (*Rultedge C.J. Maung Ba and Heald, J.J.*) **EMPEROR v. MAUNG PU KAI.** 118 I.C. 637=7 Rang. 329=30 Cr. L. J. 961=1929 Cr. C. 177=A.I.R. 1929 Rang. 203 (F.B.)

**—S. 114—Trespass.**

—*Abettor present when offence committed—Abettor is guilty of the offence.*

Where a person inciting others to commit an offence under S. 447 is himself present when the offence is committed, he is guilty under S. 447: A.I.R. 1925 P.C. 1, Foll. (*Fawcett and Madgavkar, J.J.*) **PATELHVA RAOJIBALA v. EMPEROR.** 97 I.C. 737=28 Bom. L.R. 1029=27 Cr. L.J. 1153=A.I.R. 1926 Bom. 512.

**—S. 116—Offering bribe.**

Where the doctor in charge of a Government hospital has already decided to discharge a patient but that patient is still in the hospital he cannot be regarded to be *functus officii* as his duties and responsibilities to the patient still remain and an offer of a bribe to him to retain the patient for a longer period is an offence under S. 161 and the refusal of the bribe brings the case under illustration (a), S. 116: A.I.R. 1929 Mad. 756, Dist. (*Pandalai, J.*) **BURHAM SAHIB v. EMPEROR.** 32 M.L.W. 17=A.I.R. 1930 Mad. 671.

—Where a person is accused of abetment of bribing a Head Constable of Police, the first part of S. 116 is applicable and not the second part as an offence under S. 161 is not cognizable by the police and is not one, the commission of which it is the duty of the head constable to prevent. (*Jaital, J.*) **PURAN SINGH v. EMPEROR.** 109 I.C. 681=10 L.L.J. 384=29 Cr. L.J. 601=10 A.I.Cr.R. 356=A.I.R. 1928 Lah. 840.

—The principle of the illustration applies as much to the other purposes set out in S. 161 as to doing or forbearing to do any official act: A.I.R. 1923 Bom. 44; 21 C. W. N. 552 and A.I.R. 1924 Mad. 851, Dist. (*Wallace, J.*) **VANU RAMACHANDRIAH v. EMPEROR.** 105 I.C. 829=51 Mad. 86=39 M.L.T. 615=26 M.L.W. 529=1927 M.W.N. 764=28 Cr.L.J. 1008=9 A.I. Cr. R. 180=A.I.R. 1927 Mad. 1011=53 M.L.J. 723.

**—S. 117—Applicability.**

—*Exhorting Sikhs to form jathas under the S.G.P. Committee and to collect funds for the committee is not an offence under Criminal Law Amendment Act, S. 17 but is one under S. 117, Penal Code.*

Exhorting the Sikhs in a meeting to enlist themselves for shahidi jathas for the purpose of going to a certain place and collecting funds for a committee which was declared as unlawful by the Government, is not an offence under S. 17 (1) and S. 17 (2) of the Criminal Law Amendment Act, but is an offence under S. 117, Penal Code, as the accused instigated people to become members of a jatha under the orders of the said committee, which jatha would be an unlawful association

**PENAL CODE (1860), S. 120-A—Essentials.**

within the meaning of S. 16: A.I.R. 1924 Lah. 440 Ref. (*Scott-Smith, J.*) **KIRPAL SINGH v. EMPEROR.** 89 I.C. 462=26 Cr. L.J. 1374=26 P.L.R. 412=A.I.R. 1926 Lah. 115.

—Instigating the formation of unlawful association and contributing towards it is an abetment of an offence under S. 17 (1) of the Criminal Law Amendment Act and if it is by a class of persons exceeding 10 it is an offence under S. 117, I.P.C. (*Broadway and Moti Sagar, J.J.*) **EMPEROR v. MIHAN SINGH.**

89 I.C. 392=5 Lah. 1=26 Cr. L.J. 1352=A.I.R. 1924 Lah. 440.

**—S. 117—Offence punishable by special law.**

The punishment under S. 117, I.P.C. for abetment of an act which is an offence under the Indian Salt Act and not an offence under the Penal Code is illegal because S. 9 of the Salt Act prescribes specific punishment for such offence. (*Hasan, C.J. and Pullan, J.*) **ODDH BAR ASSOCIATION, LUCKNOW, In re.**

7 O.W.N. 895.

**—S. 120-A—Conspiracy and offence.**

The offences of conspiracy and offences committed in pursuance of that conspiracy form one and the same transaction: 19 C.W.N. 672, Rel. on. (*Maung Ba and Doyle, J.J.*) **ABDUL KAHMAN v. EMPEROR.**

94 I.C. 717=4 Bur. L.J. 213=27 Cr. L.J. 669=A.I.R. 1926 Rang. 53.

**—S. 120-A—Essentials.**

For the offence of conspiracy, it is not necessary to prove that any illegal act at all has actually been performed in pursuance of the conspiracy. What it is necessary to prove is that there has been a general agreement to commit an illegal act or a series of illegal acts. (*Mya Bu and Brown, J.J.*) **HTIN GYAW v. EMPEROR.**

109 I.C. 491=6 Rang. 6=29 Cr. L.J. 555=10 A. I. Cr. R. 243=A.I.R. 1928 Rang. 118.

—*Obiter*—In a charge of abetment by conspiracy it is not necessary that all those engaged in it should consult together. It is enough if they did an act or acts in pursuance of that conspiracy. (*Maung Ba and Douglas, J.J.*) **ABDUL KAHMAN v. EMPEROR.**

94 I.C. 717=4 Bur. L.J. 213=27 Cr. L.J. 669=A.I.R. 1926 Rang. 53.

—*Overt act is not necessary to base conviction unless agreement is not to commit an offence—Common intention is necessary—Persons doing unlawful acts in furtherance of common object but without knowledge of conspiracy are not guilty.*

Conspiracy is a substantive offence and has nothing to do with abetment. Though an overt act may be specified in the charge yet this is not (except when the end of the conspiracy is not to commit an offence) necessary. It may be specified in a charge that a certain act has been committed which could not possibly be committed by one of the alleged conspirators, nevertheless such conspirator may be guilty of that conspiracy in the course of which such act was committed. It is not by any means necessary that each conspirator should be aware of all the acts done by each of the conspirators in the course of the conspiracy. His offence is the conspiracy. The acts done by any of the conspirators in furtherance of the purpose of the conspiracy are relevant as merely indication of what the object of the conspiracy was.

What is necessary, however, is that there should be one conspiracy and not a series of conspiracies and criminal acts unconnected by unity of intention. It may be that for the purpose of conspiracy it may be

**PENAL CODE (1860), S. 120-A—Possession of arms.**

necessary to procure the doing of unlawful acts by persons who are not members of the conspiracy. In that case, if the persons so seduced into unlawful acts are not aware of the conspiracy the fact that they do unlawful acts does not make them members. (*Kennedy, J. C. and Tyabji, A. J. C.*) CHANDIRAM v. EMPEROR. 92 I.C. 462=20 S.L.R. 140=

27 Cr. L.J. 286=A.I.R. 1923 Sind 174.

**—S. 120-A—Possession of arms.**

**—Conspiracy—Offence under S. 19 (f) of the Arms Act—What has to be proved by the prosecution—Overt act.**

When the proof of a conspiracy depends upon proof of the participation of the accused in an overt act which itself amounts to an offence, the proper course is to put the accused on their trial for that offence. Where all that is shown against a person is evidence of his association with any of the conspirators that would not be sufficient to convict him of being one of the parties to the conspiracy. *Held*, that on the evidence in the case, the accused were guilty of a conspiracy to get possession of arms and ammunition by illegal means and in contravention of the Arms Act. (*Chitty and Richardson, JJ.*) KALI DAS BASU v. EMPEROR. 83 I.C. 513=26 Cr. L.J. 33=

39 C.L.J. 151.

**—S. 120-A—Proof of Conspiracy.**

**—Conspiracy—Origination need not be by all—Proof of conspiracy—Elements.**

Where the charge is that there was an agreement between several accused to cheat such members of the public as they could defraud by deceitful means, it is not a bad charge. It is also immaterial if all the accused had concocted in the scheme of the charge or that all of them should have originated it. It is sufficient if it originated with some of them and others had subsequently joined the original conspirators; *R. v. Murphy*, (1838) 8 C. and P. 297, Ref.

It is open to the Crown to prove the conspiracy by direct evidence, or by proof of circumstances from which the Court may presume the conspiracy. The fact that criminal acts done in pursuance of the conspiracy were in themselves substantive offences casts no obligation on the Crown to prosecute the individual offenders for such specific offences or deprive the Crown of its right to proceed against all of them for conspiracy pure and simple. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) KISHAN-CHAND v. EMPEROR. 92 I.C. 419=20 S.L.R. 18=

27 Cr. L.J. 243=A.I.R. 1926 Sind 171.

**—S. 120-A—Scope of.**

**—Offence complete when agreed—Any further act unnecessary.**

The crime of conspiracy is completely committed the moment two or more have agreed that they will do, at once or at some future time certain things. It is not necessary in order to complete the offence that any one thing should be done beyond the agreement. It is complete when they agreed. (*Crump, J.*) EMPEROR v. SHAFI AHMED. 31 Bom. L.R. 515.

**—S. 120-B—Acquittal of one.**

Where two persons are charged under S. 120-B of conspiracy and the charge does not show that any other person was concerned in the conspiracy then if one of the accused is acquitted, the other also should be acquitted. (*Cuming and Gregory, JJ.*) KASIM ALI v. EMPEROR. 101 I.C. 481=8 A.I. Cr. R. 64=

45 C.L.J. 204=28 Cr. L.J. 449=A.I.R. 1927 Cal. 949.

**—The gist of an offence under S. 120-B is an agreement between the accused persons. When one**

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**PENAL CODE (1860), S. 120-B—Elements of offence.**

of the two accused is acquitted and discharged under S. 120-B read with S. 302, I. P. C., the other accused cannot be convicted of the charge. (*Sanderson, C. J. and Cuming, J.*) EMPEROR v. OSMAN SARDAR. 81 I.C. 824=39 C.L.J. 264=25 Cr. L.J. 1048=

A.I.R. 1924 Cal. 809.

**—S. 120-B—Acquittal of two.**

Where two of three persons charged for conspiracy are acquitted, the third is entitled to an acquittal as a matter of course. (*Cuming and Mukerji, JJ.*) PRAFULLA KUMAR ROY v. EMPEROR. 91 I.C. 883=30 C.W.N. 94=27 Cr. L.J. 147=A.I.R. 1926 Cal. 345.

**—S. 120-B—Application of.**

The words "Where an express provision has been made in the Code for the punishment of such a conspiracy appearing in S. 120-B, Penal Code, do not mean that where there is proof of an abetment of an offence the charge should be for such abetment; it is optional for the Crown to proceed for abetment of the offence committed in pursuance of conspiracy or of the offence of conspiracy. 10 S.L.R. 69 Rel. on. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) KISHANCHAND v. EMPEROR. 92 I.C. 419=20 S.L.R. 18=27 Cr. L.J. 243=A.I.R. 1926 Sind 171.

**—S. 120-B—Contents of charge.**

Recital of specific offences committed in pursuance of a conspiracy are at most a surplusage and may be ignored: A.I.R. 1926 Sind 171 Rel. on. (*Percival, J. C. and Rupchand, A. J. C.*) MOHAN SINGH v. EMPEROR. 1930 Cr. C. 649=A.I.R. 1930 Sind 164.

**—Omission to specify in the charge the persons who were parties to the conspiracy is an irregularity curable by S. 537, Cr. P. Code.** (*Percival, J. C. and Rupchand Bilaram, A. J. C.*) HAJI SAMS v. EMPEROR. 101 I.C. 458=8 A.I. Cr. R. 11=

28 Cr. L.J. 426=A.I.R. 1927 Sind 161.

**—S. 120-B—Duty of Court.**

In cases of conspiracies it is difficult for the prosecution to secure outside and independent evidence. The prosecution has to depend upon evidence of people who are engaged in detecting crimes of this sort. In a case like this therefore the evidence of such person should be scrutinized and received with a great deal of caution. (*Suhrawardy and Panton, JJ.*) NIRMAL CHANDRA v. EMPEROR. 100 I.C. 113=31 C.W.N. 239=28 Cr. L.J. 241=

A.I.R. 1927 Cal. 265.

**—S. 120-B—Elements of offence.**

**—Agreement of parties makes offence complete—Conspiracy to possess firearms—Conspiracy in respect of particular fire arms need not be proved.**

An offence under S. 120-B consists in the conspiracy without any reference to the subject-matter of the conspiracy.

It is true that the law does not take notice of the intention or the state of mind of the offender and there must be some overt act to give expression to that intention, but that overt act in a case of conspiracy under S. 120-B consists in the agreement of the parties; *Mulcahy v. The Queen*, (L. R. 3 H. L. 306, 1868), Rel. on.

The definition of conspiracy in S. 120-B excludes the agreement to commit an offence, from the category of such conspiracies, in which it is necessary that the agreement should be followed by some act. It is not therefore necessary in a case of conspiracy to possess firearms, for the prosecution to specify in the charge or to prove that the accused conspired to possess any particular firearms: 42 Cal. 957, Rel. on. (*Suhrawardy and Panton, JJ.*) NIRMAL CHANDRA



**PENAL CODE (1860), S. 120-B—Essentials.**

v. EMPEROR. 100 I.C. 113=31 C.W.N. 239=

28 Cr. L.J. 241=A.I.R. 1927 Cal. 265.

**—S. 120-B—Essentials.**

The offence of conspiracy may be complete, although the particular means are not settled and resolved on at the time of the conspiracy. (*Percival, J. C. and Rupchand Bilaram, A.J.C.*) **Haji Samu v. EMPEROR.** 101 I.C. 458=28 Cr. L.J. 426=

8 A.I. Cr. R. 11=A.I.R. 1927 Sind 161.

—For a charge of conspiracy only an agreement is sufficient, so it is sufficient to include in the charge the agreement which is alleged to have been arrived at between the conspirators. (*Dalal, J.C.*) **BISHAMBHER NATH TANDON v. EMPEROR.**

90 I.C. 706=2 O.W.N. 760=26 Cr. L.J. 1602=A.I.R. 1926 Oudh 161.

—The law of conspiracy is no longer in a fluid state in India and recognizes the principle that a conspiracy need not be established by evidence of an actual agreement between the conspirators and that overt acts raise a presumption of an agreement and knowledge of the purpose of the conspiracy. (*Dalal, J.C.*) **BISHAMBHAR NATH TANDON v. EMPEROR.**

90 I.C. 706=26 Cr. L.J. 1602=2 O.W.N. 760=A.I.R. 1926 Oudh 161.

—The gist of the offence of criminal conspiracy to commit an offence or offences under S. 420, Indian Penal Code, lies in the agreement of common intention and not in acts. (*Sanderson, C.J., and Richardson, J.*) **P. E. BILLINGHURST v. EMPEROR.**

82 I.C. 545=25 Cr. L.J. 1313=27 C.W.N. 821=A.I.R. 1924 Cal. 18.

**—S. 120-B—Incriminating articles in house.**

—*Incriminating articles found in a house—Other facts also suggesting implication of all inmates in conspiracy—Innocence of person present there must be proved.*

Where there are no means of discriminating between the cases of the various persons found in a house where incriminating articles are discovered and the circumstances point to the conclusion that every person found in the house was a member of the conspiracy, absence of proof that a particular person was there innocently leads to the conclusion that no one's presence was innocent. (*Buckland, Suhrawardy and Cammiade, JJ.*) **HARI NARAYAN CHANDRA v. EMPEROR.**

106 I.C. 543=46 C.L.J. 368=29 Cr. L.J. 45=9 A.I. Cr. R. 228=A.I.R. 1928 Cal. 27 (F.B.)

**—S. 120-B—Misappropriation.**

Where an accused was aware of the fact that a large amount of jewellery had been handed over to another accused in order that he might deposit it for safe custody in a bank and of the fact that the latter had pawned the jewellery and kept the proceeds, and he did not inform the person, whose property had been misappropriated, of the fact, but told her deliberate untruths upon the subject,

*Held:* that both accused were engaged in a criminal conspiracy in committing an offence under S. 409. (*Stuart, C.J., and Raza, J.*) **MD. HADI HUSAIN v. EMPEROR.** 112 I.C. 103=3 Luck. 434=11 A.I. Cr. R. 226=5 O.W.N. 281=29 Cr. L.J. 983=A.I.R. 1928 Oudh 277.

**—S. 120-B—Picketting.**

—*Picketting may be an offence where agreement to stop sale of intoxicants in a bazar constituting criminal conspiracy is arrived at.*

Certain national volunteers went to a small village bazar for the purpose of picketting the sale of country liquor, etc. Outside the bazar the shopkeepers and the agents of the Zamindar told them that no inter-

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ference with the bazar would be tolerated. The volunteers finding themselves too few in numbers retired but their leaders distinctly told the interlocutors that they would return on the following market day. A large meeting of the volunteers was then convened by the leaders at which the persons present entered into an agreement to stop the sale of intoxicants, etc., at the bazar.

*Held:* (1) that the agreement was an agreement to commit the offence of criminal intimidation and amounted to a criminal conspiracy.

(2) that whatever might be said in defence of peaceful picketting when undertaken in the market of a large town by individuals or by small groups of earnest and enthusiastic men or women it had no application to the present case where it was proposed to flood a small village bazar by a body of men whose mere presence there would put a stop to all business which could only be carried on with their consent or indeed with their active assistance. (*Mears, C.J. and Piggott, J.*) **ABDULLAH v. EMPEROR.** 92 I.C. 145=4 L.R.A. Cr. 145=27 Cr. L.J. 193=A.I.R. 1924 All. 233.

**—S. 120-B—Proof.**

A charge of conspiracy may be proved by evidence of circumstances from which the Court may presume the conspiracy: 9 S. L. R. 223 and A. I. R. 1926 Sind 171, *Foll.*: 42 Cal. 957, *Expl.* (*Rupchand Bilaram and Lobo, A.J. Cs.*) **ABDULLA v. EMPEROR.** 101 I.C. 453=21 S.L.R. 244=28 Cr. L.J. 421=A.I.R. 1928 Sind 73.

**—S. 120-B—Proof of Conspiracy.**

Merely that a person was an associate of the persons who were party to a criminal conspiracy, is not of itself sufficient for the foundation of the conviction of that person; nor can the fact that the person was endeavouring to extricate himself from being accused of anything connected with the conspiracy help the case against such person. (*Rankin, C.J. and C. C. Ghose and Mallik, JJ.*) **RAKHAL CHANDRA DAS v. EMPEROR.**

A.I.R. 1930 Cal. 647 (F.B.)

—That immediately after occurrence person was anxious to escape observation and was doing his best to conceal his whereabouts is not enough to infer complicity. (*Rankin, C.J., Ghose and Mallik, JJ.*) **RAKHAL CHANDRA DAS v. EMPEROR.**

A.I.R. 1930 Cal. 647 (F.B.)

—To establish a charge of conspiracy, the agreement is very often to be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. It is unavoidable in such cases to have a large mass of evidence which taken separately may not appear to be relevant against every person accused of the offence, but taken in conjunction with the other evidence in the case may establish the conspiracy. (*Mirza and Murphy, JJ.*) **EMPEROR v. C. E. RING.**

120 I.C. 340=53 Bom. 479=31 Bom. L.R. 545=1929 Cr.C. 114=31 Cr. L.J. 65=A.I.R. 1929 Bom. 296.

—One S kept a bomb, pistol and cotton wool for some three months in his possession and then for fear of the police made them over to one G. The bomb and pistols were subsequently discovered at G's house and both G and S were arrested. There was nothing in their statements to show that the bombs and pistols were to be used for any innocent purpose.

*Held:* that even if G knew nothing about the possession of these things by S before they were made over to him, it is quite clear that from the moment that these things were made over by S to G, there was an agreement between these two persons to keep



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the bombs, pistol and gun cotton and to keep them for the purposes described in sub-S. 4 (b), Explosive Substances Act, namely, with intent either themselves to endanger or to enable other persons by means of them to endanger life. The charge under S. 120-B had therefore been clearly brought home to both the persons. (*Cuming and Lort Williams, JJ.*) **GOURCHANDRA DAS v. EMPEROR.** 115 I.C. 359 =

32 C.W.N. 1004 = 30 Cr. L.J. 478 =  
A.I.R. 1929 Cal. 14.

—*Conspiracy may be established by direct evidence or presumed from circumstances proved—Specifying unlawful act is sufficient—Means adopted by conspirators need not be specified.*

A charge for conspiracy may be established either by direct evidence of an agreement between the conspirators, or it may be established by evidence of circumstances from which the Court may raise a presumption of a common concerted plan to carry out the unlawful design: 9 Bom. L.R. 347; 37 Cal. 467; 20 C.W.N. 292; 42 Cal. 1153 and A.I.R. 1926 Sind 171, Rel. on.

The gist of the offence of criminal conspiracy is the agreement itself, and where the object of the agreement is to do an unlawful act by an unlawful means it is sufficient to specify the unlawful object without specifying the means adopted by all or any of the conspirators to gain that object: *R. v. Gill*, (1818) 2 B & Ald. 204, Rel. on. (*Percival, J.C. and Ryphand Bilaram, A.J.C.*) **Haji SAMO v. EMPEROR.**

101 I.C. 458 = 28 Cr. L.J. 426 = 8 A.I. Cr. R. 11 =  
A.I.R. 1927 Sind 161.

**—S. 120-B—Two trials for same offence**

—*Cr. P. Code, S. 403—Trial for conspiracy to kill Europeans is untenable on basis of facts proved in previous trial ending in conviction for conspiracy to overawe Government by killing British officers.*

There do not exist two conspiracies, one for the overawing the Government and the other for the killing Europeans, where a conspiracy to overawe the Government by means of criminal force, namely, by causing bombs to be thrown at British officers is proved. The conspiracy is one and the same, the killing of Europeans being only the means to an end, *viz.*, the object of overawing the Government by criminal force. In such a case when once there has been a conviction under S. 121-A a fresh conviction, under S. 120-B cannot be founded on the same facts. (*Martineau, J.*) **HUSSAIN alias UMAR v. EMPEROR.** 82 I.C. 169 =  
25 Cr.L.J. 1241 = A.I.R. 1925 Lah. 157.

**—S. 121—Contents of charge.**

In a case under S. 121, I.P.C., even if the charge does not set out the speeches alleged to be seditious it would not vitiate the proceedings. (*Odgers and Wallace, JJ.*) **M. P. NARAYANA MENON, In re.** 77 I.C. 481 = 25 Cr.L.J. 401 = A.I.R. 1925 Mad. 106.

**—S. 124-A.**

**Disaffection.**

**Evidence.**

**Hatred and contempt.**

**Intention.**

**Offence under.**

**Principles of Construction.**

**Printer.**

**Privy Council.**

**Procedure.**

**Sentence.**

**—S. 124-A—Disaffection.**

At present to advocate expulsion of Englishmen from India is tantamount to asking for the subversion

**PENAL CODE (1860), S. 124-A—Disaffection.**

of Government now established by law. (*Zafar Ali, J.*) **SATYA PAL v. EMPEROR.** 121 I.C. 425 =

31 Cr.L.J. 266 = 31 P.L.R. 11 =

A.I.R. 1930 Lah. 309.

—*“War” and “warring against Government” do not necessarily make speech seditious.*

The word “jung” in Urdu is often used metaphorically and means the same thing as the implication of the word war in such expressions as “warring elements,” “warring opinions” and so on, and unless there is something expressly to the contrary in a speech the expression “war against the Government” does not transgress the border line between exciting discontent and exciting disaffection. (*Zafar Ali, J.*) **SATYA PAL v. EMPEROR.** 121 I.C. 425 = 31 Cr.L.J. 266 =

31 P.L.R. 11 = A.I.R. 1930 Lah. 309.

—*Speech in which the speaker approves of violence as means of achieving self Government amounts to offence under S. 124-A.*

A speech in which the speaker exhorts his audience to persuade Congress to alter their constitutional policy of non-violence into a policy of anarchy is intended to excite disaffection towards the established Government and amounts to an offence under S. 124-A. To advise a person to persuade others to adopt violence as a means of attaining a political goal is no less objectionable than advising that person to commit violence himself for that purpose. In either case the advice is to pursue a course of action which is calculated to disturb the tranquillity of the State. It is a recommendation to oppose the established Government by force. Such a speech as a whole is obviously calculated to cause disaffection towards the Government established by law and the speaker must be deemed to have that intent. (*Fforde, J.*) **ANAND KISHORE v. EMPEROR.** 121 I.C. 76 = 31 Cr.L.J. 201 =

A.I.R. 1930 Lah. 306.

—*Speeches imputing evil motives—Exhortation to escape English rule—Speech is seditious.*

Where a speech attributed evil motives to the Government such as desire of addicting the people to evil habits and of ruining them, and dwelt on the unfairness and partiality in the administration of justice, and the total disregard for the life of an Indian soldier by an English officer, and concluded with exhorting them not to live under the Englishmen, and was coupled with a wholesale denunciation of the Government, the speech was considered seditious. (*Bhidi, J.*) **KEDARNATH v. EMPEROR.** 1929 Cr.C. 442 =

A.I.R. 1929 Lah. 817.

—*Article attributing to Government deliberate policy of fomenting communal troubles—Readers are likely to be thereby disaffected towards Government and hold it in contempt—Writer is guilty of sedition.* (*Courtney Terrel, C.J. and Allanson, J.*) **JAGAT NARAIN LALL v. EMPEROR.** 113 I.C. 696 =

9 P.L.T. 784 = 30 Cr. L.J. 218 = 12 A.I. Cr.R. 110 =

A.I.R. 1929 Pat. 10.

—*Conditions at present in India are much more in favour of free expression than about 20 years ago—To ascribe to Government the intention of dividing and ruling so as to destroy indigenous culture etc. and to state that Government was ruling by brute force are seditious—Though a phrase like “Punjab atrocities” is commonly used by some people, yet, if it is used for generating disaffection, it is an offence.*

Conditions at present in India are quite different from those which existed in 1897 and far greater freedom is given to the press now than was given in those days and things which may now be said and written with impunity would have been treated as seditious at

**PENAL CODE (1860), S. 124-A—Evidence.**

the end of the last century. But we have to consider the state of the minds of the people at present and the present conditions and to decide whether this article is now likely to engender feelings of hatred, enmity or disloyalty in the minds of the readers.

The ascription to the Government of the object as a root principle to divide the races of India so as to strengthen its rule and to destroy the language, culture, trade, commerce, arts and industries by strangling regulations, as well as the description of the Government as a Government which rules by brute force in an arbitrary manner over a people who have no voice in the administration cannot fail to cause a feeling of disaffection and contempt if not hatred in the mind of the Indian reader.

Even the adoption of a phrase like the "Punjab atrocities" may be seditious if the intention is to stir up disaffection against Government though that phrase may be commonly used by portions of the public. (*Adami and Macpherson, J.J.*) NAGESWAR PRASAD v. EMPEROR. 83 I.C. 638=1924 P.H.G.C. 283=26 Cr.L.J. 78=A.I.R. 1925 Pat. 99.

**—S. 124-A—Evidence.**

*Evidence of other speeches—Admission of—Illegality.*

It is not open to a Magistrate to admit any evidence with regard to speeches other than those for which an accused is prosecuted, or to consider them in determining the guilt or otherwise of the accused for having made the speeches for which he is prosecuted, nor even for the purpose of determining the sentence to be awarded to the accused. (*Jai Lal, J.*) PROFESSOR INDRA v. EMPEROR. 31 P.L.R. 625=1930 Cr. C. 914=A.I.R. 1930 Lah. 870.

—Where certain speeches form part of a series of speeches or lectures on one topic delivered within a short period of time, any of such speeches or lectures are admissible under S. 14, as evidence of the intention of the speaker in respect of the speech which forms part of the prosecution in the present case. And a period of six months cannot be described as long for this purpose. (*Tapp, J.*) OM PARKASH v. EMPEROR. A.I.R. 1930 Lah. 867.

—In a case under S. 124-A, whatever the memory of witnesses, their memories as to actual words used should not be relied upon after a considerable time. (*Hilton, J.*) RAM CHANDRA v. EMPEROR. 120 I.C. 798=1930 Cr. C. 331=31 Cr. L.J. 168=A.I.R. 1930 Lah. 371.

—In the absence of other evidence, the mere fact that the title-page of pamphlet bears the accused's name does not justify the conclusion that he and nobody else could be the author and publisher thereof. Such evidence is not sufficient to attribute the authorship of the book to the accused. (*Zafar Ali, J.*) RANJIT SINGH TAJWAR v. EMPEROR. 88 I.C. 356=26 Cr. L.J. 1124=26 P.L.R. 403=A.I.R. 1925 Lah. 569.

**—S. 124-A—Hatred and contempt.**

*Any advocacy for change in Government that brings present Government into hatred etc., comes within section.*

The words used by the legislature in S. 124-A are the "Government established by law in British India." The section does not contemplate the probability of attempts being made to excite hatred and contempt against abstractions, but uses a clear phrase for a definite thing and, therefore, it is no defence to say that the attempt to excite hatred and contempt was directed solely against the particular form of Government now obtaining in India and not against the fact of the Government. Any advocacy regarding change

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in the form of Government as bringing into hatred or contempt or exciting disaffection towards the present Government comes within the mischief of S. 124-A. (*Rankin, C. J., Suhrawardy and Pearson, J.J.*) SOJONI KANTA DAS, *In re*, 34 C.W.N. 217=A.I.R. 1930 Cal. 244 (F.B.)

—It is not necessary that rebellion of any form should be advocated in article—Government may be brought into hatred and contempt by abuse of officials. 22 Bom. 112 and A.I.R. 1929 Cal. 309, *Ref. to. (Rankin, C.J. and C.C. Ghose, J.) SATYA RANJAN BAKSHI v. EMPEROR.* 121 I.C. 749=56 Cal. 1085=1930 Cr. C. 220=31 Cr. L.J. 313=A.I.R. 1930 Cal. 220.

—Writer can discuss policy of Government without attributing base motives to Government amounts to offence.

It is of course open to a writer to criticize any policy of the Government as permitted by Explanations to S. 124-A but if he proceeds to attribute base motives to Government of having deliberately ruined the subjects etc., he will be liable to be punished under S. 124-A.

Where the article as a whole is calculated to bring the British Imperialists, whose policy is criticised, into hatred and contempt and there are clearly references to the acts of Government of India leading to the inference that the Government of India is included among the Imperialists an offence under S. 124-A is committed. (*Bhide, J.*) ARJAN SINGH v. EMPEROR. 1930 Cr. C. 129=A.I.R. 1930 Lah. 186.

—Where allegations bring Government to hatred and contempt, writer is guilty.

An article in a newspaper contained following paragraph: "Under their rule the English have displayed such acts of oppression, highhandedness, excesses, tyranny, repression and dishonesty as are making the world civilization feel ashamed. English rule in India depends upon those bad characters of number 10 of England who have become notorious for their folly, barbarity and hard heartedness. Such cruel, unmannerly and foolish persons are sent as officers of this country as might be considered burdensome for England's soil. This is the reason why the general massacre of Julianwala Bagh, the bloody field of Guru-ka-Bagh and the Karbalas and bloody scenes of Nankana Sahib and Jaito are being seen in India."

*Held*: that the object of the article was evidently to bring the Government into hatred and contempt and to threaten it with vengeance and destruction. The writer was therefore guilty of offence under S. 124 (2). (*Bhide, J.*) LACHHMAN SINGH v. EMPEROR. 1930 Cr. C. 164=A.I.R. 1930 Lah. 156.

—Publication bringing British Government into hatred etc., in any form whatever amounts to offence.

If the subject matter of a publication is likely to bring Government into hatred or contempt or excite disaffection towards it and if it has been published with the intention of producing such effect, it would be immaterial for the purpose of S. 124-A whether the publication assumes the form of a life-sketch or a poem or an allegory or some other form.

The publishing of the life sketch of a person who was admittedly a member of a society whose avowed object was to overthrow the Government established by law in British India is an offence under S. 124 when no reasonable explanation is forthcoming as to why the author thought it fit at that particular time to publish the life sketch. The crucial point for decision in such case is the intention with which the life sketch has been published which is to be gathered

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from the subject-matter as well as the surrounding circumstances. (*Bhide, J.*) **ARJAN SINGH v. EMPEROR.** 1930 Cr.C. 161=A.I.R. 1930 Lah. 153.

—Article can be both seditious and provocative of class enmity.

To attack the policy of the British Government does not necessarily involve attacking the British people and the one need not necessarily be hated when the other is blamed. It is possible that the same article published in a newspaper criminalizes its author both under Section 124-A and Section 153-A. (*Kennedy, J. C. and Raymond, A. J. C.*) **EMPEROR v. NABIBUX.** 81 I.C. 102=17 S.L.R. 341=25 Cr.L.J. 614=A.I.R. 1925 Sind 59.

**—S. 124-A—Intention.**

It is the duty of a historian to make an endeavour to be impartial and not to make a presentation only of the evil deeds of those with whom he is dealing. (*Boys, Bannerji and King, J.J.*) **R. SAIGAL v. EMPEROR.** 1930 A.L.J. 713=A.I.R. 1930 All. 401 (F.B.)

—Speech professing non-violence, but covertly praising violence—Offence.

It is true that the gist of the offence under S. 124-A lies in the intention of the speaker or writer. But intention is connected with consequences. To intend a thing is to act in such a way as to expect that certain consequences would follow. Intention, therefore, is correlated with the natural consequences which would follow from a particular act. Where a person says in his speech that he himself is the follower of the precept of non-violence but at the same time says that he is nobody to find fault with people who in their anger at oppression as is witnessed under the present Government use more violent methods and shoot at members of the Assembly and where throughout his speech he insinuates various disabilities of village life to be due to the present Government, there is an intention on his part to bring the Government into hatred and he commits the offence under S. 124-A. (*Dalal, J.*) **V. S. DANDEKAR v. EMPEROR.** 122 I.C. 596=11 L.R.A.Cr. 40=13 A.I.Cr.R. 214=31 Cr. L.J. 429=A.I.R. 1930 All. 324.

—Intention how to be inferred—Rule stated.

Intention is essential to the offence under S. 124-A and in fact the essence of the crime of sedition consists in the intention with which the language is used and although in inferring the intention the principle that a man must be presumed to intend the natural and reasonable consequences of his action must be applied, the articles should be read in a fair, free and a liberal spirit and if any doubt should arise in regard to the intention, the benefit of that doubt should be given to the accused. Consequently if on reading through the articles and having regard to time, place, circumstances and occasion for publication, the reasonable, natural and probable effect on the minds of people to whom they are addressed, appears to be that feelings of hatred, contempt or dissatisfaction would be excited towards the Government, then it is justifiable to say that the articles are written with that intent and that they are an attempt to create the feelings against which the law seeks to provide. 22 Bom. 122; 2 Bom. L.R. 286; 23 C.W. N. 986 (P.C.) Rel. on. P.R. No. 1 of 1905, Diss. (*Graham and S.K. Ghose, J.J.*) **SATYENDRANATH MAJUMDAR v. EMPEROR.** 34 C.W.N. 1095.

—Intention is necessary in the offence punishable under S. 124-A I.P.C. But the intention is to be gathered from expression used by the accused.

**PENAL CODE (1860), S. 124-A—Intention.**

(*Jai Lal, J.*) **PROFESSOR INDRA v. EMPEROR.**

A.I.R. 1930 Lah. 870.

—Publisher of article must be deemed to intend the natural result of his words.

A publisher of an article must be deemed to intend that which is the natural result of the words used having regard to the character and description of people expected to read them.

Where an article exceeded all the limits of fair and reasonable criticism, vilified the police as a body, in the most approbrious language and contained a threat or warning to Government that if the police continue to act as they have in the past the Empire will be brought to ruin, it must be concluded that the article was clearly intended to create feelings of hostility to Government and create disaffection: 2 Bom. L.R. 286; A.I.R. 1919 P.C. 31, Rel. on. (*Suhrawardy and Graham, J.J.*) **SATYA RANJAN v. EMPEROR.** 117 I.C. 834=30 Cr. L.J. 850=

A.I.R. 1929 Cal. 277.

—Where a speech was addressed to an audience consisting, mostly of ignorant zamindars and the intention for holding the Darga in which the speeches were delivered was unknown,

Held: that the intention had to be gathered solely from the speeches themselves and the effect they were likely to create on that ignorant audience. (*Bhide, J.*) **KEDAR NATH v. EMPEROR.**

1929 Cr. C. 442=A.I.R. 1929 Lah. 817.

—The gist of the offence under S. 124-A lies in the intention of the writer to bring into hatred and contempt the Government and is not to be gathered from isolated or stray passages here and there but from a fair and generous reading of the article as a whole. Further, in gathering the intention allowance must be made for a certain amount of latitude for writers in the public press. (*Addison, J.*) **RAMCHANDRA v. EMPEROR.** 108 I.C. 372=10 A.I. Cr. R. 18=

29 Cr. L.J. 381 (Lah.)

—Intentional attempt to rouse feeling of disaffection must exist—Meaning of language used, as understood by the readers, is the meaning of the writer.

The law as codified in India in S. 124-A represents in substance the English Law of sedition, although it is much more compressed and more distinctly expressed.

In a charge under S. 124-A, the prosecution must prove to the hilt that the intention of the writer or the speaker, whoever he may be, is to bring or attempt to bring into hatred or contempt or excite or attempt to excite disaffection towards the Government established by law in British India. The essence of the crime of sedition, therefore, consists in the intention with which the language is used. What is rendered punishable by S. 124-A is the intentional attempt, successful or otherwise, to rouse as against Government the feelings enumerated in the section, and a mere tendency in an article to promote such feelings is not sufficient to justify a conviction.

The intention of a writer or a speaker, however, has to be gathered from the language used in the particular article or speech which is the subject-matter of the charge. When a man is charged in respect of anything that he has written, the meaning of what he wrote must be taken to be his meaning and that meaning is what his language would be understood to mean by the people to whom it is addressed. (*C. C. Ghose and Gregory, J.J.*) **SATYA RANJAN BAKHSI v. EMPEROR.** 103 I.C. 771=

45 C.L.J. 638=28 Cr. L.J. 723=

A.I.R. 1927 Cal. 699.

**PENAL CODE (1860), S. 124-A—Intention.**

*Intention will be presumed from language and conduct of accused who must rebut presumption.*

Intention is an essential element in the offence of sedition, though the section does not expressly say so. It is not necessary for the prosecution to prove the intention directly by evidence which in most cases would be impracticable. The law will presume the intention, whether good or bad, from the language and conduct of the accused, and it will be then for him to show that his words were harmless and his motives innocent.

The article was written in Gurmukhi at the time when the relations between the Government and the Sikhs were very much strained. The Government was therein charged with having resorted to various excesses in order to humiliate the Sikh community. Its policy was designated as a double-faced policy and it was insinuated that in order to gain its ulterior objects the Government had not hesitated to disregard even the religious scruples and prejudices of the Sikh community.

*Held:* that it was seditious. (*Moti Sagar, J.*)  
**JIWAN SINGH v. EMPEROR.**

82 I.C. 574=  
6 L.L.J. 379=25 Gr. L.J. 1342=  
A.I.R. 1925 Lah. 16.

*Books intended to educate public opinion—No offence.*

A book or report published in England like Ramsay MacDonald's "Awakening of India" or a despatch of the Secretary of State is intended to inform the public in England of this day about the state of affairs in India and it can have no intention of causing disaffection in this country or of bringing the Government established in this country into contempt. Those publications would in any case come under one of the two explanations even if published in India. (*Adami and Macpherson, JJ.*) **NAGESWAR PRASAD v. EMPEROR.**

83 I.C. 638=1924 P.H.C.G. 283=  
26 Gr. L.J. 78=A.I.R. 1925 Pat. 99.

*Intention to cause disaffection is necessary.*

Court must look to the real intention and spirit of the article. It has to see whether the general tendency of the article is such as to show an intention to excite the feelings mentioned in the section. The amount or intensity of the disaffection is absolutely immaterial, for if a man excites or attempts to excite feelings of disaffection at all even in the smallest degree, he is guilty under the section. The class of paper in which the article appears and the class of people among whom it will be circulated are important points. Though the ultimate object of the writer may be unobjectionable, if explaining that object, he uses language which is likely to bring the Government into contempt or to excite disaffection, S. 124-A will apply. (*Adami and Macpherson, JJ.*) **NAGESWAR PRASAD v. EMPEROR.**

83 I.C. 638=1924 P.H.C.G. 283=  
26 Gr. L.J. 78=A.I.R. 1925 Pat. 99.

*Proof of—Articles in same issue can be used to prove intention.*

Articles published in the same issue of a paper and forming the subject matter of one or other of the charges may be admitted to prove intention. (*Graham and S. K. Ghose, JJ.*) **SATYENDRANATH MAJUMDAR v. EMPEROR.**

**—S. 124-A—Offence under.**

It cannot be said that the speech even if it brought the Government into hatred and contempt can be considered to be innocuous because such hatred and contempt cannot be increased from the standard that already exists in the minds of the people. (*Dalal, J.*)  
**V. S. DANDAS v. EMPEROR.**

122 I.C. 596=

**PENAL CODE (1860), S. 124-A—Offence under.**

11 L.R.A. Cr. 40=13 A.I. Cr. R. 214=  
31 Gr. L.J. 429=A.I.R. 1930 All. 324.

*A Historical article—Suppression and consistent avoiding truth or anything that is in Government's favour amounts to sedition.*

No exception can be taken to an article so far as it sets forth in chronological sequence the various landmarks in India's struggle for independence. But if the writer does not content himself with a mere recapitulation of events but in places makes comments which indicate that his purpose was not merely to appeal to the interest of his readers in a historical retrospect but evinces further object of inflaming opinion against the Government, specially when the striking feature of the articles is consistently one-sided studiously avoiding and suppressing the truth or anything that goes in favour of the Government, the article comes within the mischief of S. 124. (*Graham and S. K. Ghose, JJ.*) **SATYENDRANATH MAJUMDAR v. EMPEROR.**

34 C.W.N. 1095.

*Vilification of Government by contrast—Offence.*

It is one thing to hold up an admired character as a pattern in a speech and quite another to vilify the British by contrast; but a speaker cannot be allowed to use the former as a cloak for the latter if the result of what he says in fact be to inspire his audience with hatred and disaffection towards Government. Where the speaker, in his speech, oversteps the boundary line, he is guilty under S. 124-A. (*Pearson and Patterson, JJ.*) **JNANAJAN NIYOGI v. EMPEROR.**

A.I.R. 1930 Cal. 363.

*Political speech—Reference to economic exploitation—Inference—Sentence for offence—Consideration.*

Where the accused in his speech referred to the "war of independence" of 1857 which "unluckily failed" and advised his hearers to attain the same object though by different means, but it appeared that he nowhere advocated violence, *Held*, that the accused was liable to be convicted under S. 124-A. I.P.C. *Held* however that the mere reference to the economic exploitation of India will not constitute an offence under the section; considerations in passing sentence under S. 124-A indicated. (*Tek Chand, J.*) **RAM SARAN DAS v. EMPEROR.**

31 P.L.R. 688=

A.I.R. 1930 Lah. 892.

*A speaker representing in his speech that the Penal Code enforced by the Government attacks every religion is guilty under S. 124-A.*

Where reading the speech as a whole there cannot be the least doubt that it is an attempt to excite, disaffection to the Government by law established, the speaker is guilty under S. 124-A. (*Curriel, J.*) **MALIK AMIR ALAN v. EMPEROR.**

A.I.R. 1930 Lah. 885.

*Seditious article in newspaper—Responsibility of Editor.*

If an article constitutes an offence under S. 124-A, the fact that it was not written by the editor does not affect the question of his guilt whatever effect it may have on the question of sentence.

When therefore an editor, though not the author of an article falling under S. 124-A is willing to take the responsibility which is legally his, but adds that he published it at a time of stress when he was not in a position to fully discharge his liability as an editor and publisher, he deserves to be treated leniently, specially when the policy of the newspaper ordinarily is in favour of non-violence. (*Abdul Qadir, J.*) **KHUSAL CHAND KHURSAND v. EMPEROR.**

A.I.R. 1930 Lah. 875,

**PENAL CODE (1860), S. 124-A—Offence under.**

—If certain alleged facts are used as a peg on which to hang seditious comments, the truth of the facts does not excuse the seditious commentary: 19 Bom. L.R. 211, Dist. (*Hilton, J.*) **RAMCHANDRA v. EMPEROR.** 120 I.C. 798 = 1930 Cr. C. 331 =

31 Cr. L.J. 168 = A.I.R. 1930 Lah. 371.

—*Allegations against Home Government do not amount to offence under S. 124-A.*

A paragraph containing following statements was printed and published by editor of a newspaper. The writer said that the English had made a fine move for taking possession of Kabul by their duplicity. On the one hand the Afghan King had been made to introduce European fashions in his country and on the other the Afghan subjects had been incited to rebel against their King.

*Held*: that the allegations did not fall within the scope of S. 124-A. There was no reference in the paragraph to the Government established by law in British India. The policy criticised was that of Home Government and not of Indian Government. The language also was not such as could be reasonably held to be calculated to excite disaffection towards His Majesty or the Government of British India. (*Bhide, J.*) **LACHHMAN SINGH v. EMPEROR.**

1930 Cr. C. 164 = A.I.R. 1930 Lah. 156.

—Report of speech not verbatim—Portions taken down correctly taken down—Excerpts fair representation of general drift and subject matter bringing speech under S. 124-A—Conviction is justified. (*Dulip Singh, J.*) **SANT RAM v. EMPEROR.**

123 I.C. 572 = 1930 Cr. C. 102 = 31 Cr. L.J. 562 = A.I.R. 1930 Lah. 86.

—An article attacking the police comes within the purview of S. 124-A since the police is one of the human agencies through which Government acts: 19 Bom. L.R. 211, Rel. on. (*Suhrawardy and Graham, JJ.*) **SATYA RANJAN v. EMPEROR.**

117 I.C. 834 = 30 Cr. L.J. 850 = A.I.R. 1929 Cal. 277.

—*Mere printing is sufficient, publication is not necessary.*

In a case under S. 124-A, the mere authorship of a seditious leaflet which has been published by others would be sufficient to constitute the offence. So where a person is proved to have caused the leaflet to be printed, he is liable to be dealt with under S. 124-A, whether he was responsible for its publication or not. (*Darwood, J.*) **CHELLAM PILLAI v. EMPEROR.**

117 I.C. 49 = 30 Cr. L.J. 707 = A.I.R. 1928 Rang. 276, —S. 124-A.—Principles of Construction.

The book must be judged as a whole with its introduction and acknowledgement or dedication. (*Boys, Banerji and King, JJ.*) **R. SAIGAL v. EMPEROR** 1930 A.L.J. 713 = A.I.R. 1930 All. 401. (F.B.)

—In properly construing a speech, it has to be read as a whole in a fair, free and liberal spirit, and one should not pause on an objectionable sentence here or a strong word there: 19 Bom. L. R. 211, Foll. (*Bhide, J.*) **KEDAR NATH v. EMPEROR.**

1929 Cr. C. 442 = A.I.R. 1929 Lah. 817.

—*Article must be considered as a whole.*

An article, alleged to be seditious, must be read as a whole to see if it is likely to bring the Government into hatred or contempt or is liable to excite disaffection against it. (*Courtney-Terrell, C. J. and Allanson, J.*) **JAGAT NARAIN v. EMPEROR.**

113 I.C. 696 = 9 P.L.T. 784 = 30 Cr. L.J. 213 =

12 A.I.Cr.R. 110 = A.I.R. 1929 Pat. 10

—*Section should be narrowly construed—Article should be read as a whole—Some latitude to public press should be allowed.*

The gist of the offence lies in the intention of the

**PENAL CODE (1860), S. 124-A—Printer.**

writer. The intention is not to be gathered from isolated or stray passages here and there. It must be gathered from a fair and generous reading of the article in respect of which the charge has been laid. In gathering the intention, allowance must be made for a certain amount of latitude to writers in the public press. S. 124-A is in such wide terms that unless it is very strictly or narrowly construed, there is a real danger that legitimate criticism may be stifled altogether: A. I. R. 1927 Cal. 698, and A. I. R. 1927 Cal., 747, Rel. on.

Where it was plainly suggested in the article that the riots which took place in Calcutta in the summer of 1926 were allowed to continue because of the motive which the Government had, namely to keep the Hindus and Mahomedans apart by favouring the Mahomedans,

*Held*: that the argument of the writer was to show that the only obstacle to Hindus and Mahomedans coming together was the presence of a third party, namely the Government who were animated by a bad political motive and that the writer was therefore guilty. (*C. C. Ghose and Gregory, JJ.*) **GOPAL LAL SANYAL v. EMPEROR.** 105 I.C. 228 = 46 C.L.J. 156 =

9 A.I.Cr.R. 47 = 28 Cr. L.J. 900 =

A.I.R. 1927 Cal. 751.

—*Words used should be construed liberally.*

The expression in the section "calculated to bring into hatred or contempt or excite or attempt to excite disaffection" must, as a rule of construction, be very narrowly construed so as to interfere as little as possible with the liberty of the subject and the freedom of speech. If a party publishes any matter in a newspaper and it contains no more than a calm, dispassionate and quiet discussion showing possibly a little feeling in the man's mind, that will not be seditious; but if the article goes beyond and attributes improper and dishonest or corrupt motive and thereby is calculated to excite tumult then it is seditious.

While a very large amount of latitude is and must be allowed to writers in the public press, the interests of the State must at the same time, be not lost sight of and writers cannot under the guise of criticism of public affairs, be allowed to indulge in attributing base, improper or dishonest motives to those who carry on the work of the Government of the country. (*C. C. Ghose and Gregory, JJ.*) **SATYA RANJAN BAKSHI v. EMPEROR.**

103 I.C. 771 =

43 C.L.J. 638 = 28 Cr.L.J. 723 =

A.I.R. 1927 Cal. 698

—Article as a whole should be taken—Single sentences or expressions should not be looked to—Undue importance should not be given to inflated or turgid language. (*Adami and Macpherson, JJ.*) **NAGESWAR PRASAD v. EMPEROR.**

83 I.C. 638 =

1924 P.H.C.C. 283 = 26 Cr.L.J. 78 =

A.I.R. 1925 Pat. 99.

**—S. 124-A—Printer.**

—*Knowledge can be presumed from circumstances.*

Knowledge by a printer of the nature of the matter printed is a question to be determined on the particular facts of a particular case.

Where the seditious pamphlet was a small one and the title page contained seditious matter prominently displayed and the press was not a large business with numerous employees and a Manager who was not the keeper,

*Held*: that it must be presumed that the keeper of the press must have had knowledge of the contents of the pamphlet. (*Campbell, J.*) **RAM SARAN DATTA v. EMPEROR.**



**PENAL CODE (1860), S. 124-A—Procedure.**  
**EMPEROR.** 84 I.C. 446=26 Cr. L.J. 302=  
 A.I.R. 1925 Lah. 298.

—**S. 124-A—Procedure.**

—*Complaint under S. 124-A, Penal Code—Alleged speech not attached, nor mentioned in complainant's statement—Complaint held not proper.*

A complaint was filed under Penal Code, S. 124-A but no original or translation of alleged speech was attached to it. Sanction of the Local Government required under S. 196, Cr. P. Code, was attached. Although in the sanction order attached to the complaint a short abstract of the words used was given, it was not mentioned by the complainant in his statement. On application by the accused for granting bail the Magistrate refused bail.

*Held*: that there was no proper complaint and the Magistrate did not direct his mind to question of presence or absence of proper complaint and the order refusing bail was not passed on proper appreciation of the facts and non-bailable warrants should not have been issued. (*Dalip Singh, J.*) **RAM CHAND v. EMPEROR.** 120 I.C. 10=30 Cr. L.J. 1129=  
 A.I.R. 1929 Lah. 284.

—A trial for sedition under S. 124-A, I. P. C., should be by a special jury: (1908) 10 Bom. L.R. 848, Foll. (*Fawcett, J.*) **EMPEROR v. PHILLIP SPRATT.** 108 I.C. 509=30 Bom. L.R. 313=  
 29 Cr. L.J. 411=9 A.I. Cr. R. 433=  
 A.I.R. 1928 Bom. 74.

—If a leaflet is printed at R, the mere fact that it was published elsewhere would not oust the jurisdiction of R Court to try the case, one of the ingredients of the offence, *viz.*, the creation of the written words having taken place within the jurisdiction of R Court. (*Darwood, J.*) **CHELLAM PILLAI v. EMPEROR.** 117 I.C. 49=30 Cr. L.J. 707=  
 A.I.R. 1928 Rang. 276.

—**S. 124-A—Sentence.**

—*Mitigating circumstances.*

Where the accused reproduced in this paper an article in another paper which was headed 'Swaraj or death' and which was seditious, *Held* that the accused was liable to be convicted under S. 124-A and the fact that he copied the articles and that the writer of the original article was not convicted, though good ground for passing a lesser sentence, did not exculpate the accused from guilt. *Held* also that the fact that the accused aimed at weaning the members from the council would also be a mitigating circumstance as regards the sentence. (*Boys, J.*) **KRISHNA GOPAL SHARMA v. EMPEROR.** 1930 A.L.J. 1215.

—Where the speaker in his speech does not in terms advocate violence in any shape and there is nothing in the speech which might by implication or innuendo suggest its use, a heavy sentence is not called for: 108 I.C. 372, Ref. (*Tek Chand, J.*) **RAM SARAN DAS v. EMPEROR.** A.I.R. 1930 Lah. 892.

—In considering the question of sentence with regard to an offence under S. 124-A each case must be dealt with on its own particular facts and the circumstances and atmosphere of the time when it was delivered must be considered. (*Currie, J.*) **MALIK AMIR ALAM v. EMPEROR.** A.I.R. 1930 Lah. 885.

—Accused guilty where intention to create disaffection towards Government is clear—But where speech is not in intemperate language and accused is old man severe punishment is not called for. (*Currie, J.*) **SHAM DAS v. EMPEROR.**

A.I.R. 1930 Lah. 874.

—In the case of violent political speeches the dividing line between culpability and an honest desire

**PENAL CODE (1860), S. 141—Disobedience of order.**

to obtain redress from the Government is very thin. Where the accused in one speech appealed to people to carry on the independence movement regardless of consequences and in the other pleaded for non-payment of taxes as a means of remedying agrarian grievances,

*Held* that the first speech alone was seditious but even that did not call for a severe sentence. (*Jai Lal, J.*) **INDRA v. CROWN.** 31 P. L. R. 625=  
 1930 Cr. C. 914=A.I.R. 1930 Lah. 870.

—Where the offence is a first offence and committed by a person of peaceful character on the impulse of the moment, the sentence of 12 months' rigorous imprisonment and a fine of Rs. 500 is somewhat severe and should be reduced to wit, to what had been undergone. (*Fforde, J.*) **ANAND KISHORE v. EMPEROR.** 121 I. C. '6=31 Cr. L. J. 201=  
 A. I. R. 1930 Lah. 303.

—The object of the Crown, in instituting proceedings of this nature, is not to take vindictive action. (*C. C. Ghose and Gregory, JJ.*) **SATYA RANJAN BAKSHI v. EMPEROR.** 103 I. C. 771=  
 45 C. L. J. 638=28 Cr. L. J. 723=  
 A. I. R. 1927 Cal. 658.

—**S. 141—"Assembly".**

When two or more mobs start from different localities, operate independently and never mingle together at any time or place, the mere fact that they have a common intention will not make them one assembly. The question whether two groups of men do or do not form one "assembly" is a question of fact in each case. (*King, J.*) **WAZID ALI v. KING EMPEROR.** 100 I.C. 817=4 O.W.N. 240=  
 28 Cr. L. J. 337=7 A. I. Cr. R. 567=  
 A. I. R. 1927 Oudh. 151.

—**S. 141—Charge under.**

The charge of unlawful assembly with the common object of 'harassing Hindus' is not too general and unfair or unjust to the accused. What is necessary is that the accused shall have reasonably distinct notice of the common object imputed to them and of the manner in which that common object is to be brought within the language of S. 141. (*Ayling and Odgers, JJ.*) **AYAMAD, In re.** 74 I.C. 1044=  
 18 M. L. W. 350=24 Cr. L. J. 832=  
 A. I. R. 1924 Mad. 376.

—**S. 141—Common object—Finding—Need for.**

Where the common object of an unlawful assembly is to cause a particular kind of hurt, and the whole judgment is directed to the question whether that hurt was caused or not, it is unnecessary to come to a definite finding in terms of the common object. (*Wort, J.*) **RAMDARSON MAHTON v. EMPEROR.**

116 I.C. 523=10 P.L.T. 136=30 Cr. L.J. 634=  
 13 A. I. Cr. R. 59=A.I.R. 1929 Pat. 206.

—**S. 141—Compulsion to omit act.**

It is not sufficient to prove that the common object of the accused's party was to compel the complainant by means of force to omit, for the time being, to do a certain act. The act omitted must be one which the complainant was legally entitled to do and if it was not such an act cl. 5 cannot apply. (*Wazir Hasan, A.J.C.*) **BAIJNATH v. EMPEROR.** 85 I.C. 353=  
 27 O. C. 292=26 Cr. L. J. 513=  
 A. I. R. 1925 Oudh 425.

—**S. 141—Disobedience of order.**

Where the offence which is alleged to be the common object of an assembly is an offence under S. 188 it comes within Cl. 1, S. 40, and as such falls under S. 141, Cl. (3): A. I. R. 1923 Pat. 1 (S.B.), Ref.



**PENAL CODE (1860), S. 141—"Enforce a right".**  
(*Pathar and Wild, JJ.*) B. LALCHANDRA TRIMBAK  
v. EMPEROR. 31 Bom. L. R. 1151=

1929 Cr. C. 545=A.I.R. 1929 Bom. 433.

—S. 141—"Enforce a right."

—*'Enforce a right' relates only to an initial act in furtherance of a right.*

The true import of the expression 'to enforce any right' relates to an initial act when it is done in furtherance of any right and not to an act when it is done to maintain a position already achieved in the lawful exercise of that right.

Where the accused, being molested while watering their fields in the exercise of their lawful rights, resorted to force,

*Held:* that they were not liable. A.I.R. 1923 All. 194: 9 O.L.J. 291 and 10 O.C. 196. Foll. (*Wazir Hasan, A.J.C.*) BAIJNATH, v. EMPEROR. 85 I.C. 353= 27 O.C. 292=26 Cr. L.J. 513=

A.I.R. 1925 Oudh 425.

—S. 141—Enforcement of right.

In a village an agreement had been entered into by leaders of Hindus and Mahomedans that the former would not slaughter pigs and the latter would not slaughter cows in public places. This agreement was observed by both parties for about a year. Later on, a mob of Hindus, suspecting that Mahomedans were going to slaughter a cow in a certain place, assembled in a large number with lathis, etc. It was argued that their common object, if at all, was to maintain a right which they had enjoyed for a long time.

*Held:* that their object must be deemed to be to enforce a right with a show of criminal force and that they were rightly charged with it. (*Adami and Wort, JJ.*) LACHMI SINGH v. EMPEROR.

109 I.C. 503=10 A.I. Cr. R. 328=29 Cr. L.J. 567= A.I.R. 1928 Pat. 562.

—S. 141—Entry by force.

Persons effecting entry on land by means of criminal force are members of an unlawful assembly. (*Mullick, Ag. C.J. and Wort, J.*) EMPEROR v. BANDHU SINGH.

106 I.C. 691=6 Pat. 794=29 Cr. L.J. 99= 9 A.I. Cr. R. 258=A.I.R. 1928 Pat. 124.

—S. 141—Essentials.

The law does not declare the mere assemblage of men however large illegal. What it requires is that in order to be illegal it must be inspired by an illegal object. (*Kinkhede, A.J.C.*) SITARAM v. EMPEROR. 86 I.C. 731=26 Cr. L.J. 587=A.I.R. 1925 Nag. 260.

—*Immediate purpose to carry out common object must exist—Deliberations for future individual action do not constitute an assembly unlawful.*

To constitute an assembly an unlawful one it must be a part of the plan of the meeting that the common object should be forthwith carried into effect. If men meet only to arrange plans for future action it cannot be said that there was any fear of the breach of the peace without which there can be no unlawful assembly. There must be some present and immediate purpose of carrying into effect the common object. A meeting for deliberation only and to arrange plans for future action to be taken individually and not jointly is not an unlawful assembly. (*Brown, J.*) EMPEROR v. NGA TUN MAUNG. 92 I. C. 849=

4 Bur. L.J. 169=27 Cr. L.J. 337= A. I. R. 1925 Rang. 362.

—S. 141—Obstruction.

Order of Court in effect though not in terms to cut a bundh—Order vague—Assembly engaged in resisting the cutting is not unlawful. (*Greaves and Panton, JJ.*) ABDUL JALIL v. EMPEROR. 84 I. C. 343=

28 G.W.N. 732=26 Cr. L.J. 279= A. I. R. 1924 Cal. 996.

**PENAL CODE (1860), S. 143—Defence of rights.**

—S. 141—Obstruction to police.

Where the immediate object of an assembly when it reached the Police station was to obstruct by threat the police in the discharge of its duty,

*Held:* that the object in itself and apart from any of the other clauses of S. 141 is sufficient to bring the case within the purview of the 3rd clause of the section. (*Mears, C.J. and Piggott J.*) ABDULLAH v. EMPEROR. 92 I.C. 145=

4 L.R.A. Cr. 143=27 Cr. L.J. 193=

A. I. R. 1924 All. 233.

—S. 141—Proof of Common intention.

—*Common intention is a matter of inference.*

In order to establish the common intention of any unlawful assembly it is not necessary to prove that its members actually met and conspired to commit an offence, but such intention can be inferred from the circumstances of the case. In the case of concerted attack by five or more persons it is a perfectly valid and reasonable inference that they all had a common intention and were, therefore, members of an unlawful assembly. (*Jailal, J.*) LOJJA v. EMPEROR.

100 I.C. 232=9 L.L.J. 209=

28 Cr. L.J. 264=28 P.L.R. 273=

A.I.R. 1927 Lah. 193.

—In a charge of rioting, the common object of which is to enforce a right, or a supposed right, it is necessary for the prosecution only to show that the accused was not in actual possession at the time of the occurrence. (*Newbould and Mukerji, JJ.*) CHHAKARI SHAIK v. EMPEROR. 85 I.C. 711=

26 Cr. L.J. 567=A.I.R. 1926 Cal. 439.

—S. 141—Religious procession.

Every one has right of conducting religious procession through public street—Knowledge of forcible opposition by another party does not constitute the members of the procession unlawful assembly—But party going out for the express purpose of fighting constitutes an unlawful assembly. (*Sampson, A. J. C.*) DILLI v. EMPEROR. 89 I.C. 269=

2 O.W.N. 589=26 Cr. L.J. 1325=

A.I.R. 1925 Oudh 686.

—S. 141—Taking possession by force.

Accused party having title to the disputed property and therefore taking possession from complainant by force—Unlawful assembly is formed. (*Macpherson, J.*) JASURAM MARWARI v. EMPEROR. 74 I.C. 73=

2 Pat. L.R. Cr. 13=24 Cr. L.J. 743=

A.I.R. 1924 Pat. 143.

—S. 142—Resistance to attachment.

The fact that a Court exceeded its jurisdiction in issuing a warrant of attachment is no defence for a charge on an assault committed on the Court's officer who was acting in good faith. (*Teunon and Ghose, JJ.*) DURGA KOMAR DE v. SAMEDUR RAJA CHAUDHURI. 61 I.C. 167=22 Cr. L.J. 343 (Cal.)

—S. 143—Common object—Inference of.

Where a crowd has dispersed without taking any action, the intention and common object of that crowd can only be inferred from the surrounding circumstances, and among other circumstances the attitude and demeanour of the crowd itself is one of the points which must be taken into consideration. (*Jwala Prasad, J.*) JAGI RAUT v. EMPEROR. 105 I.C. 234=9 P.L.T. 260=28 Cr. L.J. 906=

A.I.R. 1928 Pat. 98.

—S. 143—Defence of rights.

It is little short of self-evident that in defending a right which the accused are possessed of and *bona fide* believe that they have a right to, whether it be tangible property or such a right as that to a supply of water, they are not criminally punishable if they

**PENAL CODE (1860), S. 143—Defence of rights.**  
form an assembly for that purpose: 24 Cal. 686;  
36 Cal. 865; A.I.R. 1925, Lah. 49; 17 C. W. N. 1132,  
Foll.; 16 Cal. 206, not Appr. (*Curgenven, J.*)  
**VEERABADRA PILLAI v. EMPEROR.**

105 I.C. 687=51 Mad. 91=26 M.L.W. 549=  
1927 M.W.N. 828=28 Cr. L.J. 945=  
9 A.I. Cr. R. 120=A.I.R. 1927 Mad. 986=  
53 M.L.J. 696.

—The phrase "to enforce a right" can only  
apply when the party claiming the right has not pos-  
session over the subject of the right and therein lies  
the distinction between "enforcing a right" and  
"maintaining a right." A party in possession is entitled  
to resist and repel an aggression and his action in so  
doing would be for the maintenance of his right.  
(*Scott-Smith and Fford, J.J.*) **BAGH SINGH v.**  
**EMPEROR.**

81 I.C. 113=23 Cr. L.J. 625=  
A.I.R. 1925 Lah. 49.

#### —S. 143—Exercise of rights.

Where water draining from the complainant's  
mill is polluting the water supply and so damaging  
the crops and rendering the water unfit for drinking,  
the accused in taking steps to prevent the contami-  
nation of their drinking water, act under colour of a  
right so to do and they, therefore, cannot be con-  
victed of forming members of an unlawful assembly  
and committing mischief: 23 M. L. T. 210, Expl.  
and Dist. (*Curgenven, J.J.*) **VEERASWAMI v. KANA-**  
**KAYYA.** 121 I.C. 159=1929 Cr. C. 481=  
1929 M.W.N. 711=2 M.Cr.C. 318=31 Cr. L.J. 223=  
A.I.R. 1929 Mad. 833.

#### —S. 143—Ingredients of offence.

The mere fact that the accused went to a particular  
place armed with lathis with more than five persons  
will not ordinarily constitute an offence under S. 143.  
(*Suhrwardy and Cammiade, J.J.*) **DIBAKAS v.**  
**SAKTIDHAR KABIRAJ.** 101 I.C. 180=54 Cal. 476=  
31 C.W.N. 527=28 Cr. L.J. 404=8 A.I. Cr. R. 56=  
A.I.R. 1927 Cal. 520.

#### —S. 143—Public meeting.

Public meeting lawfully convened—Some members  
of it attempting by show of force to coerce the others  
into taking a certain course—Whole assembly does  
not become unlawful. (*Brown, J.*) **MAUNG OH**  
**KYAN v. EMPEROR.** 88 I.C. 706=  
26 Cr.L.J. 1186=4 Bur.L.J. 80=  
A.I.R. 1925 Rang. 243.

#### —S. 143—Theft.

Where the common object of the unlawful assembly  
is theft the accused cannot be separately convicted  
and sentenced under the two sections. Sections 379 and  
143 or Section 144 and the conviction and the sentence  
under one of these two sections must be set aside.  
(*Adami and Sen, J.J.*) **PRAYAG GOSE v. EM-**  
**PEROR.** 82 I.C. 284=3 Pat. 1015=  
5 P.L.T. 571=1924 P.H.C.G. 247=  
25 Cr.L.J. 1276=A.I.R. 1924 Pat. 764.

#### —S. 144—Prosecution of common object.

Common object of shooting and looting—Some  
members arming themselves with gun—Offence.

Where the accused assembled and formed the com-  
mon object of shooting the deceased and some came  
with guns, held, the carrying of guns was not prepa-  
ration but was an act made in prosecution of the com-  
mon object and that all the members were liable to be  
convicted under S. 144 read with S. 149 of the Penal  
Code. The word 'prosecution' means following up.  
(*Wallace and Jackson, J.J.*) **RAMARAJU TEYAN, In re.**  
1930 M.W.N. 377.

#### —S. 146—Common motive.

Where the members of a crowd are actuated by a  
single motive and they make a series of attacks with

**PENAL CODE (1860), S. 147—Common object.**  
the same object in view each time, only a single riot is  
committed and not a number of separate riots although  
the crowd may vary in its composition. (*Pullan,*  
*A. J. C.*) **PRAG v. EMPEROR.** 82 I.C. 33=  
11 O.L.J. 693=25 Cr.L.J. 1169=  
A.I.R. 1925 Oudh. 65.

#### —S. 146—Interpretation.

—"Common intention" in S. 34 does not mean  
the same thing as "common object" in Ss. 146 and  
149.

The words "common intention" in S. 34 have not  
the same meaning as "common object" in Ss. 146 and  
149. The object of an assembly as a whole may not  
be the same as the intention which several persons  
may have when in pursuance of that intention they  
perform a criminal act and it may well be that the  
object of the assembly was lawful whereas the inten-  
tion common to those of the assembly who jointly  
committed a criminal act was in itself criminal and  
joint criminal act must be equally imputed to all of  
them. 52 Cal. 197 (P.C.), Rel. on. (*Courtney Terrell,*  
*C. J. and Adami, J.*) **BHONDU DAS v. EMPEROR.**

113 I.C. 676=7 Pat. 758=30 Cr.L.J. 205=  
12 A.I.Cr.R. 6=11 P.L.T. 111=  
A.I.R. 1929 Pat. 11.

#### —S. 146—Sentence.

Organized fights with each side armed with lathis  
are grave infractions of the law and frequently result  
in the death of one or more combatants. The in-  
troduction of the pistol is an added aggravation and  
in such cases transportation for life is the only ap-  
propriate sentence that could be passed against the  
combatant who uses the fire-arm and brings down a  
man to the ground though not dead, at least wounded.  
(*Mears, C. J. and Sulaiman, J.*) **AJUDHIA PRASAD**  
**v. EMPEROR.** 87 I.C. 597=26 Cr.L.J. 997=  
6 L.R.A.Cr. 81=A.I.R. 1925 All. 664.

#### —S. 14;—

Common object.

Conviction, alteration of.

Conviction and sentences.

Conviction of some only.

Evidence and onus.

Lawful acts and private defence.

Possession.

Rioting.

Violence.

What constitutes offence.

Miscellaneous.

#### —S. 147—Common object.

Where once a party entitled to possession forcibly  
takes possession, his retaining possession subsequently  
by force is not with the common object of taking  
possession by force and the opposite party has no  
right to eject them forcibly. (*Newbould and*  
*Mukerji, J.J.*) **AHED FAKIR v. EMPEROR.** 87 I.C. 98=  
26 Cr.L.J. 946=43 C.L.J. 245=  
A.I.R. 1925 Cal. 1235.

—If certain persons jointly enter on certain land  
in defiance of an order that has been passed under  
S. 144, Cr. P. Code, though some may be guilty of the  
offence under S. 188, I.P.C. and others of abetment of  
that offence nevertheless the common object of them  
all is one and the same. (*Newbould and Mukerji, J.J.*)  
**NAYAN ULLAH v. EMPEROR.** 85 I.C. 813=  
26 Cr. L.J. 594=A.I.R. 1925 Cal. 903.

—Charge for offence with one common object.  
will vitiate conviction for offence with another com-  
mon object. (*Kulwant Sahay, J.*) **SHAFAYET KHAN**  
**v. EMPEROR.** 81 I.C. 794=25 Cr.L.J. 1018=  
A.I.R. 1925 Pat. 152.

**PENAL CODE (1860), S. 147—Common object.**

*Common object once alleged failing, another cannot be invented.*

Where the common object assigned in the charge as framed to support a case under S. 147 has not been sustained, another common object cannot be invented in order to support the conviction. 41 Cal. 43, 33 Cal. 295, 2 C.L.J. 516, 24 Cal. 686, Foll. (*Mookerjee and Chatterjee, JJ.*) EMPEROR v. AKBAR MOLLA.

81 I.C. 261 = 51 Cal. 271 = 38 C.L.J. 379 =  
25 Cr. L.J. 773 = A.I.R. 1924 Cal. 449.

**—S. 147—Common Object—Proof of.**

The mere fact that 20 or 30 persons assembled and some of them had sticks in their possession would not be sufficient to establish that their intention was to accomplish their object by the use of criminal force. 24 Mad. 124, Foll.

Injuries inflicted by these persons in course of defending a sudden unexpected attack do not render the assembly unlawful. The common intention of an unlawful assembly to use criminal force must be established as a fact by legal evidence. (*Srinivasa Ayyangar, J.*) RAMASWAMI v. EMPEROR. 91 I.C. 540 =

27 Cr. L.J. 108 = 1925 M.W.N. 666 =  
A.I.R. 1925 Mad. 1213.

**—S. 147—Common object—Specification.**

Omission to specify common object in the charge does not vitiate the trial unless the omission has prejudiced the accused or resulted in a failure of justice. (*Fawcett and Mirza, JJ.*) HASANALI v. EMPEROR.

115 I.C. 399 = 39 Bom. L.R. 653 = 30 Cr. L.J. 467 =  
12 A.I.Cr.R. 303 = A.I.R. 1928 Bom. 236.

*—The principle and the prominent common object should form the subject of the charge under S. 147, and not the incidental happenings.*

The principal and the prominent common object should form the subject of the charge under S. 147, and not the incidental happenings.

In his first information complainant charged the accused who constituted an unlawful assembly with the common object of destroying a hut. That charge was not substantiated but it was proved that the complainant was beaten incidentally by the assembly. Beating the complainant was not the principal or the sole object of the assembly. However, the accused were convicted under S. 147, holding that the common object of the assembly was to assault.

*Held*: that the conviction was bad. (*Jwala Prasad, J.*) AKLU MIAN v. EMPEROR. 108 I.C. 421 =  
29 Cr. L.J. 390 = 10 A.I.Cr.R. 132 =

A.I.R. 1928 Pat. 406.

*—Omission to state the common object in the charge under S. 147, does not vitiate a conviction if there is evidence on record to show it. (Raza, J.)* EKADASHI v. EMPEROR.

99 I.C. 235 =  
28 Cr. L.J. 107 = A.I.R. 1927 Oudh 85.

*—In the case of rioting it is necessary that the common object of the unlawful assembly should have been clearly stated in the charge. (Zafar Ali, J.)* ALLAH DAD v. THE CROWN.

75 I.C. 731 =  
25 Cr. L.J. 43 = A.I.R. 1924 Lah. 667.

**—S. 147—Conviction, alteration of.**

*—Persons originally charged under S. 147, and 353—Evidence not definitely disclosing which of the accused actually struck—Conviction can be altered to one under S. 149, in appeal.*

Section 149 does not provide for a separate offence, but merely is a declaration that persons found in certain circumstances cannot set up as a defence the fact that they themselves did not commit that offence by their own hands.

Certain persons were originally charged under S. 147 and 353 for assaulting a constable with a view

**PENAL CODE (1860), S. 147—Conviction and sentences.**

to resist him and to rescue a certain prisoner. But evidence did not disclose which of the accused actually struck the constable. In consequence, conviction from one under S. 147 and S. 353 was altered to a conviction under Ss. 149 and 323 in appeal. It was contended that the conviction was bad because they were not charged under S. 149.

*Held*: that the conviction was right. (*Adami and Wort, JJ.*) RAMASRA AHIR v. EMPEROR.

110 I.C. 104 = 7 Pat. 484 = 9 P.L.T. 738 =

10 A.I. Cr. R. 424 = 29 Cr. L.J. 648 =

A.I.R. 1928 Pat. 454.

**—S. 147—Conviction and sentences.**

On a conviction from rioting and hurt under Ss. 147 and 323 of the Indian Penal Code, separate sentences for the offences are not illegal. (*Zafar Ali, J.*) FAQIRIA v. EMPEROR. 114 I.C. 331 =

30 Cr. L.J. 295. (Lah.)

*—Where five people were charged under Ss. 147, 149 and 325:*

*Held*; that convictions for three separate offences was bad as it is perilously like convicting them twice over for the same offence and as it offends against the maxim "*nemo debet bis nemo debet bis vexari* etc." (*Harrison, J.*) BUTA v. EMPEROR. 120 I.C. 283 =

31 Cr. L.J. 82 = 13 A.I.Cr.R. 226 =

A.I.R. 1929 Lah. 498.

*—Rioting and causing hurt—Separate sentences can be passed.*

Causing hurt and using force are not the same thing and the word "force" does not appear in the definition of hurt." The use of criminal force is no doubt an ingredient of the offence of rioting, but the force necessary to constitute these offences may fall far short of "causing bodily pain," and if further force is used which does cause bodily pain, then the offences which involve and are complete by mere use of criminal force have been exceeded and that excess constitutes another offence, viz., that of causing hurt, or causing whatever more serious form of bodily hurt has been the result: Mad. Cr. Revn. Cases 248 of 1924 and 982 of 1926, Diss. from. (*Wallace, J.*) ANTHONI UDAIYAN v. RAYAPPUDAYAR.

105 I.C. 806 = 39 M.L.T. 543 =

1927 M.W.N. 850 = 28 Cr. L.J. 982 =

9 A.I. Cr. R. 160 = A.I.R. 1928 Mad. 18 =

53 M.L.J. 653.

*—Unlawful assembly—Members assaulting public officers in furtherance of their common intention—They are liable to be convicted under S. 353-354 also.*

Where the common object of the unlawful assembly was to compel by criminal force the excise officers to stop the house searches and this was effected by smashing up the handis, and when the excise officers expostulated with the rioters, they proceeded to attack them.

*Held*: that the members thereof were liable to be convicted both under S. 147 and Ss. 353-354: 41 Cal. 836, Foll. (*Allanson and Sen, JJ.*) GENDO NARAYAN v. EMPEROR. 106 I.C. 591 = 6 Pat. 828 =  
29 Cr. L.J. 79 = 9 A.I. Cr. R. 286 =  
9 P.L.T. 167 = A.I.R. 1928 Pat. 115.

*—Inflicting separate sentences for the offences of rioting and hurt are not justified. When the causing of hurt by some members of the assembly converts it into unlawful one, separate sentences for rioting and causing hurt are not justifiable. (Tek Chand, J.)* HAZURA SINGH v. EMPEROR. 104 I.C. 454 =

28 Cr. L.J. 838 = A.I.R. 1927 Lah. 786

**PENAL CODE (1860), S. 147—Conviction and sentences.**

*Conviction under both Ss. 147 and 323 is not illegal.*

S. 149 creates no substantive offence in itself. It is merely declaratory of the law and makes a person who has been a member of an unlawful assembly liable for the offences committed by any other member of it. But S. 147 is a substantive offence in itself and makes a person guilty of the offence of rioting as distinct from actually causing any injury or hurt. Similarly S. 323 is a distinct offence in itself; therefore there is nothing illegal in convicting a person of offences under both these sections. As soon as the first injury is caused to any person force is used and the offence of rioting is complete. Subsequent injuries though inflicted in pursuance of the same common object would be distinct in injuries justifying a conviction under S. 323; 17 Bom. 260 (F.B.) Appr. 6 All. 21; Dist. 9 All. 645 and 14 A.L.J. 738, foll. (*Sulaiman, J.*) CHHIDDA v. EMPEROR. 92 I.C. 463 =

24 A.L.J. 178 = 7 L.R.A. Cr. 13 =

27 Cr. L.J. 287 = A.I.R. 1926 All. 225.

—Separate sentences under Ss. 147 and 332 of the I. P. C. are not illegal in view of amended S. 35: A.I.R. 1926 Bom. 64 and 49 Bom. 916, Foll. (*Dalip Singh, J.*) RAHMAN v. EMPEROR. 95 I.C. 600 =

27 Cr. L.J. 824 = A.I.R. 1926 Lah. 521.

—Separate sentences may be passed under S. 147 and any other section under which the accused may be found guilty, e.g. separate sentences can be passed for rioting under S. 147 and for house trespass after preparation for causing hurt under S. 482: 17 O.C. 184, Foll. (*Stuart, C.J.*) SHEO NATH v. EMPEROR. 97 I.C. 804 = 3 O.W.N. Sup. 92 =

27 Cr. L.J. 1172.

—Where the members of an unlawful assembly commit a riot in pursuance of their common object of insulting and attacking Tazias, only one offence is committed and not two and the offenders are not liable to punishment separately under the two sections. (*Pullan, A.J.C.*) PRAG v. KING-EMPEROR. 82 I.C. 33 = 11 O.L.J. 693 = 25 Cr. L.J. 1168 =

A.I.R. 1925 Oudh 65.

—In the case of rioting resulting in grievous hurt, convictions and separate sentences under S. 325 are legal where it is shown that the accused actually joined in the assault. Some of these assaults may have resulted in simple hurt, others in grievous hurt, but all the actual assailants are under S. 149, I. P. C. liable for all the results, 17 B. 260 (F.B.) Foll. (*May Oung, J.*) NGA SAN MINAND v. EMPEROR. 82 I.C. 473 = 3 Bur. L.J. 49 = 25 Cr. L.J. 1305 =

A.I.R. 1924 Rang. 291.

**—S. 147—Conviction of some only.**

*Assembly of five or more persons—Conviction of persons less than five.*

The essential question in a case under S. 147 is whether the number of persons who took part in the crime was five or more than five. The identity of the persons who were members thereof, relates to the determination of the guilt of the individual accused. If, however, it is only possible to convict less than five persons, S. 147, still applies. (*Jai Lal, J.*) FERROZE DIN v. EMPEROR. 111 I.C. 443 =

29 Cr. L.J. 859 = 11 A. I. Cr. R. 164 =

A.I.R. 1929 Lah. 58.

—Nine persons originally charged as members of unlawful assembly—Four only identified to have been members of the assembly and convicted—Conviction was held to be right. (*Adami and Wort, JJ.*) RAMASRAY AHIR v. EMPEROR. 110 I.C. 164 =

**PENAL CODE (1860), S. 147—Evidence and onus.**

7 Pat. 484 = 9 P.L.T. 738 = 10 A.I. Cr.R. 424 =

29 Cr. L.J. 648 = A.I.R. 1928 Pat. 454.

—14 out of 17 persons acquitted on a charge of unlawful assembly for not being properly identified—Remaining three may be still found guilty. (*Raza, J.*) EKADASHI v. EMPEROR. 99 I.C. 235 =

28 Cr.L.J. 107 = A.I.R. 1927 Oudh 85.

—Five persons charged but four acquitted—One can be convicted under S. 147. A.I.R. 1923 Lah. 692, Dist. (*Dalip Singh, J.*) RAHMAN v. EMPEROR.

95 I.C. 600 = 27 Cr. L.J. 824 = A.I.R. 1926 Lah. 521.

—Where there were originally 13 persons charged under S. 147, Penal Code, nine of whom have been acquitted the conviction of remaining four is not illegal, if it is found that a very large number of persons had joined in the attack. (*Sulaiman, J.*) RAM ADHIN v. EMPEROR. 81 I.C. 613 =

21 A.L.J. 839 = 4 L.R.A. Cr. 240 = 25 Cr.L.J. 965 = A.I.R. 1924 All. 230.

—Conviction for rioting of a person who has been found to be the leader of a gang forming an unlawful assembly whose common object is to assault passers-by, is not illegal. (*Macleod, C.J. and Shah, J.*) SUJAT ALI NYAMATALI v. EMPEROR. 66 I.C. 192 =

24 Bom. L.R. 110.

**—S. 147—Evidence and onus.**

Where persons are charged with rioting in a case of confused riot, all that the prosecution needs to establish is that the accused were voluntarily members of the crowd of rioters who committed the offence alleged. (*Findlay, J. C.*) RAMADHIN BRAHMIN v. EMPEROR. 112 I. C. 51 = 29 Cr. L.J. 863 = 11 A.I. Cr. R. 302 =

A.I.R. 1929 Nag. 36.

—No one who intentionally joins or continues in an unlawful assembly can be allowed to say that he was merely a harmless spectator. He must prove that he was there owing to no fault of his own and that he could not get out of the crowd. Otherwise he is liable to be convicted under S. 147. (*Allanson and Sen, JJ.*) GENDO URAON v. EMPEROR. 106 I.C. 591 = 6 Pat. 828 = 29 Cr. L.J. 79 =

9 A.I. Cr. R. 256 = 9 P.L.T. 167 =

A.I.R. 1928 Pat. 115.

—Where in a case under S. 147 the evidence of the prosecution is all interested and a considerable amount of enmity exists between the factions who are concerned in the affair, it is necessary to scrutinize the evidence of the prosecution witnesses very carefully. (*Dalip Singh, J.*) MAJHI v. EMPEROR. 103 I.C. 413 = 28 Cr. L.J. 685 =

8 A.I. Cr. R. 360 = 9 L.L.J. 369 =

A.I.R. 1927 Lah. 617.

—When it is found that the part assigned to any particular accused is falsified by the medical evidence, and further when the locality and the motive for the fight are not established, it cannot be said that the accused had taken part in the fight. (*Dalip Singh, J.*) MAJHI v. EMPEROR. 103 I.C. 413 =

28 Cr. L.J. 685 = 8 A.I. Cr. R. 360 =

9 L.L.J. 369 = A.I.R. 1927 Lah. 617.

—Evidence conflicting—No discrimination between parties is possible.

Where the evidence in a riot case was so conflicting and unsatisfactory that individual responsibility for the death of one of the party could not be fixed upon any one and there was no reliable information available about the manner in which that death was caused but the evidence against both parties established clearly that they were guilty of rioting and neither side had been able to establish any justification for their attack upon the other.

*Held*: there were no grounds for discriminating

**PENAL CODE (1860), S. 147—Lawful acts and private defence.**

between the two parties. (*Campbell, J.*) SAADULLAH v. THE CROWN. 81 I.C. 631=6 L.L.J. 170=

25 Cr. L.J. 983=A.I.R. 1924 Lah. 482.

**—S. 147—Lawful acts and private defence.**

Assembly does not become unlawful by reason of its lawful acts, exciting others to do unlawful acts. (*Kinkhede, A.J.C.*) MOHAMAD IBRAHIM v. EMPEROR.

112 I.C. 902=30 Cr. L.J. 38=11 A.I.Cr. R. 526=

A.I.R. 1929 Nag. 43.

—Where K being attacked by M & N, friends and partizans of K arrived on the scene and attacked K's assailants causing them various injuries, Held their conviction under S. 147 was not sustainable, the common object of the crowd being to rescue K, the person originally assaulted, and not to assault M & N, his assailants. Further, the users of excessive force alone were liable to be punished for the assaults committed by them and not the other members of the assembly; A.I.R. 1922 Pat. 498, Foll. (*Broadway and Zafar Ali, JJ.*) NAWAB v. EMPEROR. 109 I.C. 673=

29 Cr. L.J. 593=10 A.I. Cr. R. 337=

10 L.L.J. 258=29 P.L.R. 727=

A.I.R. 1928 Lah. 277.

—Where a person is maintaining his own right and not enforcing it he cannot be punished under the sections. (*Ross, J.*) ANWAR ALI v. EMPEROR.

98 I.C. 187=27 Cr. L.J. 1291=

A.I.R. 1927 Pat. 96.

—The detention and arrest of members of the public are not matters of caprice, but are governed by and must be conducted upon certain rules and principles which the law clearly lays down. To arrest persons without any justification is one of the most serious encroachments upon the liberty of the subject which can well be contemplated.

The fact that because a party of persons are in a certain place at a certain time it cannot be said simply from these circumstances that they are about to engage in a criminal act, and therefore there is no legal justification for the arrest of those persons by the police, and they are not guilty of rioting if they oppose their arrest. (*Bucknill, J.*) RAMPRIT AHIR v. EMPEROR. 90 I.C. 712=7 P.L.T. 218=

26 Cr.L.J. 1608=A.I.R. 1926 Pat. 560.

—Where a large party of armed men went to escort certain ladies who wanted to go with them.

Held: that the party was not an unlawful assembly. When they were resisted or obstructed they were entitled to fight in self-defence and did not, by so doing become a body of rioters. (*Walsh and Sulaiman, JJ.*) RAMZANI v. EMPEROR.

86 I.C. 45=23 A.L.J. 68=26 Cr. L.J. 669=

6 L.R. A. Cr. 97=A.I.R. 1925 All. 319.

—Where the common object of the unlawful assembly is alleged to be looting of crops, the fact that the title to the land is uncertain and that a *bona fide* dispute exists about it, obviates offence under Section 147. (*Kulwant Sahay, J.*) BHAGAWAT JHA v. EMPEROR. 81 I.C. 45=6 P.L.T. 310=

25 Cr.L.J. 557=A.I.R. 1925 Pat. 158.

—Persons not engaged in criminal act—Arrest of—Resistance—If amounts to rioting.

Certain persons who were found on the Railway lines were arrested by the police though they were not actually committing any criminal acts. They resisted the attempt to arrest, and a fight ensued. Subsequently they were convicted under S. 147, I. P. C. Held, the conviction was wrong, as the arrest was without any justification. (*Bucknill, J.*) RAMPRIT AHIR v. EMPEROR. 90 I.C. 712 (Pat)=

26 Cr. L.J. 1608=7 P.L.T. 218=

A.I.R. 1926 Pat. 560.

**PENAL CODE (1860), S. 147—Rioting.****—S. 147—Possession.**

If in a case of rioting with common intention of taking possession of complainant's land, the Magistrate does not decide as to possession on the ground that another case under S. 145 is pending and acquits the accused, his decision ought to be set aside. (*C. C. Ghose and Duval, JJ.*) SURENDRA NATH SINGH v. JANAKI NATH GHOSE. 96 I.C. 527=

53 Cal. 411=27 Cr. L.J. 975=7 A.I. Cr.R. 55=

A.I.R. 1926 Cal. 945.

—Landlord and Tenant—Tenancy—After cessation of tenancy possession of tenant is wrongful and landlord can forcibly eject him but without undue force.

The tenant whose right is determined has no right to remain forcibly upon the land and say to his landlord that he will cultivate that land till such time as he is evicted by a Civil Court. From the moment the title of the tenant expires, the landlord is in possession in the eye of the law, and provided that he does not use undue force, he is entitled to go upon the land and if necessary to use force for the purpose of asserting and maintaining his possession. (*Mullick and Bucknill, JJ.*) GITA PRASAD SINGH v. KING-EMPEROR. 81 I.C. 535=3 Pat. L.R.Cr. 27=5 P.L.T. 656=

1924 P.H.C.C. 29=25 Cr.L.J. 919=

A.I.R. 1926 Pat. 17.

—Order under S. 144, Cr. P. C., is not evidence of possession.

An order under S. 144, should not be treated as substantive evidence of possession in a case of rioting. No importance should be attached to a temporary injunction under S. 144, Criminal P. C., which is intended for emergencies. The judgment in such a case is certainly not admissible as a judgment. The fact of the order may be admissible under S. 13 of the Indian Evidence Act, but having regard to the peculiar jurisdiction conferred by S. 144, no inference can be drawn from it as to the possession. (*Mullick and Bucknill, JJ.*) GITA PRASAD v. EMPEROR. 81 I.C. 535=5 P.L.T. 656=3 Pat. L.R.Cr. 27=

1924 P.H.C.C. 29=25 Cr.L.J. 919=

A.I.R. 1926 Pat. 17.

—Finding as to possession necessary.

Where the common object of the unlawful assembly was to remove paddy reaped and stacked by another, Court should record a finding as to who had raised the crop. (*Mookerjee and Chatterjee, JJ.*)

MAMGRU CHOWDHURY v. EMPEROR. 81 I.C. 264=

51 Cal. 418=38 C.L.J. 391=25 Cr.L.J. 776=

A.I.R. 1924 Cal. 323.

**—S. 141—Rioting.**

—Villagers assembled to resist attack of rival villagers—Latter having no right established by Court.

People of village S not heeding the Sub-Inspector's warning, having assembled, proceeded to cut the bandh. People of village K resisted but were turned back. Meanwhile a large crowd collected on both sides, armed with lathis, spears and garases. People of K seeing that the people of S were not likely to listen to their remonstrances proceeded in a body to prevent them from cutting the bandh and to drive them away. A free fight ensued; one man from village S received mortal injuries and died on his way to the hospital. The Sessions Judge convicted the accused who were residents of K under S. 302 read with Ss. 147, 148 and 149 I. P. C.

Held, that the people of S had no right to cut the bandh under the circumstances mentioned and when they actually proceeded to destroy it, the people of K had certainly a right to prevent them from doing so.



**PENAL CODE (1860), S. 147—Violence.**

*Held*, further that the people of K had erected a bandh in their village and at the time of the occurrence they were in possession of the bandh and there had been no lawful order passed by any competent Court directing them or authorising people of K to remove the bandh. This being so, it was not unlawful on the part of the appellant to prevent the people of S from forcibly cutting the bandh and that consequently their convictions under Ss. 147, 148, and 149 could not be sustained. (*Courtney Terrell, C. J. and Fazal Ali, J.*) **TILAK KOHAR v. EMPEROR.** 1929 Cr. C. 283 = A.I.R. 1929 Pat. 523.

**—S. 147—Violence.**

Chasing one or two persons who do escape or merely advancing to attack, amounts to an assault or preparation to use force or violence, but does not amount to the use of force or violence. (*King, J.*) **WAJID ALI v. KING-EMPEROR.** 100 I.C. 317 = 4 O.W.N. 240 = 28 Cr. L.J. 337 = 7 A.I.Gr. R. 567 = A.I.R. 1927 Oudh 151.

**—S. 147—What constitutes offence.**

*Forcible abatement of alleged nuisance—Easement not proved to exist—Conviction is justified.*

Where more than four persons forcibly stopped the construction of a wall alleging that they were abating a nuisance but were not able to prove that any easement of theirs had been interfered with, the conviction of even four of them under S. 147 is correct as they had taken the law in their own hands. 11 Bom. L. R. 849, Appr. : 23 W. R. Cr. 25, and 3 Cal. 573, Dist. (*Allanson, J.*) **KISHAN GOPAL MARWARI v. EMPEROR.** 114 I.C. 477 = 30 Cr. L.J. 305 = A.I.R. 1929 Pat. 44.

*Rioting and dacoity—Common object proved—Any person taking part in disturbance is guilty of both.*

Where it is established that the common object of the Mahomedan rioters was both to hurt any members of the Hindu community whom they might happen to find and to rob the shops and houses of the Hindus, any person who is proved to have taken a part in the disturbance must be found guilty not only of the offence of riot but also of the offence of dacoity. (*Stuart, C. J.*) **DAULAT v. EMPEROR.** 99 I.C. 238 = 3 O.W.N. (Sup.) 304 = 28 Cr. L.J. 110 = 2 Luck. 264 = A.I.R. 1927 Oudh 70.

*Intention to attack police being clear, on attempt by police to disperse assembly by force, if attack on police and murder follows, every member is liable unless his separation is proved.* (*Mears, C. J. and Piggott, J.*) **ABDULLAH v. EMPEROR.** 92 I.C. 145 = 4 L.R.A. Cr. 143 = 27 Cr. L.J. 193 = A.I.R. 1924 All. 233.

*Persons going in a large body to cut bandh without any right to do so intending to carry out their object by force are guilty.* (*Adami, J.*) **BASDEO SINGH v. KING-EMPEROR.** 84 I.C. 322 = 2 Pat. L.R. Cr. 194 = 26 Cr. L.J. 258 = A.I.R. 1924 Pat. 704.

**—S. 147—Miscellaneous** A.I.R. 1924 Pat. 704.

Persons may riot without actually committing an offence under S. 352 and the theory that S. 147 embraces S. 352 is fallacious. (*Jackson, J.*) **SRINIVASULU NAICKEN, In re.** 106 I.C. 338 = 39 M.L.T. 409 = 29 Cr. L.J. 2 = A.I.R. 1928 Mad. 21.

**—S. 148—Conviction.**

*No proof as to who were the aggressors—Bamboo sticks two inches thick whether deadly weapons—Both sides equally to blame—Sentence.*

In a conviction for rioting it does not much matter who the aggressors are if the persons who are on the scene and who are attacked themselves riot and use deadly weapons. *Bamboo sticks two inches thick—*

**PENAL CODE (1860), S. 148—Offence under.**

ness are deadly weapons if they are used on a vulnerable part of the body. *Held* also, that both sides being equally to blame it was not a case in which a heavy sentence should be passed. (*Beasley, C. J. and Cornish, J.*) **PEDDA HAMPAYYA v. EMPEROR.** 1929 M.W.N. 583.

**—S. 148—Distinctions.**

*Some of the persons carrying deadly weapons—Others having knowledge whether guilty.*

S. 149, I. P. C., constitutes a separate offence of its own. Hence if persons who are not carrying deadly weapons themselves are rioting and are found to be guilty they can only be found guilty under S. 148 coupled with S. 149, I. P. C. If all the accused were not proved to have been armed with deadly weapons only those who have been proved to have been so armed can be convicted under S. 148 in the absence of a charge under S. 149. (*Beasley, C. J. and Cornish, J.*) **SUPPIAH SERVAI v. EMPEROR.** 1929 M.W.N. 888.

**—S. 148—Furtherance of Common Object.**

*One member of unlawful assembly carrying deadly weapon—Other members are liable unless it is proved that the weapon was not carried in furtherance of common object.*

A person who is a member of an unlawful assembly is guilty under S. 148 though he himself is not armed with a deadly weapon, when some other member of the assembly is so armed.

Where an act is committed by a person which is not an essential ingredient of the offence which is intended to be committed by a body of persons, no doubt the other persons composing the body would not be liable for the act of a single individual; he does it on his own account. But, where the carrying of a deadly weapon cannot but be in prosecution of the common object, it cannot be said that the other persons composing the unlawful assembly cannot be punished under S. 148 read with S. 149.

If a deadly weapon is carried without the knowledge of the other members of the assembly for the private ends of a particular individual, no doubt the other persons would not be guilty under S. 148. But where that fact is not made out, but it is shown that one or more of the members of the assembly carried a deadly weapon it cannot be said that the weapon was not carried in prosecution of the common object; and, therefore, all the members of the assembly are guilty under S. 148: 22 Cal. 276, Expl. (*Devadoss and Waller, JJ.*) **MUDURUPAYALAGADU, In re.** 96 I.C. 158 = 27 Cr. L.J. 894 = A.I.R. 1926 Mad. 741 = 50 M.L.J. 559.

**—S. 148—Joinder.**

A charge for an offence under S. 148 with S. 149 is an incongruous and impossible charge. (*Jwala Prasad and Coutts, JJ.*) **JIWAN RAUT v. KING-EMPEROR.** 12 I.C. 519 = 4 P.L.T. 502 = 1 Pat. L.R. Cr. 55 = 24 Cr. L.J. 407 = A.I.R. 1924 Pat. 350.

**—S. 148—Offence under.**

Where five persons assembled at the water-head to take water by force and armed themselves with deadly weapons to strike and vanquish anybody who should stand in their way and prevent them from accomplishing their purpose.

*Held* that they constituted an unlawful assembly and became guilty of rioting when they used their deadly weapons in pursuance of their common object, and further that as every one of them knew that these weapons were likely to be used with deadly effect, they were all responsible if any one of them inflicted a fatal injury. A.I.R. 1925 Lah. 49 Dist,



**PENAL CODE (1860), S. 148—Private defence.**  
(*Zafar Ali and Jailal, JJ.*) **HARI SINGH v. EMPEROR.** 92 I.C. 217=7 L.L.J. 576=26 P.L.R. 820=  
27 Cr. L.J. 233=A.I.R. 1925 Lah. 4.

—**S. 148—Private defence.**

Where accused are charged as being members of an unlawful assembly the common object of the assembly being to beat a certain person, then in the absence of prosecution presenting a true account how that person was killed it is not necessary for the accused to plead private defence and show that they had not exceeded that right. (*Ross and Sen, JJ.*) **RADHE SAHI v. EMPEROR.** 85 I.C. 935=  
2 Pat. L.R. Cr. 217=26 Cr. L.J. 647=  
A.I.R. 1925 Pat. 175.

—**S. 148—Sentence.**

—**Fights between factions—Use of deadly weapons—5 years' rigorous imprisonment—Appropriateness of sentence.**

Fights between factions must be stopped, and where in such factions one party uses weapons such as choppers and spears and serious injuries are inflicted upon members of the other it cannot be said that five years' rigorous imprisonment is too trivial a sentence for a person who is found to have taken an active part in such an active fight. (*Beasley and Cornish, JJ.*) **SUPPIAH SERVAI v. EMPEROR.** 1923 M.W.N. 888.

—**S. 149—Conviction.**

—**Principal offender convicted for murder—Other members can be convicted of grievous hurt.**

It is not necessary that all the members of the unlawful assembly should be convicted of the same offence as that of which the principal offender has been convicted. Where, for example, the principal offender has been found guilty of grievous hurt as well as murder and is convicted for the latter offence, other members can legally be convicted of grievous hurt and it is not necessary that they should either be convicted of murder or acquitted: A.I.R. 1923 Patna 50, Diss. from; 7 O.L.J. 671 and A.I.R. 1924 All. 670 Rel. on. (*Kincaid, J.C. and Barlee, A.J.C.*) **AHMED v. EMPEROR.** 99 I.C. 93=21 S.L.R. 159=  
7 A.I. Cr. R. 454=28 Cr. L.J. 61=  
A.I.R. 1927 Sind 108.

—Where all the accused had been convicted under Ss. 304-149 and Ss. 325-149 not for any injury caused by them individually but on account of the injuries caused by some members of the unlawful assembly of which they also were members.

**Held:** that a conviction under Ss. 325-149 was not legal in the face of the conviction under S. 304-149 as the major offence included the minor. (*Jai Lal, J.*) **QADIR BAKSH v. THE CROWN.** 91 I.C. 804=  
27 Cr. L.J. 132=26 P.L.R. 648=7 L.L.J. 368=  
A.I.R. 1925 Lah. 539.

—In the case of rioting resulting in grievous hurt convictions and separate sentences under S. 325 are legal where it is shown that the accused actually joined in the assault. Some of these assaults may have resulted in simple hurt, others in grievous hurt, but all the actual assailants are under S. 149, I.P.C. liable for all the results, 17 B. 260 (F.B.) Foll. (*May Oung, J.*) **NGA SON MIN v. KING-EMPEROR.** 82 I.C. 473=  
3 Bur. L.J. 49=25 Cr. L.J. 1305=  
A.I.R. 1924 Rang. 291.

—**S. 149—Conviction under different section.**

—**Charge of unlawful assembly with common object of mischief—Evidence of dacoity against some accused—Conviction for dacoity illegal.**

The charge framed against the accused was, that of being members of an unlawful assembly whose common object was mischief and hurt. In the course of evidence it appeared that some two or three of the

**PENAL CODE (1850), S. 143—Offence—Meaning.** accused beat some of the prosecution witnesses, entered their houses and carried off some articles. On this the accused were convicted of dacoity under S. 395, Indian Penal Code.

**Held,** that on the facts of the case a conviction for dacoity can be sustained only by the application of Ss. 34 and 149, Indian Penal Code and it was necessary to charge and prove that the assembly as a whole had for its common object the committing of dacoity, or that each of the members knew that dacoity was likely to be committed in the prosecution of their common object; and that there having been no such charge the conviction for dacoity was bad and illegal. (*Odgers and Wallace, JJ.*) **KOTTOORA THEVAN, In re** 77 I.C. 444=19 M.L.W. 211=34 M.L.T. 307=  
1924 M.W.N. 238=25 Cr. L.J. 396=  
A.I.R. 1924 Mad. 584=46 M.L.J. 311.

—**S. 149—Essentials.**

Where it is not proved that five persons took part in the assault accused cannot be held constructively guilty of murder under S. 149 read with S. 302 of the Penal Code, because S. 149 only applies where there is an unlawful assembly. (*Scott-Smith and Zafar Ali, JJ.*) **MAULU v. EMPEROR.** 85 I.C. 371=  
26 Cr. L.J. 531=6 L.L.J. 434=  
A.I.R. 1925 Lah. 532.

—**Original object being to cause hurt—Some persons carrying deadly weapons—Knowledge of the rest—Charge under S. 149 against all the accused—Sustainability.**

The object with which persons may set out may be that of causing hurt but if they know that those persons whom they accompany are carrying deadly weapons and that if such deadly weapons are used it is likely to cause grievous hurt to any one, the charge against the accused is properly framed under S. 149, I.P.C. (*Beasley, C.J. and Cornish, J.*) **SUPPIAH SERVAI v. EMPEROR.** 1929 M.W.N. 888.

—**S. 149—Interpretation.**

The word "knew" in S. 149 cannot be made to bear the sense of "might have known," (*Broadway and Fforde, JJ.*) **DIAL SINGH v. EMPEROR.** 93 I.C. 1043=27 Cr. L.J. 547=  
A.I.R. 1926 Lah. 419.

—**S. 149—Legality of conviction.**

When a charge has been framed under Ss. 326 and 149, I.P. Code conviction under S. 326, I.P. Code is not necessarily bad, the legality of the conviction depending on whether the accused has or has not been materially prejudiced by the form of the charge. (*Spencer, Krishnan and Ramesam, JJ.*) **THEETHUMALAI GOUNDER, In re.** 82 I.C. 465=  
47 Mad. 746=20 M.L.W. 261=35 M.L.T. 21=  
25 Cr. L.J. 1297=A.I.R. 1925 Mad. 1=  
47 M.L.J. 221 (F.B.)

—**S. 149—Offence—Meaning.**

—**Word "offence" is confined to offence under Penal Code and so conviction under S. 128, Railways Act, with reference to S. 149 is illegal.**

The term "offence" in S. 149, Penal Code, is confined to offence under the Penal Code and so a conviction under S. 128, Railways Act, with reference to S. 149 is illegal and cannot be sustained: A.I.R. 1923 Mad. 187 and A.I.R. 1925 Mad. 239, Foll.

Where a large body of men set out to obstruct a railway line and throw stones at trains they form an unlawful assembly and if in carrying out their common object they commit offences under Ss. 127 and 128, Railways Act, only those of them who are proved themselves to have committed these offences under Ss. 127 and 128 can be convicted under those sections. The rest are not constructively guilty as

**PENAL CODE (1860), S. 149—Offence—Meaning.**  
S. 149 cannot be invoked against them although the offences committed by them are the very offences they set out to commit and committed in prosecution of their common object. (*Waller and Ananthakrishna Ayyar, JJ.*) *VASUDEVA MUDALIAR v. EMPEROR.* 118 I.C. 68=52 Mad. 882=

30 M.L.W. 108=1929 M.W.N. 522=

2 M. Cr. C. 173=30 Cr. L.J. 869=1929 Cr. C. 624=

A.I.R. 1929 Mad. 880=57 M.L.J. 114.

—The term offence in Section 149, of the Penal Code covers only offences punishable under the Penal Code and is not inclusive of an offences under Section 126 of the Indian Railways Act or Section 7, (c) of the Malabar Martial Law Regulation. (*Wallace and Madhavan Nair, JJ.*) *P. ATHAMI, In re.*

86 I.C. 283=26 Cr. L.J. 747=20 M.L.W. 914=

A.I.R. 1925 Mad 239.

—S. 149—Offence under.

—Certain persons who were members of party A had the common unlawful object to resist a process-server and agents of the decree-holder who formed another party B and to cause hurt to their persons. Marpit began between the two parties in which, party A was faring badly. Then suddenly S, a member of party B, came on the scene and inflicted a blow with his stick on P, a member of party A, and in return P gave a blow to S causing a wound on his head which proved fatal.

*Held*: that the members of party A other than P were not guilty for the offence of murder on account of their constructive liability under S. 149: 20 W. R. Cr. 5 (F.B.). Foll.

*Held further*: that under the circumstances P could not be said to have committed offence under S. 302, but only of culpable homicide punishable under S. 304. (*Mohiuddin, A. J. C.*) *UMED HUSSAIN v. EMPEROR.* 114 I.C. 449=30 Cr. L. J. 307=

A.I.R. 1929 Nag. 14.

—Some members armed with knives—One stabbing—All are guilty.

Where a certain number of persons were armed with knives to the knowledge of the others and stabbing was committed by a member thereof, in prosecution of the common object of the assembly:

*Held*: that all the members composing the assembly must be found to have known that such an offence was likely to be committed in the prosecution of the object and that all the appellants are constructively guilty of the offence under S. 326. (*Stuart, C. J. and Raza, J.*) *BASHIR v. EMPEROR.* 101 I.C. 485=

4 O.W.N. 313=28 Cr. L.J. 453=

A.I.R. 1927 Oudh 609.

—Where in an assault by an unlawful assembly death is caused in furtherance of its common object, and the evidence cannot disclose who of the participants was the actual person to inflict the injuries which caused the death, the culpability can be brought home to all the persons taking part in the fight. (*Stuart, C. J.*) *GURDIN v. KING EMPEROR.* 95 I.C. 766=

1 Luck. 180=13 O.L.J. 204=6 O.W.N. 1146=

27 Cr. L.J. 846=A.I.R. 1927 Oudh 102.

—Knowledge of likelihood of hurt and actual hurt make all members equally liable for the hurt.

Where accused were members of an unlawful assembly being determined to resist by violence any attempt by complainant to exercise his rights and where it must have been within the knowledge of all the accused that grievous hurt was likely to be inflicted on the other side in the course of the fight.

*Held*: all the accused were guilty of an offence under S. 325 read with S. 149 of the Penal Code with regard to the fatal injury inflicted upon one of

**PENAL CODE (1860), S. 149—Presumption of knowledge.**

the other side and of an offence under S. 323, read with S. 149 of the Code with regard to the injuries inflicted upon others. (*Le Rossignol, J.*) *DATA RAM v. EMPEROR.* 94 I.C. 39=26 P.L.R. 267=

27 Cr. L.J. 7=A.I.R. 1926 Lah. 516.

—Rioting—Offence of murder—Conviction.

The accused who were proved to be the aggressors went to the spot armed in order to assert a supposed title and to establish possession by force. A murder was committed in prosecution of the common object by rioters. *Held*, that the accused were rightly convicted under S. 302, read with S. 149, I.P.C. (*Waller and Cornish, JJ.*) *TIRUVU TEVAN v. EMPEROR.*

1929 M.W.N. 889.

—S. 149—Omission of section in charge.

—Omission of S. 149 from charge is not illegality.

S. 149 creates no offence, but is like S. 34 merely declaratory of a principle of the common law and its object is to make it clear that an accused who comes within that section cannot put forward as a defence that it was not his hand which inflicted the grievous hurt. A person cannot be tried and sentenced under S. 149 alone, no punishment being provided by the section. Therefore, the omission of S. 149 from a charge does not create an illegality by reason of S. 233, Criminal P. C. which provides that for every distinct offence of which any person is accused there shall be a separate charge. (*Spencer, Krishnan and Ramesam, JJ.*) *THEETHUMAI GOUNDER, In re.*

82 I.C. 455=25 Cr. L. J. 1297=47 Mad. 746=

20 M.L.W. 261=35 M.L.T. 21=

A.I.R. 1925 Mad. 1=47 M.L.J. 221 (F. B.)

—The accused has been convicted, *inter alia*, of an offence under S. 126, Railways Act, the conviction being by force of S. 149, Penal Code. The charge framed against them made no mention of S. 149, Penal Code. *Held*: the conviction by force of S. 149, Penal Code, was illegal. (*Ramesam and Wallace, JJ.*) *THAIKOTTATHIL KUNHEEN.* 76 I.C. 644=

18 M.L.W. 946=33 M.L.T. 210=1924 M.W.N. 47=

25 Cr. L. J. 212=A.I.R. 1924 Mad. 338.

—S. 149—Presence and sympathy.

—Riot—Accused standing by and sympathizing the principal offender, but not taking active part and inducing the principal offender to leave off the victim—Accused is excluded from operation of S. 149.

Where the accused was present at the riot and he was not only the brother of the principal offender but a sympathizer with the attacking party, but the evidence of the actual participation by the use of the lathi on the part of the accused, was vague and general, and the evidence showed that the accused was actually kicking the principal offender, saying, "let him off, he will die."

*Held*: that the accused was clearly excluded from the general liability which may otherwise be imposed upon him by the application of S. 149. (*Walsh and Dalal, JJ.*) *SHEORAJ v. EMPEROR.* 96 I.C. 122=

48 All. 375=24 A.L.J. 394=7 L.R.A. Cr. 85=

27 Cr. L.J. 87=A.I.R. 1926 All. 340.

—S. 149—Presumption of knowledge.

—Gang starting out to abduct women—Two armed with pistols—Knowledge that death is likely, to result can be presumed.

When a number of persons set out to abduct women and some of them are armed with pistols the obvious inference to be drawn is that the pistols were, intended to be used, if necessary, to overcome any

**PENAL CODE (1860), S. 149—Private defence.** resistance that might be offered. The members of the gang would, therefore, know that murder was very likely to be committed, and where murder is actually committed all the members are equally liable. (*Scott-Smith and Fforde, JJ.*) MOMSHA SINGH v. CROWN. 86 I.C. 347=7 L.L.J. 51=26 Cr. L.J. 763= A.I.R. 1925 Lah. 371.

—**S. 149—Private Defence.**

Where both parties are armed and prepared for fight and the riot is premeditated, there is no right of private defence unless it can be shown that the object of the assembly was to repel forcible and criminal aggression; 20 All. 459 Foll. (*Courtney-Terrell, C. J., and Rowland, JJ.*) RAMPAL DAS v. EMPEROR. 1929 Cr. C. 577= A.I.R. 1929 Pat. 705.

—There is nothing unlawful on the part of five or more persons in congregating together for exercising a lawful right and resist opposition, if necessary, provided they do not exceed the limits of the right of private defence of their property or persons; and if some one or more of them exceed that right, unless the individuals can be identified the mere presence of the accused at or near the spot is not sufficient to bring home to them guilt for the acts of others who exceeded their rights. (*Dawson Miller, C. J., and Foster, J.*) SAHA AHIR v. EMPEROR. 97 I.C. 54=27 Cr. L.J. 1078=7 A.I. Cr. R. 142= A.I.R. 1927 Pat. 27.

—*Defence cannot be nicely modulated—Retiring, because violence is expected, is not compulsory—Assembly can be guilty of exceeding right of private defence against criminal force.*

Where, possession is undisputed or where there is no time to seek assistance of the authorities there is no obligation upon a person, entitled to exercise the right of private defence and to defend his person, or his property, to retire from the field merely because his assailant threatens him with violence. A man acting under an apprehension of death cannot be expected to judge too nicely the force of his own blow; and the common law of England, which is substantially also the law in India on this topic, says that he is not bound to modulate his defence step by step according to the attack before there is reason to believe that the attack is over; he is not obliged to retreat but may pursue his adversary till he finds himself out of danger and if in a conflict between them he happens to kill, such killing is justifiable. *Obiter.*

—The law is that if the members of an assembly act with the common object of exceeding the right of private defence, then they are not only all generally guilty of rioting but also of the particular offence constituted by such excess of user. An assault is a crime except under certain special circumstances. But in one sense criminal force is a continuing wrong and there is a limit where the plea of justification ceases to operate and the liability to punishment revives; if one member in prosecution of the common object of an assembly exceeds that limit every other member shares with him the guilt of his act. 13 C.W.N. 1180, Foll. 39 Cal. 896; 35 Cal. 368, Dist. (*Mullick and Adami, JJ.*) NARESHI SINGH v. EMPEROR. 82 I.C. 186=2 Pat. 595=6 P.L.T. 87=25 Cr. L.J. 1228=3 Pat. L.R.Cr. 163= A.I.R. 1924 Pat. 388.

—**S. 149—Procedure.**

When the accused persons were charged under S. 155, I. P. C., and some of them were also charged for rioting which was the foundation of the former charge: *Held*, that the case under S. 155, I. P. C., should be postponed till the disposal of the rioting case. (*Jwala Prasad, J.*) SHEIKH ABDUL ALI v.

**PENAL CODE (1860), S. 149—Scope.**

EMPEROR. 59 I.C. 41=22 Cr.L.J. 9=1 Pat.L.T. 446.

—**S. 149—"Prosecution of common object."**

—*Preparation towards common object is prosecution.*

After people have formed themselves into an unlawful assembly and decided upon their common object, preparation towards that common object is prosecution or following up, and if the preparation happens to be an offence then they are all equally liable. (*Wallace and Jackson, JJ.*) K. RAMARAJU TEVAN. v. EMPEROR. A.I.R. 1930 Mad. 857.

—Section 149 ought to be strictly construed. The prosecution of the common object must mean something immediately connected with the common object. (*Kincaid, J. C., and Barlee, A. J. C.*) AHMED v. EMPEROR. 99 I.C. 93=24 S.L.R. 159=7 A.I.Cr. R. 454=28 Cr.L.J. 61= A.I.R. 1927 Sind 108.

—**S. 149—Scope.**

—S. 149 creates no substantive offence, but Ss. 147 and 323 do—So conviction under both Ss. 147 and 323 is not illegal.

S. 149 creates no substantive offence in itself. It is merely declaratory of the law and makes a person who has been a member of an unlawful assembly liable for the offences committed by any other member of it. But S. 147 is a substantive offence in itself and makes a person guilty of the offence of rioting as distinct from actually causing any injury or hurt. Similarly S. 323 is a distinct offence in itself; therefore there is nothing illegal in convicting a person of offences under both these sections. As soon as the first injury is caused to any, person force is used and the offence of rioting is complete. Subsequent injuries, though inflicted in pursuance of the same common object, would be distinct injuries justifying a conviction under S. 323; 17 Bom. 260 (F.B.), Appr. 6 All. 21, Dist.; 9 All. 645 and 14 A.L.J. 738, Foll. (*Sulaiman, J.*) CHHIDDA v. KING-EMPEROR. 92 I.C. 463=24 A.L.J. 178=7 L.R.A.Cr. 13=27 Cr.L.J. 287= A.I.R. 1926 All. 225.

—It is true S. 149 is an offence in respect of which there has been participation. It prescribes a new set of conditions to which the section shall become applicable, but in the end the guilt of the person shall be the guilt attaching to the principal's crime. (*Mullick and Kulwant Sahay, JJ.*) RAMSUNDER ISSER v. EMPEROR. 93 I.C. 976=5 Pat. 238=7 P.L.T. 178=27 Cr.L.J. 512= A.I.R. 1926 Pat. 253.

—S. 34 refers to cases in which several persons both do an act and intend to do that act: it does not refer to cases where several persons intend to do one act and some one or more of them do an entirely different act. In the latter type of cases S. 149 may apply but S. 34 cannot apply. (*Walmsley and Mukerji, JJ.*) ANIRUDHA MANA v. EMPEROR. 86 I.C. 475=26 Cr.L.J. 827= A.I.R. 1925 Cal. 913.

—*Section covers two classes of cases—One is act done for the common object and the other is act known by accused as likely to be caused in prosecuting their common object.*

Per *Daniels, J.*—Section 149 covers two classes of acts. The two parts of the section are quite distinct though the same act may and frequently does fall under both. The first class of acts are those committed in prosecution of the common object of the assembly. The act may be that of one individual accused, but if it is committed in furtherance of the end which they all have in view, all the accused are liable for it. The

**PENAL CODE (1860), S. 149—Security order.**

second class of acts are those which the accused knew to be likely to be committed in connection with the carrying out of their common purpose.

Per *Boys, J.*—Ordinarily if accused persons go armed with spears in superior force intending to carry out by force a purpose (in this case capturing a woman) which they know others will resist, each of the accused must be taken to have known at least, that a death caused by one of his party was likely to be caused. (*Daniels and Boys, JJ.*) **BEHARI v. KING-EMPEROR.** 83 I.C. 714=5 L.R.A. Cr. 113=26 Cr. L.J. 154=A.I.R. 1924 All. 670.

**—S. 149—Security order.**

—Order under S. 106, Cr. P. C. does not lie where accused is convicted under any section of I.P.C. read with S. 149.

The amendment to S. 106, by the Act XVIII of 1923 has made an order under S. 106 impossible where the only section under which the accused are convicted is a section of the Penal Code which is read with S. 149. The amendment is not very happily worded for it speaks of an offence punishable under S. 149. No offence is punishable under S. 149 alone; there must be some substantive offence charged to be read with S. 149.

Where the accused were convicted under S. 325 read with S. 149.

*Held*: that under S. 106, as it now stands, an order cannot be passed against them. (*Adami and Bucknill, JJ.*) **CHHEDI SINGH v. THE KING-EMPEROR.**

85 I.C. 42=6 P.L.T. 330=3 Pat. 870=26 Cr. L.J. 426=A.I.R. 1925 Pat. 117.

**—S. 150—Conviction different from charge.**

Where a person is charged with an offence under S. 304 read with S. 150 of the Penal Code and the charge against him is a definite one of having engaged a person to commit culpable homicide not amounting to murder, and the jury holds that the latter did not commit the culpable homicide, the person charged with having engaged him cannot be convicted of constructive homicide under the provisions of S. 150 of the Penal Code. (*Newbould and Mukerji, JJ.*) **NAYAN ULLAH v. EMPEROR.** 85 I.C. 818=26 Cr. L.J. 594=A.I.R. 1925 Cal. 903.

**—S. 153—Processions.**

—Hindu procession proceeding in particular authorised street—Mahomedan procession coming in opposite direction ignoring orders of police to go by another route—Accused are guilty under S. 153.

In ordinary circumstances undoubtedly a police constable has not the power to stop a person from proceeding along a particular street and order him to go by another. He can stop him for a certain time in order to regulate traffic so as to prevent the traffic getting mixed up and obstructing passage along the street. Where the accused Mahomedans formed themselves into a procession, and proceeded along a certain route at the time when another procession of Hindus was passing in the opposite direction along the same route as settled by authorities, ignoring the orders of policemen stationed there to control traffic that they should go by another route, and a riot with injury to many persons was the result:

*Held*: that the act of the accused in refusing to comply with the orders of the police was an offence under Penal Code, S. 153 the orders of the police being valid under Bombay District Police Act, S. 53. (*Fawcett and Mirsa, JJ.*) **GULAMKADAR SAHEB v. EMPEROR.** 109 I.C. 217=30 Bom. L.R. 367=10 A.I. Cr. R. 204=29 Cr. L.J. 489=A.I.R. 1928 Bom. 156.

**PENAL CODE (1860), S. 153-A — Comments on religion.****—S. 153—Throwing bricks at Temple.**

—Person deliberately throwing bricks at a temple—He is guilty neither under S. 336 nor S. 153.

G deliberately threw bricks at a temple hoping that the Hindus would believe that the bricks came from the Mahomedan quarter and that thereby the Hindus would be enraged against the Mahomedans and there would be a riot between the Hindus and Mahomedans. Nobody was hurt by the act.

*Held*: G desired a certain result to follow from the throwing of bricks and he deliberately threw the bricks at the temple for that purpose. There was neither rashness nor negligence in the act. G was not guilty under S. 336.

*Held*: further that the throwing of a brick at a temple is not declared to be an offence, nor is it prohibited by law. G's act was not therefore illegal and he was not guilty under S. 153. (*Dalal, J.*) **GAYA PRASAD v. EMPEROR.** 112 I.C. 592=29 Cr. L.J. 1088=10 L.R. A. Cr. 28=51 All. 465=1929 A.L.J. 175=11 A.I. Cr. R. 207=A.I.R. 1928 All. 745.

—S. 153-A. See also PENAL CODE, S. 124-A.

**—S. 153-A—Burden of proof.**

—Burden of proof shifts on accused when he asserts that natural inference does not hold good in his case.

Where the articles can bear a meaning only that they are calculated to produce hatred and enmity between two classes the natural inference from the publication of such articles and writing is that the person who published them had the malicious intention that they should produce such hatred and enmity. The burden of proof shifts to the accused when he asserts that the natural inference to be drawn from the publication of the articles does not hold good in his case: A.I.R. 1927 Cal. 215, Dist. (*Mirza and Broomfield, JJ.*) **KANCHANLAL CHUNNILAL v. EMPEROR.** 32 Bom. L.R. 585=A.I.R. 1930 Bom. 177.

—Onus that forfeited matter does not fall under S. 153-A, is on applicant.

Where an application is made under S. 99, Cr.P.C. to have an order of forfeiture set aside on the ground that the matter published does not fall within the mischief of S. 153-A, I. P. C.; it is for the applicant to convince the Court that for the reasons he gives the order is a wrong order. (*Walsh, A. C. J., Lindsay and Banerji, JJ.*) **KALICCHARAN SHARMA v. EMPEROR.** 49 All. 856=A.I.R. 1927 All. 649 (S.B.)

**—S. 153-A—Comments on founder of a religion.**

A Hindu who ridicules the Mahomedan Prophet in a book not out of any eccentricity but in the prosecution of a propaganda started by a class of persons who are not Mahomedans, is punishable under S. 153-A, as such a book would certainly promote feelings of enmity and hatred between Hindus and Mahomedans: A.I.R. 1927 Lah. 590, dissented from. (*Dalal, J.*) **KALICCHARAN SHARMA v. EMPEROR.**

104 I.C. 225=8 A. I. Cr. R. 204=8 L.R. A. Cr. 124=25 A.L.J. 846=28 Cr. L.J. 785=A.I.R. 1927 All. 654.

**—S. 153-A—Comments on religion.**

—Liberty to criticise religion does not mean license to use abusive language.

It must be recognized that in countries where there is religious freedom a certain latitude must of necessity be conceded in respect of the free expression of religious opinions together with a certain measure of liberty to criticize the religious beliefs of others; but it is contrary to all reason to imagine that liberty to

**PENAL CODE (1860), S. 153-A—Comments on religion.**

criticize includes a license to resort to vile and abusive language. (*Walsh, A. C. J., Lindsay and Banerji, JJ.*) *KALICHARAN SHARMA v. EMPEROR.*

49 AIL. 856 = A.I.R. 1927 AIL. 649 (S.B.)

—*Explanation—Strong comment on a religion or its founder to induce persons to change religion may be permitted.*

It is possible to conceive the writing of a reasoned, critical and strong attack on a religion or its founder, written by way of comment on that religion or on its founder with a view to induce persons to forsake that religion for another, which might fall within the explanation, for the reason that though there may be a tendency in the language employed to promote hatred or enmity, the language used did not of necessity convey that intention or where the writer has been able to prove by evidence that that was not his intention even in part; but a scurrilous and vituperative attack on a religion or on its founder would require a considerable amount of explanation to take it out of the substantive part of S. 153-A and bring it within the four corners of the explanation. Though any criticism of a religious leader, whether dead or alive, may not fall within the ambit of S. 153-A the writing of a scurrilous and foul attack on such a religious leader would *prima facie* fall under the said section. (*Broadway and Skemp, JJ.*) *DEVI SHARAN SHARMA v. EMPEROR.*

104 I.C. 234 = 28 P.L.R. 497 = 28 Cr. L.J. 794 = A.I.R. 1927 Lah. 594.

**—S. 153-A—Criticism on deceased.**

Section 153-A was intended to prevent persons from making attacks on a particular community as it exists at the present time and was not meant to stop polemics against deceased religious leaders however scurrilous and in bad taste such attacks might be. (*Dalip Singh, J.*) *RAJ PAL v. EMPEROR.*

103 I.C. 769 = 28 P.L.R. 514 = 28 Cr. L.J. 721 = 9 L.L.J. 379 = 8 A.I. Cr.R. 403 = A.I.R. 1927 Lah. 590.

**—S. 153-A—Essentials for conviction.**

The fact that the article in a newspaper was not conducive to an improvement in the feelings of the two communities towards one another is no ground for conviction under S. 153-A because even if it was not, the prosecution has to establish that it was published with intent to incite Hindus against Muhammadans or to stir up feelings of hatred and enmity between the two communities. The act of recalling to the mind of the Hindus of a place, the painful experiences of people of their community in other places would naturally have the effect of embittering their feelings against the alleged oppressors, but those who suffer have the right to complain, and if the complaint is made in a sober language and is free from exaggerations and incisive comments, it can lawfully be published, for the consideration of public officers and others concerned with a view to their taking necessary action to prevent a repetition of what had previously taken place. (*Zafar Ali, J.*) *DESHBANDEHU GUPTA v. THE CROWN.*

81 I.C. 624 = 6 L.L.J. 162 = 25 Cr. L.J. 976 = A.I.R. 1924 Lah. 502.

**—S. 153-A—Facts to be considered.**

—*Intention of writer, policy of the journal, class of readers and state of communities to be affected should be considered—Intention is to be gathered internally as well as externally—Antecedents of writer may be considered in awarding punishment.*

Section 153-A, I. P. C. does not mean that any per-

**PENAL CODE (1860), S. 153-A—Intention.**

son who publishes words that have a tendency to promote class hatred can be convicted under that section. The words "promotes or attempts to promote feelings, of enmity" are to be read as connoting a successful or unsuccessful attempt to promote feelings of enmity. It must be the purpose or part of the purpose of the accused to promote such feelings and, if it is no part of his purpose, the mere circumstance that there may be a tendency is not sufficient. The intention is to be collected, in most cases, from the internal evidence of the words themselves, but there is no authority for saying that other evidence cannot be looked at. The explanation shows quite conclusively that in any matter on which other evidence could assist, it may be taken. It is permissible to examine the general policy of the paper and also take into consideration the persons for whom it was written and the state of feeling between the two communities at the time of publication: A. I. R. 1926 Cal. 1133, Appr. and Foll.

The fact that the writer had previously published matter which necessitated warnings from Government on three separate occasions would justify the award of substantial punishment. (*Broadway and Skemp, JJ.*) *DEVI SHARAN SHARMA v. EMPEROR.*

104 I.C. 234 = 28 P.L.R. 497 = 28 Cr. L.J. 794 = A.I.R. 1927 Lah. 594.

**—S. 153-A—Hatred and enmity.**

There is no authority for the contention that the object of S. 153-A is to prevent the promotion of hatred and enmity between classes and that this hatred and enmity should be reciprocal and not merely unilateral. (*Broadway and Skemp, JJ.*) *DEVI SHARAN SHARMA v. EMPEROR.*

104 I.C. 234 = 28 P.L.R. 497 = 28 Cr. L.J. 794 = A.I.R. 1927 Lah. 594.

**—S. 153-A—Intention.**

Although the internal evidence of the words published will generally be decisive on the question of intention they are never more than evidence of intention and it is the real intention of the accused that is the test. Ill-feeling may or may be likely to result from published matter is not in itself sufficient: A. I. R. 1926 Cal. 1133, Foll. (*Rankin, C. J. and C. C. Ghose, J.*) *SATYA RANJAN v. EMPEROR.*

56 Cal. 1090 = A.I.R. 1929 Cal. 309.

—If the words used naturally, clearly and indubitably have the tendency to incite one community against another then the intention to do it should be inferred: 47 Cal. 190, Foll. (*Rankin, C. J. and C. C. Ghose, J.*) *SATYA RANJAN v. EMPEROR.*

56 Cal. 1090 = A.I.R. 1929 Cal. 309.

—The intention of the writer has to be judged not only from the words used in a particular part of an article in a newspaper but from the article taken as a whole. (*C. C. Ghose and Gregory, JJ.*) *ISHWARA PRASAD v. EMPEROR.*

46 C.L.J. 154 = 9 A.I.Cr.R. 44 = 28 Cr. L.J. 897 = A.I.R. 1927 Cal. 747.

—*Intention of writer should be judged primarily by the language—Truth of language is immaterial.*

The intention of the writer of a book must be judged primarily by the language of the book itself though it is permissible to receive and consider external evidence either to prove or to rebut the meaning ascribed to it in the order of forfeiture under S. 99-A, Criminal P. C. If the language is of a nature calculated to produce or to promote feelings of enmity or hatred the writer must be presumed to intend that which his act was likely to produce. This intention should also be judged from the nature of the language he has used and from the circumstances in which the



**PENAL CODE (1860), S. 153-A—Intention.**

book was published; in cases like these the truth of the language can neither be pleaded nor proved; it is immaterial *Burdett's case* (4 B. and A. 120), Appl. (Walsh, A. C. J. *Lindsay and Banerji*, JJ.) KALI CHARAN SHARMA v. EMPEROR. 49 All. 856=

A. I. R. 1927 All. 649 (F.B.)

—The editor of a newspaper has certain public duties, one of which is to publish matters which, it is to the public interest, that it should be known and if he does so honestly he is evidently not liable to be dealt with by a criminal Court. (*Chotzner and Duval*, JJ.) HEMENDRAPRASAD v. EMPEROR. 99 I. C. 941=

31 C.W.N. 168=28 Cr. L.J. 205=45 C.L.J. 432=A.I.R. 1927 Cal. 215.

—The essence of an offence under S. 153 A. is malicious intention, and if there is no malicious intention in the publication, honesty of purpose may safely be inferred: A. I. R. 1926 Cal. 1133; Appl. (*Chotzner and Duval*, JJ.) HEMENDRAPRASAD v. EMPEROR. 99 I. C. 941=31 C.W.N. 168=

28 Cr.L.J. 205=45 C.L.J. 432=A.I.R. 1927 Cal. 215.

—Intention is essential—Truth of statements charged is material to determine intention and for sentence.

Intention is an element in the offence under S. 153-A and the Court must be satisfied that the accused had a conscious intention of promoting, causing or exciting enmity and hatred; 10 P. R., (Cr.) 1907, *Foll.* The question of the truth of the statements made by the accused is material so far as the accused's intention is concerned. Moreover evidence given to show that the statements made by the accused were true, or believed by him to be true, even if insufficient for the purpose of proving him to be innocent of intending to promote class hatred, would be relevant on the question of the sentence to be passed in the event of his conviction. (*Martineau*, J.) KING-EMPEROR v. RAJ PAL, 93 I.C. 1052=7 Lah. 15=27 Cr. L.J. 556=27 P.L.R. 207=A.I.R. 1926 Lah. 195.

—Evidence of Intention to promote feelings of enmity is necessary—External evidence is not excluded on the question of intention—Words used are merely evidence of intention but real intention is the test.

Section 153-A does not mean that any person who publishes words that have a tendency to promote class hatred can be convicted under that section. The words "promotes or attempts to promote feelings of enmity" are to be read as connoting a successful or unsuccessful attempt to promote feelings of enmity. It must be the purpose or part of the purpose of the accused to promote such feelings and, if it is no part of his purpose, the mere circumstance that there may be a tendency is not sufficient. It is quite true that whether or not the promoting of enmity is the intention is to be collected in most cases from the internal evidence of the words themselves, but there is no authority for saying that other evidence cannot be looked at; and the explanation shows quite conclusively that in any matter on which other evidence could assist it may be taken. But although other evidence is not excluded, it is true that from the nature of the case, the internal evidence of the words used and the meaning of the words used will very generally be decisive of the question whether or not the Court is confronted with a successful or unsuccessful attempt to promote feelings of enmity. They will be decisive in all cases where the intention is expressly declared; also if the words used naturally, clearly and indubitably have such a tendency, then it must be presumed that the publisher intended that which is the natural

**PENAL CODE (1860), S. 154—Essentials.**

result of the words used: 47 Cal. 190 (S. B.), Rel. on. Malice is not to be imputed without definite and solid reason. The words used and their true meaning are never more than evidence of intention and it is the real intention of the accused that is the test: 47 Cal. 190 (S.B.); 38 Cal. 214; and 43 Mad. 146, Rel. on. (*Rankin and Mukerji*, JJ.) P. K. CHAKRAVARTI v. EMPEROR. 97 I. C. 738=54 Cal. 59=

44 C.L.J. 172=30 C.W.N. 953=

27 Cr. L.J. 1154=A.I.R. 1926 Cal. 1133.

**—S. 153-A—"Promotes".**

—Article printed in periodical exclusively subscribed by Hindus under signature of correspondent which had effect of causing excitement amongst Mahomedans—Editor held responsible and liable under Ss. 153-A and 295-A irrespective of fact how it came to notice of Mahomedans.

C. was Editor, printer and publisher of a periodical called Shuddhi Samachar, printed in Hindi language and script and having ten thousand subscribers all Hindus. The periodical contained a signed article contributed by a correspondent, contents of which were such that if read by Mahomedans they were likely to promote feelings of enmity and hatred between the Hindus and the Mahomedans. Some Mahomedans somehow got to know of the contents of the article in question with the result that at a meeting held in Juma Mosque, Delhi, speeches were made protesting against the article and condemning what was contained therein.

Held: that it was immaterial how article came to the notice of the Mahomedans and C. was held responsible for the result making him liable under Ss. 153-A and 295-A, Penal Code: A.I.R. 1927 All. 649 and A. I. R. 1927 Lah. 594, Rel. on, A. I. R. 1927 Lah. 570, Dist. (*Fforde and Addison*, JJ.)

CHIDA NAND v. EMPEROR. A.I.R. 1930 Lah. 350.

**—S. 153-A—Scope.**

An explanation appended to a section is not the same as a proviso. Explanation to S. 153-A cannot be used to enlarge the provisions of the substantive section; any more than a proviso can be used to enlarge the provision to which it is a proviso: West Derby Union v. Metropolitan Life Society, (1897) A.C. 647, Ref. (*Rankin and Mukerji*, JJ.) P. K. CHAKRAVARTI v. EMPEROR. 97 I. C. 738=54 Cal. 59=

44 C.L.J. 172=30 C.W.N. 953=27 Cr.L.J. 1154=A.I.R. 1926 Cal. 1133.

**—S. 153-A—Twofold offence.**

To attack the policy of the British Government does not necessarily involve attacking the British people and the one need not necessarily be hated when the other is blamed. It is possible that the same article published in a newspaper criminales its author both under Section 124-A and Section 153-A. (*Kennedy, J. C. and Raymond, A. J. C.*) EMPEROR v. NABIBUX. 81 I. C. 102=17 S.L.R. 341=25 Cr.L.J. 614=

A.I.R. 1925 Sind 59.

**—S. 154—Application.**

Very greatest caution is required before proceedings are started against persons under Section 154. (*Newbold, C. C. Ghose and Cuming*, JJ.) NRIPENDRA BIJUSAN RAY v. GOBINDA BANDHU MAZUMDAR. 82 I. C. 266=39 C.L.J. 236=

25 Cr.L.J. 1258=A.I.R. 1924 Cal. 1018.

**—S. 154—Essentials.**

Per C. C. Ghose, J.—Knowledge on the part of the owner or occupier of the land of the acts or intentions of the agent is not an essential element of an offence under this section and he may be convicted under it though he may be in entire ignorance of the acts of his agent or manager. (*Newbold, C. C. Ghose and*



**PENAL CODE (1860), S. 160—Applicability.**  
*Cuming, J.J.* NRIPENDRA BHUSAN RAY v. GOBINDA BANDHU MAZUMDAR. 82 I.C. 266=39 C.L.J. 236=25 Cr.L.J. 1258=A.I.R. 1924 Cal. 1018.

—S. 160—Applicability.

—Section postulates commission of definite assault or breach of peace.

Accused was quarrelling with a debtor. There was no evidence of exchange of blows. The lower Court convicted accused because the accused was quarrelling with his debtor in the public street and but for police intervention there was danger of breach of peace.

*Held:* that whatever offence the accused might have committed he was not within the purview of S. 160, as the section postulates the commission of a definite assault or breach of peace. (*Broadway, J.*) GANESH DAS v. EMPEROR. 116 I.C. 180=12 A.I. Cr. R. 446=30 Cr. L.J. 571=A.I.R. 1928 Lah. 813.

—Prosecution should not lodge a complaint simply for exchanging abuse in a public street. (*Harrison, J.*) THE CROWN v. ATMA SINGH. 94 I.C. 888=8 L.L.J. 82=27 Cr. L.J. 696=27 P.L.R. 176=A.I.R. 1926 Lah. 412.

—S. 161—Accomplice in offering bribe.

A person who offers a bribe to a public officer is an accomplice. Persons who actually pay the bribes or co-operate in such payments or are instrumental in the negotiations for the purpose are also accomplices of the person bribed, and a person who with knowledge that the bribe has to be paid advances money is clearly an abettor and as such an accomplice: 14 Bom. 331; 26 Bom. 193 and 27 Cal. 144. Rel. on. (*Kinkhede, A.J.C.*) MAHAMED YUSOFKHAN v. EMPEROR. 114 I.C. 457=30 Cr. L.J. 311=1929 Cr. C. 110=A.I.R. 1929 Nag. 215.

—S. 161—Applicability.

Even where an act is not within the exercise of the official duty of a public servant, if a public servant erroneously represents that the particular act is within the exercise of his official duty he would be liable to conviction under S. 161, if he obtained a gratification by inducing such an erroneous belief in another person: 1 A.L.J. 207, Notes Appr., A.I.R. 1924 Mad. 851, Diss. from. (*Dalal, J.*) AJODHIA PRASAD v. EMPEROR. 113 I.C. 179=51 All. 457=11 A.I. Cr. R. 205=1929 A.L.J. 153=10 L.R.A. Cr. 23=30 Cr. L.J. 67=A.I.R. 1928 All. 752.

—Section 161 is not confined to cases in which the gratification is taken for doing an official act under it. It is an offence if a public servant accepts any gratification other than legal remuneration as a motive or reward for rendering or attempting to render any service to any one with any public servant as such. (*Wallace, J.*) VENU RAMACHANDRAIAH v. EMPEROR. 105 I.C. 829=51 Mad. 86=39 M.L.T. 615=26 M.L.W. 529=1927 M.W.N. 764=28 Cr. L.J. 1005=9 A.I. Cr. R. 180=A.I.R. 1927 Mad. 1011. 53 M.L.J. 723.

—It is necessary that the gratification need actually be produced. (*Wallace, J.*) VENU RAMACHANDRAIAH v. EMPEROR. 105 I.C. 829=51 Mad. 86=39 M.L.T. 615=26 M.L.W. 529=1927 M.W.N. 764=28 Cr. L.J. 1005=9 A.I. Cr. R. 180=A.I.R. 1927 Mad. 1011=53 M.L.J. 723.

—Statement that Government servant worked for money in favour of a candidate at an election is not charging him with bribery as such work is not in discharge of his official duty. It is on the contrary prohibited. (*Ross and Kulwant Sahai, J.J.*) NIRSU NARAYAN SINGHA v. EMPEROR. 97 I.C. 354=6 Pat. 224=

**PENAL CODE (1860), S. 161—Illustrations.**  
 7 P.L.T. 608=1926 P.H.C.C. 314=27 Cr. L.J. 1090=A.I.R. 1926 Pat. 499.

—S. 161—Attempt to bribe.

—Government Hospital—Doctor—Bribe, offer of to induce him to retain patient.

Where the doctor in charge of a Government hospital has already decided to discharge a patient but that patient is still in the hospital he cannot be regarded to be *functus officio* as his duties and responsibilities to the patient still remain and an offer of a bribe to him to retain the patient for a longer period is an offence under S. 161, and the refusal of the bribe brings the case under illustration (a), S. 116: A.I. R. 1929 Mad. 756, Dist. (*Pandalai, J.*) BURHAM SAHIB v. EMPEROR. 32 M.L.W. 17=A.I. R. 1930 Mad. 671.

—A mere offer to pay an illegal gratification to a public servant is an attempt to bribe; actual money or other consideration need not be produced at the time the offer is made. (*Bucknill and Adami, J.J.*) RAMESWAR SINGH v. EMPEROR. 83 I.C. 679=3 Pat. 647=3 Pat. L.R. Cr. 61=26 Cr. L.J. 119=A.I.R. 1925 Pat. 48.

—S. 161—Bribing police.

Where a person is accused of abetment bribing a Head Constable of Police, the first part of S. 116, is applicable and not the second part as an offence under S. 161, is not cognizable by the police and is not one, the commission of which it is the duty of the head constable to prevent. (*Jai Lal, J.*) PURAN SINGH v. EMPEROR. 109 I.C. 681=10 L.L.J. 364=29 Cr. L.J. 601=10 A.I. Cr. R. 356=

—S. 161—Essentials. A.I. R. 1928 Lah. 840.

Mere knowledge that a bribe was to be given would not make a person who has the knowledge, a participant in the giving of the bribe. (*Mirza and Murphy, J.J.*) EMPEROR v. C. E. RING. 120 I.C. 340=53 Bom. 479=31 Bom. L.R. 545=1929 Cr. C. 114=31 Cr. L.J. 65=A.I.R. 1929 Bom. 296.

—No favour need be shown to the briber as a fact; it would be sufficient if he was led to believe that the matter would go against him if he did not give the Officer a present. (*Macleod, C.J. and Crump, J.*) BHIMRAO NARASIMHA HUBLIKAR v. EMPEROR. 86 I.C. 72=27 Bom. L.R. 120=26 Cr. L.J. 696=A.I.R. 1925 Bom. 261.

—For a conviction under S. 161, I.P.C. the illegal gratification must be proved to have been received with one of the intents mentioned in the section. (*Moti Sagar, J.*) AJUDHIA PARSHAD v. EMPEROR. 89 I.C. 455=26 Cr. L.J. 1387=1 L.C. 522. (Lah.)

—Motive of accused must relate to official act—What is departmentally reprehensible merely is distinct from what is criminal—Karnam taking bribe for getting darkhast commits no offence. (*Jackson, J.*) PULIPATI VENKIAH, *In re*. 84 I.C. 940=20 M.L.W. 618=1924 M.W.N. 894=26 Cr. L.J. 396=A.I.R. 1924 Mad. 881=47 M.L.J. 662.

—S. 161—False report. Lahore High Court Rules—Process Server not authorised to conduct Court Sale—False report by Liability. (*Broadway, J.*) DALIP SINGH v. EMPEROR. 1930 Cr.C. 108=A.I.R. 1930 Lah. 92.

—S. 161—Illustrations.

The principle of the illustration applies as much to the other purposes set out in S. 161 as to doing or forbearing to do any official act: A.I.R. 1923 Bom. 44; 21 C.W.N. 552, and A.I.R. 1924, Mad. 851, Dist. (*Wallace, J.*) VENU RAMACHANDRAIAH v. EMPEROR. 105 I.C. 829=51 Mad. 86=9 A.I. Cr. R. 180=39 M.L.T. 615=26 M.L.W. 529=1927 M.W.N. 764=28 Cr. L.J. 1005=A.I.R. 1927 Mad. 1011=53 M.L.J. 723.

**PENAL CODE (1860), S. 161—Officer functus officio.**

—S. 161—Officer functus officio.

If a man in the vain hope of getting a public officer to reconsider a question, as to which that public officer is *functus officio* offers a bribe he commits no offence whatever.

Amendment of the present law suggested. (*Coutts Trotter, C.J. and Walsh, J.J.*) VENKATARAMA NAIDU v. EMPEROR. 119 I.C. 315=30 M.L.W. 235=1929 Cr. C. 334=1929 M.W.N. 695=2 M. Cr. C. 230=30 Cr. L.J. 1055=A.I.R. 1929 Mad. 756=57 M.L.J. 239.

—S. 161—Present for obtaining Employment.

The accused, a candidate for service, went to interview an officer and after saying that he wished to apply for a post in his department offered him 20 currency notes of Rs. 10 each saying, "I have brought this as a present for you". The officer immediately caught hold of the accused, and, after getting the notes counted by his servant turned the accused out of his quarters.

*Held*: that a clear case under S. 161 was made out. (*Scott-Smith and Martineau, J.J.*) CROWN v. BIMAL PARSHAD. 88 I.C. 857=6 Lah. 98=26 P.L.R. 263=26 Cr. L.J. 1241=A.I.R. 1925 Lah. 401.

—S. 161—Proof of Offence.

—Receiving bribe even for doing a just and proper act is an offence—People of locality accustomed to pay bribes—Independent proof of offence is necessary.

The fact that the people of a particular tract of the country have been given to the practice of making payments in money or in kind to subordinate officials to win their favour, does not relieve the prosecution of the necessity of strict and conclusive proof of the offence of bribery.

When a bribe has been proved to have been given it is not necessary to ask what, if any, effect the bribe had on the mind of the receiver and it is an offence even when the act, done for the bribe given, is a just and proper one. The gist of the offence is a public servant taking gratification other than legal remuneration in respect of an official act. (*Prideaux, A.J.C.*) ANANT WASUDEO v. EMPEROR. 89 I.C. 1035=8 N.L.J. 138=26 Cr. L.J. 1467=A.I.R. 1925 Nag. 313.

—S. 161—Public servant.

If a convict warder accepts gratification from a prisoner for smuggling certain papers with some person outside the jail he commits an offence under S. 161. (*Macleod, C.J. and Shah, J.*) SAIFIN RASUL v. EMPEROR. 83 I.C. 342=26 Bom. L.R. 267=25 Cr. L.J. 1382=A.I.R. 1924 Bom. 385.

—S. 161—Punishment.

—Punishment must be deterrent—Mere fine is not enough.

Punishments in the case of offences by or relating to the public servants, and particularly those of obtaining or giving bribes by or to public servants, ought to be deterrent as their object is to check repetition of the offences not only by the actual culprits, but also by the other public servants. A lenient punishment as of a mere fine can hardly act as a corrective, or deter men from committing similar offences. (*Kinkhede, A.J.C.*) EMPEROR v. MAHADEO GANESH. 86 I.C. 469=26 Cr. L.J. 821=A.I.R. 1925 Nag. 321.

—S. 161—Sanction.

Sanction is not necessary for the prosecution for receiving bribe of an Excise Inspector in U.P. as he is removed from his office by the Excise Commis-

**PENAL CODE (1860), S. 171-F—Abetment of personation.**

sioner. (*Dalal and Boys, J.J.*) JALALUDDIN v. EMPEROR. 92 I.C. 857=48 All. 264=24 A.L.J. 230=27 Cr. L.J. 345=7 L.R.A. Cr. 41=A.I.R. 1926 All. 271.

—S. 167—Forgery.

The offence under S. 167, is included in the offence under Ss. 467-471, and, therefore, conviction, both under S. 167 and Ss. 467-471, is not maintainable. (*Stuart, C.J.*) GULZARI LAL v. EMPEROR.

99 I.C. 122=3 O.W.N. 760=7A.I. Cr. R. 51=13 O.L.J. 817=28 Cr. L.J. 90=A.I.R. 1926 Oudh 615.

—S. 167—Tampering with records.

Any official, however humble, who deliberately tampers with official records, and issues false copies, whatever his motives, deserves severe punishment, not merely for his own conduct, but as a deterrent to others who may be tempted to follow his example. (*Walsh, J.*) SUKHNANDAN LAL v. KING-EMPEROR.

99 I.C. 63=28 Cr. L.J. 31=7 L.R.A. Cr. 162=A.I. R. 1926 All. 719.

—S. 171-A—Applicability.

—Acts amounting to offence under S. 52, Madras District Municipalities Act no offence under Penal Code.

In the matter of the Election Offences Act (introduced as Chap. 9-A in the Penal Code) bearing on elections to the Legislative Council there is no section corresponding to S. 52, District Municipalities Act. If an allegation is made in the matter of an election to the Legislative Council that a candidate committed acts which would amount to an offence under S. 52, District Municipalities Act, it could not be an offence under the Election Offences Act relating to the Legislative Council. (*Ramesam, J.*) NARAYANASWAMI CHETTIAR v. SUBBARATNAM AIYAR. 122 I.C. 33=30 M.L.W. 889=A.I.R. 1929 Mad. 910=57 M.L.J. 851.

—S. 171-C—Offence—Essentials.

Where the complainant, a candidate for election, was prevented from coming out of his house and going to the voters by his rival candidate and the latter's supporters who were picketing the former's house.

*Held*: that the accused, the rival candidate, is not guilty of an offence under S. 171-C. (*Shadi Lal, C.J.*) RAM SARAN DAS v. EMPEROR. 93 I.C. 692=7 Lah. 218=27 P.L.R. 190=27 Cr. L.J. 468=A.I.R. 1926 Lah. 297.

—S. 171-D—Applicability.

In a Municipal electoral roll Mohammad Din, son of Faqir Mohammad, was recorded as a person entitled to vote. The accused Mohammad Din whose father's name was admittedly Abdulla asked for a ballot paper in the name of Mohammad Din, son of Faqir Mohammad; and when questioned he asserted more than once that his father's name was Faqir Mohammad. The contention that the officer who prepared the electoral roll intended to put the accused on the register and that Mohammad Din, son of Faqir Mohammad had no existence at all, was not proved.

*Held*: that the accused was guilty of personation: *Reg v. Parrick Fox*, 16 Cox. Cr. C. 166, *Dist. (Shadi Lal, C.J.) MAHOMED DIN v. EMPEROR.* 117 I.C. 883=30 Cr.L.J. 853=A.I.R. 1929 Lah. 52.

—S. 171-F—Abetment of personation.

Voter to be identified by candidate—Candidate identifying without ascertaining identity of the voter—He is guilty of abetment of personation at election (*Mears, C.J. and Walsh, J.*)—He is only technically

**PENAL CODE (1860), S. 171-F—Enhancement of sentence.**

guilty (Iqbal Ahmad). (*Mears, C.J., Walsh and Iqbal Ahmad, J.J.*) **EMPEROR v. BADAN SINGH.** 118 I.C. 577=30 Cr.L.J. 933=A.I.R. 1928 All. 150.

**—S. 171-F—Enhancement of sentence.**

Abetting personation at election—Abettor an M.L.C. —The fact is not a justification for enhancing the sentence (Iqbal Ahmad, J. contra *Mears, C.J. and Walsh, J.*) (*Mears, C.J. Walsh and Iqbal Ahmad, J.J.*) **EMPEROR v. BADAN SINGH.** 118 I.C. 577=30 Cr.L.J. 933=A.I.R. 1928 All. 150.

**—S. 171-F—False signature.**

The offence of false preparation of signature sheet at an election being specifically described and designated by the legislature, it is not open to any Court to say that, although the offence may be specifically one under S. 171 (f) of the Penal Code, it falls equally under S. 465 of the same Code and therefore, it is open to the Court to try the offender under either of the two sections. (*Mukerji, J.*) **RAM NATH v. EMPEROR.** 84 I.C. 714=47 All. 268=22 A.L.J. 1106=26 Cr. L.J. 362=6 L.R.A.Cr. 25=A.I.R. 1925 All. 230.

**—S. 171-F—Gist of offence.**

*Fraudulently obtaining signature slip is no offence under S. 171 (f) read with S. 511.*

The accused went to the officer who had the custody of signature slips. He did not give out his name but produced a certain piece of paper which bore a certain number. The officer looked at that number then looked at the electoral roll and discovered that against that number the name of one L. appeared. On being asked by that officer if he was L. the applicant said he was. A patwari of the village was there and he said that the applicant was not L. but was one M. There was a dispute and ultimately the applicant admitted that he was M and not L.

*Held:* that the obtaining of the "signature slip" was an act which by itself would not have amounted to an application for a voting paper. (*Mukerji, J.*) **MALKHAN SINGH v. KING-EMPEROR.**

84 I.C. 711=22 A.L.J. 1102=6 L.R.A.Cr. 20=26 Cr.L.J. 359=A.I.R. 1925 All. 226.

**—S. 171-F—Ingredient of offence.**

*Mens rea* is an ingredient in the offence under S. 171 (f) and where the corrupt intention is absent, the offence of personation cannot be committed: *The Steptey Case*, 4 O. M. & H. 34, Foll. (*Beasley, C.J. and Pandalai, J.*) **VENKAYYA v. EMPEROR.**

121 I.C. 763=1930 Cr.C. 199=31 M.L.W. 71=31 Cr.L.J. 329=3 M.Cr.C. 1=1930 M.W.N. 174=A.I.R. 1930 Mad. 246=58 M.L.J. 111.

**—S. 171-F—Lenient view.**

*Iqbal Ahmad, J.*—The system of election in India is still in its infancy, if not in its experimental stage. The degree of solemnity that attaches to elections in England does not attach to elections in this country, and these possibly are the reasons that influenced the legislature in providing for comparatively lenient and alternative punishments for offences committed at elections in India as compared with the punishments provided in England. (*Mears, C.J., Walsh and Iqbal Ahmad, J.J.*) **EMPEROR v. BADAN SINGH.** 118 I.C. 577=30 Cr.L.J. 933=A.I.R. 1928 All. 150.

**—S. 171-F—No offence.**

Candidate attesting voting slips after honestly making due enquiries of voters' identity in polling officer's presence is not guilty of abetment. (*Sular-*

**PENAL CODE (1860), S. 174—Inability to attend.**

*man, J.*) **RAM NATH v. KING-EMPEROR.**

94 I.C. 897=24 A.L.J. 180=7 L.R.A.Cr. 18=27 Cr. L.J. 705=A.I.R. 1926 All. 231.

**—S. 172—Scope.**

The provisions of S. 172 do not cover the absconding from a warrant of arrest: 5 W. R. (Cr.) 71; 2 C.L.J. 625; and 4 A. H.C.R. 302; Rel. on. (*Dalai, J.*) **SHEO JANGAL PRASAD v. EMPEROR.**

113 I.C. 740=50 All. 666=9 A.I.Cr.R. 443=9 L.R.A.Cr. 68=30 Cr.L.J. 203=26 A.L.J. 443=A.I.R. 1928 All. 232.

**—S. 173—Refusal of notice.**

Refusal to accept a notice by a Police Officer under S. 160, Criminal P. C., does not amount to an offence of intentionally preventing service. (*Kanhaiya Lal, J.*) **BAHADURA v. EMPEROR.**

92 I.C. 460=24 A.L.J. 215=27 Cr.L.J. 284=7 L.R.A.Cr. 37=A.I.R. 1926 All. 304.

**—S. 173—Refusal of summons.**

Mere refusal to take a summons does not amount to disobedience under S. 173 and so is not an offence. (*Lindsay, J.*) **BANWARI v. EMPEROR.**

91 I.C. 814=24 A.L.J. 216=7 L.R.A.Cr. 24=27 Cr.L.J. 142.

—Where a police constable took a summons to the accused for the purpose of serving it on him and the accused refused to take the summons and sign an acknowledgment.

*Held*, that this is not enough to constitute an offence under S. 173. (*Mukerji, J.*) **DEBIGIRI TAPDHARI v. EMPEROR.**

86 I.C. 978=23 A.L.J. 148=26 Cr.L.J. 909=A.I.R. 1925 All. 322.

**—S. 173—Tender.**

*Getting away from the serving officer and shutting oneself in house amounts to "intentionally preventing service."*

Personal service may be made either by delivering or tendering, but the tender must be real tender of a document which is understood by the person to be served, and he must have voluntarily waived actual delivery and indicated in some way that a tender was sufficient.

A man who gets away from the serving officer with the obvious intention of not allowing him to hold any communication with him at all and shuts himself in his house, is intentionally preventing service either by tender or by delivery: 40 All. 577 and 5 Mad. 199, Dist. (*Walsh, J.*) **BUDHNA v. EMPEROR.**

107 I.C. 563=26 A.L.J. 107=9 L.R.A.Cr. 1=29 Cr.L.J. 263=9 A.I.Cr.R. 52=A.I.R. 1928 All. 118.

**—S. 174—Inability to attend.**

*Accused an advocate—Summons on—Pleader appearing for—Advocate engaged elsewhere on date of hearing—No offence.*

Magistrate ordered the issue of summons to the petitioner, who was a barrister, to appear on the 12th April and answer a charge under the Burma Motor Vehicles Act. The summons was not served till 5 p. m. on the 11th April. Next morning another Barrister, appeared before the Magistrate on petitioner's behalf and stated that the petitioner was appearing as counsel in a case before the High Court and that therefore he was unable to attend. The learned Magistrate noted that the explanation was unsatisfactory but adjourned the case till 19th April 1923. On the 19th, the petitioner duly appeared and, after the motor case had been disposed of was called upon to answer another charge namely that of disobeying the summons to attend on the 12th.

**PENAL CODE (1860), S. 174—Late service.**

*Held* that no offence under S. 174 was made out.

*Held* further that the petitioner did not intend to disobey the summons but, placed as he was, he found himself unable to abandon his client's interests and therefore instructed a barrister to represent the circumstances to the Magistrate. (*May Oung, J.*)

J. R. DASS v. EMPEROR. 76 I.C. 693=  
1 Rang. 549=2 Bur. L.J. 146=25 Cr. L.J. 229=  
A.I.R. 1924 Rang. 35.

**—S. 174—Late service.**

U. P. Land Revenue Act, S. 147—Citation served on accused evening previous to date for appearance—Accused not appearing on the day fixed—He cannot be convicted under the Penal Code, S. 174.

(*Sulaiman, Ag. C.J. and Boys, Banerji, Kendall and Weir, JJ.*) EMPEROR v. TIKERAM.

111 I.C. 670=9 L.R. A. Cr. 130=26 A.L.J. 1201=  
10 A. I. Cr. R. 390=29 Cr. L. J. 910=  
A.I.R. 1928 All. 680 (F.B.)

**—S. 174—Omission of place.**

Sub-poena not stating definite place for attendance—Disobedience thereof is not an offence. 5 All. 7, Foll. (*Daniels, J.*) HUKAM SINGH v. EMPEROR.

94 I.C. 889=24 A.L.J. 536=7 L.R. A. Cr. 132=  
27 Cr. L. J. 697=A. I. R. 1926 All. 474.

**—S. 174—Order 'Ultra vires'.**

Section 36 does not authorize the District Magistrate to compel the attendance of an alleged tout in the proceedings or to receive orders in the case, and therefore he cannot be charged under S. 174, Penal Code, if he fails to attend the Court. (*Carr, J.*)

P. J. MONEY v. EMPEROR. 111 I. G. 672=  
6 Rang. 529=29 Cr. L. J. 912=  
A.I.R. 1928 Rang. 296.

**—S. 174—"Summons."**

(*Per Boys and Young, JJ.*) A citation issued to a person who is in arrear of Government revenue under S. 147, Land Revenue Act is not a summons within the meaning of S. 174, Penal Code and the person so served is not bound to appear in obedience to it and by his failure to attend he is not guilty under S. 174, Penal Code : (*Sen, J. Contra*) (*Cases considered*).

(*Boys, Young and Sen, JJ.*) EMPEROR v. HUMAN-  
CHAL SINGH. 123 I.C. 673=31 Cr. L. J. 546=  
1930 A.L.J. 354=A.I.R. 1930 All. 265.

—Person disobeying the order under S. 147,  
U. P. Land Revenue Act is liable.

Section 147, U. P. Land Revenue Act, when it gives a revenue official exercising fiscal functions authority to issue a citation to a defaulter to appear, gives him authority to order that person to appear before him and the person is obliged to appear before him if so ordered under the penalty laid down by S. 174, Penal Code : 13 O. C. 55, Foll. ; A. I. R. 1927 All. 122, Diss. (*Stuart, C. J. and Pullan, J.*)

CHANDUKA SINGH v. EMPEROR. 106 I.C. 686=  
4 O. W. N. 1241=29 Cr. L. J. 94=  
9 A.I. Cr. R. 336=A. I. R. 1928 Oudh 122.

—The issue of a citation to an alleged defaulter under S. 147 of the Land Revenue Act does not involve him in any legal liability to attend and therefore no offence under S. 174 is committed by non-appearance : Government Appeal No. 821 of 1925, Foll. (*Sulaiman, J.*) BANWARI LAL v. KING-EMPEROR.

99 I.C. 409=25 A.L.J. 88=7 L.R.A. Cr. 177=  
28 Cr. L.J. 153=39 All. 215=A.I.R. 1927 All. 49.

—The issue of a citation to an alleged defaulter under S. 147 of the Land Revenue Act does not involve him in any legal liability to attend, and a person is not guilty of an offence punishable under S. 174 if he does not comply with such a citation. (*Datta and*

**PENAL CODE (1860), S. 179—Indirect answer.**

*Boys, JJ.*) EMPEROR v. BHRIGU SINGH. 99 I.C. 60=  
49 All. 205=24 A.L.J. 1001=28 Cr. L.J. 28=  
8 L.R.A. Cr. 41=7 A.I. Cr. R. 175=  
A.I.R. 1927 All. 122.

**—S. 174—Summons on wrong form.**

Where in an application for action to be taken under S. 107 of the Cr. P. C. the Sub-Divisional Magistrate directed the Tahsildar to make inquiry into the matter, and the latter sent summons to the parties on forms provided for cases under S. 193 of the Land Revenue Act, and on the parties failing to appear, convicted them under S. 174 of the Penal Code, held that the proceedings were illegal *ab initio*, that the order of the Sub-Divisional Magistrate was *ultra vires* that there was no summons issued according to law, and that the conviction is not maintainable. (*Gokul Prasad, J.*) BEHARI LAL v. EMPEROR. 59 I.C. 335=22 Cr. L.J. 79=L.R. 2 A. (Cr.) 3. (All.)

**—S. 176—Applicability.**

The fact that some persons bound to give information have given that information while other persons who might be bound to give that information have omitted to do so is no ground for their prosecution and conviction under S. 176. 4 Cal. 623 ; 20 Cal. 316 and 7 Mad. 436, Foll. (*Kinkhede, A.J.C.*) BHAGAWANT-  
RAO v. EMPEROR. 90 I.C. 145=26 Cr. L.J. 1489=  
A.I.R. 1926 Nag. 217.

**—S. 176—Recovery of excess rent.**

Where a zamindar collecting more than the recorded rent from the tenants has not been asked the information by Qanungo or the Patwari, his failure to inform the officials concerned the fact of such collection does not amount to an offence under S. 176, Penal Code. (*Banerji, J.*) BUDH SINGH v. EMPEROR. 98 I.C. 487=7 L.R.A. Cr. 195=27 Cr. L.J. 1367=  
A.I.R. 1927 All. 111.

**—S. 177—Essentials.**

The essence of offence under S. 52, Income tax Act and Penal Code, S. 177 lies in the verification of an untrue statement, and provided the statement was deliberately false or not believed to be true, subsequent rectification cannot make it any the less an offence, though it may be considered as an extenuating circumstance in awarding sentence. (*Mukherji and Niamatullah, JJ.*) GANGA SAGAR v. EMPEROR. 120 I.C. 435=1930 A.L.J. 26=31 Cr. L.J. 88=  
1929 Cr. C. 647=A.I.R. 1929 All. 919.

**—S. 179—Conduct of accused.**

S. 179 has nothing whatever to do with the conduct of accused persons in Court. (*Schwabe, C.J. and Waller, J.*) S. TIRUMALA REDDI, *In re*. 77 I.C. 422=  
47 Mad. 396=19 M.L.W. 292=34 M.L.T. 331=  
1924 M.W.N. 141=25 Cr. L.J. 374=  
A.I.R. 1924 Mad. 640=46 M.L.J. 40.

**—S. 179—Essentials.**

Where the question for the refusal to answer which the witness was sought to be tried under Section 179 of the Indian Penal Code had no bearing whatsoever on the facts of the case.

*Held* that his prosecution under that section was injudicious. (*Wazir Hasan, J.C.*) CHEDI LAL v. EMPEROR. 81 I.C. 981=14 O.L.J. 358=  
25 Cr. L.J. 1127=A.I.R. 1924 Oudh 402.

**—S. 179—Indirect answer.**

Where a witness, though persistently asked by the Court to give certain information, persisted in giving an indirect answer.

*Held* : that this amounted to a refusal to answer question and that an offence, under S. 179, was committed but not one under S. 229. (*Mukherji, J.*)

**PENAL CODE (1860), S. 179—Refusal what is.**

HAR NARAIN v. EMPEROR. 84 I.C. 706=  
22 A.L.J. 1100=6 L.R.A. Cr. 14=26 Cr. L.J. 353=  
A.I.R. 1925 All. 239.

**—S. 179—Refusal what is.**

Where a Court asks a witness the name of his grandfather to which the witness replies that he does not remember, it is not refusal to answer within the meaning of S. 179; if the answer is false he may be proceeded with under S. 193. (*Broadway, J.*)  
KALLU v. EMPEROR. 92 I.C. 428=27 Cr. L.J. 123=  
A.I.R. 1926 Lah. 240.

**—S. 182—Affidavits.**

Criminal case—Transfer application by complainant's advocate—Affidavit by third person in support of petition—False information in—Deponent if liable. (*Wallace and Madhavan Nair, JJ.*) PUBLIC PROSECUTOR v. K. PRAKASAM. 83 I.C. 343=  
25 Cr. L.J. 1383=1925 M.W.N. 145=  
20 M.L.W. 624=A.I.R. 1925 Mad. 123=  
47 M.L.J. 658.

**—S. 182—Applicability.**

For a conviction under S. 182, it is not necessary that the false report must be taken down from dictation. 6 A. L. J. 236 Dissented from. (*Stuart, C. J.*)  
RAM JUAWAN v. EMPEROR. 95 I.C. 598=  
3 O.W.N. Sup. 96=27 Cr. L.J. 822=  
A.I.R. 1926 Oudh 448.

—A prosecution under S. 182, I. P. C., will lie quite irrespective of whether the action which a public servant is asked to take on information given to him is a legal one or not. To take the view that if he is not legally entitled to take action a prosecution will not lie will reduce S. 182, I. P. C. to a *reductio ad absurdum*. (*Pipon, J. C.*) SANT RAM v. DIWAN CHAND. 75 I.C. 289=24 Cr. L.J. 913 (Lah.)

**—S. 182—Comparative Scope.**

Sections 182 and 211, Penal Code in reality differ fundamentally as regards the ingredients of the offence concerned.

Section 182 is primarily intended for cases of false information which do not ordinarily involve a particular allegation or charge against a specified and definite person. S. 211 covers cases where there is a definite information or charge with reference to a criminal offence against a particular person. (*Findlay, J. C.*) BHOLU v. PUNAJI. 105 I.C. 434=  
23 N.L.R. 136=10 N.L.J. 191=28 Cr. L.J. 934=  
9 A.I. Cr. R. 87=A.I.R. 1928 Nag. 17.

**—S. 182—Essentials.**

To constitute the offence punishable under S. 182, I.P.C. it is necessary that the information given should be that which the accused person knows or believes to be false. It is not sufficient that he had reason to believe it to be false, or that he did not believe it to be true, there must have been positive knowledge or belief that it was false: 32 P. R. 1884 Cr. and 29 P. R. 1894 Cr., Foll. (*Tekchand, J.*) SARDAR KHAN v. EMPEROR. 119 I.C. 230=30 P.L.R. 685=30 Cr. L.J. 1008=  
1930 Cr. C. 22=11 L.L.J. 495=A.I.R. 1930 Lah. 84.

—It is an essential ingredient of an offence under S. 182 that the offender should intend to cause, or should know it to be likely that the information given by him to the public servant will cause the public servant to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given or known by him, or to use the lawful power of such public servant to the injury or annoyance of any person. A. I. R. 1925 Pat. 717, Ref. (*Courtney-Terrill, C. J., and Dhaole, J.*) BANTI PANDE v. EMPEROR. A.I.R. 1930 Pat. 550.

—Under S. 182, accused must have known or believed information to be false while under S. 211

**PENAL CODE (1860), S. 182—"Gives information."**

if he had reasons to believe it to be false it is enough.

Under S. 211 of the Penal Code if the accused makes his complaint without any just grounds and acts without due care or caution it is enough to constitute an offence. But under S. 182 the information given to a public servant should not only be false in fact but it must be false to the knowledge or belief of the informant and the mere fact that the accused had reasons to believe it to be false is not sufficient. (*Rupchand Bilaram, A. J. C.*) X v. EMPEROR. 82 I.C. 718=19 S.L.R. 91=25 Cr. L.J. 1358=  
A.I.R. 1925 Sind 184.

**—S. 182—Evidence and Proof.**

The fact that an information is shown to be false does not cast upon the party who is charged with an offence under S. 182 the burden of showing that when he made it, he believed it to be true. The prosecution must make out that the only reasonable inference was that he must have known or believed it to be false. It is necessary for the prosecution to prove, not merely the absence of reasonable or probable cause for giving the information, but a positive knowledge or belief of the falsity of the information given: 26 Mad. 640; 31 Bom. 204; and 35 P. R. 1890 Cr.; Foll. (*Tek Chand and Agha Haidar, JJ.*) EMPEROR v. KARTARSINGH. 110 I.C. 785=  
10 A.I. Cr. R. 557=29 Cr. L.J. 753 (Lah.)

**—S. 182—False Report.**

—Police prosecuting for different offence—Persons giving false report whether liable to be convicted.

A made a false report of dacoity. The police did not proceed on his complaint but prosecuted certain persons under S. 324. This offence was also not brought home to them and the police made a complaint against A requesting his prosecution under S. 182 for making a false report of dacoity. A was convicted. Held that the conviction was legal. The complaint was properly made under S. 182. The only persons who could take action in the case were the police and not the Court which not having tried any case of dacoity was not in a position of being able to say a false complaint had been made of dacoity before it. (*Pullan, J.*) GANGA PRASAD v. EMPEROR. 7 O.W.N. 756=1930 Cr. C. 954=  
A.I.R. 1930 Oudh 414.

**—S. 182—"Gives information."**

There is nothing to justify the reading in of the word "voluntarily" before the word "gives" in S. 182.

Where a driver of a motor-car driving without a license, when asked for his name by the Superintendent of Police gave a wrong name,

Held: that the Superintendent of Police was not holding an investigation and the question put to the driver was not put under S. 161, Cr. P. Code, so as to give him benefit of S. 162. He is guilty under S. 182, I.P.C., because the words "gives information" in that section should not be interpreted as necessarily meaning "volunteers information": 35 P.W.R. Cr. 1914, Dist. 10 Bom. 124 and A. I. R. 1928 Pat. 56, Rel. on. (*Allanson, J.*) EMPEROR v. LACHMAN SINGH. 113 I.C. 587=7 Pat. 718=10 P.L.T. 244=  
30 Cr. L.J. 117=11 A.I. Cr. R. 567=  
A.I.R. 1929 Pat. 4.

—The words "give information" should not be interpreted as necessarily meaning "voluntary information," i.e., that it must be information on some matter which is not already under inquiry by the public servant.

Statements made by persons in the nature of evidence given before an inquiring officer are information as contemplated by the section: 10 Bom. 124,



**PENAL CODE (1860), S. 182—"Gives information."**

Rel. on; 31 Mad. 506 and 227 P.L.R. 1914 Cr., Dist. (Allanson, J.) BISHWANATH SINGH v. EMPEROR. 104 I.C. 712=28 Cr.L.J. 872=9 A.I.Cr.R. 54=9 P.L.T. 342=A.I.R. 1928 Pat. 56.

—Obiter—The word "give" in S. 182 cannot be given the restricted meaning of the word "volunteer". 227 P.L.R. 1914 and 2 Cr. L. J. 474, not foll. (Maung Ba, J.) SULTAN v. DE M. WELBOURNE, 90 I.C. 316=26 Cr.L.J. 1532=4 Bur. L.J. 261=3 Rang. 577=A.I.R. 1925 Rang. 364.

**—S. 182—Graver and minor offences.**

There is no bar to cognizance being taken of an offence under Penal Code, S. 211 on the complaint of the investigating police officer though he is not also an officer referred to under S. 195 (1) (a), Cr. P. Code; but if the charge under Penal Code, S. 211 fails, there cannot by reason of Cr. P. Code, S. 195 (1) (a) be a conviction under Penal Code, S. 182. (Macpherson, J.) KANTIR MISSIR v. EMPEROR. 117 I.C. 37=30 Cr. L. J. 710=1930 Cr. C. 74=11 P.L.T. 88=A.I.R. 1930 Pat. 98.

**—S. 182—Inability to prove.**

—Inability to substantiate claim is no offence.

A person who makes a false statement in his petition cannot be held to have committed an offence under S. 182 simply because his claim is not substantiated, even assuming that some false statement, which was not directly the subject of complaint, was made with the object of inducing and that he did induce the Court to take some action, as it cannot be said that the Court was thereby induced to do what it ought not to have done. (Jwala Prasad, J.) AMIR ALI v. DUKHAN MOMIN. 109 I.C. 805=10 A. I. Cr. R. 320=29 Cr. L.J. 613=A.I.R. 1928 Pat. 574.

**—S. 182—Intention.**

A driver of a motor car was driving without license. The Superintendent of Police asked for his name and he gave a false and fictitious name. The effect of the false information was that difficulties and obstacles were put in the way of his prosecution.

Held; that although the effect of the wrong information was merely to obstruct the prosecution of the real offender, yet it is the intention in the mind of the informant, that is important. In giving the false name the driver's intention was to cause the police officer to take steps for the prosecution of a person, who did not exist and to omit to take steps against himself. The false information given by him, therefore, came within the mischief of S. 182 (a); 13 All. 351 and 13 Bom. 506, Rel. on. (Allanson, J.) EMPEROR v. LACHMAN SINGH. 113 I.C. 587=7 Pat. 715=10 P.L.T. 244=30 Cr. L.J. 177=11 A.I. Cr. R. 567=A.I.R. 1929 Pat. 4.

**—S. 182—Jurisdiction.**

Person making complaint to police—Police taking no action—Complaint filed in Court of Magistrate—Magistrate ordering preliminary inquiry—Police subsequently filing complaint in Court of another Magistrate against the informant charging him under Ss. 182 and 211—Latter Court cannot take cognizance of complaint filed by police. A.I.R. 1927 Cal. 95; A.I.R. 1927 Mad. 851; A. I. R. 1928 Rang. 254, Rel. on. (Wild, J. C. and Aston, A. J. C.) RAMCHAND v. EMPEROR. 115 I. C. 313=23 S.L.R. 223=30 Cr. L. J. 389=1123 Cr. C. 166=A.I.R. 1929 Sind 115.

**—S. 182—No offence.**

Person identifying before Treasury Officer another as the proper payee of a certain money, rashly and without taking care to ascertain as to the truth of his identity is not guilty under S. 182 or S. 420 where it

**PENAL CODE (1860), S. 182—What constitutes offence.**

is held that his intention was not dishonest. (Rankin and Mukerji, JJ.) EMPEROR v. CHANDRA KUMAR DEV. 99 I. C. 57=44 C.L.J. 230=28 Cr. L.J. 25=7 A.I. Cr. R. 177=A.I.R. 1927 Cal. 78.

**—S. 182—Power to prosecute.**

The petitioner filed a complaint before the Magistrate who after examining the petitioner sent the complaint to the Sub-Inspector for inquiry and report. The Sub-Inspector reported the case to be maliciously false, recommended the prosecution of the petitioner under S. 211, Penal Code, and preferred a complaint of that offence against the petitioner. The petitioner filed a petition impugning the report and praying the Magistrate to make a judicial inquiry. The Magistrate directed the Sub-Inspector to submit a report for prosecution under S. 182 and on receipt of the "report for prosecution" issued summons on the petitioner under S. 182.

Held: that the order was wrong in law, that S. 195 (i) (a), Cr. P. Code, bars a complaint by the Sub-Inspector of an offence under S. 182 since he was not "the public servant concerned" or the superior of such public servant to whom the false information punishable under S. 182 was given and that S. 195 (i) (b) was a bar to cognizance being taken of it except on the complaint of the Magistrate. (Macpherson, J.) JOKHI MIAN v. MAHMAD DAFADAR. 115 I.C. 882=10 P.L.T. 77=30 Cr. L.J. 545=12 A.I.Cr.R. 363=A.I.R. 1929 Pat. 92.

—False report to the police—Similar complaint subsequently to Magistrate—Police can institute proceedings under S. 182—Discretion or power of the police to proceed is not limited in any way by the discretion vested in the Magistrate. (Boys and Iqbal Ahmad, JJ.) JANG BAHADUR SINGH v. EMPEROR. 114 I.C. 189=26 A.L.J. 533=9 L.R. A. Cr. 73=9 A. I. Cr. R. 458=30 Cr. L.J. 72=A.I.R. 1928 All. 342.

—Accused persons not taking action under S. 211—Court has authority to complain against the false complainant. (Dalal, J.) RAM DAS v. GANGA RAM. 112 I.C. 770=9 L.R. A. Cr. 71=9 L.R. A. Cr. 78=9 A. I. Cr. R. 446=9 A. I. Cr. R. 475=30 Cr. L.J. 2=A.I.R. 1928 All. 333.

**—S. 182—Public servant.**

—Information to any but a public servant as defined by Code—No offence.

No offence under S. 182, Indian Penal Code can be made out where it is not suggested that false information was given to a public servant as defined by the Indian Penal Code, quite apart from the consideration that it was given without and beyond British India. (Shah and Kajiji, JJ.) RAMBHARTHI HIRABHARATHI, In re. 77 I.C. 189=47 Bom. 907=25 Bom. L.R. 772=25 Cr. L.J. 333=A.I.R. 1924 Bom. 51.

**—S. 182—What constitutes offence.**

A made a false report of dacoity. The police did not proceed on his complaint but prosecuted certain persons under S. 324. This offence also was not brought home to them and the police made a complaint against A requesting his prosecution under S. 182 for making a false report of dacoity. A was convicted.

Held: that the conviction was legal. The complaint was properly made under S. 182. The only persons who could take action in the case were the police and not the Court which not having tried any case of dacoity was not in a position of being able to say a false complaint had been made of dacoity



**PENAL CODE (1860), S. 183—No offence.**

before it : A.I.R. 1928 Rang. 254, Dist. (*Pullan, J.*)  
**GANGA PRASAD v. EMPEROR.** 7 O.W.N. 756=  
 1930 Cr. C. 954=A.I.R. 1930 Oudh 414.

**—S. 183—No offence.**

Where certain property is entrusted to a firm for sale and subsequently the management of the owner's estate is handed over to the Court of Wards, any refusal by the firm to deliver the property entrusted to them until their general account is settled does not amount to any resistance to the taking of any property by the lawful authority of any public servant, nor voluntary obstruction to a public servant in the discharge of his public functions, by reason of S. 171 of the Contract Act. (*Stuart, C. J.*) **E. H. PARAKH v. EMPEROR.**

92 I.C. 744=1 Luck. 133=  
 3 O.W.N. 160=27 Cr. L.J. 328=  
 A.I.R. 1926 Oudh 202.

**—S. 186—Conviction and sentence.**

Separate convictions under both sections are bad when the accused is found to have refused to follow the Court peon when arrested under civil warrant and threatened to use violence—Whole occurrence falls under S. 189, Penal Code. (*Kulwant Sahay, J.*)  
**JAGARNATH SINGH v. EMPEROR.** 82 I.C. 165=  
 25 Cr. L.J. 1237=A.I.R. 1925 Pat. 183.

**—S. 186—Escape from custody.**

Escape from lawful custody of a process server does not amount to obstruction to a public servant in the discharge of his duties, nor does the act of a person in running away and shutting himself up in a room and refusing to come out constitute voluntary "obstruction," but it constitutes an offence under S. 225-B. 2 B.H.C. 128 (F.B.), Foll. (*Tek Chand, J.*)  
**JAMNA DAS v. EMPEROR.** 103 I.C. 833=  
 9 L.L.J. 408=3 A.I. Cr. R. 443=  
 28 Cr. L.J. 753=A.I.R. 1927 Lah. 708.

**—S. 186—Essentials.**

The word "obstruction" as used in S. 186 means "physical obstruction," i.e., actual resistance or obstacle put in the way of a public servant. The word implies the use of criminal force, and mere threats or threatening language is insufficient : 7 A.L.J. 1174 and 38 All. 506; Ref. (*Shadi Lal, C. J.*) **MT. DARKAN v. EMPEROR.**

110 I.C. 101=40 A.I. Cr. R. 486=  
 29 Cr. L.J. 645=A.I.R. 1928 Lah. 827.

**—S. 186—Illegal warrant.**

Prayer for symbolical possession only—Warrant issued for actual possession—Warrant is illegal—Obstruction by person in possession not bound by decree—No offence is committed.

Obstruction to illegal warrant is not unlawful. (*Krishnan, J.*) **MURUGAPPA NAICKER v. EMPEROR.**

85 I.C. 286=26 Cr. L.J. 750=  
 21 M.L.W. 82=A.I.R. 1925 Mad. 613=  
 48 M.L.J. 97.

—The execution of a writ of attachment after the date fixed for its return has expired, is illegal and therefore resistance to such an execution is not an offence under S. 186. (*Sultan Ahmed, J.*) **TANUK LAL MANDAR v. EMPEROR.**

60 I.C. 334=  
 1 Pat. L.T. 654=22 Cr. L.J. 222=  
 1920 P.H. C.G. 285 (Pat.)

**—S. 186—Invalid warrant.**

When the date fixed in a warrant of attachment has expired, then the warrant is no longer in force and capable of execution, and if any person offers resistance to execution purporting to be made under the time-expired warrant then he is not guilty of any offence under S. 186 : 10 Cal. 18 ; 37 Cal. 122 ; 31 Cal. 424 and 1 Pat. L. J. 550, Foll. ; 40 Cal. 849 Dist.

**PENAL CODE (1860), S. 186—Public functions.**

(*King, J.*) **MAHADEO v. KING EMPEROR.**

99 I.C. 413=2 Luck. 40=4 O.W.N. 43=  
 28 Cr. L.J. 157=7 A.I. Cr. R. 56=  
 A.I.R. 1927 Oudh. 91.

—Attachment under invalid writ—Attached property claimed by owner judgment-debtor from attaching peon's possession—Peon delivering possession of property—Judgment-debtor is not guilty under S. 186. (*Adami and Bucknill, JJ.*) **BADRI GOPE v. EMPEROR.**

93 I.C. 146=5 Pat. 216=7 P.L.T. 30=  
 27 Cr. L.J. 418=A.I.R. 1926 Pat. 237.

**—S. 186—No offence.**

The refusal of a patwari to allow the Kanungo to go through his books and to check them is only an act of insubordination and is not a criminal act. (*Mukerji, J.*) **KISHORI LAL v. EMPEROR.**

85 I.C. 821=26 Cr. L.J. 597=6 L.R.A. Cr. 43=  
 A.I.R. 1925 All. 409.

—Resigning membership of Panchayat and instigating others not to accept the membership—No offence.

The accused a member of a village Panchayat when asked to sit with a member of the depressed classes, refused to do so and told the S. D. O. that the Panchayat would cease to exist and instigated his fellow Panchas and other persons not to sit with the members of the depressed classes in the Panchayat.

Held : that though the Sub-Divisional Officer was no doubt hampered in the performance of his public duty by the refusal of the applicant and by his instigations, the applicant's conduct did not amount to voluntary obstruction within the meaning of S. 186. (*Stuart, J.*) **RAM GULAM SINGH v. EMPEROR.**

87 I.C. 514=47 All. 579=23 A.L.J. 352=  
 26 Cr. L.J. 978=A.I.R. 1925 All. 401.

**—S. 186—"Public Servant".**

—Obstruction to helpers of the public officer is not obstruction to public officer.

The Naib-Tahsildar of Income Tax visited the village of the accused where he was told by the Lambardars that the petitioners kept several shops and ought to be assessed. A dispute then took place between the Lambardars on the one side and the petitioners on the other and it was alleged that the Lambardars were in the course of the quarrel assaulted and beaten and thereupon they declined to render any help to the Naib Tahsildar. Held, that the mere fact that the Lambardars so refused to render help to the Naib Tahsildar, does not amount to obstruction to the Naib Tahsildar, within S. 186. (*Shadi Lal, C. J.*) **MATU RAM v. EMPEROR.**

73 I.C. 338=24 Cr. L.J. 594=  
 A.I.R. 1924 Lah. 238.

**—S. 186—Passive conduct.**

The word "voluntarily" contemplates the commission of some overt act or obstruction ; mere passive conduct is not intended to be penalised. (*Moti Sagar, J.*) **JASWANT SINGH v. EMPEROR.**

81 I.C. 209=25 Cr. L.J. 721=  
 A.I.R. 1925 Lah. 139.

**—S. 186—Procedure.**

In the Central Provinces a complaint in respect of an offence under S. 186, I.P.C., in respect of a process-server, can be made by a Nazir, or a District Judge, or the Judicial Commissioner, but not a Sub-Judge nor an Additional Judicial Commissioner. (*Hallifax, A.J.C.*) **MRITYUNJAY PRASAD v. RAMRAO.**

96 I.C. 866=27 Cr. L.J. 1010=  
 A.I.R. 1926 Nag. 485.

**—S. 186—Public functions.**

"Public functions" mean legal or legitimately authorised public functions and do not cover every act

**PENAL CODE (1860), S. 186—Sanction.**

undertaken to be performed by public functionary and *bona fide* belief of the public servant that he is acting in the discharge of his duties does not make resistance or obstruction to him an offence. (10 P.R. 1905 Cr.; 13 Bom. 168; 23 Cal. 896, Foll.) (*Motisagar, J.*)  
**JASWANT SINGH v. EMPEROR.** 81 I.C. 209=  
 25 Cr. L.J. 721=A.I.R. 1925 Lah. 139.

**—S. 186—Sanction.**

District Munsif cannot dispense with on enquiry in granting sanction under S. 186, I.P.C. (*Ramesam and Wallace, J.*) **MULLIAH GOUNDAN v. CHINNA NALLAPPA GOUNDAN.** 83 I.C. 702=19 M.L.W. 392=  
 1924 M.W.N. 358=26 Cr. L.J. 142=  
 A.I.R. 1924 Mad. 615.

**—S. 186—Want of jurisdiction.**

**—Officer acting beyond jurisdiction—Obstruction to him is not punishable.**

Section 186 does not apply to an officer, who, is acting wholly outside his jurisdiction or authority.

Where a range Forest Officer was acting in perfect good faith, but he had no jurisdiction whatever to seize timber under S. 82 of the Indian Forest Act, or under any other enactment,

**Held:** obstruction offered to such officer is not punishable under S. 186: 15 Bom.L.R. 315, and 13 Bom. 168, Foll.

(*Patkar, J.*) The public functions mean legal and legitimately authorised public functions and do not cover any act which a public functionary may take upon himself to perform: 22 Cal. 286; 13 Bom. 168 and 15 Bom. L.R. 315, Ref. (*Fawcett and Patkar, J.*)  
**EMPEROR v. KADARBHAI USAFALLI.** 103 I.C. 593=  
 51 Bom. 896=28 Cr. L.J. 705=  
 8 A.I. Cr. R. 346=29 Bom. L.R. 987=  
 A.I.R. 1927 Bom. 483.

**—Person is not guilty of offence under S. 186 where the warrant was directed by Munsif to a place beyond his jurisdiction.** (*Walmsley and Subrawardy J.*) **SARBESHAWAR NATH v. EMPEROR.** 39 C.L.J. 33=  
 A.I.R. 1924 Cal. 501.

**—S. 186—What Constitutes offence.**

Obstruction offered to a person acting under the orders of a public servant while fixing the boundaries under Cl. 2, S. 119, Bombay Land Revenue Code, is equal to an obstruction offered to the public servant. 13 Bom. 160 and A.I.R. 1927 Bom. 483, Dist: A.I.R. 1928 Bom. 135, Rel on. (*Patkar and Baker, J.*)  
**LIMBA SATYA v. EMPEROR.** 31 Bom. L.R. 800=  
 1929 Cr. C. 321=A.I.R. 1929 Bom. 385.

**—Execution of distress warrant against person assessed to incometax—Peon attaching property and giving custody to surety—Another peon sent to sell it with direction to attach other property failing the one first attached—Surety denying custody and fact of suretyship—Other property attached—Resistance to such attachment is offence under S. 186.** (*Courtney Terrel, C.J. and Rowland, J.*) **PICHT LAL MISSEER v. EMPEROR.** 119 I.C. 886=30 Cr. L.J. 1099=  
 1929 Cr. C. 255=A.I.R. 1929 Pat. 503.

**—Physical obstruction to person acting under the direction of public servant present at the time is an offence under S. 186.**

In the case of removing an encroachment, a public servant has ordinarily only to see that the encroachment is removed. He is not, either by law or practice, required to do the whole act of removing the encroachment by his own hands. He can employ agents for such a manual task and if the agent is obstructed in doing what he is legitimately required to do by the public servant actually present at the time of the removal, then there is an obstruction offered to the public servant himself, because what

**PENAL CODE (1860), S. 188—Evidence and proof.**

he is doing by the hand of that agent is really, in the eyes of the law, something he is actually doing himself and the person obstructing is guilty under S. 186: A.I.R. 1924 Lah. 401 and A.I.R. 1925 All. 401, Dist. (*Fawcett and Mirza, J.*) **BHAGA MANA v. EMPEROR.** 109 I.C. 353=52 Bom. 286=30 Bom.L.R. 364=  
 10 A.I. Cr. R. 197=29 Cr.L.J. 529=  
 A.I.R. 1928 Bom. 135.

**—Where a constable entered a house and found in a room three articles alleged to have been stolen, but before the constable could remove them the accused caused the door of the room to be shut and also threatened to kill the constable if he removed the articles,**

**Held:** the acts constitute obstruction of a public servant in the discharge of his public functions. 15 Mad. 221, Dist. (*Venkatasubba Rao, J.*) **NARAYANA RAJU v. EMPEROR.** 83 I.C. 657=1924 M.W.N. 438=  
 20 M.L.W. 717=35 M.L.T. 126=26 Cr.L.J. 97=  
 A.I.R. 1924 Mad. 760.

**—S. 188—Disobedience long after order.**

Orders passed under S. 144, Cr. P. Code, being intended to provide for cases where a speedy remedy was desirable, do not have more than a temporary operation. Where an order had been passed on 7th February 1873 presumably under the said section prohibiting religious processions with music in any but certain specified thoroughfares in Bareilly City, a person could not now be convicted under S. 188 of the Penal Code for disobedience of that order long after. 5 Cal. 7 (F.B.), 10 All. 115; 2 Mad. 140, Ref. (*Walsh, J.*) **RAM DAS v. EMPEROR.** 59 I.C. 34=  
 22 Cr. L.J. 2=18 A.L.J. 857.

**—S. 188—Essentials.**

In order to constitute offence under S. 188 it is not sufficient merely to find that a person was a member of a crowd which disobeyed a lawful order but it must further be found that the disobedience of the crowd of which that person was a member, tended to cause danger to human life, health or safety, or caused or tended to cause a riot or an affray: 32 Cal. 793; A.I.R. 1928 Mad. 591, Rel. on. (*Tek Chand, J.*) **DIN MUHAMMAD v. EMPEROR.** 111 I.C. 461=  
 10 Lah. 231=29 P.L.R. 647=29 Cr.L.J. 877=  
 11 A.I. Cr. R. 137=A.I.R. 1929 Lah. 378.

**—It is not sufficient in order to affect a person with the knowledge of an order under S. 144 and to render him liable to conviction under S. 188 to show that the order had been duly promulgated. It is necessary to prove by positive evidence that he has the knowledge that the order has been made: A.I.R. 1927 Cal. 28 and 22 Cr.L.J. 705, Ref. (*Cuming and Gregory, J.*) **ABDUL v. EMPEROR.** 100 I.C. 830=  
 31 C.W.N. 340=45 C.L.J. 202=28 Cr.L.J. 350=  
 7 A.I. Cr. R. 540=A.I.R. 1927 Cal. 306.**

**—Promulgation of order is not sufficient—Accused must be proved to have knowledge of the order.**

Section 188 requires that it should not merely be proved that there was an order which was duly promulgated under S. 134, Cr. P. Code, but also that the accused person who is going to be convicted under the section was aware of it. The promulgation of the order is not sufficient to establish this knowledge: 22 Cr. L.J. 725, Foll. (*Mukerjee and G. N. Roy, J.*) **RAM DAS SINGH v. EMPEROR.** 99 I.C. 36=  
 54 Cal. 152=28 Cr. L.J. 4=44 C.L.J. 250=  
 A.I.R. 1927 Cal. 28.

**—S. 188—Evidence and Proof.**

Section 144 makes provision for a contingency that local and temporary orders may, at times, be made without there being a real danger of breach of the

**PENAL CODE (1860), S. 188—Evidence and proof.**  
 peace or other reason justifying it. Accordingly under that section it has to be proved that the accused not merely disobeyed the lawful order but that the act of disobedience was such as caused or involved the risk of a breach of the peace or other danger or trouble. (*Rankin, C. J. and Patterson, J.*)  
**DABIRUDDIN MOHAMMAD v. EMPEROR.**  
 1930 Cr. C. 131 = A.I.R. 1930 Cal. 131.

—Where having regard to the circular issued by the accused and his admissions that he convened the meeting, there is adequate ground for drawing the inference that the accused knew that the disobedience of the order of the Commissioner of Police would at least result in a conflict with police, the disobedience of the order under S. 23 (3) in such a case fulfils all the conditions necessary to constitute an offence under Penal Code, S. 188: A. I. R. 1923 All. 606, Ref. (*Patkar and Wild, J.J.*) **BHALCHANDRA TRIMBAK RANADIVE v. EMPEROR.** 1929 Cr. C. 545 = 31 Bom. L.R. 1151 = A.I.R. 1929 Bom. 433.

—In the absence of a finding to the effect that the disobedience was likely to cause or tended to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person or any one of the things mentioned in Cl. 3, the mere disobedience of a duly promulgated order is not an offence under S. 188. (*Devadoss, J.*) **PARAMASIVA MOOPPAN v. EMPEROR.** 109 I.C. 606 = 1928 M.W.N. 70 = 29 Cr. L.J. 590 = 10 A.I.Cr.R. 258 = 1 M. Cr. C. 80 = A.I.R. 1928 Mad. 591.

—Sale of arrack in contravention of an order promulgated by the District Collector is not punishable under S. 188 in absence of proof of causing or tending to cause obstruction, annoyance or injury to any one. (*Wallace and Madhavan Nair, J.J.*) **Y. VENKANNA, in re.** 90 I.C. 436 = 22 M.L.W. 98 = 1925 M.W.N. 396 = 26 Cr. L.J. 1556 = A.I.R. 1925 Mad. 856 = 48 M.L.J. 605.

—It is the duty of the prosecution in every case under S. 188 to prove by positive evidence that the accused had knowledge of the order with the disobedience of which he is charged. The proof of general notification promulgating the order does not satisfy the requirements of the section. (*Abdul Raof and Moti Sagar, J.J.*) **EMPEROR v. ABDULLAH.** 63 I.C. 865 = 22 Cr. L.J. 705 (Lah.).

#### —S. 188—Interpretation.

**Per Sulaiman, J.**—To be justified in directing a certain act to be done or not to be done is one thing, and be legally empowered to order its commission or omission, with the consequence of the disobedience being punishable under Section 188 of the Indian Penal Code, is quite another. (*Walsh, Ag. C. J. and Sulaiman, J.*) **KING-EMPEROR v. RAGHUNATH VENAIAK.** 85 I.C. 823 = 47 All. 205 = 22 A.L.J. 1049 = 26 Cr. L.J. 591 = 6 L.R.A. Cr. 1 = A.I.R. 1925 All. 165.

#### —S. 188—Offence under Special Acts.

—**Order under Bombay City Police Act—Disobedience of, is offence under section.**

The offence of disobedience of an order duly promulgated by a public servant under certain prescribed conditions is an offence under S. 188, I.P.C., and S. 23 (3) enlarges the ambit of the existing offence under S. 188, I. P. C. by including an act prohibited by S. 23 (3) within it. Though the disobedience of the order of the Police Commissioner under S. 23 (3) is an offence punishable under S. 127, yet it would be equally punishable under S. 188, I. P. C. if all the conditions laid down by that section are fulfilled: *Lowe v. Dorling & Son*, (1906) 2 K. B.

#### **PENAL CODE (1860), S. 189—Separate convictions.**

772 and *Rex v. Wright*. (1758). 1 Bur. 543, Ref. (*Patkar and Wild, J.J.*) **BHALCHANDRA TRIMBAK RANADIVE v. EMPEROR.** 1929 Cr. C. 545 = 31 Bom. L.R. 1151 = A.I.R. 1929 Bom. 433.

#### —S. 188—"Promulgate."

—**Meeting convened against order of Police Commissioner—Order held duly promulgated under S. 188.**

On 15th July 1920, the Commissioner of Police issued an order, styling it a "notification" under S. 23 (3) prohibiting the President, the Secretary, the members of the managing Committee and the members of the Girni Kamgar Union from holding, convening, or calling together any assembly of mill hands or employers of the textile mills of Bombay for one week from the date of the order. The notification was duly promulgated in the mill area. On 13th July 1929, a circular was issued purporting to be signed by six persons including the accused inviting the strikers to attend the meeting. The meeting was held in the evening and in consequence the accused were placed before a Magistrate who convicted them under I.P.C. S. 143.

**Held:** that in issuing the order under S. 23 (3) the Commissioner of Police properly exercised his discretion for the preservation of the public peace and safety and that it was lawfully promulgated within the meaning of Penal Code, S. 188.

**Held further:** that the order in writing was not vitiated by the misdescription as a notification: *Sharp v. Wakefield*, (1891) A. C. 17; A.I.R. 1924 Bom. 1, Ref. (*Patkar and Wild, J.J.*) **BHALCHANDRA TRIMBAK RANADIVE v. EMPEROR.**

1929 Cr. C. 545 = 31 Bom. L. R. 1151 =

A.I.R. 1929 Bom. 433.

—**Per Walsh, Ag. C. J.**—*Prima facie* "promulgate" seems to indicate, if not a formal document printed or written, at any rate some form of publication. The view that it must be printed or written may be rejected. (*Walsh, Ag. C. J. and Sulaiman, J.*) **KING-EMPEROR v. RAGHUNATH VENAIAK.**

85 I.C. 823 = 47 All. 205 = 22 A.L.J. 1049 =

26 Cr. L. J. 599 = 6 L.R.A. Cr. 1 =

A.I.R. 1925 All. 165.

#### —S. 188—What is offence under.

—**Order under Cr. P. C. 145—Resistance to.**

Where a person was not only aware of proceedings under S. 145 but has acted in collusion with one party in order to deprive the other party of the fruits of their success in S. 145 case.

**Held:** that the order under S. 145 was binding on such person and any resistance to execution of the order will justify conviction under S. 188. (*Pearson and Mallik, J.J.*) **SATYA CHARAN DE v. EMPEROR.** 33 C.W.N. 1002 = 1930 Cr. C. 15 = A.I.R. 1930 Cal. 63.

#### —S. 188—Injury, what is.

Injury in S. 189 implies an illegal harm; but the mere threat to bring a legal complaint either before a Court or before a constable's superiors is not an injury. (*Le Rossignol, J.*) **SHAHDAID KHAN v. KING-EMPEROR.** 93 I.C. 48 = 6 Lah. 558 = 27 Cr. L. J. 406 = 27 P.L.R. 87 =

A.I.R. 1926 Lah. 139.

#### —S. 188—Separate convictions.

Separate convictions under both sections are bad when the accused is found to have refused to follow the Court peon when arrested under civil warrant and threatened to use violence—Whole occurrence falls under S. 189, Penal Code. (*Kulwant Sahay, J.*)

**PENAL CODE (1860), S. 190—Injury, what is.**

JAGARNATH SINGH v. KING-EMPEROR.

82 I.C. 165=25 Cr.L.J. 1237=  
A.I.R. 1925 Pat. 183.**—S. 190—Injury, what is.**

A threat for the institution of a civil suit for a mere declaration of right against a person who is objecting to that right cannot be said to be an injury within S. 190. (*Sulaiman, J.*) MULAI RAI v. EMPEROR.

92 I.C. 863=24 A.L.J. 314=27 Cr.L.J. 351=  
7 L.R.A.Gr. 51=A.I.R. 1926 All. 277.**—S. 191—Affidavits.**

A person making an affidavit containing a false statement made in support of an application for transfer of a case is guilty under S. 191, 20 Cal. 724; 5 S.L.R. 102; and 10 S.L.R. 64, Dist. (*Tyabji, A. J.C.*) SANWAL v. EMPEROR. 99 I.C. 341=

28 Cr.L.J. 133=A.I.R. 1927 Sind. 113.

**—S. 191—Essentials.**

In order to sustain an indictment for perjury the prosecution must establish, *inter alia*, two things: (1) that the statement was false; and (2) that it was known or believed to be false or not believed to be true. In other words, the statement must be intentionally false. (*Shadi Lal, C. J.*) TAJ MAHOMMAD v. EMPEROR. 107 I.C. 100=29 P.L.R. 14=

29 Cr.L.J. 212=

9 A.I.Cr.R. 305=A.I.R. 1928 Lah. 123.

**—S. 191—Evidence.**

—Two depositions contradictory—They must be wholly irreconcilable to prove perjury.

Where two depositions of a witness contradict each other, in order to establish the charge of perjury it is necessary to prove that the two statements are wholly irreconcilable.

There are cases in which a person might honestly and conscientiously swear to a particular fact from the best of his recollection and belief, and from other circumstances at a subsequent time he might be convinced that he was wrong and swear to the reverse, without meaning to swear falsely on either of the two occasions. (*Shadi Lal, C. J.*) TAJ MOHAMMAD v. EMPEROR. 107 I.C. 100=29 P.L.R. 14=

29 Cr.L.J. 212=

9 A.I.Cr.R. 305=A.I.R. 1928 Lah. 123.

**—S. 191—Offences under.**

The offence of perjury is intimately connected with the statements made. There would be as many different offences as there are false statements. (*Mukerji, J.*) NANHU SINGH v. EMPEROR. 111 I.C. 122=

10 A.I.Cr.R. 269=9 L.R.A.Gr. 121=

29 Cr.L.J. 794=A.I.R. 1928 All. 706.

**—S. 192—False dying declaration.**

—False dying declaration by man, who does nothing to communicate with authorities does not come under either S. 192 or S. 194.

While a false dying declaration may well, in certain circumstances, go in as evidence, the intent that it may appear in evidence in a judicial proceeding and cause an erroneous opinion to be entertained touching a point material to the result of such a proceeding, which is an essential ingredient in the definition, cannot easily be inferred of a man who was thought to be dying at the time and did nothing by himself or by his friends to communicate with or seek any redress from the authorities. The intent of knowledge necessary under S. 194 presents an even greater difficulty in the application of that section, for it postulates a feeling in the mind of the petitioner that his recovery was impossible. (*Courtney-Terrell, C.J. and Dhillon, J.*) BANTI PANDE v. EMPEROR. A.I.R. 1930 Pat. 550.

**PENAL CODE (1860), S. 193—Basis of prosecution. —S. 192—Procedure.**

Where a party who has brought a civil suit has not himself fabricated the evidence in relation to that suit but is challenging certain evidence the opposite party might produce against him, to his prejudice as being false and fabricated and it is not produced and the party succeeds in the suit, party is entitled to file a complaint against the other party under Ss. 192 and 193, Penal Code, and it is not necessary that the Court should file complaint under S. 195 (b), Cr. P. Code: A.I.R. 1923 Bom. 105 and 39 Mad. 677, Dist. (*Mirza and Broomfield, J.J.*) MOHANIRAJ KRISHNA KORHALKAR, *In re*. 32 Bom. L.R. 589=

A.I.R. 1930 Bom. 337.

**—S. 192—Tutored Evidence.**

The tutoring of a man to give false evidence amounts to the "causing of a circumstance to exist" within S. 192: 29 All. 351, Foll.; 16 Cr. L. J. 667, Diss. from. (*Lindsay, Ag. C. J.*) SURNATH BHADURI v. EMPEROR. 105 I.C. 662=25 A.L.J. 1077=

8 A. I. Cr. R. 342=8 L. R. A. Cr. 140=

28 Cr. L. J. 950=A.I.R. 1927 All. 721.

**—S. 193.****Appeal and revision.****Basis of prosecution.****Complaint and charge.****Contradictory statement.****Essentials.****Fabrication of false evidence.****False statements.****Grounds for conviction.****Purpose of being used.****Retracted statements.****Sanction.****Sentence.****Miscellaneous.****—S. 193—Appeal and revision.**

Perjury committed in administrative enquiry—No appeal lies against order for prosecution. (*Sen, J.*) RAJA RAM v. EMPEROR. 120 I.C. 122=

30 Cr. L.J. 1154=1930 A.L.J. 251=

1929 Cr. C. 664=A.I.R. 1929 All. 936.

—Revision Court cannot direct further inquiry into an offence under S. 193, where the sanction of the Court in which that offence was committed is wanting. (*Dalal, J.*) MEHARBAN ALI KHAN v. SITA RAM. 118 I.C. 232=1929 A.L.J. 512=

10 L.R.A. Cr. 9=30 Cr. L.J. 874=

12 A.I. Cr. R. 22=1929 Cr. C. 1=

A.I.R. 1929 All. 374.

**—S. 193—Basis of prosecution.**

—Perjury case written complaint, no basis for—But examination on oath can be basis.

As a written complaint is not verified nor is it required by law to be verified it cannot by itself be used as a basis for prosecution for perjury. But the examination of the complainant under S. 200 being taken on oath and signed by the complainant can be so used though it does not bear any certificate by the Magistrate that the same was read over to the complainant. The evident object of getting this substance of the examination of the complaint signed by him or her is to make use of it, in case of need: as against the complainant's subsequent deposition as a witness for starting against him, if need be, a prosecution for perjury on the ground that the two statements contradict each other. 6 C.W.N. 840, Rel. on. (*Kinkhede, A.J.C.*) BHAGIRATHI BAI v. EMPEROR. 89 I.C. 713=26 Cr. L.J. 1401=A.I.R. 1926 Nag. 141.

—Deposition not read over to witness, can't be basis of prosecution.

Where the provisions of Order 18, Rule 5 of the Civil Procedure Code have not been fully complied

**PENAL CODE (1860), S. 193—Basis of prosecution.**

with *e.g.*, when the deposition of a witness has not been read over to him after it is recorded it is not permissible to prosecute the witness on his previous statement thus informally recorded and to supplement such omission by means of extrinsic evidence, although every departure from the letter of the law not offending against the spirit of it, should not derogate from the evidentiary value of a record of Court. 42 Cal. 240, Foll. 28 Mad. 308, Foll. 45 Cal. 825, Dist. (*Suhrawardy and Cuming, JJ.*) **EMPEROR v. NABAB ALI SARKAR.** 81 I.C. 803=51 Cal. 236=

25 Cr. L.J. 1027=A.I.R. 1924 Cal. 705.

—*Perjury trial—Opinion of handwriting expert and judge's opinion—Conviction bad.*

Where in a trial for perjury in respect of a promissory note which the accused said on oath was in his handwriting, the Magistrate admitted in evidence the opinion of a handwriting expert against the accused without his being examined on oath and also had his own opinion after comparing the handwriting of the promissory note with various other handwritings, that the writing was not of the accused.

*Held* that a conviction under S. 193 based on these materials is bad. The proposition that a Judge should not import his personal knowledge into his judgments and that if he wishes to rely on facts within his knowledge, he must go to the witness box and depose to them on oath is no doubt correct in the main, but it does not apply to facts of which a Judge is permitted to take judicial notice and nowhere in the Indian Evidence Act is it laid down that a Judge must not look at exhibits produced in Court or partly base his judgment on them. 11 W.R. Cr. 25, Foll.

No man can be convicted of giving false evidence except on proof of facts which, if accepted as true, shew not merely that it is incredible, but that it is impossible that the statements of the party accused made on oath can be true. If the inference from the facts proved falls, short of this, there is nothing on which a conviction can stand; because assuming all that is proved to be true, it is still possible that no crime was committed. (*Mac Coll, J.*) **S. C. GUPTA v. EMPEROR.** 76 I.C. 425=1 Rang. 290=

25 Cr. L. J. 185=A. I. R. 1924 Rang. 17.

—**S. 193—Complaint and charge.**

—*Complaint under Ss. 193 and 211, I. P. C.—Provisions of S. 198 Cr. P. Code complied with—Magistrate can frame charge under S. 500, I. P. C.*

Where the complaint purported to be under Ss. 193 and 211, Indian Penal Code, but the Magistrate, after hearing the evidence, framed the charge of defamation, under S. 500, Indian Penal Code, and convicted the accused under that section,

*Held*: It is quite sufficient that the complainant shall state the true facts in his own language, and it is for the Magistrate to apply the law to those facts. If, in the opinion of the Magistrate, the offence disclosed fell under S. 500, Penal Code the Magistrate was at liberty to proceed and frame a charge under that section, provided the complainant satisfied the conditions of S. 198 of the Cr. P. Code whatever may have been the section of the Penal Code recited in the complaint. 10 All. 39; 27 Mad. 61; 29 Cal. 415, Dist. 23 P. R. (Cr.) 1895 Foll. (*Le Rossignol and Fforde, JJ.*) **MT. NAURATI v. EMPEROR.** 95 I.C. 305=6 Lah. 375=26 P.L.R. 552=

27 Cr. L.J. 769=A.I.R. 1925 Lah. 631.

—*Complaint under—Particulars necessary.*

A complaint generally ought to contain sufficient particulars as to the offence with which a man is charged, and in the case of an offence under S. 193

**PENAL CODE (1860), S. 193—Contradictory statement.**

a complaint ought to mention the particulars, for S. 193 consists of two parts: one relating to false statements and the other to the fabrication of false evidence. If it is a false statement that is complained of then the false statement should be set out in detail. It should not be left to the trying Court to find out what statements are false and what statements are not false. (*Devadoss and Wallace, JJ.*) **SESHAYYA v. B. SUBBARAYUDU.** 90 I.C. 661=26 Cr. L.J. 1589=1925 M.W.N. 470=A.I.R. 1925 Mad. 1157.

—A complaint of offence under S. 193, I. P. C. must state what was the false evidence given by the accused.

It is not for the Magistrate to fish about in order to find out what statements the complaining Court may have considered to be false. The complaint itself must make it clear; otherwise a complaint under S. 193 cannot stand. (*Wallace and Madhavan Nair, JJ.*) **KALYANJI (dead) v. RAM DEEN LALA.** 86 I.C. 449=48 Mad. 395=21 M.L.W. 664=26 Cr. L.J. 801=A.I.R. 1925 Mad. 609=48 M.L.J. 290.

—*Charge must set out the specific answer alleged to be false.*

A charge under S. 193, was as follows: "That you intentionally gave false evidence in answer to certain of the following questions put to you in the course of your evidence before the said Court." Then followed the 50 questions and the answers thereto. Which answers were alleged to be false did not appear in the charge sheet.

*Held* that no accused person reading such a charge could say what he was called on to answer. (*C. C. Ghose and Cuming, JJ.*) **R. H. E. OATES v. EMPEROR.** 76 I.C. 417=25 Cr.L.J. 177=

38 C. L. J. 163=A.I.R. 1924 Cal. 104.

—**S. 193—Contradictory statement.**

In every case of contradictory statements it is not desirable to prosecute a witness. A prosecution in these circumstances should be undertaken when it appears to Court that it is expedient in the interest of justice that a complaint should be made under S. 476, Cr. P. Code, A.I.R. 1928 Cal. 862, Ref. (*Suhrawardy and Graham, JJ.*) **KAMINI KUMAR v. EMPEROR.** 33 C.W.N. 664=1929 Cr. C. 26=A.I.R. 1929 Cal. 390.

—There is no provision of law which requires that a witness should be given an opportunity to explain discrepancies in his evidence. But it is open to a witness if he wishes to do so to explain at the time when the deposition is read out to him. (*Suhrawardy and Graham, JJ.*) **KAMINI KUMAR CHAKRAVARTY v. EMPEROR.** 33 C.W.N. 664=

1929 Cr. C. 26=A.I.R. 1929 Cal. 390.

—*Contradictory statements in same deposition—No conviction for perjury.*

If a witness makes a statement and later in the course of the same deposition contradicts it and says it was untrue, the whole deposition amounts to no more than the second statement. He cannot be convicted of perjury in the alternative, in one or the other of the two statements, and if the first can be proved to be false he cannot be convicted of more than attempt to commit perjury. (*Hallifax, A.J.C.*) **LOCAL GOVERNMENT v. GAMBHIR BHUJA.** 103 I.C. 101=23 N.L.R. 35=28 Cr. L.J. 645=A.I.R. 1927 Nag. 189.

—Where one of the two contradictory statements was made by the witness after the accused was discharged from the case,



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*Held:* that that statement cannot be availed of by the accused for applying for prosecution of the witness for perjury: 42 Cal. 240, Rel. on. (*Kinkhede, A.J.C.*) BHAGIRATHIBAI v. EMPEROR. 89 I.C. 713=

26 Cr. L.J. 1401=A.I.R. 1926 Nag. 141.

**—S. 193—Essentials.**

*—For offence of perjury to be complete deponent must leave Court under lie with which he begins by deceiving it.*

The gist of an offence of perjury is the fact that it amounts to an attempt to mislead and deceive the Court. For the offence to be complete the deponent must leave the Court under the lie with which he began by deceiving it.

Where a witness makes a statement in his examination-in-chief contradictory to his previous deposition but in his cross-examination goes back to his previous position, the whole evidence must be read together and no offence of perjury is committed: A.I.R. 1927 Nag. 189, Affirmed. (*Findlay, J.C.*) TARACHAND MARWADI v. EMPEROR. 117 I.C. 210=

30 Cr. L.J. 724=1929 Cr. C. 436=

A.I.R. 1929 Nag. 279.

*—There can be no offence if a statement though false was made without an intention to make it, and it is only the intentional making of a false statement that the law condemns and punishes:* 28 Bom. 533; 7 All. 44; 10 Cal. 405 and 11 W.R. (Cr.) 25. Rel. on. (*Kinkhede, A.J.C.*) BHAGIRATHI BAI v. EMPEROR.

89 I.C. 713=26 Cr. L.J. 1401=

A.I.R. 1926 Nag. 141.

*—Statement capable of reasonable construction—No perjury.*

The intention to commit perjury must be clearly present before a person charged with that offence can properly be convicted of it and a statement capable of being construed in any reasonable way in such committing that it does not show a clear intention of committing perjury or a deliberate attempt to make a false statement, does not *per se* contain the elements of the offence. (*Bucknill, J.*) RAMGOBIND RAM v. KING EMPEROR. 72 I.C. 887=

1 Pat. L.R. Cr. 17=24 Cr. L.J. 471=

A.I.R. 1924 Pat. 381.

*—To support a conviction under S. 193, there must be absolute certainty about the falsity of the statement and the accused's lack of full faith in his own words.* (*Bucknill, J.*) LALMONI NONIA v. EMPEROR. 72 I.C. 161=4 P.L.T. 683=

1 Pat. L.R. Cr. 142=24 Cr. L.J. 321=

A.I.R. 1924 Pat. 276.

**—S. 193—Fabrication of false evidence.**

*—Accused sending waste paper by insured packet, purporting to contain currency notes in satisfaction of his debt due to addressee—Application to file the acknowledgment in suit by the addressee—Accused is guilty under section.*

A owed B certain amount. He sent a registered and insured packet to B, purporting to contain currency notes in settlement of debt and got acknowledgment of the receipt of the packet. The packet was found to contain waste paper. B sued A for the debt. A applied to Court to admit the acknowledgment in evidence.

*Held:* that A was neither guilty under S. 417 for cheating, nor of attempt to cheat. A's action amounted to preparation.

To satisfy the definition of cheating there must be fraudulent causation, and the act itself must involve the probability. It is not enough to say that the signed acknowledgment is likely to be used as to

**PENAL CODE (1860), S. 193—False statements.**

cause damage; the act of signing itself must be likely to cause damage.

*Held:* further that A was guilty under S. 193 for fabricating false evidence in relation to judicial proceedings and sanction under S. 195, Cr. P. Code, was necessary. (*Jackson, J.*) KUNJU v. EMPEROR.

99 I.C. 102=24 M.L.W. 725=28 Cr. L.J. 70=

38 M.L.T. 187=7 A.I. Cr. R. 7=

A.I.R. 1927 Mad. 199=51 M.L.J. 800.

*—Where the accused forged a kabuliyat,*

*Held:* that the inference that the intention of the accused in preparing the document was that the document in question should be used in a judicial proceeding, even though such a proceeding, had not in fact been instituted, is a reasonable one. (*Suhrawardy and Panton, J.J.*) HAMED ALI v. EMPEROR.

90 I.C. 534=42 C. L. J. 215=26 Cr. L. J. 1574=

A.I.R. 1926 Cal. 224.

*—A person fabricating a false rent note showing that a house has been let to him for a certain period is guilty under S. 193 of the Code.* (*Shah and Crump, J.J.*) RAJARAM BHAVANISHANKAR v. EMPEROR.

59 I.C. 135=22 Cr. L.J. 28=

22 Bom. L.R. 1229.

**—S. 193—False statements.**

*—Written statement in suit—False verification to—Liability.*

Since under O. 6, R. 15, C. P. Code there is an express provision of law requiring the defendant to confirm the truth of the statement made by him in the preceding clauses of his written statement, if he does so knowing that that verification is false, he is declared by legislature in S. 191 as giving false evidence thereby making him liable under S. 193: 6 All. 626; A.I.R. 1927 All. 383; 27 P.R. 1894 Cr.; 25 C.W.N. 886; 43 Cal. 1001 and A. I. R. 1927 All. 383, Ref. (*Boys and Young, J.J.*) EMPEROR v. PADAM SINGH.

1930 A.L.J. 955=A.I.R. 1930 All. 430.

*—If the statement made is designedly false the accused is liable irrespective of the fact whether the statement had a material bearing or not upon the matter under enquiry before the Court. The materiality or immateriality can have a bearing upon the sentence to be passed.* (*Sen, J.*) RAJA RAM v. EMPEROR.

120 I.C. 122=30 Cr. L.J. 1154=

1930 A.L.J. 251=1929 Cr. C. 664=

A.I.R. 1929 All. 936.

*—Where a patwari, in order to save the trouble of taking down the evidence, was directed by a revenue Court to prepare a written statement according to his papers and file it, and where the patwari made such a statement on oath, the statement cannot be called a public document which it was his duty to prepare, and therefore on proof of patwari's statement being false, he could not be prosecuted for an offence under S. 218 but under S. 193, Penal Code, for giving false evidence:* 5 All. 553, Foll. (*Dalal, J.*) MEHARBAN ALI v. SITA RAM. 118 I.C. 232=

1929 A.L.J. 512=10 L.R.A. Cr. 90=12 A.I. Cr. R. 22=

30 Cr. L.J. 874=1929 Cr. C. 1=A.I.R. 1929 All. 374.

*—False affidavit intended to be used in a judicial proceeding but voluntarily made—It is an offence both under Ss. 193 and 199.*

Where an identifier swore a false affidavit intended to be used in a judicial proceeding although no affidavit was required from the identifier.

*Held:* that the offence of fabricating false evidence within the meaning of S. 193, was complete.

*Held:* further that the false affidavit is also punishable under S. 199, as the Court was authorized under the circular orders of the High Court and O. 19, C. P. Code, to receive an affidavit from an identifier as



**PENAL CODE (1860), S. 193—False statements.**

evidence of the fact of service of summons. (*Mullick Ag. C. J. and Wort, J.*) KARI GOPE v. MANMOHAN DAS. 106 I.C. 703=6 Pat. 760=29 Cr.L.J. 111=

A.I.R. 1928 Pat. 161.

—False statements by a witness at different times and on different subjects during one deposition—Each statement is separate offence. (*Crump, J. (on difference between.) (Shah and Fawcett, JJ.)* SEJMAL PUNAMCHAND v. EMPEROR. 100 I.C. 981=

7 A.I.Cr.R. 505=28 Cr.L.J. 373=51 Bom. 310=29 Bom.L.R. 170=A.I.R. 1927 Bom. 177.

—A person presenting a verified petition for substitution of parties, containing a false statement of the death of a defendant cannot be considered to fall within the mischief of S. 193, as verification is not required for a petition for substitution of parties. (*Ross and Foster, JJ.*) PURANDAR JHA v. NUNNLAL JHA. 102 I.C. 214=6 Pat. 184=8 P.L.T. 412=

28 Cr.L.J. 518=8 A.I.Cr.R. 99=A.I.R. 1927 Pat. 197.

—A person renders himself liable to prosecution for false statements made in an affidavit in support of an application under S. 439 as required by S. 539-A. Cr. P. Code, 20 Cal. 724 and 5 S. L. R. 102, Dist. (*Kincaid, J. C. and Barlee, A. J. C.*) EMPEROR v. KUNDAN. 99 I.C. 600=28 Cr.L.J. 168=

7 A.I.Cr.R. 336=A.I.R. 1927 Sind 128.

—Transfer petition—False statement in.

An application for transfer is not a part of the defence of an accused person and statements made by an accused in an affidavit in support of an application for transfer do not enjoy the immunity conferred by S. 342 of the Cr. P. Code, upon answers to questions put to the accused by the Court trying the case. A.I.R. 1922 Lah. 113 foll. 28 All. 331 and 33 All. 163 dissented. (*Le Rossignol, J.*) MT. ALLAH WASAI v. EMPEROR. 89 I.C. 457=26 Cr.L.J. 1369=

A.I.R. 1926 Lah. 12.

—Evidence given under special oath is conclusive only as against the person who offers to be bound by it; but does not prevent the court from attempting to establish that a particular statement made by the appellant was false in fact and false to his knowledge. (*Shah, Ag. C. J. and Fawcett, J.*) RAMDAS VISHNU-DAS, In re. 82 I.C. 359=26 Bom. L.R. 713=

26 Cr. L.J. 1287=A.I.R. 1924 Bom. 511.

—Making false claim against railway for detention of goods by over-stating of value is punishable under S. 193. (*Baker, J. C.*) PARMANAND PARWAR v. KARTARNATH. 75 I.C. 703=25 Cr. L.J. 15=

A.I.R. 1924 Nag. 35.

**—S. 193—Grounds for conviction.**

Where accused's statement is proved to be false, it can be presumed that he "intentionally" gave false evidence—Accused in execution Court making statement that decree against him was adjusted on certain dates—Dates material factor for trial of case—In trial Court accused never suggesting that he gave those dates on mistaken belief—Held statement was false and accused did not believe it to be true while making it. 22 O.C. 236, Foll.; 26 All. 509; 36 All. 362, Rel. on; A.I.R. 1927 Nag. 170, Ref. (*Subhedar, A. J. C.*) JANAKILAL v. EMPEROR. 116 I.C. 643=

30 Cr. L.J. 655=1929 Cr. C. 83=13 A.I. Cr.R. 78=A.I.R. 1929 Nag. 193.

—False evidence—Conclusive proof of the charge—Necessity.

During the proceedings of a certain case, a witness stated that he had no knowledge of the fact that his son was proceeded against and avoided conviction by apologizing. Proceedings were then taken against him under S. 193, I.P.C., for false evidence. During

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**PENAL CODE (1860), S. 193—Retracted Statements.**

the trial it was not conclusively proved that he was present in the village at the time of arrest of his son.

Held: that the conviction was illegal. The mere fact that the accused heard of the arrest of his son between certain periods was not sufficient to warrant his conviction on the charge laid against him. (*Broadway, J.*) NATHA SINGH v. EMPEROR. 106 I.C. 98=9 L.L.J. 414=28 Cr. L.J. 1010=

A.I.R. 1927 Lah. 874.

—No man can be convicted by giving false evidence except on proof of facts which, if accepted as true, show not merely that it is incredible, but that it is impossible that the statement of the party accused made on oath can be true. If the inference from the facts proved falls short of this, there is nothing on which a conviction can stand; because assuming all that is proved to be true, it is still possible that no crime was committed. (*Mac Coll, J.*) S.C. GUPTA v. EMPEROR. 76 I.C. 425=1 Rang. 290=25 Cr. L.J. 185=

A.I.R. 1924 Rang. 17.

—Mere malice or absence of reasonable enquiry as to the facts alleged is not sufficient for a conviction under S. 193 of the Code. It must be proved that the statement must be false to the knowledge of the person or that he did not believe the facts to be true. (*Ryves, J.*) ASHUTOSH GANGOLI v. BRIJ NARAIN LAL. 61 I.C. 521=22 Cr. L.J. 393=

L.R. 2 A. (Cr.) 94 (All.)

—Grounds of conviction—Suit on promissory note—Presumption as to passing of consideration for promote—Applicability to criminal trial.

In a prosecution for perjury under S. 193 of the Code arising out of a civil suit on a promissory note in which the accused denied the receipt of consideration it is for the prosecution to prove the passing of consideration, as the presumption of law under the Negotiable Instruments Act as to the passing of consideration for a promissory note is not applicable to a criminal trial. (*Gokul Prasad, J.*) SAKHAWAT HAIDAR v. EMPEROR. 59 I.C. 198=22 Cr. L.J. 54=

18 A.L.J. 1151.

**—S. 193—"Purpose of being used."**

The purpose with which a document might have been prepared is a matter of inference. (*Suhrwardy and Panton, JJ.*) AHMED ALI v. EMPEROR. 90 I.C. 534=42 C.L.J. 215=26 Cr. L.J. 1574=

A.I.R. 1926 Cal. 224.

**—S. 193—Retracted Statements.**

Where the accused retracts his false statements, made on solemn oath in a witness box, only when he discovers that his fraud has been detected, no Court can infer from the subsequent correction or retraction that there is no intention to give false evidence: 19 Bom. L.R. 61; 4 S.L.R. 255; 16 O. C. 84; 26 Mad. 55 and (1864) W.R. 10, Dist. (*Percival, J. C. and Aston, A. J. C.*) EMPEROR v. BADALMAL. 120 I.C. 507=1930 Cr. C. 125=

24 S.L.R. 7=31 Cr.L.J. 135=

A.I.R. 1930 Sind 61.

—It is inadvisable to prosecute a man under S. 193 if he has reverted to the truth in the course of the trial. (*Dalip Singh, J.*) ALLAH WASAYA v. EMPEROR. 112 I.C. 468=29 Cr. L.J. 1044=

11 A.I. Cr. R. 398 (Lah.)

—Witness withdrawing his previous statement in same deposition as being false—No offence is committed.

A witness should be given a *locus penitentiae* and an opportunity to correct himself, and if he corrects himself immediately afterwards, or on a second thought in the same deposition, a prosecution for

**PENAL CODE (1860), S. 193—Retracted Statements.**

perjury would not lie. The essence of the offence of perjury consists in an attempt to mislead and deceive the Court : 26 Mad. 55, Dist. (Sen, J.) HIT NARAYAN SINGH v. EMPEROR. 96 I.C. 505=27 Cr.L.J. 953=A.I.R. 1926 Pat. 517.

—When a false statement is made and is at once retracted by the witness and is admitted by him that he made it through mistake, he must not be convicted under S. 193. 34 P.W.R. 1911 (Cr.), Foll. (Abdul Raoof, J.) FAKIR CHAND v. EMPEROR.

89 I.C. 1028=26 Cr. L.J. 1460=A.I.R. 1925 Lah. 646.

—*Retracted statements—Immediate retraction on fresh thought is no perjury.*

A witness is entitled to *locus penitentiae* and an opportunity, to correct himself and if, when he gets that opportunity, he recalls to his mind any fact about which he had made a statement which was not quite accurate, a prosecution for perjury will hardly be desirable. No statement made by a witness in a deposition can be regarded as completed statement until the deposition is finished and corrected, if necessary, for till then it is open to the witness to qualify any statement or to correct it himself. 16 O.C. 81 Foll. (Kanhaiya Lal, J.) MAHARAJ PRASAD v. KING-EMPEROR. 74 I.C. 443=21 A.L.J. 673=24 Cr. L.J. 779=A.I.R. 1924 All. 83.

—A witness is not guilty of perjury if he corrects a statement of his, previously made in the same deposition. (Wazir Hasan, J. C.) CHEDI LAL v. EMPEROR. 83 I.C. 400=26 Cr. L.J. 10=11 O.L.J. 309=A.I.R. 1924 Oudh 373.

**—S. 193—Sanction.**

Sessions Judge can take action even though offence is committed before his predecessor. A. I. R. 1924 Lah. 101, Foll; 6 P. R. 1909 (Cr.) Dist. (Addison, J.) BARKAT ALI v. GHULAM HUSSAIN. 93 I.C. 991=27 Cr. L.J. 527=A.I.R. 1926 Lah. 394.

**—S. 193—Sentence.**

—Giving false answers to questions which should not have been asked but were asked—Perjury is committed but sentence should be light. (Bucknill and Ross, JJ.) TUNIA v. EMPEROR. 90 I.C. 715=7 P.L.T. 423=26 Cr. L.J. 1611=A.I.R. 1926 Pat. 168.

**—S. 193—Miscellaneous.**

—*A prosecuting B for perjury—B. acquitted and A prosecuted for the same offence upon the Magistrate's complaint—A found not guilty—A applying that B should be again tried for perjury—It is improper to continue such cycle of prosecution—Criminal trial.*

There is no such invariable rule that justice must ultimately be done. Cases occur where a matter is left in doubt and real justice is not done. It is inadvisable that in following such a will-o'-the-wisp as absolute justice parties should be put to enormous expense and the time of Courts should be wasted.

On the motion of A, B was prosecuted under S. 477-A, Penal Code and was acquitted by the Magistrate upon whose complaint A was tried for perjury. The Magistrate holding the enquiry came to the conclusion that A was not guilty and he was acquitted. Thereupon A applied that B should be tried for perjury.

*Held* : that such cycle of cases should be stopped and it was improper to continue such criminal prosecution; *Revision No. 232 of 1917, Relied on,*

**PENAL CODE (1860), S. 196—Essentials.**

(Dalal, J.) DUBI DUTT TEWARI v. EMPEROR.

110 I.C. 816=26 A.L.J. 1327=9 L.R.A. Cr. 137=10 A.I. Cr.R. 442=29 Cr. L.J. 784=A.I.R. 1928 All. 548.

—The fact that no oath was administered to the accused is no bar to his prosecution under Penal Code, S. 193. (Mukerji, J.) MOTE RAM v. EMPEROR. 85 I.C. 710=26 Cr. L. J. 566=6 L.R.A. Cr. 44=A.I.R. 1925 All. 410.

—A person was charged of having given false evidence in a will case.

*Held* : that the judgment in the will case and the depositions of other witnesses in the will case are not admissible against the accused in the perjury case, the depositions would be relevant only to corroborate the statements of the same witnesses at their trial. (C. C. Ghosh and Cuming, JJ.) R. H. E. OATS v. EMPEROR. 76 I.C. 417=25 Cr.L.J. 177=38 C.L.J. 163=A.I.R. 1924 Cal. 104.

—*Inquiry under S. 11 of the Frontier Crimes Regulations is not a judicial proceeding.*

Inquiry by the Magistrate, *elaka* under orders from the District Magistrate to find out whether action under S. 11 of the Frontier Crimes Regulation is necessary, is not a judicial proceeding and giving false evidence therein is no offence under S. 193. (Scott Smith, Ag. C. J. and Maian, J.) JAHANGIR v. THE CROWN. 82 I.C. 710=6 L.L.J. 375=25 Cr.L.J. 1350=A.I.R. 1924 Lah. 729.

**—S. 194—Intention—Presumption of.**

—*False dying declaration—Not Communicated to authorities—Neither intention nor knowledge presumed.*

While a false dying declaration may well, in certain circumstances, go in as evidence, the intent that it may appear in evidence in a judicial proceeding and cause an erroneous opinion to be entertained touching a point material to the result of such a proceeding, which is an essential ingredient in the definition, cannot easily be inferred of a man who was thought to be dying at the time and did nothing by himself or by his friends to communicate with or seek any redress from the authorities. The intent of knowledge necessary under S. 194 presents an even greater difficulty in the application of that section, for it postulates a feeling in the mind of the petitioner that his recovery was impossible. (Courtney-Terrell, C. J., and Dhavle, J.) BANTI PANDE v. EMPEROR. A.I.R. 1930 Pat. 550.

**—S. 196—Essentials.**

—*Knowledge of the falsity.*

In the absence of any evidence that the accused knew that the interpolation in an account complained about, was a false statement, the mere fact that it was he who produced the accounts into Court cannot support a conviction under S. 196. (Wallace and Madhavan Nair, JJ.) KALYANJI v. RAMDEEN. 86 I.C. 449=48 Mad. 395=21 M.L.W. 664=26 Cr.L.J. 801=A.I.R. 1925 Mad. 609=48 M.L.J. 290.

—*Corrupt use—Production of document under Court's orders—Swearing as to its genuineness.*

It is an essential element of the offence under S. 196 that the documents should have been corruptly used or attempted to be used as true or genuine evidence.

Where the appellants produced the documents in Court, in obedience to an order of Court to that effect,

*Held* : that the appellants were not guilty under S. 196 as independent volition on their part was entirely absent, 36 Mad. 387 Foll,

**PENAL CODE (1860), S. 196—Income-tax proceedings—Applicability.**

*Held*: further that their having sworn in evidence that the documents were genuine does not make them guilty under this section. 36 Mad. 392 Foll. (*Godfrey, J.*) MA AIN LON v. MA ON NU.

85 I.C. 253=26 Cr. L.J. 509=3 Bur. L.J. 349=3 Rang. 36=A.I.R. 1925 Rang. 191.

**—S. 196—Income-tax proceedings—Applicability.****—Production of false account books.**

Section 37, being a penal section, has to be construed strictly. There is no reference whatsoever in the section itself to S. 196, I. P. C., therefore, a person cannot be prosecuted under S. 196 for producing account books in pursuance of notice under S. 23 (2) where the books were found to be false. (*C.C. Ghose, and Cammiade, JJ.*) LAL MOHAN PODDAR v. EMPEROR.

104 I.C. 903=31 C.W.N. 996=46 C.L.J. 550=8 A.I. Cr. R. 445=28 Cr. L.J. 887=A.I.R. 1927 Cal. 724.

**—S. 196—Punishment.****—Must be deterrent.**

The offences under Ss. 196 and 465 are indeed serious and difficult to detect and consequently call for deterrent punishment. (*Fawcett and Madgavkar, JJ.*) EMPEROR v. JORABHAI. 97 I.C. 805=50 Bom. 783=28 Bom. L.R. 1051=27 Cr. L.J. 1173=A.I.R. 1926 Bom. 555.

**—S. 197—Applicability.**

**—Certificate under Post Office Savings Bank rules not certificate contemplated by S. 197.**

The certificate given under the Post Office Savings Bank rule that in the case of female depositors withdrawing by their authorised agents under Rule 18 the agent must sign a certificate on the application for withdrawal to the effect "Certified that the depositor is on this day alive and sane" is not a certificate either prescribed by the Government Savings Banks Act or by statutory rules made thereunder. The rule is made for the general conduct of the Post Office business and therefore signing such certificate after a female depositor's death is not an offence under S. 197.

Per *Suhrwardy, J.*—The certificate contemplated by S. 197 is a certificate which is required by law to be given or signed for the purpose of being used in evidence in the course of administration of justice. (*Suhrwardy and Duval, JJ.*) BIRENDRA NATH CHATTERJEE v. UMANANDA MUKHERJEE.

91 I.C. 988=42 C.L.J. 587=30 C.W.N. 120=27 Cr. L.J. 182=A.I.R. 1926 Cal. 258.

**—S. 197—False affidavit.****—Accused not protected.**

Where the law does not prohibit the administration of an oath or solemn affirmation and where in fact the practice of the Court directs that an oath or solemn affirmation must be administered before the affidavit is accepted, there cannot be any protection for an accused person who commits perjury in such a document. The fact the affidavit was made for supporting transfer application in a case in which he was an accused is immaterial: 12 Mad. 451, Dist.; 19 All. 200 and 28 All. 331, Doubtful and not Foll. (*Stuart, C. J. and Raza, J.*) PRAG DUTT v. EMPEROR. 123 I.C. 854=1930 Cr. C. 158=31 Cr. L.J. 600=7 O.W.N. 9=A.I.R. 1930 Oudh 62.

**—S. 199—Affidavits.**

**—Oath administered by one having no authority to administer—Section does not apply.**

A nazir of civil Court has no authority to administer oath for the purposes of an affidavit or statement to be used in a criminal Court and a person making such

**PENAL CODE (1860), S. 201—Essentials.**

statement cannot be convicted under S. 199: 14 Cal. 653; 35 All. 58; and A.I.R. 1926 Pat. 214, Rel. on. (*Madgavkar and Baker, JJ.*) GANPAT DEVAJI v. EMPEROR.

116 I.C. 248=31 Bom. L.R. 144=30 Cr. L.J. 593=13 A.I. Cr. R. 14=A.I.R. 1929 Bom. 136.

**—Under S. 539-A, Cr. P. Code—Grounds of belief not stated—Section applies.**

Where a deponent while swearing an affidavit under S. 539-A, Cr. P. Code swears of his personal knowledge of the truth of his allegations and the allegations are ultimately found to be false, he is guilty under S. 199, I.P.C., although he has not separately stated what facts he had reasonable grounds to believe to be true as required by third clause of the section: 14 Cal. 653, Dist. (*Jwala Prasad and James, JJ.*) RAMSARUP SINGH v. EMPEROR.

116 I.C. 755=30 Cr. L.J. 645=13 A.I. Cr. R. 91=A.I.R. 1929 Pat. 156.

**—S. 199—Burden of proof.****—On prosecution.**

In the case of a prosecution for making a false statement it is for the prosecution to prove that the statement of the accused was false, and not for the accused to prove that it was true. (*Boys, J.*) BADDU KHAN v. EMPEROR. 108 I.C. 124=29 Cr. L.J. 336=9 A.I. Cr. R. 91=9 L.R. A.C. 3=A.I.R. 1928 All. 182.

**—S. 199—Written statement,****—False declaration verified in—No offence.**

An allegation in a written statement is not evidence of any fact, which a Court is bound or authorized by law to receive and, therefore, false declaration in a written statement which is verified as required by the provisions of O. 6, R. 15, C.P. Code, but of which the Court has not ordered proof by affidavit, cannot be the basis of a conviction under S. 199. (*Dalal, J.*) JANKI RAI v. EMPEROR. 100 I.C. 707=49 All. 482=25 A.L.J. 327=8 L.R.A. Cr. 62=28 Cr. L.J. 323=7 A.I. Cr. R. 405=A.I.R. 1927 All. 383.

**—S. 201 to 203—Omission to give information.****—Grave and sudden death—Obligation to inform—Failure—Liability.**

In the case of grave and sudden death the offender himself is under an obligation to give information and he can be convicted for breach of that law under Ss. 201 to 203, I.P.C. In practice, if he has been convicted of the offence itself, no court will think it worthwhile to convict him also under Ss. 201 to 203, I.P.C. But if the commission of the main offence is not brought home to him, then he can be convicted under Ss. 201 to 203, I.P.C. (*Wallace and Jackson, JJ.*) CHINNA GANGAPPA v. EMPEROR. 1930 M.W.N. 489.

**—S. 201—Applicability.**

The section applies merely to the person who screens the principal or actual offender and not to the principal or actual offender himself: 22 Cal. 638, Foll. (*Scott-Smith and Martineau, JJ.*) AHMAD v. EMPEROR. 91 I.C. 541=27 Cr. L.J. 109=A.I.R. 1926 Lah. 209.

**—Causing evidence of one's own offence to disappear—Section does not apply.**

S. 201 does not apply to a criminal causing evidence of his own crime to disappear but applies to a person who screens the actual offender and no question of abetment can possibly arise in such a case: 22 Cal. 638; 12 C.P.L.R. 17 (Cr.) Foll. (*Prideaux, A.J.C.*) KUDAON v. EMPEROR. 91 I.C. 236=21 N.L.R. 86=27 Cr. L.J. 60=A.I.R. 1925 Nag. 407.

**—S. 201—Essentials.****—Volition and intention to screen.**

**PENAL CODE (1860), S. 201—Essentials.**

The essence of S. 201 is that the accused caused the evidence of the commission of the offence to disappear with the intention of screening the offender from legal punishment.

P murdered H and ordered B to help him, carrying the corpse to a ditch and burying the wearing apparel.

**Held:** that the offence under S. 201 was not proved against B. B in helping to carry the corpse to the ditch was acting under orders of P and she appeared to have been bullied into doing the act. B's acts were not voluntary nor done with the intention of screening the offence from punishment. (*Young and Sen, JJ.*) **MT. BAKHTAWARI v. EMPEROR.** 120 I.C. 268 = 31 Cr. L.J. 37 = 1930 Cr. C. 61 = A.I.R. 1930 All. 45.

—**Intention to screen necessary—Mere knowledge not sufficient—Presumption as to intent.**

Under S. 201 mere knowledge on the part of the accused that his act is likely to screen the principal offender is not sufficient, but actual intention must be established. Whether the requisite intention is proved or not is a question to be decided on the facts of each case. Ordinarily where the Crown has satisfactorily proved that (a) an offence has been committed for which some person is criminally responsible and (b) that the accused caused the disappearance of the evidence of the commission of the offence or gave false information concerning it, as the case may be, a presumption arises in favour of the Crown that the accused did act with the requisite intent. That presumption may, however, be rebutted by circumstances or by direct evidence. Where it is so rebutted the accused is entitled to be acquitted except where he is charged with giving false information, in which case he may still be convicted under S. 203. (*Rupchand Bilaram and Lobo, A.J.Cs.*) **TAJAN v. EMPEROR.** 103 I.C. 402 = 21 S.L.R. 206 = 8 A.I.C.R. 353 = 28 Cr.L.J. 674 = A.I.R. 1927 Sind 241.

—**Offender need not be specified.**

There is nothing in the section to require the Crown to prove that the accused intended to screen a specified offender. An intention to screen an offender unknown to the Crown is sufficient; A.I.R. 1925 Sind 257. Expl. (*Rupchand Bilaram and Lobo, A.J.Cs.*) **TAJAN v. EMPEROR.** 103 I.C. 402 = 21 S.L.R. 206 = 8 A.I.C.R. 353 = 28 Cr. L.J. 674 = A.I.R. 1927 Sind 241.

—**Intention to screen a specified offender, necessary.**

One of the ingredients of the offence under this section is the intention to screen a specified offender, 3 All. 279. Foll. In order to justify a conviction under the section it is necessary that an offence for which some person has been convicted or is criminally responsible should have been committed. (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*) **ADHO v. EMPEROR.** 85 I.C. 961 = 19 S.L.R. 6 = 26 Cr. L.J. 897 = A.I.R. 1925 Sind 257.

—**S. 201—Evidence, sufficient.**

—**Knowledge of murder and of the place where the bodies were—Jewellery on the body traced to accused—Confession to lambardar.**

A who was charged under S. 302 knew where the bodies of the murdered persons were. He also knew that murder had been committed. The jewellery removed by him from the dead body was subsequently produced and identified. Moreover he confessed his guilt to the lambardar of the village.

**Held:** that it was not safe to rely upon the confession made to the lambardar and therefore he could not be convicted under S. 302. But the evi-

**PENAL CODE (1860), S. 201—"Offender."**

dence was sufficient to convict him under S. 201. (*Broadway and Agha Haidar, JJ.*) **DES RAJU v. EMPEROR.** 111 I.C. 449 = 29 P.L.R. 486 = 29 Cr. L.J. 865 = A.I.R. 1928 Lah. 858.

—**Motive for crime—Tracks of accused traced—Shoe and body discovered at his instance—Ample evidence.**

B and S were charged under S. 302, Penal Code, for the murder of R, who, according to the village rumour, was in intrigue with G's wife, M, sister to B. S was the brother of G. A tracker followed the tracks with directions from villagers to the Ahata of S and G. Shoes of R were recovered at the instance of B. The tracker found tracks of B and S, leading to the place where the body was later found buried. Dead body of R was found at the instance of the confession made by S.

**Held:** that the evidence was not sufficient to establish charge under S. 302 but was ample to establish an offence under S. 201, Penal Code. (*Addison and Coldstream, JJ.*) **BULAGHI v. EMPEROR.**

112 I.C. 347 = 9 Lah. 671 = 29 Cr. L.J. 1019 = 11 A.I. Cr. R. 284 = A.I.R. 1928 Lah. 476.

—**S. 201—Legality of conviction.**

—**Acquittal of principal offence—No bar to conviction for proved offence.**

When an accused person has been acquitted of a charge of committing a crime, the fact that he had been suspected and tried of the principal offence would not prevent his conviction under S. 201, if there is clear proof that he has caused the evidence to disappear in order to screen some unknown offender from legal punishment: 6 P. R. 1902 Cr.; 1 P. R. 1904 Cr.; 46 Cal. 427; A. I. R. 1926 All. 737; A. I. R. 1923 Bom. 262; 1 L. B. R. 316; and A. I. R. 1925 P. C. 130 (P.C.); Foll.: 22 Cal. 638; 3 C. L. J. 333; and A. I. R. 1925 Nag. 407; Diss. from.; A. I. R. 1926 Lah. 209, Dist. (*Agha Haidar, J.*) **DITTA v. EMPEROR.**

110 I.C. 682 = 10 Lah. 213 = 30 P.L.R. 402 = 10 A.I. Cr. R. 562 = 29 Cr. L.J. 746 = A.I.R. 1928 Lah. 906.

—**Suspicion of principal Offence—Conviction under—Not illegal.**

A conviction for the accessory offence under S. 201 is not illegal merely because it is suspected, but not proved or admitted, that the accused committed or was one of several persons who committed the principal offence. A. I. R. 1925 P. C. 130 and Pat. Un. Cr. C. 799, Foll.; 6 Cal. 789, and 22 Cal. 638. Ref. (*Rupchand Bilaram and Lobo, A. J. Cs.*) **TAJAN EMPEROR.** 103 I.C. 402 = 21 S.L.R. 206 = 8 A.I. Cr. R. 353 = 28 Cr. L.J. 674 = A.I.R. 1927 Sind 241.

—**S. 201—"Offence".**

—**Not the offence committed—Offence the accused knew had been committed.**

Under S. 201, I.P.C., it is necessary for the Court to decide not so much what the offence, the evidence of which had been concealed, had been committed, as what offence the accused knew or had reason to believe had been committed. The Court must treat him to be a stranger to the crime, who had merely witnessed it. (*Wallace and Jackson, JJ.*) **CHINNA GANGAPPA v. EMPEROR** 1930 M.W.N. 489.

—**S. 201—"Offender".**

—**Not the person charged.**

It is settled law that a principal cannot be convicted as an accessory and it may well be presumed that in enacting this section the legislature never intended to depart from that rule, if it be so, the offender in S. 201 must needs refer to a person other than the person charged. A. I. R. 1923 Bom. 262; A.I.R. 1925

**PENAL CODE (1860), S. 201—Removal of Corpse.**

Sind 306, and A. I. R. 1925 Nag. 407, Foll.; A. I. R. 1926 All. 737, not Foll. (*Rupchand Bilaram and Lobo, A. J. C's*). **TAJAN v. EMPEROR.**

103 I.C. 402=21 S.L.R. 206=8 A.I. Cr. R. 353=  
28 Cr. L.J. 674=A.I.R. 1927 Sind 241.

**—S. 201—Removal of Corpse.****—Constitutes offence.**

The mere removal of a body from one place to another so as to remove traces of the place where the murder took place, or indications which might implicate a particular individual, even though such removal does not remove undoubted evidence that a murder has taken place, is within the section. (*Walsh and Pullan, JJ.*) **EMPEROR v. MT. HAR PIARI.**

97 I.C. 44=49 All. 57=24 A.L.J. 958=  
27 Cr. L.J. 1068=7 L.R.A. Cr. 156=  
A.I.R. 1926 All. 737.

**—Itself an offence—Destruction of all evidence—Not necessary.**

Removal of dead body from the house to a distant place does amount to causing an evidence of the commission of the offence to disappear. S. 201 cannot be confined to the destruction of the evidence of the murder itself. The words 'any evidence of the commission of that offence' clearly include any evidence of the commission by the offender of that offence. (*Walsh and Sulaiman, JJ.*) **EMPEROR v. AUTAR.**

86 I.C. 52=26 Cr. L.J. 676=  
47 All. 306=23 A.L.J. 25=6 L.R.A. Cr. 68=  
A.I.R. 1925 All. 315.

**—Causing evidence about the locality to disappear—Intention to screen—A question of fact.**

The ordinary inference to be drawn from the conduct of persons who have been concerned in a murder in a house, and who have removed the body to another place, is that they do so with the intention of causing, at any rate, the true evidence about the locality, in which the murder took place, to disappear. Whether such evidence was caused to disappear, with the intention of screening the offender from legal punishment is a question to be decided from the circumstances of the case: 47 All. 306, Rel. on.

Three men were sleeping close to the deceased man. Some one came in the night and struck the man with a violent blow severing the neck from body. Subsequently these persons removed the corpse to another room, broke bars of the windows and obliterated blood marks in original place, thereby causing evidence of locality of murder to disappear and putting police on wrong scent as to murderer.

**Held:** that the fact that none of them was disturbed was improbable and it must be held that those persons must have had an intention of screening the murderer or murderers. (*Stuart, C.J., and Raza, J.*) **MATA DIN v. EMPEROR.**

123 I.C. 886=  
31 Cr. L.J. 575=6 O.W.N. 1017=  
A.I.R. 1930 Oudh 113.

**—S. 201—Removing traces of crime.****—Offender can be guilty of.**

A person who has actually committed a crime himself, whether murder or any other crime, cannot be said to be less guilty of removing traces thereof if it is proved against him that he has done so, because he was the person who actually committed the offence: A.I.R. 1925 All. 315, Appr.; 8 All. 252, Diss. from. (*Walsh and Pullan, JJ.*) **EMPEROR v. MT. HAR PIARI.**

97 I.C. 44=49 All. 57=24 A.L.J. 958=  
27 Cr. L.J. 1068=7 L.R.A. Cr. 156=  
A.I.R. 1926 All. 737.

**PENAL CODE (1860), S. 210—Jurisdiction.****—S. 201—Sentence.**

**—Depends on the offence that accused knew was committed.**

For the purposes of calculating the punishment to be awarded under S. 201, it is necessary for the Court to decide, not so much what offence, the evidence of which has been concealed has been committed, as what offence the accused knew or had reason to believe had been committed. Where, therefore, a person himself charged but acquitted of the actual crime, is convicted under S. 201 the Court must treat him as a stranger to the crime, as one who had merely witnessed it, while calculating the sentence to be passed. (*Wallace and Jackson, JJ.*) **CHINNA GANGAPPA v. EMPEROR.**

A.I.R. 1930 Mad. 870.

**—S. 206—Interpretation.**

**—"Civil suit" must be actually pending.**

The words "intending thereby to prevent that property from being taken into execution of a decree or order which has been made or which he knows likely to be made by a Court of justice in a civil suit" refer to a civil suit which is actually pending before a Court. (*Carr, J.*) **M. S. PONNUSWAMI v. EMPEROR.**

8 Rang. 268=A.I.R. 1930 Rang. 128.

**—S. 209—Essentials.**

**—Knowledge of falsity.**

To justify a sanction to prosecute for an offence under S. 209 of the Penal Code, a mere dismissal of the plaintiff's suit is not enough. It must be proved that the claim was to his knowledge false. (*Jwala Prasad, I.*) **RAMNANDAN v. PUBLIC PROSECUTOR.**

61 I.C. 995=22 Cr. L. J. 467 (Pat.)

**—S. 210—Execution Petition.**

**—Omission to enter part satisfaction—Fraud must be established.**

*H* had obtained a decree for Rs. 578-12-0 against one *U*. A sum of Rs. 276-12-0 was recovered in execution. *H* put in another application for execution of his decree claiming the full decretal amount, i.e., Rs. 578-12-0 with costs. The sum of Rs. 276-12-0 which he had realized in part satisfaction of the decree was not shown in the appropriate column. Eventually a house was sold in satisfaction of the decree and the full amount was realized by *H*. *U* the applicant subsequently discovered that *H* had recovered more than what was really due on the basis of the decree and applied to the execution Court for sanctioning prosecution of *H* under S. 210, Penal Code.

**Held:** for sustaining a charge under S. 210 it must be established that the person charged acted 'fraudulently.' Although *H* omitted to state the amount realized in his application for execution, it was very doubtful, if he acted fraudulently. The judgment-debtors did not raise any objection as to the excess claimed by the decree-holder for nearly two years although they raised various other objections in the meantime. The case was therefore not a fit case for sanctioning prosecution of *H* under S. 210. (*Bhide, J.*) **HARI RAM v. EMPEROR.**

116 I.C. 711=  
11 L.L.J. 103=30 P.L.R. 392=30 Cr. L.J. 666=  
13 A.I. Cr. R. 99=A. I. R. 1929 Lah. 676.

**—S. 210—Jurisdiction.**

**—Decree fraudulently obtained for claim disallowed in another court—Latter cannot take action.**

Where a plaintiff first instituted a suit in one Court and obtained a decree for a part of his claim and then proceeded to present a fresh plaint in respect of the item disallowed and obtained an *ex parte*



**PENAL CODE (1860), S. 210—Over-stating claim.** decree, the action under S. 210, Indian Penal Code, can only be taken by the Court in which later suit was filed or by the Court to which they are both subordinate, as the filing of the second suit cannot be held to be an offence committed in relation to proceedings in the first Court. (*Harrison, J.*)  
**WISHNU RAM v. CROWN.** 90 I.C. 660=  
 26 Cr.L.J. 1588=26 P.L.R. 717=6 Lah. 443=  
 7 L.L.J. 341=A.I.R. 1925 Lah. 524.

**—S. 210—Over-stating claim.**

**—Sanction.**

The applicant a dealer in saltpetre brought a suit against the East Indian Railway for damages for detention of his goods and obtained a decree. It was found that the value of the goods when purchased was overstated in the suit with a view to the claim for damages, and the depositions of both the applicant and his munim on this point were apparently false.

**Held:** that a sanction to prosecute them under S. 193, I.P.C. was rightly granted. (*Baker, J.C.*)  
**PARMANAND PARWAR v. KARTARNATH.**

75 I.C. 703=25 Cr.L.J. 15=  
 A.I.R. 1924 Nag. 35.

**—S. 211—Applicability.**

**—No charge in any Court nor trial nor proceeding for offence complained—Section does not apply.**

Where the person at whose instance proceedings under S. 211, Penal Code, are initiated against a false complainant, is never charged in any Court, nor is he ever put upon his trial before any Magistrate, nor were any proceedings taken against him before the Court in which another person who was alleged by the false complainant to be his accomplice was involved, it cannot be said that the offence under S. 211, Penal Code, was an offence which was committed in or in relation to any proceeding in Court, though another person against whom also false complaint was made in the same transaction is tried in Court : A.I.R. 1924 All. 779, Foll.: 19 P.R. 1917 Cr. and 34 All. 522, no longer good law; 43 Cal. 1152 and 44 Cal. 650, Ref. to. (*Shadi Lal, C.J. and Agha Haidar, J.*)  
**MUHAMMADA v. EMPEROR.** 109 I.C. 686=  
 9 Lah. 408=10 L.L.J. 218=29 Cr. L.J. 605=  
 10 A.I.Cr.R. 313=29 P.L.R. 515=  
 A.I.R. 1928 Lah. 259.

**—False information to Police—Complaint dismissed—Offence under S. 211 and not under S. 182.**

The false information to the police was followed by a complaint to the Magistrate on the same facts and the same charge. The Magistrate tried the complaint and classified it to be false. The police preferred a complaint under S. 182 for false information given to them.

**Held:** that the offence alleged fell under S. 211 and a complaint by the Magistrate before whom the charge was made was necessary. (*Pratt, J.*)  
**MAUNG PE v. MAUNG CHAW.** 112 I.C. 468=  
 29 Cr.L.J. 1044=11 A.I.Cr.R. 272=  
 A.I.R. 1928 Rang. 243.

**—S. 211—Burden of proof.**  
**—Rests on prosecution.**

Where a person is charged under S. 211 of making a false report it is not for him to make out that his report was true until it has been clearly traversed by evidence produced by the prosecution showing that it was false. (*Reilly, J.*)  
**SANKARAM SERVAI, In re.**

113 I.C. 455=2 M.Cr.C. 78=30 Cr.L.J. 167=  
 30 M.L.W. 795=12 A.I.Cr.R. 71=  
 A.I.R. 1929 Mad. 496.

**PENAL CODE (1860), S. 211—Dismissal of complaint.**

**—S. 211—Charge.**

**—Charge against several—Only some proceeded against in Court—No charge against the rest.**

Where a charge is made against several people but one of them is not proceeded against and is not charged in Court, the fact that the others are charged in Court does not make the charge against the former a charge in Court : 34 All. 522, Dissented from. (*Walsh, Ag. C.J. and Ryves, J.*)  
**KASHIRAM v. EMPEROR.** 82 I.C. 167=22 A.L.J. 829=  
 5 L.R.A.Cr. 137=25 Cr.L.J. 1239=  
 46 All. 906=A.I.R. 1924 All. 779.

**—What amounts to.**  
 Merely stating facts and suspicions is not "charge" but alleging belief in guilt of particular person and desiring he should be proceeded against is charge. (*Walsh, Ag. C.J. and Ryves, J.*)  
**KASHI RAM v. EMPEROR.** 82 I.C. 167=22 A.L.J. 829=  
 5 L.R.A.Cr. 137=25 Cr.L.J. 1239=  
 46 All. 906=A.I.R. 1924 All. 779.

**—Causing police search to be made—Indicating guilt—Amounts to.**  
 Causing police search to be made and identifying property as being unlawfully in complainant's possession and indicating to the police that the complainant was guilty amounts to charge within the meaning of S. 211. (*Walsh, Ag. C.J. and Ryves, J.*)  
**KASHI RAM v. EMPEROR.** 82 I.C. 167=22 A.L.J. 829=  
 5 L.R.A.Cr. 137=25 Cr.L.J. 1239=  
 46 All. 906=A.I.R. 1924 All. 779.

**—S. 211—Condition precedent.**

**—Material sufficient for prima facie case—Mere belief—Dismissal of Complaint—No grounds.**  
 A mere belief without any foundation whatsoever does not justify a Court of justice to send a man for trial. Before a Court orders a prosecution under S. 211, there must be enough materials to justify a complaint being filed, i.e., there must be enough materials to show that there is a *prima facie* case. A dismissal of complaint does not justify a Court in prosecuting the complainant under S. 211. (*Banerji, J.*)  
**DIN MAHOMED v. EMPEROR.** 98 I.C. 465=  
 27 Cr.L.J. 1345=A.I.R. 1927 All. 107.

**—Statement or examination of complainant not taken—No prosecution lies.**  
 Where a criminal charge is filed by a complainant before a Magistrate but the Magistrate does not examine the complainant on oath, nor does he take down his statement in writing, the complainant, even if the charge turns out to be a false one, cannot be prosecuted under S. 211. (*Martin and Coyajee, JJ.*)  
**PAMPAPPA BALLABROO DESAI, In re.** 95 I.C. 68=  
 28 Bom. L.R. 490=27 Cr. L.J. 740=  
 A.I.R. 1926 Bom. 284.

**—S. 211—Definite statement to police.**  
**—Different from mere information to Police—Section applies.**  
 There is an essential difference between a mere information to the Police and a definite statement to it that a certain person has committed a certain particular offence. In the latter case, which is much graver than the former, S. 211 of the Penal Code applies. A.I.R. 1924 All. 779, Ref. (*Mukerji, J.*)  
**SANO-KHAN v. EMPEROR.** 85 I.C. 818=26 Cr. L.J. 594=  
 6 L.R.A. Cr. 71=A.I.R. 1925 All. 472.

**—S. 211—Dismissal of complaint.**  
**—Same Magistrate acting under S. 211—Competency.**

Where a false complaint is lodged and dismissed, the Magistrate dismissing the complaint is not competent



**PENAL CODE (1860), S. 211—Dying declaration.**

to proceed against the complainant under S. 211, Penal Code. He should make a complaint under S. 195, Cr. P. Code (*Ross and Kulwant Sahay, J.*)  
*AMBICA SINGH v. EMPEROR.* 96 I.C. 651 =  
 5 Pat. 450 = 7 P.L.T. 716 = 27 Cr. L.J. 987 =  
 7 A.I. Cr. R. 20 = A.I.R. 1926 Pat. 368.

**—S. 211—Dying declaration.**

*—Accusation contained in—Made to a Magistrate—Does not amount to complaint.*

An accusation contained in a dying declaration made to a Magistrate stands on no better footing than an accusation made to a private individual, such as the compounder in the hospital, without any statutory obligation to move in the matter at all: 11 I.C. 617; 17 Cal. 574; 30 Cal. 415; 19 Bom. 51 and 26 Mad. 640 Ref. (*Courtney—Terrell, C.J., and Dhavle, J.*)  
*BANTI PANDE v. EMPEROR.* A.I.R. 1930 Pat. 550

**—S. 211—Essentials.**

*—Complaint without just cause—Action without due care or caution—Sufficient ground—S. 182 distinguished.*

Under S. 211 of the Penal Code if the accused makes his complaint without any just grounds and acts without due care or caution it is enough to constitute an offence. But under S. 182 the information given to a public servant should not only be false in fact but it must be false to the knowledge or belief of the informant and the mere fact that the accused had reasons to believe it to be false is not sufficient. (*Rupchand Bilaram A.J.C.*) X v. EMPEROR.  
 82 I.C. 718 = 25 Cr. L.J. 1358 = 19 S.L.R. 91 =  
 A.I.R. 1925 Sind 184.

*—Malice or failure to make reasonable enquiry—Not sufficient ground.*

A man cannot be convicted of perjury for having acted maliciously or for having failed to make a reasonable enquiry with regard to the facts alleged by him to be true. It must be proved that he made some statements which he knew to be false and which he believed to be false or which he did not believe to be true. (*Ryves, J.*) *ASHUTOSH GANJOLI v. BRIJ NARAIN LAL.* 61 I.C. 521 = 22 Cr. L.J. 393 =  
 L.R. 2 A. (Cr.) 94 (All.)

**—S. 211—Evidence and proof.**

*—Absence of reasonable grounds—Knowledge of the same—Burden on prosecution.*

In order to bring home a charge under S. 211 the prosecution must establish that there are no just and lawful grounds for the action taken and that the accused knew this. The mere communication of a suspicion to the police does not amount to a charge of a criminal offence. (*Scott-Smith, J.*) *ABDUL GAFUR v. THE CROWN.* 88 I.C. 525 = 6 Lah. 28 =  
 26 Cr. L.J. 1165 = 26 P.L.R. 131 =  
 A.I.R. 1925 Lah. 325.

**—S. 211—Failure to prove case.**

*—Not sufficient ground—Intent to cause injury or knowledge of falsity essential.*

The fact that the complainant fails to prove his case is by itself not sufficient to sanction a prosecution under S. 211 of the Indian Penal Code. It must be established satisfactorily in the mind of the Judge or the Magistrate that the complaint was made with intent to cause injury or that it was a false complaint made with the knowledge that it was false. (*Kulwant Sahay, J.*) *BHUAN KAHAR v. EMPEROR.* 83 I.C. 701 = 6 P.L.T. 365 = 26 Cr. L. J. 141 =  
 A.I.R. 1925 Pat. 329.

*—Failure to prove a case is not the same thing as the institution of a maliciously false case. (Adami,*

**PENAL CODE (1860), S. 211—False information to police.**

*J.) CHHEDI UPADHYA v. KING-EMPEROR.*

72 I.C. 76 = 4 P.L.T. 703 = 1 Pat. L. R. Cr. 50 =  
 24 Cr. L.J. 316 = A.I.R. 1924 Pat. 379.

**—S. 211—False charge against public servant.**

*—To whom made.*

A false charge against a public servant must be made to an officer who has power to investigate and send it for trial: 6 Cal. 620, Foll. (*Pearson and*

*Mallik, J.J.*) *AMANAT ALI v. EMPEROR.*

33 C.W.N. 1058 = 1929 Cr. C. 360 =

A.I.R. 1929 Cal. 724.

**—S. 211—False information to police.**

*—To a police officer charging his subordinate officer—S. 211 and not S. 182 applies.*

Where the charge against the accused was that he gave false information to a public servant, namely, the Superintendent of Police that he and his mother had been unlawfully confined by a certain Police Officer and that money had been extorted wrongly from them, held, that the offence fell under S. 211 and not under S. 182, I. P. C. and that the case could not be tried summarily. (*Cuming, J.*)  
*TOFAZEL HOOSAIN v. H. C. HUNT.*

34 C. W. N. 556 = 1930 Cr. C. 1111 =

A. I. R. 1930 Cal. 711.

*—Report to police—Subsequent complaint to Court—Dismissed—Sanction not necessary.*

P complained on 9th October 1927 to the police that certain persons committed an offence. Subsequently he lodged a complaint in the Court of a Magistrate on the same allegations on 17th October and the complaint was dismissed after inquiry. The Superintendent of Police, then sent a written complaint to the District Magistrate for the prosecution of P.

Held: the offence, if any, committed by P was complete before he went to Court with his complaint, and therefore it could not be said that the offence was committed in, or in relation to any proceeding in any Court. Sanction of the Court under S. 195 (1) (b) was therefore not necessary. A. I. R. 1924 All. 779, Foll.: A. I. R. 1926 All. 613; Dist.: 44 Cal. 650, Diss. from. (*Dalal, J.*) *PRAG DATT TIWARI v. EMPEROR.*

111 I.C. 858 = 29 Cr. L.J. 938 = 10 L.R.A. Cr. 19 =  
 1929 A. L. J. 68 = 51 All. 382 =

11 A.I. Cr. R. 152 = A. I. R. 1928 All. 765.

*—No complaint under S. 195, Cr. P. Code necessary.*

When a false charge has been made only to the police, but the person making the false charge has not applied to the Magistrate and no Court proceedings whatever have ensued, no complaint is necessary under S. 195, Cr. P. Code, before a prosecution under S. 211, Penal Code, can be instituted against the informant: 43 Cal. 1152, Foll.: A. I. R. 1924 All. 779, Appr.; 34 All. 522, Doubtful. (*Findlay, J.C.*) *BHOLU v. PUVAJI.* 105 I.C. 454 = 23 N. L. R. 136 =  
 10 N.L.J. 191 = 28 Cr. L.J. 934 = 9 A.I. Cr. R. 87 =  
 A.I.R. 1928 Nag. 17.

*—Amount to instituting criminal proceedings.*

A false information given to the Police is a proceeding instituted on a false charge within the meaning of S. 211 as a charge laid before the police is a criminal proceeding. 17 Cal. 574 (F.B.) Foll. (*Mullick and*

*Bucknill, J.J.*) *PARAMESHWAR LAL v. EMPEROR.*

92 I.C. 885 = 4 Pat. 472 = 7 P.L.T. 657 =

27 Cr. L.J. 373 = A.I.R. 1925 Pat. 878.

*—Followed by complaint to Court—Court not investigating—Sanction necessary.*

Where an information to the police is followed by a complaint to the Court based on the same allegations:

**PENAL CODE (1860), S. 211—False information to police.**

and the same charge, the sanction of complaint of the Court itself under S. 195 (1) (b) of the Code is necessary before the Court could take cognizance of an offence punishable under S. 211 of the Indian Penal Code, in respect of the false charge made to the police, on the ground that it was an offence committed in relation to a proceeding in Court. The fact that the complaint was not investigated by the Court, does not make any difference. 43 Cal. 1152 and 44 Cal., 650 followed. (*Bucknill and Ross, JJ.*)

**SHAIKH MUHAMMAD YASSIN v. EMPEROR.**

86 I.C. 825=4 Pat. 323=6 P.L.T. 457=  
26 Cr. L.J. 389=A.I.R. 1925 Pat. 483.

—Court proceedings followed accused discharged—Offence Committed "in relation to proceedings."

The petitioner himself planted a mould in respondent's house and gave information to the Police that Respondent was counterfeiting coin. The Respondent was prosecuted but was discharged. Subsequently the Court granted an application for sanction to prosecute the Petitioner for an offence under S. 211, I. P. C. On application to revoke the sanction on the ground that the offence was not committed "in or in relation to any proceeding in the Court,"

*Held*: that the facts alleged against the petitioner did constitute an offence in relation to the proceedings before the Magistrate. (*Carr, J.*) **ANI v. AH YONE.**

84 I. C. 863=2 Bur. L. J. 289=26 Cr. L. J. 383=  
A. I. R. 1924 Rang. 211.

**—S. 211—"Falsely charging."**

"Falsely charging" means a false accusation made to any authority bound by law to investigate it or to take any step in regard to it. 32 *Mad.* 258, *Ref.* (*Courtney-Terrell, C. J., and Dhaive, J.*) **BANTI PANDE v. EMPEROR.**

A.I.R. 1930 Pat. 550.

**—S. 211—Graver and lesser offence.**

—Offence falling under Ss. 211 and 182—Prosecution for minor offence under S. 182 improper.

P went to the police station and made allegations against one B and A to the effect that they had jointly committed robbery on him, in the course of which, one of them caused hurt to him. The police investigated the case, found it to be false and finally classified it as such; thereupon, P lodged a complaint in Court against B and A on the same facts and for the same offence. The Magistrate on receipt of it directed the police for enquiry and report. On receipt of the police report, the Magistrate dismissed the complaint, classifying the case as "false." Then the officer-in-charge of the police station filed a complaint against P under S. 182, Penal Code.

*Held*: that though the offence alleged against the petitioner fell under both S. 182 and S. 211, prosecution under S. 182 was quite improper. To permit such prosecution will be contrary to the general principle that a prosecution for a lesser offence should not be launched when the facts constitute a graver offence: 5 Cal. 184; 32 Cal. 180; 15 All. 336; 44 Cal. 650; A.I.R. 1925 Pat. 483; 7 Bom. 184; 32 Cal. 180; and 2 U.B.R. 95; *Rel. on.* (*Mya Bu, J.*) **RAMBROSE v. EMPEROR.**

114 I.C. 685=30 Cr. L.J. 342=  
6 Rang. 578=A.I.R. 1928 Rang. 254.

—No jurisdiction for the grave—Investigation by Magistrate into the lesser—If empowered.

Where a Magistrate has no jurisdiction to take cognizance of an offence under S. 211 for want of proper complaint he can investigate the complaint as regards S. 182. (*Mullick and Jwala Prasad, JJ.*)

**PENAL CODE, (1860) S. 211—Jurisdiction.**

**DAROGA GOPE v. EMPEROR.**

88 I.C. 1045=  
5 Pat. 33=6 P.L.T. 515=  
26 Cr. L.J. 1269=1926 P.H.C.C. 106=  
A.I.R. 1925 Pat. 717.

**—S. 211—Institution.**

—False information to superior Police Officer—If constitutes.

Lodging false information with Superintendent of Police that the informant and his mother were wrongfully confined by a police officer constitutes institution of criminal proceedings within the meaning of S. 211. (*Cuming, J.*) **TOPZAL HOSSAIN v. H. C. HUNT.**

A.I.R. 1930 Cal. 711.

**—S. 211—Interpretation.**

—Charge and proceedings—Must be made in British India.

On general rules of construction it seems that the criminal proceedings and false charge within S. 211 must mean proceedings and charge in British India where the Indian Penal Code is in force though a person may be able to institute such proceedings or make such a charge while he is actually in foreign territory. The criminal proceedings taken and the false charge made before the Vyra Court in the Baroda State are not within the scope of the section. (*Shah and Kajiji, JJ.*) **RAMBHARTHI HIRA BHARTHI, In re.**

77 I.C. 189=47 Bom. 907=  
25 Bom. L.R. 772=25 Cr. L.J. 333=  
A.I.R. 1924 Bom. 51.

**—S. 211—Investigation by police.**

—Non-cognizable offence—Police have no power—Complaint must be preferred.

The petitioner made a statement to the Village Munsif that a dacoity was committed in his house and mentioned certain persons as having taken part in the dacoity. The Village Munsif forwarded the complaint to the Police, who held an investigation and referred the case as false. The Sub-Magistrate to whom the papers were sent, accepted the referred charge-sheet and struck the case off his file. The police put in a charge-sheet before the Sub-Divisional Magistrate against the petitioner for an offence under S. 211, I. P. C. The Sub-Divisional Magistrate transferred the case to the Second Class Magistrate who had acted on the referred charge-sheet in the alleged dacoity case.

*Held*: that this was not a case in which the police could start proceedings of their own accord. The offence under S. 211 is a non-cognizable one and the Police were not empowered to investigate into a non-cognizable offence and charge the petitioner. It was open either to the accused in the alleged dacoity case or to the Village Munsif, or any Police Officer to prefer complaint under S. 190, Cr. P. Code, in which case the Magistrate before whom the complaint is made might take the case on his file after taking a sworn statement from the complainant. As such course was not adopted in this case, the proceedings, were illegal. (*Devadoss and Wallace, JJ.*) **PERUMAL NAICK v. EMPEROR.**

90 I.C. 398=  
1925 M.W.N. 317=22 M.L.W. 209=26 Cr.L.J. 1550=  
A.I.R. 1928 Mad. 672.

**—S. 211—Jurisdiction.**

—Erroneously and in good faith taken over by magistrate—Prosecution for false complaint—Not sustainable.

If a Magistrate not empowered by law to take cognizance of an offence under S. 190 (1) (a) erroneously and in good faith does so, although his proceedings shall not be set aside merely on the ground of his not being so empowered, it will not have the effect of making the complainant liable for prosecution for a false complaint by reason of the Magistrate's having

**PENAL CODE, (1860) S. 211—Jurisdiction.**

taken cognizance of it without power to do so: A. I. R. 1926 Pat. 400, Foll: 17 Cal. 574 and 32 Mad. 258, Dist. (Courtney-Terrell, C. J. and Dhavle, J.) **BANTI PANDE v. EMPEROR.** A.I.R. 1930 Pat. 650.

—*Preliminary inquiry on complaint ordered by one Court—Subsequent complaint by police to another Court—Latter Court has no jurisdiction.*

A person made a complaint against Abkari Inspector's Naik to the police and as the police took no action he filed a complaint in the Court of a Magistrate and the Magistrate ordered a preliminary enquiry. The police subsequently filed complaint against the person in the Court of another Magistrate charging him under Ss. 182 and 211 with regard to the complaint which he had made to the police.

*Held*: that the latter Court could not take cognizance of the complaint filed by the police against the person, the preliminary enquiry of the first Court not having been completed and no complaint by the first Court having been made: A. I. R. 1927 Cal. 95; A. I. R. 1927 Mad. 851; A. I. R. 1928 Rang. 254, Rel. on. (*Wild, J. C., and Aston, A. J. C.*) **RAMCHAND v. EMPEROR.** 115 I.C. 313=23 S.L.R. 225=30 Cr. L.J. 399=1929 Cr.C. 106=A.I.R. 1929 Sind 115.

**—S. 211—No offence.**

—*Complaint filed in Court—No report to police—Police cannot proceed under S. 211.*

Accused filed a complaint of dacoity in the Court and afterwards in reply to certain questions put to him by the Sub-Inspector of Police made a statement that he had been dacoited by certain persons and that he had filed a complaint in Court. Police upon investigation found that the complaint was false and the accused was sent up for trial on a charge under S. 211 by the Police.

*Held*: that the statement to the police did not amount to a report and as proceedings were started in Court, complaint by Court was necessary to initiate proceedings under S. 211 and that police was not competent to proceed against the accused. (*Banerji, J.*) **GHASLAWAN SINGH v. EMPEROR.** 96 I.C. 870=27 Cr. L.J. 1014=24 A.L.J. 816=7 L.R.A. Cr. 143=A.I.R. 1926 All. 613.

**—S. 211—Notice.**

Notice to show cause prior to prosecution need not be issued unless complaint challenges police report. A.I.R. 1927 Pat. 402; 6 Cal. 496 and 14 Cal. 707 (F.B.), Dist. (*Adami and Chatterji, JJ.*) **EMPEROR v. SOBARATI SAIN.** 120 I.C. 48=1929 Cr. C. 378=8 Pat. 734=30 Cr. L.J. 1144=A.I.R. 1929 Pat. 650.

**—Circumstances dispensing with.**

False information was given to the police in a cognizable case. The investigating police officer complained against the informant under S. 211. The information was *prima facie* false and it would have been impossible for the informant to establish its truth. Until proceedings had been taken under S. 211, the informant never protested against mode of the investigation. The Magistrate was not uncertain as regards the regularity of the investigation.

*Held*: that the Magistrate could dispense with calling on the informant to show cause against the proceedings. (*Adami and Wort, JJ.*) **MAGUNI PADHAN v. EMPEROR.** 117 I.C. 647=7 Pat. 408=30 Cr. L.J. 842=10 P.L.T. 827=A.I.R. 1929 Pat. 70.

**—S. 211—Opportunity to prove case.**

—*Trial bad, if accused not given.*

A trial for an offence under S. 211, merely on the report of the police that the information given by the

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**PENAL CODE (1860) S. 211—Withdrawal of complaint.**

accused was false, without giving the accused an opportunity to prove the truth of the information given by him, is bad. (*C. C. Ghose and Duval, JJ.*) **AKSHOY KUMAR v. EMPEROR.** 99 I.C. 408=31 C.W.N. 124=28 Cr. L.J. 152=A.I.R. 1927 Cal. 175.

—*Must be given before sanction is ordered.*

A Magistrate does not exercise a proper discretion in ordering a complainant to be prosecuted under S. 211, I.P.C., merely on the receipt of a police report that the complaint is false. The complainant should be given a reasonable time and full opportunity to prove his case before sanction is given for his prosecution. (*Das, J.*) **TENHU DHANUK v. EMPEROR.** 103 I.C. 63=8 A.I. Cr. R. 259=8 P.L.T. 662=28 Cr. L.J. 639=A.I.R. 1927 Pat. 402.

**—S. 211—Original case.**

—*Must have been investigated.*

It is not open to a Magistrate to lodge a complaint for making a false charge against a complainant until he has first investigated according to law the original complaint which the complainant has made. (*Marten and Coyajee, JJ.*) **POMPAPPA BALLABROO DESAI, In re.** 95 I.C. 68=28 Bom. L.R. 490=27 Cr. L.J. 740=A.I.R. 1926 Bom. 284.

**—S. 211—Sanction.**

—*Accused not party in proceedings—Court may proceed suo motu.*

Court may make a complaint against a person, under S. 476 for an offence under S. 211, Penal Code if it is of opinion that the proceedings before the Court were caused to be started by that person though he was not a party to a proceeding before it. A.I.R. 1925 Rang. 321, Foll.; 37 Cal. 256 and 7 C.L.J. 375, Ref. (*Suhrawardy and Costello, JJ.*) **AKHLA KULLA CHAUDHURY v. EMPEROR.** A.I.R. 1930 Cal. 674.

—*Complaint should be dealt with.*

As a matter of judicial prudence, sanction to prosecute for making a false complaint ought not to be granted until the complaint is properly dealt with and dismissed, (*Kotwal, A.J.C.*) **MAHADU v. EMPEROR.** 75 I.C. 543=24 Cr. L.J. 954=A.I.R. 1924 Nag. 115.

**—S. 211—Scope.**

—*Ss. 211 and 182 distinguished.*

Sections 182 and 211, Penal Code in reality differ fundamentally as regards the ingredients of the offence concerned.

Section 182 is primarily intended for cases of false information which do not ordinarily involve a particular allegation or charge against a specified and definite person. S. 211 covers cases where there is a definite information or charge with reference to a criminal offence against a particular person. (*Findlay J.C.*) **BHOLU v. PUNAJI.** 105 I.C. 454=23 N.L.R. 186=28 Cr. L.J. 934=9 A.I. Cr. R. 87=10 N.L.J. 191=A.I.R. 1928 Nag. 17.

**—S. 211—Taking action under.**

—*Court has power suo motu.*

Even where accused persons do not desire to take action under S. 211, I.P.C. a Court of law has authority to complain against a false complainant under S. 182 (*Dalal, J.*) **RAM DAS v. GANGA RAM.** 112 I.C. 770=30 Cr. L.J. 2=9 A.I. Cr. R. 475=9 A.I. Cr. R. 446=9 L.R.A. Cr. 74=9 L.R.A. Cr. 71=A.I.R. 1928 All. 333.

**—S. 211—Withdrawal of complaint.**

—*Workmen's Breach of Contract Act, S. 1—Not a criminal proceeding.*

**PENAL CODE (1860), S. 212—Interpretation.**

The mere initiation of a proceeding under the preliminary portion of S. 1 of the Workman's Breach of Contract Act for execution of the work or for repayment of the advance, which is withdrawn before any order is passed therein, is not a criminal proceeding within S. 211 of the Cr. P. Code. (*Ayling and Coutts Trotter, J.J.*) **HUSSAINA BEARI v. EMPEROR.**

59 I.C. 45=22 Cr. L.J. 13=43 Mad. 443.

**—S. 212—Interpretation.**

*No proof of accused having Knowledge or reasonable belief—Conviction bad—“Know” “has reason to believe” and “offender” explained.*

A person can be supposed to “know” where there is a direct appeal to his senses. Person “has reason to believe” under S. 26 if he has sufficient cause to believe the thing but not otherwise. The word “offender” used under S. 212 means a person who has contravened the provisions of any criminal law, which is punishable either with death, transportation, imprisonment or fine. Where there is neither affirmative nor any circumstantial evidence to bring home to the door of the accused that he knew or had reason to believe that the person he was harbouring was an offender within the meaning of S. 212, his conviction under S. 212 cannot be sustained. (*Young and Sen, J.J.*) **EMPEROR v. LATOOR.** 121 I.C. 349=1930 Cr.C. 48=31 Cr.L.J. 288=A.I.R. 1930 All. 33.

**—S. 213—Essentials for Conviction.**

*Actual concealment or screening must be proved—Subsequent prosecution—Offence not purged.*

For conviction under S. 213, actual concealment or screening even for a short time may be sufficient, but there must be some concealment or screening actually proved. If such is proved and there is further the acceptance of or attempt to obtain or agreement to accept the gratification or restitution as a consideration for the same, the offence is complete. The fact that the very same person subsequently did prosecute even to conviction would not purge the offence. (*Newbould and Mukerjee, J.J.*) **HEM CHANDRA MUKHERJEE v. EMPEROR.**

84 I.C. 649=52 Cal. 151=40 C.L.J. 278=26 Cr.L.J. 345=A.I.R. 1925 Cal. 85.

**—S. 215—Defence.**

*Accused being the thief—No defence.*

It is no defence to a charge under S. 215 for the accused to say that he was the actual thief of the stolen property. The accused must take steps to bring the offender to justice: A. I. R. 1924 All. 783, Rel. on. (*Percival, J. C. and Aston, A. J. C.*) **EMPEROR v. GULA.**

110 I. C. 592=22 S.L.R. 450=23 Cr.L.J. 736=A.I.R. 1928 Sind. 168.

**—S. 215—Object and Scope.**

*Punishment of trafficking in crime does not apply to the thief—Failure to trace, not knowing the offender—No offence.*

The primary aim of the section is to punish all trafficking in crime, by which a person knowing that property has been obtained by crime, and knowing the criminal, makes a profit out of the crime, while screening the offender from justice. The section is not intended to apply to the actual thief, but to some one who, being in league with the thief, receives some gratification on account of helping the owner to recover stolen property, without at the same time using all the means in his power to cause the thief to be apprehended and convicted of his offence.

Where the accused was offered a certain sum to trace out and to restore certain horses which had been lost to their rightful owner and which work he undertook but failed and there was no evidence that the accused ever knew who the offender was;

**PENAL CODE (1860), S. 216—Giving meal.**

*Held: that offence under S. 215 was not established. (Mears, C. J. and Lindsay, J.) MANGU v. EMPEROR.*

106 I.C. 437=50 All. 186=29 Cr.L.J. 21=8 A.I. Cr. R. 551=8 L.R.A. Cr. 158=25 A.L.J. 866=A.I.R. 1928 All. 22.

**—S. 215—Offence under.**

*—The thief himself offering to recover—Guilty of.*

Where a bullock was stolen and the accused took money in order to bring back the animal which he knew to be stolen and where he took no steps to bring the thieves to justice,

*Held* he was guilty though he might be himself the thief. (23 A. 81 *Overruled.*) (*Walsh, Ag.C.J. and Ryves, J.*) **EMPEROR v. MUKHTARA.** 85 I.C. 225=22 A.L.J. 838=5 L.R.A. Cr. 145=46 All. 915=26 Cr.L.J. 481=A.I.R. 1924 All. 783.

**—S. 215—Scope.**

S. 215 does not apply to the actual offender: A.I.R. 1925 Lah. 563, Foll. (*Broadway, J.*) **GODHA v. EMPEROR.**

103 I.C. 206=8 Lah. 263=28 P.L.R. 433=28 Cr. L.J. 670=A.I.R. 1927 Lah. 500.

*—Does not apply to the thief.*

S. 215 is not intended to apply to the actual thief, but to some one who takes any gratification on account of helping the owner to recover the stolen property without at the same time using all the means in his power to cause the offender to be apprehended and convicted of the offence. 23 All. 81: 26 M.L.J. 598, Foll. (*Scott-Smith, J.*) **KEHR SING v. EMPEROR.**

88 I.C. 353=7 L.L.J. 477=26 Cr.L.J. 1121=26 P.L.R. 303=A.I.R. 1925 Lah. 563.

**—S. 216—Essential.**

*Legal warrant of arrest—Intention to prevent apprehension.*

In order to convict a person under S. 216 it must be shown that the warrant to arrest the alleged offender was a legal one, and that the harbouring was with the intention of preventing him from being apprehended. (*Patkar and Baker, J.J.*) **SHRIPAD CHANDAVARKAR, In re.**

108 I.C. 27=52 Bom. 151=30 Bom. L.R. 70=29 Cr. L.J. 317=9 A.I. Cr. R. 563=A.I.R. 1928 Bom. 184.

*—Harboured person need not be found guilty—Order of apprehension sufficient—Acquittal, a consideration in sentence.*

It is not an essential ingredient of the offence under S. 216 that the person harboured should be found guilty. It is enough to show that against the person harboured order of apprehension had been issued for an offence, that is to say, for an offence alleged against him. Although, however, the acquittal of the person harboured cannot affect the legality of the conviction, it may well be taken into consideration in awarding sentence: 3 All. 279; 20 W. R. Cr. 66; 12 All. 432; 23 Cal. 420; and 37 Bom. 658; Dist. (*Curgenven, J.*) **RANGASWAMI GOUNDAN v. EMPEROR.** 113 I.C. 545=52 Mad. 73=1 M. Cr. C. 253=128 M.W.N. 588=28 M.L.W. 403=30 Cr. L.J. 183=12 A.I. Cr. R. 51=A.I.R. 1928 Mad. 1147=55 M.L.J. 503.

*—Accused must know that the person harboured is a proclaimed offender. (Campbell, J.) HARNAM SINGH v. EMPEROR.*

84 I.C. 1055=6 L.L.J. 478=26 Cr. L.J. 415=A.I.R. 1925 Lah. 103.

**—S. 216—Giving meal.**

*By itself no offence.*

The mere giving of a meal to those who are proclaimed offenders is not an offence within the meaning of S. 216 because in the absence of any evidence to

**PENAL CODE (1860), S. 216—Knowledge subsequent to harbouring.**

that effect it cannot be held that the intention of the appellants was to prevent them from being apprehended. (*Scott-Smith, Offg., C.J.*) HUKAM SINGH v. EMPEROR. 84 I.C. 1050=6 L.L.J. 481=

26 Cr. L.J. 410=A.I.R. 1925 Lah. 289.

**—S. 216—Knowledge subsequent to harbouring.**

*—Harbouring first without knowledge—Assisting evasion of apprehension after knowledge—Offence committed.*

A person was charged for harbouring a proclaimed offender. There was no satisfactory evidence on record to show that the accused knew that the person harboured was a proclaimed offender till police officer informed him to that effect. But after the police officer had so informed him, the accused gave false information in order to assist evading apprehension and eventually the offender was found in his house.

*Held:* that the false information given after having been informed that person was a proclaimed offender is sufficient to bring the accused within the purview of S. 216: A.I.R. 1926 Lah. 206, Rel. on. (*Bhide, J.*) VIR SINGH v. EMPEROR. 1930 Cr. C. 73=

11 L.L.J. 377=A.I.R. 1930 Lah. 99.

**—S. 216-A—Applicability.**

*—Harbouring dacoits—S. 216-A, I. P. C. and not S. 110, Cr. P. Code applies.*

The legislature did not desire that the provisions of S. 110, Cr. P. Code should be applied to a person suspected of harbouring dacoits, the intention being that such a man should be dealt with under the substantive portion of the Penal Code, i.e., S. 216-A. (*Dalal, J.*) MANNI LAL AWASTHI v. EMPEROR.

116 I.C. 804=1929 A.L.J. 93=51 All. 459=

11 A.I. Cr. R. 250=10 L.R.A. Cr. 34=

30 Cr. L.J. 694=A.I.R. 1928 All. 682.

**—S. 216-A—Essentials.**

*—Not Dacoits in general—Connection with a particular Dacoity essential.*

It is not enough to attract the penalty of the section that a person should be harbouring dacoits in general but the section renders it penal to harbour persons who intend to commit a particular dacoity. (*Kennedy, J. C. and Aston, A. J. C.*) EMPEROR v. SUNDERDAS. 87 I.C. 916=19 S.L.R. 111=

26 Cr. L.J. 1028=A.I.R. 1925 Sind. 29f.

**—S. 216-B—Assistance, What is.**

*—Every kind of assistance—Warning of approach of Police.*

The words "assisting a person in any way to evade apprehension" are general and will include every kind of assistance.

The accused's brother was wanted by the Police; on the appearance of the police to apprehend his brother, the accused gave a sign to him by which he took warning and escaped.

*Held:* that the accused was guilty though to a very slight extent. 25 All. 261 Diss. 26 C. L. J. 241 Foll. (*Dalal, A. J. C.*) BALKARAM SINGH v. EMPEROR.

89 I.C. 152=12 O.L.J. 270=2 O.W.N. 260=

26 Cr. L.J. 1288=A.I.R. 1925 Oudh. 423.

**—S. 216-B—"Harbouring".**

*—False information—Warning.*

Giving false information to police about proclaimed offender or warning him of approach of police in order to enable him to escape is offence. 25 All. 261, Dissented: 21 C. W. N. 1062, and 72 I. C. 949, Foll. (*Shadi Lal, C. J.*) TARA SINGH v. KING EMPEROR.

94 I.C. 131=7 Lah. 30=

27 P.L.R. 218=27 Cr. L.J. 563=

A.I.R. 1926 Lah. 206.

**PENAL CODE (1860), S. 218—Guilt of offender.****—S. 216-B—Harbouring, What is.**

*—Assistance in any manner to evade apprehension—Warning of the approach of Police—An offence.*

S. 216 (B) lays down that the word "harbour" includes the assisting a person in any way to evade apprehension. The idea that it, nevertheless, does not include giving false information to the Police with a view to assisting an outlaw to escape appears little short of a negation of the law, and one might almost say that such a view constitutes a direct encouragement to defeat the forces of law and order in dealing with what can only be described as a menace to the public. A warning given to a proclaimed offender of the approach of the police is an offence under S. 216 B. I.P.C. (*Pipon, J. C.*) AKBAR ALI v. EMPEROR.

72 I.C. 949=24 Cr. L.J. 485 (Lah.).

**—S. 216-B—Lending pony.**

Where a pony was lent to the dacoits merely to facilitate them in removing the loot, *Held* the offence under S. 216-B was not committed. (*Ryves, J.*) DAMURI v. EMPEROR.

83 I.C. 711=

22 A.L.J. 496=5 L.R.A. Cr. 90=

26 Cr. L.J. 151=A.I.R. 1924 All. 676.

**—S. 218—Applicability.**

*—Patwari filing false statement on oath—No duty to prepare—Liable under S. 193 and not under S. 218.*

Where a patwari, in order to save the trouble of taking down the evidence, was directed by a revenue Court to prepare a written statement according to his papers and file it, and where the patwari made such a statement on oath, the statement cannot be called a public document which it was his duty to prepare, and therefore on proof of patwari's statement being false, he could not be prosecuted for an offence under S. 218 but under S. 193, Penal Code, for giving false evidence: 5 All. 553, Foll. (*Dalal, J.*) MEHAR BAN ALI v. SITARAM.

118 I.C. 232=1929 A.L.J. 512=

10 L.R.A. Cr. 90=30 Cr. L.J. 874=

12 A.I. Cr. R. 22=1929 Cr. C. 1=

A.I.R. 1929 All. 374.

**—S. 218—Essentials.**

*—Recording statements not made—Destroying those made—Recording circumstances not transpired.*

A conviction under S. 218 can be maintained only where it is established that during the investigation the accused recorded statements which were not made before him or destroyed the statements that were actually made or made a record of circumstances which, as a matter of fact, did not transpire before him.

Where a Sub-Inspector recorded what was stated before him and he recorded what he actually witnessed, and where it was possible that he had a motive for recording the statement made before him knowing them to be false.

*Held:* that the last mentioned fact alone was no ground for a conviction under S. 218. (*Jai Lal, J.*) MOTI RAM v. EMPEROR.

86 I.C. 661=

7 L.L.J. 331=26 Cr. L.J. 837=

26 P.L.R. 584=A.I.R. 1925 Lah. 461.

**—S. 218—Guilt of Offender.**

*—Immaterial—Sufficient if offence is brought to notice officially.*

For the purposes of a charge under S. 218 the actual guilt or otherwise of the offender, alleged as sought to be screened from punishment is immaterial. It is quite sufficient that the commission of a cognizable offence has been brought to the notice of the accused officially and that in order to screen the



**PENAL CODE (1860), —S. 218—Interpretation.**

offender the accused prepared the record in a manner which he knew to be incorrect. (*Jai Lal, J.*)  
**MOTI RAM v. EMPEROR.** 86 I.C. 661=  
 7 L.L.J. 331=26 Cr. L.J. 837=26 P.L.R. 594=  
 A.I.R. 1925 Lah. 461.

**—S. 218—Interpretation.****—“Charged”**

The word ‘charged’ in Sec. 218 is not restricted to the narrow meaning of enjoined by a special provision of the law. 27 Cal. 144 Rel. on. (*Tekchand, J.*)  
**NATHUMAL v. ABDUL HAQ.** 123 I.C. 841=  
 31 Cr. L.J. 584=A.I.R. 1930 Lah. 159.

**—S. 218—Offence under.****—Police officer—Report knowingly incorrect—Intent to injure—Guilty.**

Where a Sub-Inspector of Police makes a report knowing it to be incorrect and with intent to cause injury to the complainant his act is clearly covered by S. 218. The word ‘charged’ in S. 218 is not restricted to the narrow meaning of enjoined by a special provision of the law. 27 Cal. 144 Rel. on. (*Tekchand, J.*)  
**NATHUMAL v. ABDUL HAQ.** 123 I.C. 841=  
 31 Cr. L.J. 584=A.I.R. 1930 Lah. 159.

**—S. 221—Applicability.****—Private and public duties—Legal obligation wanting—No offence.**

The duties of a chowkidar as a private citizen ought not to be confounded with his duties as a public servant. Where the legal obligation of the chowkidar to arrest or detain has not been established, there is no dereliction from his statutory duty within the purview of S. 221: and the chowkidar cannot be penalized for intentionally suffering a pilferer to escape from his detention. (*Sen, J.*) **BHAGVAN DIN v. EMPEROR.**  
 120 I.C. 205=11 L.R.A. Cr. 8=31 Cr. L.J. 12=  
 1930 A.L.J. 242=13 A.I. Cr.R. 126=  
 1929 Cr. C. 663=A.I.R. 1929 All. 935.

**—S. 222—‘Intentionally aiding.’****—Preparation to escape—Facilitating attempt—Attempt frustrated—Immaterial.**

The fact that the acts proved do not amount to an attempt to escape but constitute only a preparation to escape does not exculpate the accused because the offence of which he has been charged and convicted is the offence of intentionally aiding the prisoners in attempting to escape. It cannot be gainsaid that when the accused does acts done in order to facilitate the attempt of the prisoners to escape and that he does thereby facilitate an attempt to escape he can be properly convicted under S. 222 and it makes no difference that the attempt was in fact frustrated by other circumstances. (*Hilton, J.*) **MAULA BAKSH v. EMPEROR.**  
 119 I.C. 762=30 Cr. L.J. 1103=  
 1929 Cr. C. 190=A.I.R. 1929 Lah. 631.

**—S. 224—Applicability.****—Proceedings under S. 109, Cr. P. Code pending.**

A person who escapes from Police custody while proceedings under S. 109, Cr. P. Code, are pending against him commits an offence under S. 225-B and not under S. 224. (*Kincaid, J.C. and Kennedy, A. J. C.*) **EMPEROR v. KHANU K. R. NEDY.**  
 77 I.C. 814=18 S.L.R. 301=25 Cr. L.J. 462=  
 A.I.R. 1925 Sind 193.

**—S. 224—Essentials.**

To sustain a charge under S. 224 or S. 225 the arrest and detention should be legal. (*Krishnan, J.*)  
**ARUMUGA GOUNDAN v. EMPEROR.** 81 I.C. 312=  
 18 M.L.W. 818=25 Cr. L.J. 792=  
 A.I.R. 1924 Mad. 384.

**—S. 224—Interpretation.**

For ‘any such offence’ and ‘charged’ ex-

**PENAL CODE (1860), S. 225-A—Legal custody.****plained—Escape from lawful arrest on charge subsequently not proved—Still guilty.**

An accused person legally arrested for an offence must submit to be tried and dealt with according to law. If he gains his liberty before he is delivered by due course of law he commits the offence of escaping from lawful custody under S. 224; 18 Mad. 401 and 31 Mad. 271, Foll.

The words ‘for any such offence’ in S. 224 mean for any offence with which a person is charged or of which he has been convicted.

The word ‘charged’ is used in the popular sense as implying inculpation of an alleged offence as distinguished from a charge formulated after trial. It would therefore be an offence for a man to escape from custody after he has been lawfully arrested on a charge of having committed an offence although he may not have been subsequently convicted of such latter offence: 28 Cal. 253 Foll. (*Patkar and Baker, JJ.*) **KALIA AMRA v. EMPEROR.** 100 I.C. 988=  
 29 Bom. L.R. 168=28 Cr. L.J. 380=  
 7 A.I. Cr. R. 486=A.I.R. 1927 Bom. 96.

**—S. 224—Obstruction.****—Assemblage of crowd with lathis—Arrest abandoned through fear—No obstruction.**

Where when a Sub-Inspector of Police was about to arrest an accused, a crowd carrying lathis began to assemble and the Sub-Inspector considered their appearance so formidable that he desisted from his intention of arresting the accused.

*Held*: that the persons forming the crowd cannot be said to have caused illegal obstruction within the meaning of S. 224 or S. 225 nor was the person to be arrested guilty under S. 224. (*Daniels, J.*)  
**LALJI v. EMPEROR.** 86 I.C. 350=23 A.L.J. 32=  
 6 L.R.A. Cr. 95=26 Cr. L.J. 766=  
 A.I.R. 1925 All. 308.

**—S. 225—Lawful custody.****—Arrest by Forest officer without warrant—S. 225**

Under S. 63 a Forest Officer cannot arrest, without warrant, persons committing an offence under S. 29 and his custody is not a lawful custody under S. 63 within the meaning of S. 225, Penal Code. (*Rankin and Duval, JJ.*) **MOSLEM SIRKAR v. EMPEROR.**  
 102 I.C. 498=54 Cal. 296=28 Cr. L.J. 562=  
 A.I.R. 1927 Cal. 516.

**—S. 225—Offering resistance.****—With a view to prevent arrest amounts to.**

Threatening a Sub-Inspector of Excise in order to prevent him from making an arrest amounts to offering a resistance and illegal obstruction to lawful apprehension of an offender, but where the obstruction has not been such as to constitute a serious offence the case does not call for heavy punishment. (*James, J.*) **BECHU MIAN v. EMPEROR.**  
 123 I.C. 68=31 Cr. L.J. 465=A.I.R. 1930 Pat. 344.

**—S. 225-A—Legal custody.****—Arrest without warrant under S. 55, Cr. Pro. Code—Confinement of arrested person—Legal custody.**

Section 55, Criminal P. C., is independent of Chap. 8 of the Code, which includes S. 110, although proceedings under that chapter might follow an arrest under S. 55 as a natural sequence and a police officer can therefore arrest or cause to be arrested without warrant or an order of a Magistrate any person who comes within provisions of S. 55. And where such person is arrested without warrant or order of Magistrate, confinement of such person is legal custody within the meaning of S. 225-A: A.I.R. 1925



**PENAL CODE (1860), S. 225-A—Negligence.**

Lah. 623, Dist.; 35 All. 407, Ref. (*Macpherson, J.*)  
 RAMNANDAN SINGH v. EMPEROR.

124 I.C. 638=1930 Gr. C. 78=  
 A.I.R. 1930 Pat. 103.

**—S. 225-A—Negligence.****—Omission to close door.**

Where a person properly arrested is confined in a room, omission to secure the door of the room, the main cause of escape of the prisoner from custody, is an indication of negligence. (*Macpherson, J.*)  
 RAMNANDAN SINGH v. EMPEROR.

124 I.C. 638=  
 1930 Gr. C. 79=A.I.R. 1930 Pat. 103.

**—S. 225-B—Applicability.**

*Search warrant to find a woman unlawfully detained in a house—Woman found in a field and taken custody of—Rescue from custody—No offence.*

A search warrant was issued to a police officer to search a house of a particular person to find out a woman who was alleged to be unlawfully detained. She was not found in that house but was found in a field and was taken custody of. Accused rescued her from police custody.

*Held*: accused cannot be convicted under Ss. 225-B and 353 as they did not rescue the woman from lawful custody within the meaning of S. 225-B, the woman not being taken custody of in accordance with the warrant. (*Wort, J.*) CHEPA MAHTON v. EMPEROR.

113 I.C. 578=30 Gr. L.J. 175=11 P.L.T. 31=  
 12 A.I. Cr.R. 24=A.I.R. 1928 Pat. 550.

**—S. 225-B—Arrest by oral declaration.****—Legality.**

An arrest by mere oral declaration is not a legal arrest and consequently a person so arrested cannot be convicted under S. 225-B, of the Penal Code. (*Kinkhede, A.J.C.*) HARMOHAN LAL v. EMPEROR.

113 I.C. 288=30 Gr. L.J. 128.

*An arrest by mere oral declaration is insufficient.* (*Kinkhede, A.J.C.*) HARMOHAN LAL v. EMPEROR.

113 I.C. 288=11 N.L.J. 259=  
 30 Gr. L.J. 128=12 A.I. Gr.R. 95.

**—S. 225-B—Authority to arrest.****—Burden on prosecution to prove—Authority under some other provision of law—Not sufficient.**

When a constable arrests a man and tells him expressly that he is doing so under a particular authority, which he claims to have, to arrest him and if such arrest is resisted, it will be for the prosecution afterwards to establish that the constable who arrested the man had power to act under the authority that he claimed to have. It is not sufficient for the prosecution afterwards to say that the constable had authority under some other provision of law. A man is entitled to know when a constable is arresting him, under what power he is acting and if he (constable) states that he acts under certain power, which the man knows he has not got, he is entitled to object to arrest and to escape from custody when he is arrested. (*Krishnan, J.*) APPASWAMY MUDALI, *In re.*

81 I.C. 51=47 Mad. 442=  
 19 M.L.W. 504=34 M.L.T. 95=25 Gr. L.J. 563=  
 A.I.R. 1924 Mad. 555=46 M.L.J. 447.

**—S. 225-B—Escape.****—From lawful custody—Not obstruction—But offence under S. 225-B.**

Escape from lawful custody of a process server does not amount to obstruction to a public servant in the discharge of his duties, nor does the act of a person in running away and shutting himself up in a room and refusing to come out constitute voluntary "obstruction", but it constitutes an offence under S. 225-B. 2 B.H.C. 128 (F.B.) Foll. (*Tek-*

**PENAL CODE (1860), S. 225-B—Invalid warrant.**  
*chand, J.*) JAMNA DAS v. EMPEROR. 103 I.C. 833=  
 9 L.L.J. 408=8 A.I. Cr.R. 443=  
 28 Cr.L.J. 753=A.I.R. 1927 Lah. 708.

**—Arrest not justified.**

Where an arrest of a person by the police is not justified by law, and the person escapes from police custody, he is not guilty under S. 225-B. (*Lie Rossignol, J.*) KALA v. EMPEROR. 89 I.C. 400=  
 26 Gr. L.J. 1360=A.I.R. 1925 Lah. 623.

**—Proceedings under Cr. P.C. S. 109 pending.**

A person who escapes from Police custody while proceedings under S. 109, Criminal P.C. are pending against him commits an offence under S. 225-B and not under S. 224. (*Kincaid, J.C. and Kennedy, A.J.C.*) KING EMPEROR v. KHANU KORI.

77 I.C. 814=25 Gr. L.J. 462= 18 S.L.R. 301=  
 A.I.R. 1925 Sind 193.

**—S. 225-B—Essentials.****—Intentional resistance.**

An offence under S. 225-B is committed only when the resistance to arrest is intentional and that can only be when the person who makes the resistance knows that he is being or is about to be arrested. (*Dalip Singh, J.*) HOLMES, G.P.C. v. EMPEROR.

107 I.C. 772=29 Gr. L.J. 286=9 A.I. Cr. R. 499=  
 A.I.R. 1928 Lah. 324.

**—S. 225-B—Illegal custody.****—Judgment-debtor in the custody of a peon.**

A Civil Court is not empowered to leave a judgment-debtor in custody of a peon after giving him time to pay a decretal amount and such detention is not lawful custody within the meaning of the Penal Code. (*Piggott, J.*) EMPEROR v. MADHO SINGH.

86 I.C. 801=23 A.L.J. 189=26 Gr.L.J. 865=  
 47 All. 409=A.I.R. 1925 All. 318.

**—S. 225-B—Illegal order.****—Detention in Court under—Escape—No offence.**

A Court passed order under O. 38, R. 3, as follows: "Surety is discharged. Judgment-debtor will remain arrested unless he can produce another surety." He was also orally directed not to leave the Court. In defiance to the order he left the Court. On being prosecuted under S. 225-B.

*Held*: as no order to find fresh security was passed, the order was illegal and the judgment-debtor could not be convicted. (*Fforde and Stemp, J.J.*) GOPAL SINGH v. CROWN.

116 I.C. 709=30 P.L.R. 147=  
 30 Gr.L.J. 663=13 A.I.Cr.R. 94=  
 A.I.R. 1929 Lah. 163.

**—S. 225-B—Illegal warrant.****—Warrant for non-payment of tax ultra vires—Resistance not punishable.**

Under S. 225-B resistance or obstruction to the apprehension of a person is made punishable only if the apprehension was "lawful," but where the imposition of the tax, for the non-payment of which the warrants are issued, is itself illegal and *ultra vires*, the resistance to their execution cannot be punishable. (*Tekchand, J.*) DASOUDHI v. EMPEROR. 107 I.C. 604=  
 9 Lah. 424=9 A.I.Cr.R. 488=30 P.L.R. 660=  
 29 Gr.L.J. 265=A.I.R. 1928 Lah. 332.

**—S. 225-B—Invalid warrant.****—Omission of seal—Resistance no offence.**

The omission of the seal of the Court on a warrant renders it void and a person offering resistance to apprehension on such a warrant does not commit an offence under S. 225-B: 42 Cal. 708 and 18 Bom. 636, Ref. (*Tekchand, J.*) DASOUDHI v. EMPEROR.

107 I.C. 601=9 Lah. 424=9 A.I.Cr.R. 488=  
 30 P.L.R. 660=29 Gr. L.J. 265=  
 A.I.R. 1928 Lah. 332.

**PENAL CODE (1860), S. 225-B—Legality of warrant.****—S. 225-B—Legality of warrant.**

*Time extension by one not empowered—Endorsement by competent officer—Warrant is legal.*

The Nazir of the Court is incompetent to extend the time for the execution of a warrant, but where extension is endorsed by the same officer who has originally issued the warrant and the endorsement appears on the warrant itself the warrant is legal. (C. C. Ghose and Duval, JJ.) **SALIMADDIN v. EMPEROR.** 93 I.C. 1049=43 C.L.J. 234=27 Cr.L.J. 553=A.I.R. 1926 Cal. 605.

**—S. 225-B—Revision.**

*Report by munsiff—Treated as complaint—Prosecution irregular—Acquittal—No revision lies.*

The High Court will not interfere in revision with an order of acquittal, passed by Magistrate of competent jurisdiction, on a prosecution for an alleged offence under S. 225-B of the Penal Code, irregularly instituted on a report sent in by a Munsiff which was treated as a complaint. (Piggott, J.) **EMPEROR v. MADHO SINGH.** 86 I.C. 801=23 A.L.J. 189=26 Cr.L.J. 865=47 All. 409=A.I.R. 1925 All. 318.

**—S. 225-B—Showing warrant.**

*Warrant not shown when demanded—Arrest illegal.*

Any man who is being arrested, has a right to ask the officer arresting him to show him what power he has to do so. If the arrest is under a warrant, the man arrested is entitled to ask that the warrant be shown to him to see that he is being properly arrested and when the warrant is not shown to him and the arrest is made such an arrest will not be a legal arrest. (Krishnan, J.) **APPASWAMY MUDALIAR, In re.** 81 I.C. 51=48 Mad. 442=19 M.L.W. 504=34 M.L.T. 952=5 Cr.L.J. 563=A.I.R. 1924 Mad. 555=46 M.L.J. 447.

**—S. 227—Nature of evidence required.**

*What must be proved by documentary evidence—What by oral.*

In a case under S. 227 the conviction of the accused, its date and the sentence passed should be proved by documentary evidence. Further the facts that the accused person was granted a remission of punishment and that the conditions on which the remission was granted must also be proved by documentary evidence. But the fact that the accused is the person convicted, sentenced and granted remission and that he has committed a breach of a condition of remission may be proved by oral evidence. The Magistrate should not overlook the requirements of documentary evidence and the accused should not be questioned at all until proper evidence is on the record. (Carr, J.) **NGA. Po. NGWE v. EMPEROR.** 120 I.C. 692=7 Rang. 355=1929 Gr. C. 446=31 Cr. L.J. 174=A.I.R. 1929 Rang. 278.

**—S. 227—Sentence.**

*Exceeding powers under Cr. Pro. Code—Illegal.*

There is nothing in either S. 227, Penal Code or Burma Act to empower any Magistrate to pass a sentence in excess of that which he is empowered under the Criminal P. C., to pass. Thus if a Magistrate sentences a person, convicted under S. 227 of the Code, and under S. 2, Burma Act, for a period which is in excess of his power, the sentence is illegal. (Carr, J.) **NGA MYA v. EMPEROR.** 120 I.C. 693=7 Rang. 358=1929 Gr. C. 464=31 Cr. L.J. 175=A.I.R. 1929 Rang. 279.

**—S. 228—Apology.**

*Defence of—Not a sufficient justification in a criminal case.*

**PENAL CODE (1860), S. 228—Ingredients of offence.**

The mere fact that an apology has been tendered by the accused is not a sufficient reason to secure for him impunity from punishment in a serious and grave contempt case. *Rex v. Almon*, (1765) Wilmut's Opinions 243, applied. (Broadway, Addison and Coldstream, JJ.) **HABIB SADULLAH KHAN, In re.**

89 I.C. 833=6 Lah. 528=26 P.L.R. 772=26 Cr. L.J. 1409=A.I.R. 1926 Lah. 1 (F.B.)

**—S. 228—Contempt, what is.**

*Marriage with a ward of Court without consent.*

The marriage of a ward of Court requires the consent of the Court and a marriage, or connivance of marriage, with a ward of Court without such consent is, apart from any other consequences which might follow, contempt of Court liable to be severely punished: 42 Cal. 351, Foll. (*Rupchand Bilaram and Desouza, A.J.Cs.*) **PREMI KANJI v. MT. JEEWIBAI.** 108 I.C. 668=23 S.L.R. 75=A.I.R. 1928 Sind 129.

**—S. 228—Exercise of discretion.**

*Technical, slight or trivial—Court may condone—Likely interference with justice—May not interfere unless fair trial is prejudiced.*

The contempt of Court is not a matter of mere form or technicality but of substance, and the jurisdiction to punish for contempt has to be very carefully and cautiously exercised. It is well settled that when the offence is technical or of a slight or trivial nature the Court may condone it. Even if the observation on the subject-matter of a proceeding may be likely to interfere with the course of justice and may technically amount to contempt, the Court may not interfere, if it is not satisfied that such comments were calculated to prejudice the fair trial; *In re New Gold Coast Exploration*, (1901) 1 Ch. 860. Ref. (*Sulaiman, J.*) **DANGI v. SHEPPARD.** 1930 A.L.J. 665=A.I.R. 1930 All. 483.

**—S. 228—Indirect answers.**

*Liability under S. 179 not S. 228.*

Where a witness, though persistently asked by the Court to give certain information, persisted in giving an indirect answer,

*Held*: that this amounted to a refusal to answer question and that an offence under S. 179, was committed but not one under S. 228. (*Mukherji, J.*) **HAR NARAIN v. EMPEROR.** 84 I.C. 706=22 A.L.J. 1100=26 Cr. L.J. 354=6 L.R.A. Cr. 14.

**—S. 228—Ingredients of offence.**

*Intention to insult.*

The chief ingredient of the offence contemplated by Section 228 of the Indian Penal Code, is the intention of the offender. The question is not whether a Judicial Officer felt insulted, but whether an insult was actually offered and intended. (*Moti Sagar, J.*) **PARSHOTAM LAL v. THE CROWN.** 93 I.C. 698=27 Cr. L.J. 474=A.I.R. 1925 Lah. 210.

*Intentional interruption.*

Where there were two accused and where, when the Magistrate was examining the first accused, he found that the two accused were exchanging remarks:

*Held*: that for a conviction under Penal Code, S. 228, there should be an intentional interruption to the Court and the action of the accused in the Magistrate's Court in the present case did not reasonably suggest such intention and would appear undoubtedly to have been adopted in good faith in their own interests: 10 C. W. N. 1062 Ref. (*Findlay, O. J. C.*) **MAHADEO SINGH v. EMPEROR.** 91 I.C. 242=8 N.L.J. 190=27 Cr. L.J. 66=22 N.L.R. 1=A.I.R. 1925 Nag. 403.

**PENAL CODE (1860), S. 228—Legal practitioner.****—S. 228—Legal practitioner.****—Disciplinary power over—Subordinate Court—Jurisdiction.**

(Per Full Bench.)—No power to punish for contempt of an inferior Court now exists independently of the Indian Penal Code and the Contempt of Courts Act and no disciplinary power over legal practitioners or power to punish for contempt outside the provisions of the Indian Penal Code is vested in the subordinate Courts. (*Mears, C. J., Sulaiman, Boys, Banerji, Young, Sen and Niamatullah, JJ.*)  
**MAHANT SHANTHA NAND v. BASUDEVA NAND.**

1930 A.L.J. 402 = A.I.R. 1930 All. 225. (S.B.)

**—S. 228—Printed article.****—Past life of accused—When amounts to contempt.**

Matter published in a news paper relating to the past life of an accused or to his antecedent character, particularly if it suggests an offence similar to that with which he is charged, is contempt of Court, as it must tend to interfere with the fair trial of that charge. (*Sulaiman, J.*) **DANGI v. SHEPPARD.**

1930 A.L.J. 665 = A.I.R. 1930 All. 483.

**—Public criticism—Limit of—Test.**

If the scope of the inquiry or defence is very wide, it cannot be expected that, while the trial is going on, public criticism on all the various subjects involved in the inquiry should be entirely withheld. General comment on these various matters or historical events, so long as they do not directly refer to the part played by the accused, cannot be seriously objected to. Such criticism would not be a comment on pending proceedings at all nor would the publications of such comments ordinarily tend to interfere with the course of justice. The test to be applied is whether the publication is likely to prejudice mankind in favour of or against a party before the case is finally heard or whether it is likely to interfere with the due course of justice. (*Sulaiman, J.*) **DANGE v. SHEPPARD.**

1930 A.L.J. 665 = A.I.R. 1930 All. 483.

**—Pending trial.**

The publication of comments on a case which is pending trial in a Court amounts to a contempt of Court if the comments are such as are likely to prejudice the administration of justice in the case. (*Carr and Mya Bu, JJ.*) **EMPEROR v. MAUNG TIN SAW.**

109 I.C. 675 = 6 Rang. 39 = 29 Cr. L.J. 595 = 10 A.I. Cr. R. 266 = A.I.R. 1928 Rang. 115.

**—Decided case.**

The publication of an article in a newspaper referring to a case which has been decided may amount to and be treated as contempt, *R. v. Gray*, (1900) (2 Q. B. 36 and A.I.R. 1922 Bom. 426, foll. (*Broadway, Addison and Coldstream, JJ.*) **HABIB, In The Matter of.**

89 I.C. 833 = 6 Lah. 528 = 26 P.L.R. 772 = 26 Cr. L.J. 1409 = A.I.R. 1926 Lah. 1 (F.B.)

**—S. 228—Sub-Registrar.****—Not a Court.**

In the absence of a direction by the Local Government as regards the Sub-Registrar being a civil Court within the meaning of Ss. 480 and 482, Criminal P.C., an offence under S. 228, Penal Code, if committed before a Sub-Registrar cannot be dealt with under Ss. 480 and 482, Criminal P.C. (*Rankin, C. J. and Patterson, J.*) **PROBHAT CHANDRA v. EMPEROR.**

34 C.W.N. 56 = A.I.R. 1930 Cal. 366.

**—S. 228—What is contempt.****—Reasonable argument or expostulation—Not contempt—Statements amounting to—Undermining of authority.**

If reasonable argument or expostulation is offered against any judicial act as contrary to law or the public

**PENAL CODE (1860), S. 235—Essentials.**

good, no Court could or would treat that as contempt of Court, but it is a very grave and serious contempt to accuse a Judge of High Court of having decided a case not according to the dictates of justice but in order to please and curry favour with others and to say that the door of justice (clearly including the door of High Court) has been closed against a particular community. Any act done or writing published, calculated to bring a Court or a Judge of the Court into contempt, or to lower its authority is a contempt of Court. Such contempt belongs to the category characterised as "scandalising a Court or a judge." *R. v. Gray*, (1900) 2 Q. B. 30 and *In re Read Huggesson* (1742) 2 Atk. 291, applied.

The principle which is the root of and underlies the cases in which persons have been punished for attacks upon Courts and interferences with the due execution of their orders is not the purpose of protecting either the Court as a whole or the individual Judges of the Court from a repetition of them, but of protecting the public, and especially those who, either voluntarily or by compulsion, are subject to its jurisdiction, from the mischief they will incur if the authority of the Tribunal be undermined or impaired. *Rex v. Davies* (1906) 1, K. B. 32 Foll. (*Broadway, Addison and Coldstream, JJ.*) **HABIB, In the matter of.** 89 I.C. 833 = 6 Lah. 528 = 26 P.L.R. 772 = 26 Cr.L.J. 1409 = A.I.R. 1926 Lah. 1 (F.B.).

**—S. 230—Applicability.****—Coin used as ornament—Still Queen's coin—**

A coin may still, within the meaning of S. 230, be deemed to be a Queen's coin even though it has ceased to be used as money, and the mere fact that a coin is being used as an ornament by soldering a ring to it does not transform it absolutely into a new article. By removal of that ring the coin in a defaced form will re-appear and may be capable of being accepted by ignorant villagers. The rules in the Resource Manual themselves require that a person who wants to have the defaced coins exchanged must at his own cost remove the solder and then tender the coins. The rules speak of a silver coin which has been defaced. It is obvious, therefore, that when these coins are tendered to a Bank they are not tendered as ornaments or other articles into which coins have been transformed, but are tendered as coins which have been defaced. (*Sulaiman, J.*) **MEHTAB RAI v. EMPEROR.**

93 I.C. 154 = 27 Cr. L.J. 426 = 48 All. 603 =

7 L.R.A. Cr. 59 = 24 A.L.J. 842 =

A.I.R. 1926 All. 321.

**—S. 232—Sentence.****—Possessing implements and counterfeiting—One transaction—Sentences for both offences—Illegal.**

The accused were charged under Ss. 235 and 232, Penal Code with being in possession of implements and materials for counterfeiting King's coins and with actually counterfeiting King's coins, and sentenced to various terms of imprisonment under each section.

Held that the possession of such implements and materials is part and parcel of the transaction of counterfeiting coin and therefore the sentences passed on the appellants under S. 235, Penal Code, were illegal. 14 P.R. 1904 Cr. Foll. (*Abdul Raoof, J.*) **BISHAN DAS v. EMPEROR.**

71 I.C. 700 = 5 L.L.J. 272 = 24 Cr. L.J. 236 =

A.I.R. 1924 Lah. 78.

**—S. 235—Essentials.****—Mere possession no offence—Intention to counterfeit necessary.**

**PENAL CODE (1860), S. 235—Sentence.**

Mere possession of instruments and materials capable of counterfeiting coins is no offence. To constitute an offence under S. 235, possession of such instruments should be with the intention of counterfeiting coins and the intention must be proved to establish the charge.

Where the dies found were incapable of striking a complete coin.

*Held*: it cannot be inferred against the accused that his intention was to manufacture coins. (*Zafar Ali, J.*) *KHADIM HUSAIN v. EMPEROR.*

84 I.C. 247=5 Lah. 392=

26 Cr.L.J. 247=A.I.R. 1925 Lah. 22.

**—S. 235—Sentence.**

*Exemplary—Separate convictions for possession of parts—Illegal.*

The offence of counterfeiting coin is very serious and an exemplary sentence should be given. But when a man is being convicted for being in possession of instruments or materials for counterfeiting coin, it is hardly right to convict him separately for being in possession of various parts of such instruments, or materials. (*Dalip Singh, J.*) *ALLAH WADHAYA v. EMPEROR.*

123 I.C. 525=1930 Cr.C. 19=

31 Cr.L.J. 527=A.I.R. 1930 Lah. 51.

*Possession and counterfeiting—Separate sentences—Illegal.*

The accused were charged under Ss. 235 and 232, Penal Code with being in possession of implements and materials for counterfeiting King's coins and with actually counterfeiting King's coins, and sentenced to various terms of imprisonment under each section.

*Held*, that the possession of such implements and materials is part and parcel of the transaction of counterfeiting coin and therefore the sentences passed on the appellants under S. 235, Penal Code, were illegal. 14 P.R. 1904 Cr. Foll. (*Abdul Raoof, J.*) *BISHAN DAS v. EMPEROR.*

71 I.C. 700=

5 L.L.J. 272=24 Cr.L.J. 236=

A.I.R. 1924 Lah. 78.

**—S. 240—Knowledge as to counterfeit coin.**

*No evidence as to, when he became possessed—S. 241 applies.*

Where there was no evidence as to whether at the time he became possessed of the counterfeit coins the accused knew them to be counterfeit, *held*, that the accused could not be convicted for an offence under Ss. 243 or 240, I.P.C., and that the accused could only be convicted under S. 241 of the Penal Code. (*Shadi Lal, C. J.*) *BHAN SINGH v. EMPEROR.*

124 I.C. 688=31 P.L.R. 235=31 Cr.L.J. 736.

**—S. 247—Diminishing weight.**

*Coin soldered to ring and used as ornament—Cutting and clipping and making up deficient weight by solder—Offence under.*

The rules in the Resource Manual themselves require that a person who wants to have the defaced coins exchanged must at his own cost remove the solder and then tender the coins. The rules speak of a silver coin which has been defaced. It is obvious therefore, that when these coins are tendered to a Bank they are not tendered as ornaments or other articles into which coins have been transformed, but are tendered as coins which have been defaced. If therefore, an accused person clips and cuts away a coin and makes up the deficient weight by solder with the intention of subsequently delivering it to a Bank, he would certainly be guilty of fraudulently defacing a coin even though on a previous occasion the coin has been used as a wearing ornament. (*Sulaiman, J.*)

**PENAL CODE (1860), S. 268—What is nuisance.**

*MEHTAB RAI v. EMPEROR.*

48 All. 603=

7 L.R.A.Cr. 59=24 A.L.J. 842=

A.I.R. 1926 All. 321.

**—S. 265—Essentials.**

*Intention to defraud—Onus on prosecution.*

Where the accused was getting his grain measured with two kathas, which he borrowed for the purpose from another person, who told him that the kathas were passed by the Notified Area Committee and which were seized by the police, who found them to measure five tolas more than the standard katha and prosecuted the accused who was convicted under S. 265.

*Held*: that the accused could not be convicted unless it was proved that he knew that the kathas were incorrect or that before he used them, he tampered with them. Unless this was established, fraudulent intention on the part of the accused so as to convict him under S. 265 could not be presumed, one of the principal ingredients of the offence being the use of false measure with intent to defraud. (*Subhedar, A. J. C.*) *BAKHATLAL v. EMPEROR.*

116 I.C. 671=

30 Cr.L.J. 692=1929 Cr.C. 263=

13 A.I.Cr.R. 120=A.I.R. 1929 Nag. 239.

**—S. 268—Encroachment.**

Encroachment however small, upon public street is offence. 20 Cal. 665 Diss. 20 Mad. 433 and 14 Cal. 656 Foll. (*Le Rossignol and Fforde, J.J.*) *EMPEROR v. NISAL MUHAMMAD KHAN.*

86 I.C. 1006=

6 Lah. 203=26 Cr.L.J. 942=

26 P.L.R. 127=A.I.R. 1925 Lah. 454.

**—S. 268—Essentials.**

*Injury to public.*

The injury which constitutes public nuisance must be to the people in general, and not to particular class of people: 34 All. 345, Dist. (*Datal, J.*) *MUNNA TEWARI v. CHANDARBALI.*

110 I.C. 213=

50 All. 871=26 A.L.J. 1285=

10 A.I.Cr.R. 201=9 L.R.A.Cr. 118=

29 Cr.L.J. 661=A.I.R. 1928 All. 627.

**—S. 265—Right to prosecute.**

*By public officer as such.*

A public officer's right to prosecute as a member of the public, is not taken away because he did not profess to complain as an ordinary person but as a public officer. (*Wallace, J.*) *MOLAIAPPA GOUNDAN v. EMPEROR.*

115 I.C. 242=30 Cr.L.J. 432=

52 Mad. 79=28 M.L.W. 621=1 M.Cr.C. 317=

A.I.R. 1928 Mad. 1235=55 M.L.J. 718.

**—S. 268—What is nuisance.**

*Slaughtering of cattle.*

Slaughtering of cattle in a village in a particular area surrounded by walls is not necessarily a public nuisance. (*Addison, J.*) *CHUHAR v. EMPEROR.*

116 I.C. 705=30 Cr.L.J. 660=13 A.I.Cr.R. 70=

A.I.R. 1929 Lah. 252.

*Closing channel outlet inundation of villages—Public nuisance.*

Where the water which used to be collected in the neighbouring villages, and which used to pass through a natural channel by way of an opening in a bandh, had been stopped, resulting in the inundation of a large area in that locality covering lands of several villages and in the destruction of the entire crop sown in that area and also making it impossible to sow further crops thereon.

*Held*: that the case was covered by S. 268 and the nuisance must be considered not to be a nuisance of a private character but one which may legitimately be called a public nuisance. (*Gokaran Nath Misra, J.*)

**PENAL CODE (1860), S. 263—What is nuisance.**

BHAGWAN BAKHSH v. KING-EMPEROR.

99 I.C. 939=4 O.W.N. 75=28 Cr.L.J. 203=  
7 A.I.Cr.R. 440=A.I.R. 1927 Oudh 122.**—Spread of prickly pear.**

Allowing prickly pear to spread on to a road used by the public is a public nuisance within the definition of S. 268. (Wallace, J.) MOLAIAPPA GOUNDAN v. EMPEROR.

115 I.C. 242=30 Cr.L.J. 432=

52 Mad. 79=28 M.L.W. 621=1 M.Cr.C. 317=

A.I.R. 1928 Mad. 1235=55 M.L.J. 715.

**—S. 272—Mixing of pig's fat in ghee.**

Mixing of pig's fat with ghee and selling the mixture would be noxious to the religious and social feelings of both Hindus and Mahomedans but such an act would not come within the meaning of the expression 'noxious as food' which occurs in S. 272. The word 'noxious' had it stood by itself, might have had a wider meaning. (Sulaiman, J.) RAM DAYAL v. EMPEROR.

83 I.C. 1004=46 All. 94=

21 A.L.J. 875=5 L.R.A. Cr. 20=26 Cr.L.J. 220=

A.I.R. 1924 All. 214.

**—S. 273—Mixing milk and water.**

Milk is not rendered noxious by being mixed with water. The mixture of milk and water is often used as drink in the summer. So a person who exposes for sale milk adulterated with water is not guilty of an offence under S. 273. (Shadi Lal, C. J.) DHAWA v. EMPEROR.

89 I.C. 961=26 Cr. L.J. 1441=

A.I.R. 1926 Lah. 49.

**—S. 278—Scope.****—Public, not private nuisance contemplated.**

Throwing of a human skull in a highly offensive condition out of malice into a private dwelling a house does not warrant conviction under S. 278. The section is directed against a public and not a private nuisance. (Fazl Ali, J.) RAHIM MIAN v. EMPEROR. 116 I.C. 48=

10 P.L.T. 87=20 Cr. L.J. 556=12 A. I. Cr. R. 441=

A.I.R. 1929 Pat. 113.

**—S. 279—Enhanced sentence.****—Injury—Victim left unheeded—Additional sentence.**

Every case of collision between a motor-car and a pedestrian must be judged on its merits.

A person was fined Rs. 20 for injuring a woman carrying a load of grass, in a spacious street, by driving his car rashly and negligently. He left her lying in the street after she was so injured and went on his way. He was fined Rs. 20 by the trial Court.

*Held*: that the offence was a serious one and justified an additional punishment of 3 months rigorous imprisonment. (Stuart, C. J. and Raza, J.) EMPEROR v. AGHAN. 104 I.C. 940=4 O.W.N. 768=

28 Cr. L.J. 894=A.I.R. 1927 Oudh 441.

**—S. 279—Essentials.****—Danger to public.**

If there is no danger to the public, outside the car who are using the road no offence under S. 279 is committed. (Barlee, J. C.) MAHOMED JAMAL v. EMPEROR.

119 I.C. 536=30 Cr. L.J. 1077=

A.I.R. 1930 Sind 64.

**—S. 279—Offence under special law.****—Trial under either legal.**

The facts which have to be proved in both cases, i. e., under S. 279, I. P. C. and Motor Vehicles Act, S. 5, are substantially the same, and the offence comes equally well under either definition; and there can be no question of prejudice to the accused whether the conviction is under the one or the other. (Banerji, J.) CHARAN SINGH v. EMPEROR.

88 I.C. 998=23 A.L.J. 790=26 Cr. L.J. 1254=

6 L.R.A. Cr. 150=A.I.R. 1925 All. 798.

Cr. D—125

**PENAL CODE (1860), S. 287—Applicability.****—Not proved—no conviction under Section.**

The finding of a Magistrate that the accused was not guilty of an offence under S. 34 of the Police Act necessarily and logically means that the accused could not be convicted of an offence under S. 279 of the Penal Code. (Banerji, J.) DHUM SINGH v. EMPEROR.

88 I.C. 1=23 A.L.J. 436=

6 L.R.A. Cr. 143=26 Cr. L.J. 1057=

A.I.R. 1925 All. 448.

**—S. 279—Rash and negligent manner.****—Forcing way past a car in front.**

Where the accused saw another car approaching him on its proper side of the road and where he ought to have drawn in behind the water-cart passing in the same direction as the accused and not have attempted to force his way past it in front of the oncoming car.

*Held*: that such conduct on the part of the accused came within the purview of S. 5 of the Motor Vehicles Act, and that the conviction was a proper one. (Banerji, J.) CHARAN SINGH v. EMPEROR.

88 I.C. 998=23 A.L.J. 790=6 L.R.A. Cr. 150=

26 Cr. L.J. 1254=A.I.R. 1925 All. 798.

**—S. 279—Separate convictions.****—Convictions under Ss. 337 and 304-A, I. P. C.****—Separate conviction under S. 279—Sustainability.**

*Held*, that a conviction under S. 279, I.P.C. cannot separately stand if the accused is convicted under Ss. 337 and 304 of the Code. (Waller and Anantha-krishna Iyer, JJ.) COLLETT v. EMPEROR.

1929 M. W. N. 395.

**—S. 283—Essentials for conviction****—Obstruction causing danger or injury necessary for conviction.**

Proof of obstruction to the road so as to cause danger or injury to any person using the road is necessary for conviction. Therefore where one accused pleaded to be excused, admitting that he obstructed the road under mistake without admitting that danger or injury was caused to any person, conviction cannot be had. (Moti sagar, J.) EMPEROR v. GHULAM RAZA.

81 I. C. 195=25 Cr. L. J. 707=

A. I. R. 1925 Lah. 153.

**—S. 283—Public way, what is.****—Pathway over private land—Customary right of way—How established.**

A pathway, which lies over a private land and which is used by the villagers and perhaps by the inhabitants of some of the villages, but with regard to which there is no testimony of universal user sufficient to raise a presumption of dedication to the public, is not a public way within the meaning of S. 283. To establish a customary right of way to the same pathway the Court must be satisfied of the reasonableness and certainty of the user and that such user was not permissive nor exercised by stealth or force and that the right has been exercised for such length of time as to suggest that by agreement of otherwise the usage has become the customary law or the particular locality: 17 All. 87; 33 All. 257; 20 Mad. 389 and 23 Bom. 666, Ref. (Mukerji, J.) PRAM NATH v. EMPEROR.

33 C. W. N. 915=

A.I.R. 1930 Cal. 286.

**—S. 287—Applicability.****—S. 304-A distinguished—Under S. 207, rash act not directly cause of death.**

Section 304-A only applies to such acts of the accused as are rash and negligent and are directly the cause of death of another person.

F took lease of a flour mill with M as partner who was to act as manager. R was employed to act as Mistri. A shaft with a leather belting was installed in



**PENAL CODE (1830), S. 290—Collection of crowd.**

the mill but part of the belting protruded outside the building. Two girls playing nearby were caught in the belting, one being killed and the other crippled.

*Held*: that the offence by M and R was under S. 287 and not under S. 304-A. They had negligently omitted to take care of the machinery as was sufficient to guard against probable danger to human life but they never intended to cause the injury. The girls had no right to go to the mill compound.

But F who had not taken any active part in the management of the mill could not be held liable even under S. 287. (*Jai Lal, J.*) MOHRI RAM v. EMPEROR.

A. I. R. 1930 Lah. 453.

**—S. 290—Collection of crowd.**

**—Sale of Satta tickets—Crowd of customers obstructing traffic—No offence.**

Where it was alleged that a person was selling satta-tickets at his shop with the result that 10 or 15 customers collected outside and obstructed the traffic in the public street adjoining the shop:

*Held*: that the facts did not constitute an offence under S. 290. The assembling of 10 or 15 customers and the obstruction of traffic could not be considered to be the direct or necessary consequence of the offer of satta tickets for sale: 28 I.C. 110; A.I.R. 1928 Mad. 1235 and 14 Mad. 364, Dist. (*Bhida, J.*) NANAKCHAND v. EMPEROR.

1929 Cr. C. 368 =

A.I.R. 1929 Lah. 801.

**—Person responsible for the crowd is more guilty.**

If a crowd collects and obstructs the traffic so as to cause a nuisance, the person who is directly responsible for the crowd collecting is obviously not less, but more guilty than the other persons who form the crowd and this would be equally the case whether he were inside or outside his shop at the precise moment when the police appeared. (*Daniels, J.*) HOPPO-MAL v. EMPEROR.

83 I.C. 695 = 22 A.L.J. 662 =  
5 L.R.A. Cr. 98 = 26 Cr. L.J. 135 =

A.I.R. 1924 All. 568.

**—S. 290—Essentials for conviction.**

**—Annoyance to one person sufficient.**

It is necessary in order to establish a charge of committing a nuisance in a public place to the annoyance of residents or passengers in the locality, to prove that somebody was annoyed. Annoyance to one person is sufficient. If a public servant, likely a municipal employee whose duty it is to look after the cleanliness of the streets sees anybody easing himself in a public place or street he is not unlikely to be annoyed. (*Walsh, J.*) LALLU RAM v. THE CROWN.

77 I.C. 188 = 21 A.L.J. 772 = 4 L.R.A. Cr. 218 =  
25 Cr. L.J. 332 = A.I.R. 1924 All. 194.

**—S. 290—Joint owner.**

**—A joint owner is responsible in law for nuisance caused by his property.** (*Wallace, J.*) MOLAI-APPA GOUNDEN v. EMPEROR.

115 I.C. 242 =  
30 Cr. L.J. 432 = 52 Mad. 79 = 28 M.L.W. 621 =  
1 M. Cr. C. 317 = A.I.R. 1928 Mad. 1235 =  
55 M.L.J. 715.

**—S. 290—Noise for keeping thieves away.**

**—Nuisance, not committed.**

A chawkidar is perfectly within his right as a chawkidar to make noise so as to scare away thieves and bad characters from the house of his master even though by so doing he may hurt the susceptibilities of the highstrung and nervous neighbour. His action does not amount to public nuisance. (*Stuart, C.J.*) EMPEROR

RAM CHARAN AHIR. 96 I.C. 876 = 29 O.C. 302 =  
3 O.W.N. 526 = 27 Cr. L.J. 1020 =  
A.I.R. 1926 Oudh 414.

**PENAL CODE (1860), S. 294-A—Chit fund.**

**—S. 292—What constitutes offence.**

**—Advertisement of photos containing word "asan" not necessarily obscene.**

An advertisement of Kok Shastra contained words, "coloured pictures (photos) of 84 postures (asan) of men and women with interesting descriptions of these." The advertisement did not contain any posture offensive to senses nor did it suggest any indecent, obscene or immoral ideas.

*Held*: that there was nothing obscene in the word "asan" and it did not necessarily mean the posture formed at co-habitation; the advertisement did not come within the purview of S. 292. (*Jwala Prasad, J.*) JAGAT NARAIN v. EMPEROR.

110 I.C. 805 =  
10 A.I.Gr.R. 463 = 29 Cr. L.J. 773 =

A.I.R. 1928 Pat. 649.

**—Vulgar abuse and ridicule—Filthy language—If obscene.**

There were acute differences among the members of the Dawood Bohra community as to the exact position of their head priest. The accused who belonged to the minority published two pamphlets. In the first pamphlet there was provoking language in which there were vulgar abuses and ridicule of the head priest and his followers. The second one contained opprobrious epithets to the head priest and his followers. These pamphlets were distributed broadcast among the followers of the head priest, *Held*, per *Shah, J.*, that an offence under S. 292 was not committed by the publication of the first pamphlet since applying the test whether the tendency of the matter charged as obscene was to deprive and corrupt those whose minds are open to immoral influences it could not be said that the pamphlet was obscene. Per *Hayward, J.*—The pamphlet offended against S. 292 as it presented to the mind or view something which delicacy, purity and decency forbade to be expressed. Corruption and depravity of mind are encouraged by the employment of filthy language tending to debase the high purpose of sexual relations even when it is used primarily to arouse religious passions; at least retort and repetition of filthy languages will necessarily lower the standards of morality. (*Shah and Hayward, JJ.*) RAHIMATALLI v. EMPEROR.

62 I.C. 401 = 22 Cr. L.J. 513 =  
22 Bom. L.R. 166.

**—S. 294-A—Chit Fund.**

**—Certainty of distribution of profits—Drawing by lots—Not a lottery.**

The plaintiff and the defendant promoted a 'Chit Fund.' A capital fund of Rs. 500 a month was raised by 500 subscribers, subscribing, each one rupee per mensem. At the end of the month, there was a drawing by lot and the subscriber, who drew the ticket was paid Rs. 50 and his connection with the transaction forthwith ceased. This process was repeated month after month, till the end of the 49th month. At the close of the 50th month, each of the remaining subscribers was paid Rs. 50 and the stakeholders divided the profit and the fund was dissolved.

*Held* that the chit fund was not a lottery.

Per *Venkatashubba Rao, J.*—In this case, while chance determines the disposal of the interest earned, there is absolute certainty, with reference to the distribution of the capital fund itself. Though it may be said it is a small element of chance that tempts some to join the fund, the dominant feature of the transaction is that it enables a large number to gradually lay by money and receive their savings in a lump sum and the scheme is in their case an incentive to thrift.

The word 'lottery' is not defined either in the



**PENAL CODE (1860), S. 294-A—Goods.**

Indian Penal Code, or Act 5 of 1844, nor in the English Statutes. When the scheme has for its object the carrying on of a legitimate business, the fact that it provides for the distribution of its profits in certain events by lots will not vitiate the scheme. All chit-funds, the main object of which is the promotion of co-operation, prudence and thrift ought to be regarded as legitimate, even though there is an element of chance. If by the time a society of this kind became known to the public, all its members were ascertained and there is no invitation to any member of the public to join it, it cannot be said that any person keeps a lottery office, at which the public were invited to join and to pay, within the meaning of the English Acts or S. 294-A of the Indian Penal Code. That is it is not that every lottery constitutes an offence but the keeping of a lottery office, which is a standing invitation to the public, that constitutes the offence.

(English and Indian Case Law discussed.) (1858) 1 S.D. 54; 1 M.H.C. 448 and 22 Mad. 212 *Wallingford v. Mutual Society* (1880) 5 A.C. 685 Foll. 1919 M.W.N. 570 and A.I.R. 1925 Mad. 281 Dist. (*Ramesam and Venkatasubba Rao, JJ.*) SHANMUGA MUDALI v. KUMARASWAMI MUDALI. 90 I.C. 420 =

21 M.L.W. 403 = 1925 M.W.N. 655 = 48 Mad. 661 = A.I.R. 1925 Mad. 870.

**—S. 294-A—Goods.**

—Includes immovable property.

The expression "goods" in S. 294-A applies not only to moveable but also includes immovable property. (*Wallace and Madhavan Nair, JJ.*) C. M. PEDDA MULLA REDDI, *In re*. 99 I.C. 36 = 50 Mad. 479 = 24 M.L.W. 655 = 1926 M.W.N. 949 = 38 M.L.T. 136 = 28 Cr. L.J. 4 =

7 A.I. Cr. R. 172 = A.I.R. 1927 Mad. 66 = 51 M.L.J. 685.

**—S. 294-A—Lottery.**

—Actual drawing essential—Five rupee notes in some cigarette packets—Publishing pamphlet setting out facts—No offence.

The accused, who was a dealer in cigarettes had caused five-rupee notes to be placed in some packets and any purchaser of a packet of the cigarettes sold by the accused stood a chance of getting a packet of the cigarettes containing a five-rupee note. He also published a pamphlet in which these facts were set out. He was accused under S. 294-A of publishing a proposal relating to a lottery.

*Held*: that the word "drawing" is used in S. 294-A in its physical sense and that the actual drawing of lots is an essential ingredient of the offence under S. 294-A. Although the transaction in question amounted to a lottery, [*Barret v. Burden*, (1893) 63 L.J.M.C. 33; *Hunt v. Williams*, (1888) 52 J.P. 821; *Taylor v. Smetten*, (1883) 11 Q.B.D. 207]; as there was no such "drawing" and further as there was no proposal to pay any sum on any event or contingency relative to the drawing of any lot, no offence under S. 294-A was committed: 35 P. R. 1917 Cr.: A.I.R. 1925 Bom. 26, Rel. on; P. R. No. 17 of 1910, Dist. (*Patkar and Baker, JJ.*) NAZIRALLY v. EMPEROR. 112 I.C. 777 = 30 Cr. L.J. 9 = 53 Bom. 57 = 11 A.I. Cr. R. 515 = 30 Bom. L.R. 1426 = A.I.R. 1928 Bom. 550.

**—S. 294-A—Proposal to pay.**

—Lottery ticket—Statement that prizes if any due will be paid—If proposal to pay.

A lottery is an arrangement for the distribution of prizes by chance among persons purchasing tickets. If in a lottery ticket it is stated that the prize if any due on the number of ticket will be paid, the ticket does contain a proposal inviting person to take part in

**PENAL CODE (1860), S. 295—Entry by untouchables.**

the lottery, and by acquiring the ticket the purchaser or acquirer accepts the proposal. Distribution of ticket with such a proposal amounts to publishing the proposal.

*Kennedy, J. C.*—A mere casual and gratuitous delivery of a lottery ticket is not necessarily the publication for a proposal within the meaning of S. 294-A. (*Kennedy, J. C., and Tyabji, A. J. C.*) F. A. D'SOUZA v. EMPEROR. 95 I.C. 313 = 20 S.L.R. 192 =

27 Cr. L.J. 777 = A.I.R. 1926 Sind 213. —Publication of terms for prizes on horses winning at Derby races is offence.

The accused issued a circular for the sale of tickets for prizes on horses winning at the Derby races, on starters, and for other special prizes. The circular stated that the "Sweep will be closed on...and the draw under the supervision of the patrons stated in the tickets will take place on...Prize winners will be notified by telegrams."

*Held*: that the accused published a proposal to pay a sum for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number of figure in a lottery and was liable to punishment. It was not necessary that the payment proposed to be made should be made by the person advertising. (*MacLeod, C. J., and Coyajee, J.*) CHIMANLAL PRANJIVANDAS GHEEWALA v. EMPEROR. 87 I.C. 516 = 26 Cr. L.J. 980 = 27 Bom. L.R. 363 = A.I.R. 1925 Bom. 243.

—Publication that lottery tickets were had at a place—If proposal.

The publication that lottery tickets can be had at a particular place is not sufficient to constitute a publication of a proposal to pay any sum on any event or contingency relative or applicable to the drawing of any ticket in any lottery not authorised by Government as provided in the second paragraph of S. 294-A. (*Shah, Ag. C. J., and Fawcett, J.*) EMPEROR v. RAJAPPA MURIGAPPA. 83 I.C. 1006 = 26 Cr. L.J. 222 = 26 Bom. L.R. 968 = A.I.R. 1925 Bom. 26.

**—S. 294-A—Publication.**

—Delivery of ticket books of a lottery is sufficient publication. A.I.R. 1926 Sind 213, Dist. (*Zafar Ali and Bhide, JJ.*) EMPEROR v. DIWAN CHAND. 1930 Cr. C. 97 = A.I.R. 1930 Lah. 81.

**—S. 294-A—Scope.**

—Keeping lottery officer—Publication of proposal—Scope of Civil law.

The Criminal Law by S. 294-A, I.P.C. only makes punishable the keeping of an office for holding a lottery and the publication of proposals for drawing a lottery. The civil law however goes further and prevents obligations arising out of lotteries being enforced in a Court of law, whether the lottery is held in an office to which the public have access or in a private place to which admission is not to be had for the mere asking. (*Spencer and Madhavan Nair, JJ.*) VEERANNAN AMBALAN v. AYYACHI AMBALAN. 92 I.C. 968 =

22 M.L.W. 772 = 1925 M.W.N. 857 = A.I.R. 1926 Mad. 168 = 49 M.L.J. 791.

**—S. 295—Entry by untouchables.**

—Untouchable entering temple and defiling sacred object.

When custom observed for many centuries ordains that an untouchable whose very touch is in the opinion of devout Hindus pollution should not enter the enclosure surrounding the shrine of any Hindu God and when an untouchable with that knowledge

**PENAL CODE (1860), S. 295—Essentials.**

deliberately enters a temple and defiles the idol he commits an offence within the purview of S. 295. (*Prideaux, A.J.C.*) *ATMARAM v. KING-EMPEROR*. 76 I.C. 299=25 Cr. L.J. 155=A.I.R. 1924 Nag. 121.

**—S. 295—Essentials.****—Intention or knowledge to insult.**

The accused, when he was rebuilding his house, had no idea that he was likely to do any damage to the walls of the mosque by placing the ends of his rafters in them. He could not have known that such damage was likely to result as would be considered by Muhammadans as an insult to their religion.

*Held*, that the accused was not guilty under S. 295. (*Martineau, J.*) *SAHANA RAM v. THE CROWN*.

67 I.C. 586=3 L.L.J. 247.

**—S. 295—Sentence.****—Criminal trespass into Hindu temple—Consecutive sentences for both offences—Improper.**

When the accused enter into a Hindu Temple and damage its property, the offence under S. 447 is inseparable from that under S. 295 and it is improper to pass consecutive sentences for each of the offences under the sections, for both really are one and the same offence. (*Pullan, A.J.C.*) *BAHRA v. EMPEROR*. 82 I.C. 37=25 Cr. L.J. 1173=A.I.R. 1925 Oudh 50.

**—S. 297—Essentials.****—Entering mosque for prayer—Uttering abuses****—Intention to insult made out but trespass was not—Not liable.**

The petitioner had gone to mosque for midday prayer as usual; when the service was over he was asked by some others why he had on former occasions abused the moulvi and the congregation. On his attempting a denial, witness was sent for and an altercation followed, the petitioner then began to abuse all and sundry employing obscene epithets and uttering threats.

*Held* that the intention of wounding the feelings of the moulvi and congregation was quite clear but the alleged "trespass" was not and that the conviction under S. 297 was wrong.

*Held* further that the mere fact that the petitioner was a trustee does not take this case out of the purview of S. 297, and in the circumstances an offence under S. 504 was committed and that being a cognate offence conviction was altered under that section. (*May Oung, J.*) *MUSTAN v. EMPEROR*. 81 I.C. 41=

1 Rang. 690=25 Cr. L.J. 553=

A.I.R. 1924 Rang. 106.

**—S. 297—'Trespass'****—Meaning of.**

The word trespass in the section must be taken in its original meaning and there is no reason to restrict the meaning of the word which covered any injury or offence done and to couple it with entry upon property. 18 A. 395; 33 A. 773, Foll. Where A was found in a mosque having sexual intercourse with a woman B, both A and B were held guilty under this section. (*Ryves, J.*) *MOGSUD HUSSAIN v. EMPEROR*.

73 I.C. 935=45 All. 529=21 A.L.J. 455=

4 L.R.A. (Cr.) 79=24 Cr. L.J. 711.

A.I.R. 1924 All. 9.

**—Not the trespass in S. 441.**

Section 441 cannot be read into S. 297 with any intelligible result. The term "trespass" in S. 297 appears to mean any violent or injurious act committed in such place and with such knowledge or intention as is defined in that Section. 40 Cal. 548 and 23 P.R. 491. Ref. (*May Oung, J.*) *MUSTAN v. EMPEROR*.

81 I.C. 41=1 Rang. 690=25 Cr. L.J. 553=

A.I.R. 1924 Rang. 106.

**PENAL CODE (1860), Ss. 299 & 300—Attack by several persons.****—Ss. 299 and 300.****Abettor.****Attack by several persons.****Culpable Homicide or murder.****Duty of Court.****Evidence.****Exception.****Intention.****Interpretation.****Killing under officer's orders.****Knowledge.****Motive.****Murder or Hurt.****Nature of weapon.****Overlapping.****Private defence****Provocation.****Sentence.****Sudden fight.****Sufficient or likely to cause death.****—Ss. 299 & 300—Abettor.****—Confederate armed for eventuality—Liability.**

A confederate accompanying the murderer on his murderous errand armed with a weapon to meet all eventualities is just as much responsible for the murder as his associate, though he does not actually inflict any injury on the deceased: A.I.R. 1925 P.C. 1, Ref. (*Shadi Lal, C.J. and Agha Haider, J.*) *SHERA v. EMPEROR*. 116 I.C. 613=30 Cr. L.J. 637=1929 Cr. C. 423=

13 A.I. Cr. R. 41=A.I.R. 1929 Lah. 791.

**—Ss. 299 & 300—Attack by several persons.****—Common intention to cause death liable for murder.**

Where the evidence showed that four men armed with deadly weapons pursued the deceased and set upon him and killed him,

*Held*: that their common intention was to cause his death or to cause such bodily injury as was likely to cause death and under these circumstances all those who took part in the murderous assault upon him were guilty of murder. (*Scott-Smith and Harrison, J.J.*) *BHAG SINGH v. EMPEROR*. 69 I.C. 449=

A.I.R. 1924 Lah. 415.

**—One of two killed—Intention to kill him presumed.**

Where several persons attack two men A and B, but kill only B, whether their object was to get at A, more than at B, or whether they went at B, mistaking him for A, they shall be taken to have intended to kill B and there can be no question of B's death being accidental. (*Shah and Crump, J.J.*) *GANGA RAM v. EMPEROR*. 62 I.C. 545=22 Cr. L.J. 529=

22 Bom. L.R. 1274.

**—Lathi blows directed at the head—Knowledge imputed.**

Where three persons attack with lathis, the blows being directed at the head they must be imputed with the knowledge that they were likely to cause death. (*Broadway, J.*) *HARNAMA v. EMPEROR*. 60 I.C. 676=22 Cr. L.J. 276=3 U.P. L. R. (Lah.) 34.

**—Common intention is to cause grievous hurt—One member causing death—Several liability.**

Where one member of an unlawful assembly, actuated with the common intention of causing grievous hurt, but actually causing death, is responsible for causing another's death, he is guilty under Ss. 147 and 304 and the rest under S. 304 read with S. 149. (*Lindsay, J. C. and Wazir Hasan, A.J.C.*) *BARKU SINGH v. EMPEROR*. 60 I.C. 679=

22 Cr. L.J. 279=7 O.L.J. 671.

**PENAL CODE (1860). Ss. 299 & 300—Culpable Homicide or Murder—Attack on man unarmed.—Ss. 299 & 300—Culpable Homicide or Murder—Attack on man unarmed.**

—*Heat of passion—Undue advantage of victim's helplessness—Murder.*

Where the accused took undue advantage of the victim, who was lying on his charpoy when he was attacked with a formidable weapon, was not armed and was not in a position to defend himself,

*Held*: that the crime was one of murder even though committed without premeditation and in the heat of passion. (*Fforde and Addison, JJ.*) SHER ALAM v. EMPEROR. 101 I.C. 191=

28 Cr. L.J. 415=A.I.R. 1927 Lah. 808.

**—Ss. 299 & 300—Culpable Homicide or Murder—Distinction between.**

The elements which constitute the offence of culpable homicide are expressed and explained in terms of four explanations enacted in S. 300. If an act which an accused person is said to have committed does not fall within any of those explanations, and does not fall within any of the exceptions the act is murder, but if it does fall under one or other of those explanations and also falls within any of the exceptions enacted in S. 300, the act is one of culpable homicide not amounting to murder. (*Wazir Hasan and Raza, JJ.*) RAMLAL v. EMPEROR.

106 I.C. 213=3 Luck. 244=1 L.C. 579=

28 Cr. L.J. 1029=9 A.I.Cr.R. 217=

A.I.R. 1928 Oudh 15.

**—Ss. 299 & 300—Culpable Homicide or Murder—Essential requisites of.**

—*Intention to cause injury likely to cause death—Knowledge that such injury was likely to cause death—Both necessary.*

Where there was a struggle between two girls for the possession of some gram, and one of them hit the other with a stick, whereupon the uncle of the latter came running with a lathi in his hand, struck the other girl on her head, and after she had fallen down, also struck her on the thigh,

*Held*: that the accused can be convicted only of culpable homicide not amounting to murder and not of murder.

Per *Kulwant Sahay, J.*—The essence of the crime of murder under Cl. (2), S. 300, I.P.C., is that there must be the intention of causing such bodily injury as the offender knows is likely to cause death, and in order to convict a person of the offence of murder under Cl. (2) of the section, it has to be found that he had the intention of causing the injury, and also that he had the knowledge that such injury which he intended to inflict was likely to cause death.

A blow on the head with a lathi is certainly likely to cause death and the person who inflicts lathi blow on the head of another person must be presumed to have the intention of causing such bodily injury as is likely to cause death. But it does not necessarily follow that a lathi blow on the head is always sufficient in the ordinary course of nature to cause death.

If a person causes death by doing an act with the intention of causing such bodily injury as is likely to cause death, his offence comes under S. 299, and it is only, if the intention was to cause bodily injury, which injury was sufficient in the ordinary course of nature to cause death, that the offence would come under S. 300, Cl. (3).

The difference between culpable homicide and murder is merely a question of different degrees of probability that death would ensue. (*Ross and*

**PENAL CODE (1860). Ss. 299 & 300—Evidence.**

*Kulwant Sahay, JJ.*) GAHBAR PANDEI v. EMPEROR.

106 I.C. 433=7 Pat 638=29 Cr. L.J. 17=

9 A.I.Cr.R. 330=9 P.L.T. 286=

A.I.R. 1928 Pat. 169.

**—Ss. 299 & 300—Culpable Homicide or murder—Sudden and grave provocation.**

Where in a sudden and unpremeditated fight under grave provocation injuries by a knife are caused resulting in death of the injured who was the aggressor, the offence committed is culpable homicide not amounting to murder and not murder. (*Adami and Wort, J.*) KHURKHUR LOHAR v. EMPEROR.

1929 Cr. C. 278=A.I.R. 1929 Pat. 518.

**—Ss. 299 & 300—Culpable Homicide or Murder—Unmerciful beating.**

—*Numerous injuries—Each nothing more than simple hurt—Culpable homicide not amounting to murder.*

Where the deceased was given an unmerciful beating, but although the injuries inflicted upon him were so numerous, no bones were broken and not a single one of the injuries individually amounted to more than simple hurt,

*Held*: that if it had been the accused's intention to kill him or to cause him such injury as they knew to be likely to cause his death or such as was sufficient in the ordinary course of nature to cause his death, they would have inflicted wounds of much more serious nature. Therefore, the offence committed by them is not murder, but culpable homicide not amounting to murder as they must be deemed to have known that by giving the accused such a beating as they did they were likely to cause his death. A.I.R. 1922 Lah. 260 and 3 P.R. 1919, Cr. Dist. (*Martineau and Coldstream, JJ.*) BELI v. EMPEROR.

91 I.C. 61=7 L.L.J. 524=26 P.L.R. 702=

27 Cr. L.J. 29=A.I.R. 1925 Lah. 621.

**—Ss. 299 and 300—Duty of Court.**

—*Benefit of exception, not pleaded—Court must give if made out.*

Where the Court finds on the prosecution evidence itself that the accused is entitled to the benefit of one of the exceptions to S. 300, it should give the accused that benefit though accused may not have relied on the exception; thus where accused by chance caught his wife in the very act of having intercourse with her paramour and killed her on the spot,

*Held* that the accused should be convicted under S. 304 and not S. 302, though he did not plead the exception to S. 300. (*Hallifax and Kotwal, A.J.Cs.*) MANGAL GAUDA v. EMPEROR. 81 I.C. 301=

25 Cr. L.J. 1077=A.I.R. 1925 Nag. 37.

**—Ss. 299 & 300—Evidence.**

—*Admission of accused the only basis of conviction—His statement should be accepted entire.*

When the only account of what happened on the night of murder is given by the accused himself and it is his admission contained in that statement that forms the basis of his conviction, the statement should be accepted in its entirety and if it establishes any mitigating circumstance the accused should be given the benefit of it. (*Broadway and Tapp, JJ.*) EMPEROR v. MOHAMMAD YUSAF. 121 I.C. 178=

31 P.L.R. 35=31 Cr.L.J. 226=A.I.R. 1930 Lah. 269.

—*Suspicious circumstance.*

The mere fact that the accused conducted the father of the deceased and other persons to the ravine where the corpse was found lying, cannot, alone, while creating a suspicion against the prisoner, bring the guilt home to him. (*Shadi Lal, C. J., and Agha*

**PENAL CODE (1861), Ss. 299 & 300—Evidence.**

*Haider, J.* GHULAM MUHAMMAD v. EMPEROR.  
114 I.C. 719 = 30 P.L.R. 268 = 30 Cr.L.J. 375 =  
1929 Cr.C. 102 = A.I.R. 1929 Lah. 558.  
———*Pointing either to murder or suicide—No conviction.*

A person was accused of having murdered his daughter. There was evidence to show that one day he went out along with the daughter and returned alone. The accused had made a statement before the 'Juge d' instruction that his daughter was tired of life and that he assisted her to commit suicide. The accused could lead the police to the place on the river where his daughter was drowned. Although the deceased's hands were tied, there were no signs to show any struggle between her and her father. All other adverse evidence was of interested nature. During the investigation by the 'Juge d' instruction another motive also was disclosed that the daughter, who was a widow, was intriguing with a man which possibly might have been the real motive that led her to death.

*Held:* that the accused could not be convicted of murder. (*Waller and Pandalai, JJ.*) PANCHANATHAM PILLAI v. EMPEROR. 121 I.C. 157 = 52 Mad. 529 = 29 M.L.W. 645 = 1929 M.W.N. 383 = 2 M.Cr.C. 150 = 31 Cr.L.J. 223 = A.I.R. 1929 Mad. 487 = 56 M.L.J. 628.  
———*Admission of guilt to villagers—Subject to scrutiny.*

Although the evidence of admission of guilt to villagers is sufficient to justify the conviction, still the evidence that such an admission was made must be closely scrutinized like all other evidence which is used to prove a case of murder: A.I.R. 1928 Oudh 393 and A.I.R. 1929 Oudh 167, Ref. (*Raza and Pullan, JJ.*) TAULE v. EMPEROR. 117 I.C. 737 = 6 O.W.N. 309 = 30 Cr.L.J. 829 = 1929 Cr.C. 14 = A.I.R. 1929 Oudh 272.

———*No counter-story—Evident motive—Subsequent conduct—Proof of having confessed—Sufficient evidence.*

In a case of murder there was no counter-story worth believing on behalf of the accused. The motive of the accused in committing the murder was evident. His conduct subsequent to the crime showed that, although he knew the truth he put forth numerous falsehoods. And further there was in evidence the statement of the accused's uncle that the accused confessed his crime to him.

*Held:* that the evidence was sufficient to prove that the accused was guilty of murder the only proper sentence for which was death. (*Raza and Pullan, JJ.*) TAULE v. EMPEROR. 117 I.C. 737 = 6 O.W.N. 309 = 30 Cr.L.J. 829 = 1929 Cr.C. 14 = A.I.R. 1929 Oudh 272.

———*Unnatural conduct.*

Where the person admittedly knew that his wife was murdered shortly after midnight and yet he made no report to the police station, nor made any attempt to find out who killed his wife, his conduct was unnatural and may lead to the conclusion that he himself was the murderer. (*Raza and Pullan, JJ.*) BHAGWAN v. EMPEROR. 116 I.C. 193 = 6 O.W.N. 218 = 30 Cr.L.J. 567 = 12 A.I.Cr.R. 420 = 4 Luck. 679 = A.I.R. 1929 Oudh 190.

———*Statement to doctor before death—Independent corroboration necessary.*

Although the statement made by the deceased to the doctor just before his death is admissible in evidence, as dying declaration, still in order to convict the accused of murder there must be independent corroboration of facts and circumstances to prove the

**PENAL CODE (1860), Ss. 299 & 300—Intention—Drunkennes.**

offence. (*Jwala Prasad and James, JJ.*) BULLU SINGH v. EMPEROR. 120 I.C. 474 = A.I.R. 1929 Pat. 249.

———*Thrashing with oxgoad—Lathi blow on the head—More blows after felling down—Sufficient for murder.*

A zamindar ordered A, a tenant, to proceed and plough gratuitously a field belonging to him and his brother. A demurred saying that he had his own work to attend to and that he could not come that day, but he promised to come and work for the two brothers on the following day. The services of A were to be taken gratuitously though the zamindar was not entitled in any way to exact these services. When A refused to come, the zamindar seized A and commenced thrashing him with an oxgoad, which he had in his hand. He struck A with lathi a blow over the head which felled him to the ground. After he had struck him this blow on the head the zamindar hit him again more than one blow which caused the death of A.

*Held:* that the zamindar had been rightly convicted of murder. (*Stuart, C. J. and Raza, J.*) AMAR NATH SINGH v. EMPEROR. 113 I.C. 481 = 5 O.W.N. 391 = 12 A.I. Cr. R. 2 = 30 Cr. L.J. 173 = A.I.R. 1928 Oudh 282.

———**Ss. 299 & 300—Exception (5).**

The accused strangled his beloved aged 16 years to death upon their decision to die together in despair of the future separation and feeling that they could not live apart.

*Held:* that this was essentially the case where the spirit, if not the letter, of Exception 5 may be applied and, though convicted of murder, sentence should be transportation for life. (*Harrison and Dalip Singh, JJ.*) MASUM ALI v. EMPEROR. 117 I.C. 890 = 30 Cr. L.J. 855 = A.I.R. 1929 Lah. 50.

———**Ss. 299 & 300—Intention.**

———*Lathi blow on the head—Intention presumed.*

A blow on the head with a lathi is certainly likely to cause death and the person who inflicts lathi blow on the head of another person must be presumed to have the intention of causing such bodily injury as is likely to cause death. But it does not necessarily follow that a lathi blow on the head is always sufficient in the ordinary course of nature to cause death. (*Ross and Kulwant Sahay, JJ.*) GAHHAR PANDE v. EMPEROR. 106 I.C. 433 = 7 Pat. 638 = 29 Cr.L.J. 17 = 9 A.I.Cr. R. 330 = 9 P.L.T. 286 = A.I.R. 1928 Pat. 169.

———**Ss. 299 and 300—Intention—Burden of proof.**

———*Violent blows on head causing fracture—Proving absence of intention on the accused.*

A person who struck another on the head such violent blows as to cause the fracture of temporal and parietal bones and consequent death, must ordinarily accept the onus of proving that his intention was not to cause such bodily injury as would in all probability cause death or that he did not know that the injury inflicted by him would in all probability cause death. (*Martineau and Campbell, JJ.*) BAHADURI v. EMPEROR. 99 I.C. 77 = 28 Cr.L.J. 45 = 7 A.I.Cr.R. 220 = A.I.R. 1927 Lah. 63.

———**Ss. 299 & 300—Intention—Drunkennes.**

———*Not amounting to incapacity to intend—No particular individual intended—Firing at general mass of people—Cl. 4 applies.*

Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readi-

**PENAL CODE (1860), Ss. 299 & 300—Intention—Nature of the act.**

ly gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his act. And even if he did not intend to fire at any particular individual at the time but merely fired at the general mass of villagers and killed some of them his act would still come within the category of murder as defined in Cl. 4, S. 300 of the Penal Code. (*Fforde and Hilton, JJ.*) **BISHAN SINGH v. EMPEROR.** 116 I.C. 707=30 P.L.R. 357=30 Cr. L.J. 662=1929 Cr. C. 188=13 A.I. Cr. R. 75=A.I.R. 1929 Lah. 637.

**—Ss. 299 & 300—Intention—Nature of the act.**

S. 300, I. P. C., says nothing about deliberation or previous preparation. It speaks only of intention and knowledge. If the act by which death is caused is done with the intention of causing death, the offence is murder unless it falls within the exceptions. The intention must be gathered from the nature of the physical act committed; that is to say, that whoever strikes a fatal blow must be taken to have intended the injury which he actually inflicted. (*Simpson, A.J.C.*) **SHEO SHANKAR v. EMPEROR.** 91 I.C. 238=27 Cr. L. J. 62=2 O. W. N. 862=A. I. R. 1926 Oudh 148.

**—Ss. 299 & 300—Intention—No evidence of.**

Where there is no evidence that the accused intended to cause the death of the deceased, or that he intended to cause such injuries as were likely to result in death or that he intended to cause such injuries as would in the ordinary course of nature cause death, the only legal conviction which could be had would be under S. 304, Part II, of the Indian Penal Code, (*Fforde and Tekchand, JJ.*) **LEHNA SINGH v. EMPEROR.** 102 I.C. 558=28 Cr. L.J. 590=9 L.L.J. 365=8 A. I. Cr. R. 340=28 P. L. R. 631=A. I. R. 1927 Lah. 526.

**—Ss. 299 & 300—Intention—Presumption of.**

Where from the circumstances there can be no doubt that the intention of the accused was to pass with that of a person, they must be assumed to have intended the natural consequences of their act and the burden lies heavily on them to prove that they had some other intention. In the absence of any such proof, the accused can be held guilty under S. 307. (*Jailal and Bhide, JJ.*) **GOPICHAND v. EMPEROR.** A.I.R. 1930 Lah. 491.

**—Armed robbery—Intending use of guns in case of obstruction—Intention to kill presumed.**

Where certain persons, armed with guns, go to commit robbery and it was their intention to use the guns in case obstruction was offered to them, it would be legitimate to presume that they had the intention to kill anybody who would stand in the way of the attainment of their object. (*Zafar Ali and Jai Lal, JJ.*) **PAKKAR SINGH v. EMPEROR.** 120 I.C. 180=11 L. L. J. 20=31 Cr. L. J. 41=A. I. R. 1929 Lah. 292

**—Violent blow with dang on vulnerable part—Intention presumed.**

A person delivering a violent blow with a lethal weapon like a dang on a vulnerable part of the body such as the head must be deemed to have intended to cause such bodily injury as he knew was likely to cause death of the person to whom the injury was caused, (*Shadi Lal, C. J. and Addison, J.*) **PREMAN v. EMPEROR.** 105 I.C. 678=26 P.L.R. 363=28 Cr. L.J. 966=A.I.R. 1928 Lah. 93.

**—Stabbing in the abdomen—Force enough to pierce—Intention presumed.**

If a person stabs another in the abdomen with sufficient force to penetrate the abdominal walls and

**PENAL CODE (1860), Ss. 299 & 300—Killing under Officer's orders.**

the internal viscera, he must undoubtedly be held, whatever his station in life, to have intended to cause injury sufficient in the ordinary course of nature to cause death. The offence would then fall under the third clause of S. 300: A. I. R. 1924 Rang. 93. Foll. (*Shadi Lal, C. J., and Bhide, J.*) **NATHU v. EMPEROR.** 108 I.C. 268=10 A.I. Cr. R. 37=29 Cr. L.J. 369 (Lah.)

**—Ss. 299 & 300—Intention—Prevention of. —Violent blow on neck severing spinal cord—Intention presumed.**

A person giving such a violent a blow on the neck as to sever the spinal cord must be presumed to have the intention of killing his assailant. (*Kincaid, J.C. and Barlee, A.J.C.*) **AHMED v. EMPEROR.** 99 I.C. 93=21 S.L.R. 159=7 A.I. Cr. R. 454=28 Cr. L.J. 61=A.I.R. 1927 Sind 108.

**—Ss. 299 & 300—Interpretation—Clauses.****—Exhaustive in themselves.**

Before the exceptions begin and immediately preceding the illustrations, four clauses are enacted. Those clauses must be taken to define the limits and deemed exhaustive in themselves, for the purposes of the Code, of the offence of culpable homicide. (*Wazir Hasan and Raza, JJ.*) **RAM LAL v. EMPEROR.** 106 I.C. 213=3 Luck. 244=1 L.C. 579=28 Cr.L.J. 1029=9 A.I.Cr.R. 217=A.I.R. 1928 Oudh 15.

**—Ss. 299 & 300—Interpretation — "Explanations".****—Aid of Explanations to Section—Application of one explanation—No other applies.**

Per *Wazir Hasan, J.*—In interpreting several clauses or explanations in S. 300, aid must be taken from the illustrations enacted in the section. Though there are not express words to show that a particular illustration in a section applies to any particular clause of the same section yet if the clauses and illustrations of S. 300 are read as a whole, it can at once be inferred that a particular illustration applies to no other but a particular clause. (*Wazir Hasan and Raza, JJ.*) **RAM LAL v. EMPEROR.** 106 I.C. 213=3 Luck. 244=1 L.C. 579=28 Cr.L.J. 1029=9 A.I.Cr.R. 217=A.I.R. 1928 Oudh 15.

**—Ss. 299 & 300—Killing under Officer's orders.****—Shooting under illegal orders of superior officer no excuse—Officer and Subordinate equally guilty.**

A Police party with six prisoners went to a village and demanded water and food and when they did not receive the attention to which they thought themselves entitled, the head constable lost his temper and struck one of the villagers. Other villagers also joined them; the Head constable asked one constable to fire. He hesitated but later on fired at a man S. who died of the shot.

**Held:** that they were both equally guilty. The command of the Head constable cannot of itself justify the subordinate in firing, if the command was illegal, for he and the Head constable had the same opportunity of observing what the danger was, and judging what action the necessities of the case required. The order, the second accused obeyed, was manifestly illegal, and the second accused must suffer the consequences of his illegal act. 21 Mad. 249 Foll.

**Held:** however, that there should be a difference in the sentences awarded to the head constable and the constable. (*Kincaid, J. C. and Raymond, A. J.*)



**PENAL CODE (1860), Ss. 299 & 300—Knowledge.**

C.) ALLAHRAKHIO v. EMPEROR. 83 I.C. 702 =  
17 S.L.R. 182 = 26 Cr.L.J. 142 =  
A.I.R. 1924 Sind. 33.

**—Ss. 299 & 300—Knowledge.**

*Presumption as to natural consequences—Presumption as to knowledge.*

No doubt a man is presumed to intend the natural and inevitable consequences of his own act; but the presumption of intention must depend upon the facts of each particular case, and 'knowledge' as used in Cl. (2), S. 300, I.P.C. is a word which imports a certainty and not merely a probability. (*Ross and Kulwant Sahay, JJ.*) GAHHAR PANDE v. EMPEROR.  
106 I.C. 433 = 7 Pat. 638 = 29 Cr.L.J. 17 =  
9 A.I. Cr.R. 330 = 9 P.L.T. 286 =  
A.I.R. 1928 Pat. 169.

**—Ss. 299 & 300—Knowledge—Presumption of.**

*Bomb throwing—Knowledge of causing death or in jury likely to cause death presumed—No intention to kill any body in particular—No excuse.*

From the definition of murder in Cl. (4), S. 300 it follows that if a person does an act of the nature described in the clause, he is guilty of an attempt to murder.

Any person of average intelligence knows that the explosion of a bomb in a crowded room, however carefully it may be thrown, is an imminently dangerous act such as he must be deemed to know would in all probability cause death or at least such bodily injury as is likely to cause death. Accused, described by their counsel as persons of exceptional intelligence must, therefore, be presumed to know that their act was dangerous and likely to cause death. The fact that accused had no deliberate intention of killing any particular individual does not take their case outside Cl. (4), S. 300, when they had no excuse for running the risk. It is no excuse to say that they were sincerely and passionately actuated by the desire to alter the present order of things. The defence of an anarchist is no defence to the charge. (*Fforde and Addison, JJ.*) BHAGAT SINGH v. EMPEROR.  
121 I.C. 726 = 31 Cr. L.J. 290 = 31 P.L.R. 73 =  
A.I.R. 1930 Lah. 266.

*Striking with knife in the throat—Knowledge presumed.*

A man who strikes another man with a knife in the throat must know that the blow is as imminently dangerous that it must in all probability cause death and the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. (*Adami and Chatterji, JJ.*) JUDAGI MALLAH v. EMPEROR.  
121 I.C. 452 = 8 Pat. 911 =  
31 Cr. L.J. 243 = A.I.R. 1930 Pat. 168.

*Assault with dangs—Thighs much bruised and legs fractured—Minor injuries on the trunk and no injury on the head—Injuries likely to cause death—Knowledge presumed.*

Five persons armed with dangs assaulted the deceased and beat to such an extent that one of his thighs became a mass of bruises, fractured both his legs below the knee and also gave him various other minor injuries on the legs and on the trunk which caused death. But no injury was caused to the head and the injuries on the trunk also were minor.

*Held* : that the offence would not come under any of the clauses of S. 300 but would come under third part of S. 299 as the assaulting persons must be credited with a knowledge that the beating that they did actually give to the deceased was likely to cause death. (*Zafar Ali and Dalip Singh, JJ.*) INDER

**PENAL CODE (1860), Ss. 299 & 300—Murder or Hurt.**

SINGH v. EMPEROR. 113 I.C. 333 = 10 Lah. 477 =  
30 P.L.R. 674 = 30 Cr. L.J. 141 =  
12 A.I. Cr. R. 87 = A.I.R. 1929 Lah. 157

*Administering dhatura poison to facilitate robbery—Knowledge presumed.*

Where the accused administered Dhatura poison to five men in order to facilitate the commission of robbery and in consequence thereof three men died,  
*Held* : the accused must be presumed to have knowledge that their act was so dangerous that it was likely to cause death and the offence would fall under S. 300 ; 30 All. 568, Diss.; A.I.R. 1924 Patna 635, Dist. 20 All. 143; 31 All. 148 and 40 All. 360, Foll.

Per *Madgavkar, J.*—The question of knowledge is a question of fact in the circumstances of each case. It is impossible for the Courts to lay down a rule of law to deprive the jury, for instance, in each case, of their right to pronounce on the question of the presence or absence of fatal knowledge or intention. (*Fawcett and Madgavkar, JJ.*) EMPEROR v. SHATYA ZIMMA.  
97 I.C. 654 = 28 Bom. L.R. 1003 =  
27 Cr. L.J. 1134 = A.I.R. 1926 Bom. 518.

*Striking with wooden pestle on head—Knowledge presumed.*

Where the accused killed his wife by striking her on the head with a wooden pestle,

*Held* : that he must be presumed to know that he is likely to fracture her skull and to cause her death. (*Le Rossignol, J.*) KESAR SINGH v. EMPEROR.

84 I.C. 242 = 6 L.L.J. 527 = 26 Cr. L.J. 398 =  
A.I.R. 1925 Lah. 244.

**—Ss. 299 & 300—Motive.**

*Motive irrelevant.*

Adequacy or inadequacy of motive is irrelevant when the offence alleged is murder. (*Agha Haidar and Harrison, JJ.*) SHERA v. EMPEROR.

100 I.C. 226 = 7 A.I. Cr. R. 371 = 28 Cr.L.J. 258 =  
A.I.R. 1927 Lah. 729.

*By itself insufficient to convict.*

In this country and among Jats, murders are actually committed from motives of pride to avenge what appear to be comparatively harmless insults; but where the evidence of the alleged eye-witnesses cannot be relied on, the presence of motive only will not be sufficient for a conviction under S. 300. (*Martineau and Coldstream, JJ.*) POHLA v. EMPEROR.

92 I.C. 417 = 7 L.L.J. 442 = 26 P.L.R. 791 =  
27 Cr. L.J. 241.

*Unnecessary to prove—Failure to prove cannot outweigh positive evidence.*

It is not necessary for the prosecution to prove the motive for the crime. It is enough if it is established that the crime was committed. When however the prosecution put forward a substantive case as to the motive for the crime, the evidence regarding the motive has got to be considered in order to judge of the probabilities. Failure to prove motive however cannot outweigh the positive evidence to the crime. (*Sahrawardy and Mukerji, JJ.*) EMPEROR v. NISHI KANTA BANIKYA.  
86 I.C. 453 = 41 C.L.J. 35 =  
26 Cr. L. J. 808 = A.I.R. 1925 Cal. 525.

**—Ss. 299 & 300—Murder or Hurt.**

*Drunken man shooting at point blank range—Injury not in the ordinary course causing death—Supervening causes leading to death—Guilty of grievous hurt.*

The accused, when he was full drunk, fired at the deceased and caused a wound on the upper portion of his thigh with a shot which was fired at point



**PENAL CODE (1860), Ss. 299 & 300—Murder or Hurt.**

blank range. The injury was not fatal and was not such as in the ordinary course of nature would cause death. After nearly two months the injured person died, the wound having become septic and dysentery having supervened a few days before his death.

*Held*: that neither 300 (3) nor (4) applied to the case, and the accused was not guilty of murder: he was not also guilty under S. 304. But he was guilty under S. 326 and as the shot was fired at point blank range on the upper portion of the thigh maximum sentence should be passed. (*Harrison and Dalip Singh, JJ.*) **ZORA SINGH v. EMPEROR.**

120 I. C. 183 = 11 L. L. J. 44 = 31 Cr. L. J. 44 = 1929 Cr. C. 4 = A.I.R. 1929 Lah. 433.

—*Hitting with hockey stick in return for injuries received the previous day—Death by internal bleeding and clotting of blood on the surface of the brain—Guilty of grievous hurt only.*

The accused and the deceased were both young men of about 18 years. The deceased and a friend of his gave a beating to the accused. The next day the accused unexpectedly met the deceased, and forthwith formed the design of hitting him in return for the beating which he had received. Then he struck him a violent blow on the back of his head with a hockey stick which he was carrying and ran away. The deceased walked on for about 30 paces and sat down. He was taken home where, half an hour later, he was unconscious. The blow caused internal bleeding and a clot of blood on the surface of the brain. This caused death.

*Held*: that the accused was not guilty of murder, but of an offence under S. 325 as it could not be said under the circumstances of the case that the accused knew that the blow was so imminently dangerous that it must in all probability cause death or that the bodily injury which he intended to cause was sufficient in the ordinary course of nature to cause death. (*Scott-Smith and Zafar Ali, JJ.*) **GHULAM JILANI v. EMPEROR.**

88 I. C. 286 = 7 L. L. J. 573 = 26 Cr. L. J. 1118 = 26 P. L. R. 430 = A.I.R. 1925 Lah. 559.

—*Quarrel among young boys living near each other—Lathi blow found on dead body—Guilty of grievous hurt only.*

Where a quarrel began with young boys calling each other by perverted names and it ended in the death of one man, but it was found that both the parties were peaceably living near each other but that lathi wounds were found on the body of the deceased,

*Held*: the accused should be convicted of causing grievous hurt only and not of murder. (*Wazir Hasan, A. J. C.*) **KEDAR v. EMPEROR.**

83 I. C. 636 = 26 Cr. L. J. 76 = A.I.R. 1925 Oudh 284.

—*Blow aimed at woman trying to close the door—Child, the woman carried, was struck and killed—Guilty of grievous hurt only.*

The accused with three others, came to beat the owner of the house. His wife who had her small son, aged 1, in her arms, tried to close doorhi door but the three men forced it open and the accused aimed a blow at her which struck the little child and killed it. It was doubtful whether he even knew that the owner's wife was carrying the child. The affray took place at half past seven in the evening on the threshold of the doorhi which was a roofed building. The sun had set at 6 o'clock and it was, therefore, dark. The woman was trying to shut the door to keep out the three men

**PENAL CODE (1860), Ss. 299 & 300—Private defence.**

who had come to attack her husband, and the accused struck at her as he forced the door open.

*Held*: A woman or anybody else closing a door against a person trying to get in would naturally put down anything he or she was carrying in order to have both hands free. Therefore the offence appears to be equivalent to striking the woman and nothing more. Conviction altered from S. 304 to S. 325, (*Harrison, J.*) **DYAL SINGH v. EMPEROR.**

71 I. C. 52 = 5 L. L. J. 228 = 24 Cr. L. J. 4 = A.I.R. 1924 Lah. 47.

**—Ss. 299 & 300—Nature of weapon.**

—*Club wound.*

Where a person gave the deceased a club-wound sufficient to cause the death of a man in the ordinary course of nature,

*Held*: that person was guilty of murder irrespective of intention to cause death. (*Simpson, A. J. C.*) **EMPEROR v. BALDEO.**

90 I. C. 147 = 26 Cr. L. J. 1431 = A.I.R. 1926 Oudh 184.

—*Organised fights with lathis—Combatant using fire-arm.*

Organised fights with each side armed with lathis are grave infractions of the law and frequently result in the death of one or more combatants. The introduction of the pistol is an added aggravation and in such cases transportation for life is the only appropriate sentence that could be passed against the combatant who uses the fire-arm and brings down a man to the ground though not dead, at least wounded. (*Mears, C. J., and Sulaiman, J.*) **AJUDHIA PRASAD v. EMPEROR.**

87 I. C. 597 = 20 Cr. L. J. 997 = 6 L. R. A. Cr. 81 = A.I.R. 1925 All. 664.

**—Ss. 299 & 300—Overlapping.**

The facts of a case may be such that it may fall within more than one exception to S. 300. (*Jackson and Thiruvengkatachariar, JJ. afterwards Wallace, J.*) **NAGULU v. EMPEROR.**

106 I. C. 343 = 1927 M. W. N. 796 = 29 Cr. L. J. 7 = 9 A. I. Cr. R. 263 = 1 M. Cr. C. 178 = A.I.R. 1928 Mad. 136.

**—Ss. 299 & 300—Private defence.**

When a person kills a man without premeditation in excess of the right of private defence, he is guilty of culpable homicide not amounting to murder. (*Wazir Hasan and Raza, JJ.*) **RAM LAL v. EMPEROR.**

106 I. C. 213 = 3 Luck. 244 = 9 A. I. Cr. R. 217 = 28 Cr. L. J. 1029 = 1 L. C. 575 = A.I.R. 1928 Oudh 15.

—*Enmity between parties—Challenges to come out and fight—Accused being followed by deceased inside the accused's house—Encounter occurring inside the accused's house where fatal injury inflicted application of the right of.*

Where a savage enmity had been growing up for some time between the two accused, and the deceased and his brother who were their next door neighbours, and acts of aggression had been committed on both sides on the evening of the occurrence, and challenges to come out and fight had passed from one house to the other and there was an encounter in the open space in front of the two houses, in the course of which injuries were inflicted and suffered on both sides, and at some stage of that encounter one of the accused ran into the *dahliz* of his own house and was followed thereby by the deceased, and a sharp struggle then occurred just inside the entrance door of the *dahliz*, and in the course of that struggle the same accused with his spear inflicted upon the

**PENAL CODE (1860), Ss. 299 & 300—Private defence.**

deceased the fatal wound, of which the unfortunate man expired almost immediately.

*Held*: that as the accused was within the threshold of his own house when he inflicted the fatal injury, though his act was not completely covered by the provisions of the law relating to the right of private defence, Exception 2 to S. 300 sufficiently covered the case to warrant the altering of the conviction to one under S. 304, I.P.C. from under S. 302, I.P.C. (*Mears, C. J., and Piggot, JJ.*) **HAR SARUP v. EMPEROR.** 89 I. C. 264=26 Cr. L. J. 1320=

6 L.R.A.Gr. 113=A.I.R. 1925 All. 753.

—Continued attack after the opponent has fallen down is not exercise of private defence. (*Eforde, J.*) **PHUMAN SINGH v. KING EMPEROR.** 6 L.L.J. 483=A.I.R. 1925 Lah. 230.

—*Exceeding right of—No apprehension of being killed—Aggressor killed in defence—May be guilty under S. 304.*

If a person in defending himself exceeds the right of private defence and intends to cause death of his assailant he must not be held to be guilty of murder. A person in order to defend himself, may kill his adversary provided he has a reasonable apprehension that otherwise he himself would be killed. But if he exceeds the right of self defence where there is no reasonable apprehension of his being killed but only had reasonable apprehension of grievous hurt and in defending himself exceeds his right of private defence and kills the other, he is guilty of an offence less than murder. His act may amount to an offence under S. 304, Indian Penal Code. (*Devadoss and Wallace, JJ.*) **KATIRI, In re.** 88 I.C. 455=26 Cr.L.J. 1143=A.I.R. 1925 Mad. 1069.

—*Lathi aimed at the head of a thief trying to run away—Exceeding the right of—Offence under S. 304.*

Accused a servant employed to watch the crops of a field, went round one night and saw a man cutting the crop at midnight. The thief on seeing the accused tried to run but accused, who was armed with a lathi at once struck him a blow on the head felling him to the ground; the victim of the blow eventually died.

*Held*, that under Exception 2 to S. 300, Penal Code, the accused exceeded the right of private defence of property. The conviction of the accused should be under S. 304 and not under S. 325, I. P. C. (*Tudball, J.*) **EMPEROR v. KALLU.** 64 I.C. 133=22 Cr. L.J. 741. (All).

**—Ss. 299 & 300—Provocation.**

—*Question of fact—Mental condition when provoked must be considered.*

Whether provocation is grave and sudden, such as to deprive the accused of the power of self-control, is a question of fact to be determined upon the peculiar circumstances of each case. In deciding the question the Court must take into account the condition of the mind in which the offender was at the time of provocation: 3 P. R. 1913 Cr., *Foll.* (*Shadi Lal, C. J., and Agha Haidar, J.*) **DES RAJ v. EMPEROR.**

108 I. C. 902=10 A. I. Cr. R. 124=29 Cr. L. J. 454 (Lah.)

**—Ss. 299 & 300—Provocation—Abuse—Sudden.**

—*Accused called 'pig'—Accustomed to abusive language—Provocation not grave but sudden.*

Ra Bharai by caste and an agriculturist by occu-

**PENAL CODE (1860), Ss. 299 & 300—Provocation—Assault—Grave and Sudden.**

pation was accused of murdering his wife in a quarrel by means of an axe. He pleaded grave and sudden provocation and in support of the plea produced a witness who had heard the deceased calling the accused "a pig, son of pig."

*Held*: that such abuse could not constitute grave provocation specially in the case of a low caste man of the class of the accused, accustomed to the use of abusive language. But the accused could be said to have acted without premeditation under some provocation which though not grave was sudden and deserved lesser sentence than sentence of death. (*Zafar Ali and Johnstone, JJ.*) **RAHMAN v. EMPEROR.**

A.I.R. 1930 Lah. 344.

**—Ss. 299 & 300—Provocation—Abuse—Sudden and Grave.**

—*Mutual abuse followed by fight holding the tuft—Deceased went on beating accused—Accused stabbed—1st exception applies.*

Accused, who was abused by the deceased, abused the deceased in return and defied the deceased and told him to come on. The deceased caught hold of the accused by the tuft and gave him two blows with his fist. There was a struggle and the deceased held accused firm by the tuft and went on beating him. The accused then gave the deceased a blow on the left side with a "baku" (a dagger) which he had in his hand. The blow proved fatal.

*Held*: (*Wallace, J. agreeing with Thiruvengkatachiar, J.*)—That the first exception to S. 300, I. P. C., applied and that the offence was culpable homicide not amounting to murder.

*Jackson, J.*—The offence was one of murder. (*Jackson and Thiruvengkatachiar, JJ. afterwards Wallace, J.*) **NAGALU v. EMPEROR.**

106 I. C. 343=1927 M.W.N. 796=29 Cr.L.J. 7=9 A. I. Cr. R. 263=1 M. Cr. C. 178=A. I. R. 1928 Mad. 136.

—*Girl married to accused taken away on the day of ceremony—Accused abused—Hurt with pen-knife—1st exception applies.*

The accused had been married to a girl and the ceremony of *tabdil parchat* was to take place on the day of the occurrence. On that day accused found the deceased taking the girl away from the village where the ceremony was to take place and when he remonstrated with her she told him that the girl would not be married to him that day and abused him. The accused thereupon attacked both the girl and the deceased with pen-knife and inflicted one injury on each in the abdomen. The girl however survived. *Held*, that the accused acted without premeditation, used only a pen-knife and gave each woman only one injury and therefore there is a very strong presumption that he neither intended to cause death nor such bodily injury as he knew to be likely to cause death and that the provocation given to him by the deceased was sufficiently grave and sudden to bring him within the first exception in Section 300. *Held*, further that when the accused wounded the woman in the abdomen with pen-knife he certainly intended to cause them grievous hurt. (*Scott-Smith and Moti Sagar, JJ.*) **ALLAH DIN v. EMPEROR.** 73 I. C. 693=

24 Cr. L. J. 663=A.I.R. 1924 Lah. 234.

**—Ss. 299 & 300—Provocation—Assault—Grave and Sudden.**

—*Husband reproving wife for immoral conduct—Unrepentant, wife beaten—In the struggle*

**PENAL CODE (1860), Ss. 299 & 300—Provocation—Burden of proof.**

*fingers of the accused bitten—Grave and sudden provocation.*

The deceased (the wife of the accused) led an immoral life and on the accused's upbraiding the deceased, his wife, with her misconduct, instead of being repentant said that she would again do such acts upon his head. Thereupon he became enraged and struck her with a stick. She struggled with him and got hold of his fingers and bit them. He then lost control of himself and took out a knife and stabbed her with several injuries which resulted in her death.

*Held*, that the immediate provocation was sufficient to bring the offence within Exception 1 to S. 300 and to reduce it from murder to culpable homicide. (*Sulaiman and Daniels, JJ.*) **SUKHAI v. EMPEROR.**

88 I.C. 844=26 Cr. L.J. 1228=  
6 L.R.A. Cr. 157=A.I.R. 1925 All. 676.

**—Ss. 299 & 300—Provocation—Burden of Proof.**

The onus of proving grave and sudden provocation, such as would reduce the offence of murder into one of culpable homicide not amounting to murder, is on the accused. (*Shadi Lal, C. J. and Zafar Ali, J.*) **RAKHA v. CROWN.**

93 I.C. 230=6 Lah. 171=  
26 P.L.R. 304=27 Cr. L.J. 438=  
A.I.R. 1925 Lah. 399.

**—Ss. 299 & 300—Provocation—Domestic difference.**

Where the accused caused death of his wife, being annoyed with her because she opposed him in some domestic matter and there was no grave and sudden provocation.

*Held*: that the offence committed was murder. (*Agha Haidar and Harrison, JJ.*) **SHERA v. EMPEROR.**

100 I.C. 226=7 A.I. Cr. R. 371=  
28 Cr. L.J. 258=A.I.R. 1927 Lah. 729.

**—Ss. 299 & 300—Provocation—Indecent overtures.**

If a man comes home and finds a person actually misbehaving with his relation, his blood can hardly be expected to have cooled in the course of 15 or 20 seconds, and it is grave and sudden provocation within Exception 1 to S. 300. (*Harrison and Fforde, JJ.*) **DINI v. EMPEROR.**

94 I.C. 140=  
27 Cr. L.J. 572=A.I.R. 1926 Lah. 485.

**—At midnight to sister of accused—Provocation sudden and grave.**

Where the victim was found in the house about midnight and was fully aware of the fact that the accused did not like his visits to his mother's house and it appeared that he had contracted liaison with the sister of the accused and was seen by the accused, when he had put his arms round her,

*Held* that accused must have lost his power of self-control when he saw a stranger in the house at midnight taking liberties with his sister, that the culprit had received grave and sudden provocation, and that he was guilty of culpable homicide not amounting to murder. (*Shadi Lal, C. J. and Campbell, J.*) **MAHOMED YAR v. THE CROWN.**

81 I.C. 173=  
5 L.L.J. 40=25 Cr. L.J. 685=  
A.I.R. 1924 Lah. 62.

**—Ss. 299 & 300—Provocation—Petty quarrel.****—Loss of temper.**

Where, as a result of a petty quarrel the accused lost his temper and struck his grandfather on the head with a *lathi* causing extensive fracture of the skull of which the man died within a few hours.

**PENAL CODE (1860), Ss. 299 & 300—Provocation—Wife's bad character.**

*Held*, that the offence of murder was committed. (*Simpson, A. J. C.*) **SHEO DARSHAN v. EMPEROR.**

90 I.C. 159=26 Cr. L.J. 1503=  
A.I.R. 1926 Oudh 27.

**—Ss. 299 & 300—Provocation—Proof of.****—Loss of self-control—Adequate provocation for such loss—Both must be proved.**

Before a person can claim the benefit of Exception (1) to Section 300 of the Penal Code, he must prove (i) that he was deprived of the power of self-control, and (ii) that the provocation was so grave and sudden as to reasonably justify such loss of self-control. In other words, it ought to be distinctly shown not only that the act was done under the influence of some feeling which took away from the person doing it all control over his action but that that feeling had an adequate cause. In the absence of such proof, the atrocity of the offence will not be mitigated and the offender will not be able to escape the legal consequences of his act.

A person who flies into a passion without just cause and goes about slaughtering people may be insane but if he is sane he cannot defend his action on the ground of provocation. (*Abdul Raouf and Moti Sagar, JJ.*) **LAL SINGH v. EMPEROR.**

63 I.C. 610=22 Cr. L.J. 674.

**—Ss. 299 & 300—Provocation—Remonstrance.****—Over diverting course of channel—Not grave and sudden provocation.**

Where the deceased remonstrated with the accused's father for diverting the course of the old water channel which led to a quarrel, and then the accused came to support his father and assaulted the deceased.

*Held* there was no grave and sudden provocation. (*Martineau, J.*) **GULAB SINGH v. THE CROWN.**

6 L.L.J. 424=A.I.R. 1924 Lah. 742.

**—Ss. 299 & 300—Provocation—Sudden and Grave.****—Act need not immediately follow provocation—Provocation may be continuing.**

The rule contained in S. 300, Excep. (1) does not contemplate that in order to entitle an accused to earn the mitigation provided for, the act must immediately follow the provocation. The appellant continued to be under the influence of provocation until he had killed the deceased and the case fell clearly within S. 300, Excep. (1), I.P.C. (*Scott-Smith and Abdul Raouf, JJ.*) **KADIR BAKSHAH v. EMPEROR.**

68 I.C. 403=23 Cr. L.J. 563=2 L.L.J. 406.

**—Ss. 299 & 300—Provocation—Test of Sufficiency.****—Feelings aroused in a reasonable man.**

There must exist such an amount of provocation as would be excited by the circumstances in the mind of a reasonable man, so as to lead the jury to ascribe the act to the influence of that passion: *Rex v. Lesbini* (1914) 3 K.B. 1115; *Rex v. Alexander*, 109 L.T. 745; *Reg v. Malsh*, (1871) 11 Cox C.C. 335, *Ref. (Mitter and S. K. Ghose, JJ.) EMPEROR v. DINBANDHU OORIYA.*

A.I.R. 1930 Cal. 199.

**—Not as will upset a hot-tempered person.**

The provocation contemplated by S. 300, Excep. 1, must be such as will upset, not merely a hot-tempered or hyper-sensitive person, but one of ordinary sense and calmness. (*Shadi Lal, C. J. and Coldstream, J.*) **KHADIM HUSSAIN v. EMPEROR.**

96 I.C. 209=  
7 Lah. 488=27 Cr. L.J. 897=27 P.L.R. 805=  
A.I.R. 1926 Lah. 598.

**—Ss. 299 & 300—Provocation—Wife's bad character.****—Wife having immoral connexion—Husband's protest resulting in abuses from her—Husband in**

**PENAL CODE (1860), Ss. 299 & 300—Provocation—  
Wife's bad character.**

*agony loses self-control and deals fatal blow—  
Guilty under S. 304, para. 2 only.*

A woman was leading a notoriously immoral life which was the common scandal of the village. She had a young lover who was known to the accused, her husband. On the night previous to the murder she had a mysterious and significant disappearance from the bed side of her husband and subsequent protest by the husband resulted only in vulgar abuse by her. The husband started beating her with a shoe, lost his control, picked up a rough stick which happened to be lying close by and struck the fatal blow to the erring wife which resulted in her death. After murder police had no difficulty in finding him out and producing him before the Court.

*Held* : that the whole unfortunate affair should be looked at as one prolonged agony on the part of the husband which must have been preying upon his mind and eventually led to the fatal assault, bringing the case within the purview of Excep. 1, S. 300 : 2 Mad. 122 and 30 P.R. 1902 Cr., Ref. (*Broadway and Agha Haidar, JJ.*) JAN MAHOMED v. EMPEROR.

119 I.C. 323 = 30 P.L.R. 652 = 30 Cr. L.J. 1044 = 1929 Cr. G. 637 = A.I.R. 1929 Lah. 861.

*—Wife refusing to give up paramour—Quarrel ensued—Accused lost temper and killed wife—Not grave and sudden provocation.*

Where the husband asked the wife to sever her connexion with her paramour but she declined to give up her lover, thereupon there was a quarrel between the husband and the wife in the course of which he lost his temper and killed his wife.

*Held* : that the accused did not receive any grave and sudden provocation, which would bring his case within the ambit of Excep. 1 to S. 300, but that the wife's persistent immorality coupled with her refusal to sever her connexion with the lover provoked the husband and prompted the assault which resulted in her death and that the extreme penalty of the law should not be exacted. (*Shadi Lal, C. J. and Bhide, J.*) IBRAHIM v. EMPEROR. 108 I.C. 166 = 29 Cr. L.J. 347 = 10 A.I. Cr. R. 36 = A.I.R. 1928 Lah. 544.

*—Suspicion—No extenuation of wife murder.*

\* Mere suspicion of a wife's conduct is no extenuation of deliberate wife-murder and so in spite of such suspicion death is the only proper sentence. (*Waller and Pandarat, JJ.*) DASAN v. EMPEROR.

116 I.C. 142 = 1929 M.W.N. 269 = 30 M.L.W. 229 = 2 M. Cr. G. 157 = 30 Cr. L.J. 630 = 13 A.I. Cr. R. 65 = A.I.R. 1929 Mad. 495.

*—Finding wife with lover—Grave but not such as to deprive self-control.*

Accused's wife left the house after giving her husband his mid-day meal. She went to a grove and there she met her lover. The accused finished his meal, took up a banka and went in search of his wife. He found her sitting with the lover and killed her with the banka.

*Held* : that the provocation was grave but not so grave and sudden as to deprive the accused of his self-control, and that Excep. 1 of S. 300 does not apply. (*Simpson, A. J. C.*) CHAINU v. EMPEROR.

21 I.C. 241 = 27 Cr. L.J. 65 = A.I.R. 1926 Oudh. 272.

**PENAL CODE (1860), Ss. 299 & 300—Provocation—  
Wife's bad character.**

*—Finding wife with lover at midnight—  
chased the lover and killed him—Returning home  
killed wife—Provocation grave and sudden.*

Where the accused came unexpectedly at dead of night, as he entertained a suspicion about his wife, and found his wife and her lover, but the lover got away and the accused ran after him as he was entering his house and killed him with a knife which he had with him and immediately after returned to his own house and killed his wife.

*Held* : there was grave and sudden provocation and hence only culpable homicide not amounting to murder was committed. (7 P. R. 1890, Cr., Dist.) (*Martineau and Campbell, JJ.*) RAHAM SHAH v. CROWN.

85 I.C. 374 = 6 L.L.J. 437 =

26 Cr. L.J. 534 = 26 P.L.R. 260 =

A.I.R. 1925 Lah. 114.

*—Actual adultery may not have been seen—  
Finding wife with paramour—Sufficient provocation.*

Whether the accused saw his wife or the deceased actually committing adultery or whether he simply found them together in the Khola there cannot be the least doubt that grave and sudden provocation must have been caused, 8 P. R. 1890 and 8 P. R. 1899 (Cr.) Foll. The rule contained in S. 300, Excep. (1) does not contemplate that in order to entitle an accused to earn the mitigation provided for, the act must immediately follow the provocation. The appellant continued to be under the influence of provocation until he had killed the deceased and the case fell clearly within S. 300, Excep. (1), I. P. C. (*Scott-Smith and Abdul Raoof, JJ.*) KADIR BAKSH v. EMPEROR.

68 I.C. 403 = 23 Cr. L.J. 563 =

2 L.L.J. 406.

*—Husband inducing her to lead moral life—  
Insolent defiance—Provocation sufficient.*

When a husband was inducing his wife who had gone astray to lead a moral life in future, but she insolently replied that if he so attempted she would leave him.

*Held* : that such a shameless answer is sufficient to give fresh provocation with a suddenness unexpected by the husband. (*Dalal, J. C.*) GUSDIN v. EMPEROR.

83 I.C. 482 = 26 Cr. L.J. 3 =

A.I.R. 1925 Oudh. 288.

*—Finding wife in flagrante delicto—Grave and sudden provocation.*

Where a person finds his wife in *flagrante delicto* with another man he is deprived of the power of self-control by grave and sudden provocation and if he kills wife acting under that impulse he comes within S. 300, I. P. C. Exception I. (*Pipon, J. C.*) SHARIF v. EMPEROR.

71 I.C. 993 = 24 Cr. L.J. 273.

**PENAL CODE (1860), Ss. 299 & 300—Sentence—Abettor.**

—Ss. 293 & 300—Sentence—Abettor.

—*One struck with a hatchet and killed—The other stood by—Full punishment for former and transportation for latter.*

Where G and C accused, proceeded to the house of the deceased, G armed with a hatchet and C with a stick and where G admitted and it was also proved that G inflicted a blow with the hatchet on the neck of the deceased which resulted in his death and C did not inflict any injury but was present and acting under the influence of his brother G.

**Held:** that G and C were guilty of murder and that G deserved the full punishment namely death but that C only deserved transportation for life. (*Shadi Lal, C. J. and Zafar Ali, J.*) GULAB v. EMPEROR. 88 I.C. 365=7 L.L.J. 479=26 Cr. L.J. 1133=26 P.L.R. 435=A.I.R. 1925 Lah. 584.

—Ss. 299 & 300—Sentence—Absence of dead body.

—*Not finding the body immaterial—But death sentence not to be confirmed unless absolutely sure—In case of doubt, acquittal the proper course.*

If one is satisfied that murder was committed the appropriate punishment should follow. The discovery of the body is not a material circumstance. It is the murder which is the thing to be regarded, that is to say, the killing of a human being by one or more human beings without just cause or excuse. It is not the finding of the body. The absence of the body is a circumstance which makes it necessary to proceed with the greatest care and caution, and one must never confirm a sentence of death, unless one feels completely satisfied about it. If there is such an element of doubt to render a Judge in the least degree uneasy, the proper course is not to change the nature of sentence from death to transportation for life, but to acquit the man altogether.

Per *Mukerji, J.*—Where the dead body does not appear and the factum of death is established by nothing but a retracted confession, there is a suitable case where a sentence of transportation may be awarded instead of the heavier sentence. A.I.R. 1924 All. 662 Rel. on. (*Mears, C. J. Mukerji and Banerji, J.J.*) RAGHA v. EMPEROR. 89 I.C. 903=23 A.L.J. 821=26 Cr. L.J. 1431=6 L.R.A. Cr. 161=A.I.R. 1925 All. 627 (F.B.)

—Ss. 299 & 300—Sentence—Elements of—Excep. 4—Present.

—*Requisites of Excep. 4 satisfied—Other facts prove murder—Death sentence not called for.*

Where the fatal attack was not a premeditated one and the victims were injured in the heat of passion upon a sudden quarrel and the offenders did neither take undue advantage nor acted in a cruel or unusual manner, but from the other facts of the case the case would not come under Excep. 4 to S. 300.

**Held:** that the offence was one of murder, but that the extreme penalty of the law should not be exacted

**PENAL CODE (1860), Ss. 299 & 300—Sudden fight.**

in the case. (*Shadi Lal, C. J. and Addison, J.*) PREMAN v. EMPEROR. 105 I.C. 678=26 P.L.R. 363=28 Cr. L.J. 966=A.I.R. 1928 Lah. 93.

—Ss. 299 & 300—Sentence—Sudden quarrel.

—*Pre-meditation absent—Accused of a peaceful trading class.*

But the fact that the assault followed sudden quarrel without premeditation is an extenuating circumstance as also the fact that accused belongs to a peaceful trading class and extreme penalty of law should not be inflicted and sentence should be reduced to transportation for life. (*Zafar Ali and Bhide, J.J.*) BHANA MAL v. EMPEROR. 1930 Cr. C. 162=A.I.R. 1930 Lah. 154.

—Ss. 299 & 300—Sentence—Sudden quarrel on provocation.

—*Transportation substituted for death.*

Where the murder was the result of a sudden quarrel and there was also some provocation.

**Held:** that a sentence of transportation for life should be substituted for the sentence of death. (*Waller and Cornish, J.J.*) SUBBIAH TEVAN v. EMPEROR. 1929 M.W.N. 789.

—Ss. 299 & 300—Sentence—Youth of the offender.

—*Some though not adequate provocation—Offender a youth of nineteen—Extreme penalty.*

Where the accused had some provocation, though not sudden and grave provocation, so as to reduce the offence to one of culpable homicide not amounting to murder and where he was only nineteen years old.

**Held:** that the extreme penalty of the law was not necessary and that transportation for life was enough. (*Shadi Lal, C. J. and Dalip Singh, J.*) MANGAL SINGH v. EMPEROR. 99 I.C. 1017=27 P.L.R. 15=28 Cr. L.J. 217 (Lah.)

—Ss. 299 & 300—Sudden fight.

—*Sudden quarrel—A blow on the head and another on the leg not cruel and unusual act.*

Where the accused struck with lathi only one blow on the head and one on the leg in a sudden and unpremeditated quarrel, such blows with a lathi do not amount to acting in a cruel and unusual manner and the accused is entitled to the benefit of the Exception 4. (*Tekchand and Johnstone, J.J.*) NURKHAN v. EMPEROR. 121 I.C. 724=30 P.L.R. 487=1929 Cr. C. 311=31 Cr. L.J. 289=A.I.R. 1929 Lah. 719.

—*One member in a brawl striking with hatchet—Victim unarmed and taking no active part—Excep. 4 does not apply.*

When a brawl is taking place in which the assailants on both sides are using sticks a member of one side, who intervenes with a hatchet and strikes over the head of a member of the other side, who is empty-handed and is taking no active part in the fight and kills him in consequence commits murder and nothing less. Excep. 4, S. 300, I. P. C. has no application. (*Stuart, C. J. and Raza, J.*) MADARU v. EMPEROR. 107 I.C. 177=5 O.W.N. 29=29 Cr. L.J. 230=9 A.I. Cr. R. 438=A.I.R. 1928 Oudh. 224.

**PENAL CODE (1860), S. 299 & 300—Sudden fight.**

—*Splitting skull of an unarmed man with hatchet—No apprehension of injury to accused—Excep. 4 does not apply.*

Although culpable homicide is committed without premeditation and in a sudden fight, and also in the heat of passion upon a sudden quarrel, when a man uses a hatchet on another unarmed man and strikes him a blow on the head with that hatchet splitting his skull while he was under no reasonable apprehension of injury to himself, he cannot claim the protection of Exception 4. (*Broadway and Fforde, J.J.*) **KANSHI v. EMPEROR.** 94 I.C. 134=8 L.L.J. 188=27 Cr. L.J. 566=27 P.L.R. 244=A.I.R. 1926 Lah. 361.

—*Subsequent conduct.*

Exception 4 to S. 300 is meant to apply to cases wherein, in whatsoever way the quarrel originated, the subsequent conduct of both the parties put them upon an equal footing. (*Shadi Lal, C. J. and Addison, J.*) **KARAM SINGH v. THE CROWN.** 93 I.C. 251=8 L.L.J. 93=27 Cr. L.J. 439=27 P.L.R. 132=A.I.R. 1926 Lah. 219.

—*Only one out of four injuries serious—Accused received twelve injuries, some serious—Offence committed without premeditation—Excep. 4, applies.*

Where the accused was found to have caused four injuries to the deceased with a clasp knife and the only serious injury was one in the abdomen of the deceased and the accused to save himself received presumably at the hand of the deceased no less than twelve injuries including a contused wound on the front of his head and a fracture of metacarpal bone of the index finger of the right hand.

**Held :** that the offence was committed without premeditation in a sudden fight and the accused was entitled to the benefit of the 4th exception to S. 300. (*Scott-Smith and Fforde, J.J.*) **FEROZE v. EMPEROR.** 91 I.C. 58=7 L.L.J. 533=26 P.L.R. 620=27 Cr. L.J. 26=A.I.R. 1925 Lah. 633.

—**Ss. 299 & 300—Sufficient or likely to cause death.**

—*Depends on weapon, part of the body struck and violence of the blow—Intention to cause death—Immaterial.*

Where the weapon used, the part of the body aimed at and pierced and the violence with which the blow was inflicted lead to the inference that the accused intended to cause such bodily injury as was likely to cause death even though the accused did not intend to cause death, the accused can be rightly convicted of murder.

But the fact that the assault followed sudden quarrel without premeditation is an extenuating circumstance as also the fact that accused belongs to a peaceful trading class and extreme penalty of law should not be inflicted and sentence should be reduced to transportation for life. (*Zafar Ali and Bhide, J.J.*) **BHANA MAL v. EMPEROR.** 1930 Cr.C. 162=A.I.R. 1930 Lah. 154.

—*Dhatūra administered to make the patient come for treatment—Intended to cause injury sufficient in the ordinary course to cause death.*

Dhatūra was administered in sharbat on a boy 10 years old in order that according to accused's explanation the victim might become mad and his mother might seek accused's assistance for medical treatment

**PENAL CODE (1860), S. 302—Benefit of doubt.**

of her son and so come under his influence. The boy died within three or four hours after drinking sharbat. The assessors were of opinion that there was no intention to cause death.

**Held :** (1) That the fact that the accused had no intention to cause death does not take the case out of the purview of S. 300. The act by which the death was caused was done with the intention of causing such bodily injury as was sufficient in the ordinary course of nature to cause death and the case satisfied the requirements of S. 300 so as to sustain conviction under S. 302. (2) That the explanation was reasonable and so case did not call for extreme penalty. (*Shadi Lal, C. J. and Tapp, J.*) **RANA v. EMPEROR.** 120 I.C. 534=1930 Cr.C. 106=31 Cr.L.J. 140=A.I.R. 1930 Lah. 90.

—*Prompt or better treatment—Might have saved.*

The mere fact that more prompt or better treatment would have saved the deceased cannot exonerate the accused from liability for the death. (*Shadi Lal, C. J., and Bhide, J.*) **MAMMI v. EMPEROR.** 108 I.C. 164=10 A.I.Cr.R. 39=29 Cr.L.J. 345 (Lah.)

—**S. 302.**

**Abettor.**

**Benefit of doubt.**

**Concerted attack.**

**Duty of Court.**

**Evidence.**

**Extenuating circumstances.**

**Intention.**

**Jury.**

**Knowledge.**

**Motive.**

**Murder or culpable homicide.**

**Murder or hurt.**

**Powers of High Court.**

**Private defence.**

**Procedure.**

**Provocation.**

**Sentence.**

**Miscellaneous.**

—**S. 302—Abettor.**

—*Accused ordering to beat—Death caused—Guilty of murder.*

Where a person orders his men to beat the other party and in consequence of that order the people of that party are beaten and as a result some men are killed, that person is guilty of abetment of murder: **A. I. R. 1928 Pat. 100, Foll. (C. C. Ghose and Jack, J.J.) NAWABALI v. EMPEROR.** 116 I.C. 372=13 A.I.Cr.R. 61=30 Cr.L.J. 621=A.I.R. 1928 Cal. 752.

—*Presence and support.*

Persons who are present at a murder and support the same are as much guilty of murder as the murderer himself. (*Sulaiman and Mukerji, J.J.*) **TULLI v. EMPEROR.** 88 I.C. 130=47 All. 276=21 A.L.J. 1075=26 Cr.L.J. 450=6 L.R.A.Cr. 33=A.I.R. 1926 All. 185.

—**S. 302—Benefit of doubt.**

—*Student distributing sweets containing arsenic—Motive not made out—Accused himself ate—No*



**PENAL CODE (1860), S. 302—Benefit of doubt.**

*evidence who prepared them—Benefit given.*

The accused, a student, aged 17 was alleged to have distributed certain sweets containing arsenic among his fellow students. All who had received it ate it then and there except one person who took it home and gave it to his young niece and father. All the persons showed signs of arsenic poisoning and all of them recovered except the niece who died. It appeared that the accused himself had eaten a portion of the sweets and there was no motive for the crime. There was no evidence that the accused prepared the sweets.

*Held*, that the whole case was doubtful and that the accused could not be convicted of murder. (*Shadi Lal, C. J. and Agha Haidar, J.*) **HANS RAJ v. EMPEROR.** 115 I.C. 469=30 P.L.R. 424=

10 Lah. L.J. 555=  
30 Cr.L.J. 478.

——*Poisoned sweets given—Knowledge not proved, no motive—Accused partook—Case very doubtful—Benefit given.*

An accused distributed poisoned sweets to several friends of his but it was not satisfactorily proved that the accused knew that the sweets contained poison. No motive was alleged. The accused had also partaken some of the sweets. Some arsenic was found in the room occupied by the accused after six days from his arrest and there was no evidence to show as to who had the control and custody of the room during those six days.

*Held*: that the case against the accused was very doubtful and the accused should be given the benefit of doubt. (*Shadi Lal, C. J. and Agha Haidar, J.*) **HANS RAJ v. EMPEROR.** 115 I.C. 469=

10 L.L.J. 555=30 P.L.R. 424=30 Cr.L.J. 478=  
12 A.I.Cr.R. 354.

——*Fight—Gun went off during struggle—Doubtful if anybody fired—Benefit given.*

Where there was a fight in the course of which one J. died owing to a shot from T's gun but whether the shot which killed him was fired by S. as the prosecution alleged or by T. or whether it was the result of an accident due to the gun going off of itself during the struggle for its possession was doubtful and the probability was that the gun went off during the struggle.

*Held*, benefit of doubt must be given to the accused. (*Scott-Smith and Harrison, JJ.*) **KUNDAN SINGH v. THE CROWN.** 88 I.C. 711=26 Cr.L.J. 1191=

6 L.L.J. 271=A.I.R. 1924 Lah. 720.

——*Body not identified—Prosecution evidence inconsistent with medical—Benefit given.*

Where the body of the deceased was not identified when it was discovered and the prosecution evidence was inconsistent with the medical evidence, the accused was given the benefit of doubt. 18 P. R. 1917 distinguished mainly on the ground that the parties in the present case were not shown to be on bad terms. (*Broadway and Lumsden, JJ.*) **GAGTU v. THE CROWN.** 76 I.C. 397=5 L.L.J. 417=

25 Cr.L.J. 173=A.I.R. 1924 Lah. 168.

**PENAL CODE (1860), S. 302—Concerted attack.**

—**S. 302—Concerted attack.**

——*Conspiring to kill—No evidence who dealt the fatal blow—All guilty of abetment of murder.*

It was found that two accused and the approver conspired to commit theft and in pursuance of that conspiracy to kill H in order to enable them to commit theft but there was no direct evidence as to who dealt the fatal blow.

*Held*: that the accused are guilty of abetment of murder under S. 302 read with S. 109. (*Adami, J.*) **SHEO BARLU v. EMPEROR.** A.I.R. 1930 Pat. 164.

——*Intent to rob and if need be to kill any one obstructing—One person killed—Liability constructive.*

Some persons went to another's house with the object of robbery, but with the intention of killing anyone who would obstruct them in the attainment of their object, and killed one person in the prosecution of such intention.

*Held*: that their liability was constructive it being impossible to say which of them was directly responsible for the death and punishment of death would not be justified. (*Zafar Ali and Jai Lal, JJ.*) **PAKHAR SINGH v. EMPEROR.** 120 I.C. 180=11 L.L.J. 20=

31 Cr.L.J. 41=A.I.R. 1929 Lah. 292.

——*Doubt as to who struck the fatal blow—All guilty of murder.*

Where it cannot be found who among the assailants struck the blow which proved to be fatal all the assailants can be held guilty of murder: 35 All. 329, Foll. (*Staples and Subhedar, A. J. Cs.*) **KISANDAS v. EMPEROR.** 118 I.C. 473=1929 Cr.C. 529=

30 Cr.L.J. 944=A.I.R. 1929 Nag. 325.

——*At least two fatal injuries on the head—Could not have been caused by same instrument—Both liable for murder.*

Where two assailants, bearing dangerous instruments, assaulted the deceased and all the blows were aimed at the head, with the result that two fatal injuries were caused, and these injuries where such as could not be caused with one and the same instrument.

*Held*: that each of the two assailants was responsible for one of the fatal injuries and, therefore, both were guilty under S. 302: 40 All. 103; 29 All. 282; 36 Cal. 659, Dist. (*Mohiuddin, A. J. C.*) **UNDRIA DHIWAR v. EMPEROR.** 118 I.C. 50=30 Cr.L.J. 870=A.I.R. 1929 Nag. 125.

——*Fight between two parties—A member of one party struck with stick one of the other party—The latter struck the other on the head which proved fatal—Others not guilty on account of constructive liability.*

Certain persons who were members of party A had the common unlawful object to resist a process server

**PENAL CODE (1860), S. 302—Concerted attack.**

and agents of the decree-holder who formed another party B and to cause hurt to their persons. Marpit began between the two parties in which, party A was faring badly. Then suddenly S, a member of party B, came on the scene and inflicted a blow with his stick on P, a member of party A, and in return P gave a blow to S causing a wound on his head which proved fatal.

*Held*: that the members of party A other than P were not guilty for the offence of murder on account of their constructive liability under S. 149: 20 W.R. Cr. 5 (F.B.), Foll.

*Held*: further that under the circumstances P could not be said to have committed offence under S. 302, but only of culpable homicide punishable under S. 304. (*Mohiuddin, A.J.C.*) UMED HUSSAIN v. EMPEROR. 114 I.C. 449=30 Cr. L.J. 307= A.I.R. 1929 Nag. 14.

—Assailants armed with weapon found in immediate presence of deceased—Conviction under Ss. 302—149 is proper.

Where a small body of Mahomedans numbering between 50 and 100 was attacked without any proved provocation by several hundred Hindus and was pursued to some distance, as a result of which one Mahomedan died almost on the spot, another was fatally wounded and died eight days later and six Mahomedans were injured in less serious manner, and it was found that each of the accused was armed either with a sword, spear or lathi and they were found in the immediate presence of the persons actually killed:

*Held*: that conviction under S. 302 read with S. 149 would be right. (*Mears, C.J. and Mukerjee, J.*) KASHI RAM v. EMPEROR. 109 I.C. 120=26 A.L.J. 139=9 A.I. Cr. R. 248=9 L.R.A. Cr. 30=29 Cr. L.J. 472=A.I.R. 1928 All. 280.

—Common intention to murder—One did the deed—All guilty as principals.

Where four persons took a woman out with the knowledge and with the purpose that one of their number should murder her and one of their number did murder her, then that murder is done in furtherance of the common intention of all and all the four men are guilty of the crime as principals under S. 34. (*Kincaid, J.C. and Rupchand Bilaram, A.J.C.*) BUKSHAN v. EMPEROR. 98 I.C. 113=

27 Cr. L.J. 1265=A.I.R. 1927 Sind 85.

—Armed to murder any resisting robbery—Two did the deed—All are liable.

Where four persons armed with deadly weapons fully prepared to commit murder in the event of resistance and two of them actually committed murder before any resistance was offered to them. *Held* that each of the robbers is equally guilty of the offence of

**PENAL CODE (1860), S. 302—Duty of Court.**

murder. A.I.R. 1925 P.C. 1 (P.C.) Foll. (*Shadilal, C.J. and Zafar Ali, J.*) SAID NUR v. EMPEROR.

89 I.C. 718=26 Cr. L.J. 1406=A.I.R. 1926 Lah. 63. —Unlawful assembly—Armed to strike any resister—All liable if anyone of them inflicted fatal injury.

Where five persons assembled at the water-head to take water by force and armed themselves with deadly weapons to strike and vanquish anybody who should stand in their way and prevent them from accomplishing their purpose.

*Held* that they constituted an unlawful assembly and became guilty of rioting when they used their deadly weapons in pursuance of their common object, and further that as every one of them knew that these weapons were likely to be used with deadly effect, they were all responsible if any one of them inflicted a fatal injury. A.I.R. 1925 Lah. 49, Dist. (*Zafar Ali and Jai Lal, J.J.*) HARI SINGH v. EMPEROR.

92 I.C. 217=7 L.L.J. 576=26 P.L.R. 820=27 Cr. L.J. 233=A.I.R. 1926 Lah. 4.

—Joint attack.

Where the appellant and his son jointly attacked the deceased and it resulted in death, the accused were rightly convicted for murder. (*Duckworth and Maung Gyi, J.J.*) MAUNG TWA v. EMPEROR.

95 I.C. 603=5 Bur. L.J. 12=27 Cr. L.J. 827.

—With lathis—All joined in beating—Who gave the fatal blow—Immaterial—All guilty.

One B an elderly Kachhi was mercilessly beaten by the four accused. There had been litigation between B on the one side and two of the accused, on the other, in which B had been entirely successful, B was taken to the hospital where he died two days afterwards. All the accused had joined in beating B when he was on the ground with lathis and they inflicted such serious injury to him that he died two days afterwards.

*Held*: that they must have known that at the least they were causing injury which was likely to cause death, and if death resulted they are guilty of murder. In such cases it is immaterial by whose lathi the fatal injury is inflicted. 29 All. 282 is no longer good law. A.I.R. 1923 All. 88, Ref. (*Ryves and Daniels, J.J.*) UMMAD v. KING-EMPEROR.

74 I.C. 858=45 All. 727=21 A.L.J. 623=

4 L.R.A. Civ. 205=24 Cr. L.J. 826= A.I.R. 1924 All. 145.

**S. 302—Duty of Court.**

—Jury finding accused did not know that injury was likely to cause death—Judge differing as to intention and knowledge—Conviction not warranted.

The only question, in case of an alleged homicide, that the Judge has to see is, first, what degree of injury did the man intend, and secondly what did he know as to the consequences of such injury. Where the jury found the accused did not know the amount

**PENAL CODE (1860)—S. 302—Duty of court.**

of injury caused by him would be such as would be likely to cause death, the judge is not warranted in differing from them as to the intention or knowledge of the accused, based upon the reasoning of *post hoc ergo propter hoc*. In such a case the conviction should be under the second clause of S. 304. (*Ran-kin, C. J., C. C. Ghose and Patterson, JJ.*) **EMPEROR v. DAMULLYA MOLLA.** 34 C.W.N. 1127.

—*Sufficiently certain of guilt—Not sufficiently certain of sentence.*

It is not permissible for Judge to sentence a prisoner to transportation for life on the ground that he is sufficiently certain of the guilt for that purpose but not sufficiently certain to sentence him to death: A.I.R. 1930 Pat. 515, Rel. on. (*Courtney-Terrell, C. J., and Macpherson, J.*) **KHUDU RAJAK v. EMPEROR.** 124 I.C. 841=11 P.L.T. 166= A.I.R. 1930 Pat. 252.

—*Murder case—Prosecution evidence not disbelieved—Commitment to sessions.*

A Magistrate not disbelieving the evidence for the prosecution, which tends to show that an offence under S. 302, Penal Code, has been committed, should better commit the accused to the Sessions, and leave the Sessions Judge to decide upon the value of the evidence led. (*Dalip Singh, J.*) **EMPEROR v. WAFADAR.** 114 I.C. 58=30 P.L.R. 36= 30 Cr. L.J. 234=12 A.I. Cr. R. 116= A.I.R. 1929 Lah. 403.

—*Trial for murder—Every procedure must be strictly followed.*

It is imperative in cases where accused is being tried for his life that the provisions of the law should be strictly adhered to and that the accused should not have any manner of grievance with regard to the procedure adopted at the trial. (*C. C. Ghose and Graham, JJ.*) **EMPEROR v. RAJAB ALI FAKIR.** 103 I.C. 790=46 G.L.J. 31=31 C.W.N. 881= 8 A.I. Cr. R. 316=28 Cr. L.J. 742= A.I.R. 1927 Cal 631.

—*Finding of murder—Inadequate sentence—Reference to High Court.*

If a Judge accepts a finding of murder there are only two penalties. He has no right to pass inadequate sentence. If he does not believe the verdict to be right it is his duty to refer the case to the High Court. (*C. C. Ghose and Duval, JJ.*) **ARAJALI v. EMPEROR.** 98 I.C. 102=30 C.W.N. 376= 27 Cr. L.J. 1254.

—*Murder—Accused the culprit—Gravity of the offence—Sentence.*

In order to convict an accused for murder the Court must be satisfied first that the murder had been committed; then it must be satisfied that the accused has committed the murder. At the third stage the question of sentence should be determined upon the gravity of the offence quite irrespective of the circumstances whether the body has or has not been discovered: A.I.R. 1925 All. 627 (F. B.), Foll. (*Stuart, C. J. and Raza, J.*) **RAM NATH v. EMPEROR.** 93 I.C. 252=1 Luck. 327=13 O.L.J. 484= 3 O.W.N. 204=27 Cr. L.J. 460= A.I.R. 1926 Oudh 234.

**—S. 302—Evidence—Circumstantial.**

—*Complete and incompatible with innocence—Admitting of no reasonable explanation—Death sentence.*

There is no rule of law or practice to prevent a Court from sentencing an accused person to death merely on circumstantial evidence.

The accused person visited the village in which the murdered person lived and was at the shop of the

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**PENAL CODE (1860)—S. 302—Evidence—Confession.**

deceased on the night of the murder, and that night both had slept on cots in front of the shop. In the morning the person was found murdered and the accused had disappeared. At the time the accused had come to the village he was wearing shoes and also possessed a tin box of cigarettes. A pair of shoes and a tin box were found at the shop, and the accused, who was discovered when followed along the foot-prints sitting amongst some crops, was bare footed. When the accused was discovered he was in possession of the property of exactly the same description as the stolen property. Blood-stains were also found on the shirt of the accused.

*Held:* that circumstantial evidence was incompatible with the innocence and incapable of explanation upon any reasonable hypothesis except that of his guilt and the accused could be sentenced to death: A. I. R. 1926 Bom. 513, Rel. on. (*Barlee, J. C. and Aston, A. J. C.*) **KARIM BAKSH v. EMPEROR.**

1929 Cr. C. 414=A.I.R. 1929 Sind 179.

—*How estimated.*

The fundamental rule by which the effect of circumstantial evidence is to be estimated is well established. In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt: A. I. R. 1926 Lah. 88, Foll. (*Shadi Lal, C. J. and Coldstream, J.*) **MIRZA v. EMPEROR.** 96 I.C. 849=7 A.I.Cr. R. 68=27 Cr. L. J. 993. (Lah.)

—*Inference of guilt—When justified—Facts sufficient to infer from.*

Where a case depends entirely on circumstantial evidence, in order to justify the inference of guilt, the incriminating facts found against the prisoners must be incompatible with their innocence and incapable of explanation upon any other reasonable hypothesis than that of their guilt: 8 C. W. N. 278 and 41 Cal. 601, Rel. on.

The following circumstances, as proved against the accused, were held sufficient to prove that he was responsible for the murder of deceased: (1) the deceased used to live at accused's house until he disappeared; (2) accused made no report about the sudden disappearance of the deceased to the police or to anybody else; (3) within a few days after the disappearance of the deceased his dead body was found in a well about half a mile from the house of the accused; (4) shortly after the recovery of the dead body the accused admitted to a friend of his that he had murdered the deceased; (5) and after this confession the accused produced from two places considerable valuable property worth Rs. 4,000 belonging to and in the possession of the deceased until his death. (*Wadegaonkar, A. J. C.*) **RAGHUNATH v. EMPEROR.** 89 I.C. 516= 26 Cr. L. J. 1380=23 N. L. R. 62= A. I. R. 1926 Nag. 119.

**—S. 302—Evidence—Confession.**

—*Confession to lambardar insufficient to convict—Other facts proving guilt—Conviction.*

A who was charged under S. 302 knew where the bodies of the murdered persons were. He also knew that murder had been committed. The jewellery removed by him from the dead body was subsequently produced and identified. Moreover he confessed his guilt to the lambardar of the village.

*Held:* that it was not safe to rely upon the confession made to the lambardar and therefore he could not be convicted under S. 302. But the evidence was sufficient to convict him under S. 201. (*Broadway*

**PENAL CODE (1860)—S. 302—Evidence—Confession.***and Agha Haider, JJ.) DES RAJ v. EMPEROR.*111 I.C. 449=29 P.L.R. 486=29 Cr. L.J. 865=  
A. I. R. 1928 Lah. 858.

—*Confession induced by promise of pardon—Subsequently retracted—Should be excluded—Other fact insufficient—Guilt not established.*

M was convicted by the Sessions Court under Ss. 302 and 201, I.P.C., upon his own uncorroborated confession. M retracted the confession at the first opportunity alleging that the confession was put into his mouth by the police who tortured him in order to induce him to turn an approver. The prosecution never alleged that M was the only person concerned either in the murder or in the burial, but admitted that after the confession, efforts were made to induce him to become an approver. The prosecution evidence did not establish the existence of any motive on the part of M, and there was no independent evidence connecting him with the murder in material particulars except that G, the victim, with other co-accused who were acquitted of the charge of being the accomplices of M was seen in M's company shortly before the murder, that the corpse was found upon M's land and that M took the Magistrate to where the corpse was buried. The police, however, had known of the whereabouts of the corpse some days prior to M's confession.

*Held*: that in the circumstances, M's confession was probably due to the promise of pardon and, therefore, should be excluded from the evidence against M, and that if the confession was excluded, the rest of the evidence could not establish M's guilt. (*Zafar Ali and Coldstream, JJ.*) MAJHI v. EMPEROR.

104 I.C. 247=28 Cr. L.J. 807=  
A.I.R. 1927 Lah. 682.**—S. 302—Evidence—Corroboration.**

—*Prosecution witnesses untruthful—Residue uncorroborated—Conviction bad.*

Where the prosecution witnesses are found to be untruthful as to the greater part of their evidence, it is dangerous to convict the accused on the residue without corroboration: 42 Cal. 784, Foll. (*Nanavutty and Raza, JJ.*) GENDAN LAL v. EMPEROR.

A.I.R. 1920 Oudh. 460.

—*Prosecution evidence uncorroborated in material particulars—Real murderer concealed—Evidence insufficient.*

The fact of murder admitted of no doubt. The main evidence for the prosecution and the sole evidence connecting the accused with the murder was that of two brothers whose evidence was uncorroborated in material particulars and unreliable. The villagers were well aware of the identity of the murderers, but whether it was because the real murderers were public favourites or the deceased was unpopular no evidence was forthcoming:

*Held*: that the accused could not be convicted. (*Courtney-Terrell, C. J. and Rowland, J.*) SANGAR SINGH v. EMPEROR.

1929 Cr.C. 287=  
A.I.R. 1929 Pat. 527.**—S. 302—Evidence—Duty of Prosecution.**

—*Actual death must be proved.*

Where a person was beaten into unconsciousness by being brutally attacked with lathis and was dragged up to the bank of rivulet leaving traces of blood along the way and was never heard of again, *held*, that there was a reasonable possibility of the person being alive, and therefore the accused can only be convicted of an attempt to murder. Prosecution must prove the actual death of the alleged murdered person. (*Stuart and Sulaiman, JJ.*) BANDHU v. EMPEROR.

**PENAL CODE(1860)—S. 302—Evidence—Not sufficient.**81 I.C. 436=22 A.L.J. 340=  
6 L.R.A.Cr. 59=25 Cr.L.J. 900=  
A.I.R. 1924 All. 662.**—S. 302—Evidence—Dying declaration.**

—*Short statement—Answers to leading questions—Other evidence insufficient—Conviction.*

Some persons were tried under S. 302 for having murdered one B. The occurrence took place on a moonless night under a thick tree. The so-called eye-witnesses were disbelieved on the point of identification. The only evidence against the accused was the first report and the dying deposition of the deceased. The deceased was not able to make a long statement. The dying declaration was not an unaided effort but consisted of answers to leading questions put by the disbelieved alleged witness. The family of the deceased had deliberately chosen to put the attack back some two hours before it actually occurred.

*Held*: that under the above circumstances it was impossible to uphold the conviction. (*Stuart, C. J. and Raza, J.*) GANGA v. EMPEROR.

1930 Cr.C. 156=4 Luck. 726=6 O.W.N. 1056=  
A.I.R. 1930 Oudh 60.**—S. 302—Evidence—Expert.**

—*Evidence based on scientific enquiry essential—Arsenic poisoning—Viscera examination—Vomit and night-soil alone insufficient.*

In view of the common diseases of this country whose symptoms are almost indistinguishable from that of arsenic poisoning it is very unsafe to convict a person without such evidence as can be obtained from a proper scientific enquiry. The proper enquiry consists in the careful examination of the viscera of the body and an analysis by a competent analyser showing from the amount of arsenic found in the viscera that at least a lethal dose must have been administered. Mere examination of the vomit or night-soil is totally insufficient and it is extremely dangerous to rely upon some traces of arsenic found in either of these two things. (*Boys and Young, JJ.*) EMPEROR v. SIKANDAR.

1930 Cr.C. 757=  
A.I.R. 1930 All. 532.

—*Strong evidence as against chemical examiner's negative evidence.*

Chemical examiner's negative report regarding absence of trace of blood in the earth, leaves and grass taken from the alleged place of occurrence will not displace strong direct evidence of the place of a certain murder. (*Newbould and C. C. Ghosh, JJ.*) HASSENULLA SHEIKH v. EMPEROR.

83 I.C. 485=  
28 C.W.N. 561=26 Cr.L.J. 5=  
A.I.R. 1924 Cal. 625.**—S. 302—Evidence—Not sufficient.**

—*Circumstantial evidence—Palpably concocted—Improbable—Not sufficient.*

Where the whole case is one of extreme suspicion against the accused but in the opinion of the Court the separate pieces of circumstantial evidence relating to their movements and which converge on their guilt bear palpable signs of concoction and do not fit in with the conduct of rational persons, it would be most unsafe to accept them and convict the accused. (*Adami and Scroope, JJ.*) SAMBHU PATRA v. EMPEROR.

122 I.C. 587=31 Cr.L.J. 438.

—*Assessors finding some guilty and others not guilty—Evidence the same against all—Unsatisfactory—Conviction of some.*

Where the accused were seven in number and the assessors were of opinion that some of them were not guilty while others were *held* to be guilty although the evidence against them was merely the same and if

**PENAL CODE (1860)—S. 302—Evidence—Not sufficient.**

appeared that the evidence was most unsatisfactory and that the truth had been kept back. *Held*, that under those circumstances it was not proper to convict some of the accused under S. 302, I.P.C.

Per *Addison, J.*—In the Punjab persons who are on the point of death do sometimes implicate their enemies without cause. (*Addison and Skemp, JJ.*) *GHULAM QADIR v. CROWN.* 30 Punj. L.R. 536

—*Lathi blow on the head—Abettor gagged the mouth as desired—No common intention—proved—Abettor not liable for murder.*

P attacked H with a lathi and hit him on his head. P then asked B to press H's mouth with a cloth. B did as she was asked. In the post mortem H's skull was found to be shattered into 14 pieces.

Upon medical examination it was found that death was due to injuries on the head caused by P. The blows were not struck in furtherance of common intention on the part of P and B. There was no evidence that death had been caused by strangulation.

*Held*: that B was not guilty of murder. (*Young and Sen, JJ.*) *MT. BAKHTAWARI v. EMPEROR.* 120 I.C. 268=31 Cr.L.J. 37=1930 Gr.C. 61= A.I.R. 1930 All. 45.

—*Accused found with deceased the previous night—Possession of his belongings—No direct evidence—Nature of offence.*

Accused were seen in the company of deceased on a previous night. Next morning accused were found to be in possession of clothes and other articles belonging to deceased.

*Held*, that in absence of direct evidence, circumstances, though raising a strong suspicion against accused are not sufficient to convict them either under S. 302, or under S. 392, but they are guilty either under S. 411 or S. 379. 20 C. W. N. 166; 13 Cr. L.J. 249; 40 P.W.R. 1914 Cr.; and A.I.R. 1922, All. 340; *Ref. (Zafar Ali and Coldstream, JJ.) MAHOMED ALI v. EMPEROR.* 112 I.C. 212=10 L.L.J. 325= 29 Cr.L.J. 996=A.I.R. 1929 Lah. 61.

—*Suspicious circumstances—Alone insufficient.*

B and S were charged under S. 302, Penal Code, for the murder of R, who, according to the village rumour, was in intrigue with G's wife, M, sister to B. S was the brother of G. A tracker followed the tracks with directions from villagers to the Ahata of S and G. Shoes of R were recovered at the instance of B. The tracker found tracks of B and S, leading to the place where the body was later found buried. Dead body of R was found at the instance of the confession made by S.

*Held*: that the evidence was not sufficient to establish charge under S. 302 but was ample to establish an offence under S. 201, Penal Code. (*Addison and Coldstream, JJ.*) *BULAQI v. EMPEROR.* 112 I.C. 347=9 Lah. 671= 29 Cr.L.J. 1019=11 A.I.Cr.R. 284= A.I.R. 1928 Lah. 476.

—*Discovery of bloodstained weapons through accused—Injury on his person—Insufficient.*

The mere facts that the accused pointed out a heap of tury belonging to some unknown zamindar which was accessible to anybody and from which were recovered a hatchet and a dang which turned out to be bloodstained and that the accused had some injuries on his person were held to be not sufficient to prove him guilty of being concerned in the murder. (*Broadway and Jai Lal, JJ.*) *CHHAJJU v. EMPEROR.* 10 L.L.J. 58=A.I.R. 1928 Lah. 335.

**PENAL CODE (1860)—S. 302—Evidence—Presumption.**

—*Motive present—Body found in the field of accused.*

Where the only evidence against a person accused of murder consists of evidence of motive and his production of the corpse from his field, that evidence will not ordinarily warrant a conviction under S. 302, I.P.C.: A.I.R. 1926 Lah. 88 and A.I.R. 1927 Lah. 541, Foll. (*Broadway and Jai Lal, JJ.*) *FARZAND ALI v. EMPEROR.* 107 I.C. 482=9 A.I.Cr.R. 520= 29 P.L.R. 33=29 Cr.L.J. 252.

—*Accused last seen with deceased—Accused showing place where corpse was buried not sufficient.*

The fact that the accused was one of two persons with whom the deceased was last seen alive, and the fact that he pointed out the spot where the dead body was ultimately found, are not sufficient to draw the inference that the accused was one of the actual murderers. No doubt grave suspicion attaches to him in this connexion, but grave suspicion is not sufficient. (*Broadway and Skemp, JJ.*) *BESANT SINGH v. EMPEROR.* 103 I.C. 97=28 Cr.L.J. 641= 8 A.I.Cr.R. 254=A.I.R. 1927 Lah. 541.

—*Evidence of unnatural demeanour of accused.*

Where the evidence on which the accused has been convicted consists mainly of statements made by witnesses, suggesting that his demeanour was somewhat too calm when attention was drawn to the fact that his hut of grass was burning which had been set on fire and in which the deceased was found lying dead and a gun lying between his legs.

*Held*: that his conviction is not sustainable and must be set aside. (*Fforde and Addison, JJ.*) *ABDUL GHANI v. EMPEROR.* 99 I.C. 324=

8 L.L.J. 559=28 Cr.L.J. 116= 28 P.L.R. 27=A.I.R. 1927 Lah. 51.

—*Knowledge where corpse is buried.*

The mere fact that an accused person appears to have known where the corpse was buried does not prove that he was the murderer: 18 P.R. 1917, Foll. (*Scott-Smith and Zafar Ali, JJ.*) *SULAKHAN SINGH v. EMPEROR.* 89 I.C. 901=26 Cr.L.J. 1429= A.I.R. 1926 Lah. 138.

—*Property recovered from place pointed out by accused.*

The mere recovery of property belonging to the deceased from a place pointed out by a person accused of the murder cannot be regarded as a proof that the accused was a murderer: A.I.R. 1924 Lah. 109, Foll. (*Shadi Lal, C. J. and Coldstream, J.*) *MIRZA v. EMPEROR.* 96 I.C. 849=7 A.I.Cr.R. 68= 27 Cr.L.J. 993 (Lah.).

—*Production of property stolen from deceased.*

Where the only evidence against an accused person is that he produced certain property which is identified as having been stolen from a person proved to have been murdered and there is no admissible evidence against him to connect him more directly with the murder it is unsafe to convict him of the offence of murder. 13 Mad. 426 and 21 M.L.J. 1071, Dist.; (1887) A.W.N. 130, Foll. (*Wadegaonkar, A.J.C.*) *RAGHUNATH v. EMPEROR.* 89 I.C. 516= 26 Cr.L.J. 1330=23 N.L.R. 62= A.I.R. 1925 Nag. 119.

—**S. 302—Evidence—Presumption.**

—*Possession of goods recently stolen—Stolen articles were jewels worn by deceased on the day previous—Presumption.*

The possession of stolen goods recently after the loss of them may be indicative not merely of the offence of larceny or of receiving with guilty know-

**PENAL CODE (1860)—S. 302—Evidence—Presumption.**

ledge but of any other more aggravated crime which has been connected with the theft; this particular fact of presumption forms also a material element of evidence in case of murder.

The presumption is particularly applicable where there is satisfactory proof in case of a murder of a woman that the stolen articles were habitually worn by the deceased and that she was actually seen wearing it on the evening before the murder: 17 C.W.N. 1077, Ref.: A.I.R. 1926 Mad. 638 and A.I.R. 1926, Lah. 691, Dist. (Pearson and Juck, JJ.) **EMPEROR v. CHINTAMANI SHAHU.** A.I.R. 1930 Cal. 379.

—*Poisoning by members of family—Death shortly after food prepared by wife—No explanation as to cause of death—Corpse hidden—Presumption violent.*

A violent presumption that the deceased was poisoned by the members of the family arises, perhaps one of the strongest presumptions known to the law, when a man dies in his own house surrounded by his own family, and poisoned shortly after eating food which must have been prepared for him by his wife, and no explanation is forthcoming from the occupants of the household as to what had happened to him to cause his death, and where, in addition to such violent presumption, the persons accused are proved to have been guilty of persistent lying in an attempt to account for the absence of the deceased, and are also shown to have hidden the corpse to save themselves, the presumption becomes a certainty. (Walsh and Pullan, JJ.) **EMPEROR v. MT. HAR PIARI.**

97 I.C. 44=49 All. 57=27 Cr. L.J. 1068=

7 L.R.A. Cr. 156=24 A.L.J. 958=

A.I.R. 1926 All. 737.

**—S. 302—Evidence—Robbery and murder.**

—*Evidence sufficient for robbery—Not sufficient for murder.*

In a case of murder the following facts were found:—The accused found the deceased playing with three other companions, gave him a melon and took him away on the promise of giving him more. The accused and deceased were afterwards seen together near the canal by one witness and after that deceased was never seen alive again. The medical man who conducted the *post-mortem* examination was unable to give any opinion as to the cause of death because putrefaction was too far advanced. Melon seeds were found in the deceased's stomach at the *post mortem* examination. The accused's shoes were found near the canal bridge hidden in some reeds. Deceased when taken away by the accused was wearing 3 ornaments and these were not on his dead body. The appellant subsequently had knowledge of the place in which these ornaments were concealed and himself dug them up during the police investigation.

*Held:* that assuming these findings to be correct they do not exclude every reasonable hypothesis other than that the deceased's death was caused by the accused. If the accused can be held to have robbed the deceased it does not follow necessarily that he afterwards killed him. (Shadi Lal, C.J. and Campbell, J.) **WALLU v. EMPEROR.** 77 I.C. 433=

4 Lah. 373=6 L.L.J. 59=25 Cr. L.J. 385=

A.I.R. 1924 Lah. 109.

**—S. 302—Evidence—Sufficient.**

—*Accused last seen with deceased—Disappearance immediate after murder—Defence that he never knew the deceased.*

Where the evidence against the accused is that the deceased was last seen alive in his company and that

**PENAL CODE (1860)—S. 302—Extenuating circumstances.**

the accused disappeared immediately after the murder and the accused set up a palpably false defence that he did not know the deceased and was never in her company, these facts and circumstances are sufficient to bring the offence of murder home to the accused.

(Zafar Ali and Addison, JJ.) **FAZULDIN v. EMPEROR.** 120 I.C. 529=31 Cr. L.J. 138=

A.I.R. 1930 Lah. 265.

—*Accused displeased with mother—Attempt to take away child frustrated—Child poisoned—Medical evidence complete.*

The accused who was greatly displeased with the wife of his brother, came to get her child from her. He took away the child without her consent. Later on he was over-persuaded by other men to let the child remain. He then proceeded to give the child some sweets. Directly afterwards the child was taken ill and died. The child's viscera was sent to Chemical Examiner who deposed that an extract from viscera produced tingling sensation when rubbed on the tongue and killed frog on injection. He gave as his opinion that death was due to aconite poisoning. The Civil Surgeon was of opinion from the condition of the mucous membrane of the stomach and the points of haemorrhage that death was due possibly to irritant poisoning. There were other symptoms which pointed to aconite poisoning.

*Held:* that child died under circumstances which would be compatible with little else than aconite poisoning and that the child was poisoned by the accused was a good conclusion. (Stuart, C.J., and Raza, J.) **UMRAO v. EMPEROR.** 119 I.C. 870=

6 O.W.N. 681=30 Cr. L.J. 1118=

1929 Cr. C. 604=A.I.R. 1929 Oudh 516.

—*Unprovoked and surprised assault—One blow fractured the skull—Offence is murder.*

Where the accused committed an unprovoked and cowardly assault upon the deceased rushing out at him by surprise and striking him one blow and one blow alone upon the head with a lathi and the blow fractured the skull of the deceased from temple to temple, the offence is murder: A.I.R. 1923 All. 592, Foll. (Stuart, C.J. and Raza, J.) **SURAJ PRASAD v. EMPEROR.** 95 I.C. 286=13 O.L.J. 646=

3 O.W.N. 451=27 Cr. L.J. 766.

**—S. 302—Evidence—Suicide and murder.**

—*Double knotted ligature round the neck.*

Double knotted ligature round the neck of the deceased was held to be a clear indication of the fact that his death had been caused by strangulation by some person other than himself. (Wadegaonkar, A.J.C.) **RAGHUNATH v. EMPEROR.** 89 I.C. 516=

23 N.L.R. 62=26 Cr. L.J. 1380=

A.I.R. 1926 Nag. 119.

**—S. 302—Evidence—Unreliable.**

Conviction for murder on the strength of the statement of a witness who was found to be unreliable, cannot be supported. (Wallace and Madhavan Nair, JJ.) **KARUPANNA PILLAI v. PRISONER.**

100 I.C. 359=7 A.I. Cr. R. 430=28 Cr. L.J. 279=

A.I.R. 1927 Mad. 1112.

**—S. 302—Extenuating circumstances.**

—*Youth and promptings of veneration for founder of religion.*

The mere fact that the murderer is only 19 or 20 years of age and that the act was prompted by feelings of veneration for the founder of his religion and anger at one who had scurrilously attacked him, is a wholly insufficient reason for not imposing the appropriate sentence provided by law: A.I.R. 1928 Lah. 531, Ref. (Broadway and Johnstone, JJ.)



**PENAL CODE (1860)—S. 302—Extenuating circumstances.**

ILAM DIN v. EMPEROR. 120 I.C. 1=  
1930 Cr. C. 165=30 Cr. L.J. 1125=11 L.L.J. 533=  
A.I.R. 1930 Lah. 157.

**—Youth of the offender.**

A particularly cruel and cowardly murder was committed by a lad of about 19 or 20 without any apparent motive and the capital sentence was sought to be reduced.

*Held:* that the mere youth of the murderer was insufficient for not imposing the capital punishment and that the absence of an apparent motive could not be construed as indicating the existence of a provoking cause, which would amount to a mitigating circumstance. (*Fforde and Tekchand, J.J.*) GEHNA SARVARA v. EMPEROR 120 I.C. 276=31 Cr. L.J. 81=  
1930 Cr. C. 18=A.I.R. 1930 Lah. 50.

**—Saving family honour—Murder of erring wife.**

The reason for passing a lesser sentence on conviction for murder ought to be express and adequate. Such reasons are sometimes to be found in the order of the mentality to which the person belongs. But the fact that a murder of his wife by a husband was inspired with a view to save his family from dishonour which would sooner or later have fallen upon them by reason of the habits of the wife does not constitute any extenuating circumstance, for lesser sentence of transportation. (*Courtney-Terrell, C. J. and Dhavle, J.*) SOIRAI SAO v. EMPEROR.

124 I.C. 836=11 P.L.T. 148=9 Pat 474=  
A.I.R. 1930 Pat. 247.

**—Youth—A mere tool.**

Youth alone does not constitute such an extenuating circumstance as would justify the imposition of the lesser penalty prescribed by the law.

But where a youth charged under S. 302 had no personal enmity with the victim, and he was found to be only a tool in the hands of the enemies of the victims.

*Held:* the extreme penalty of the law should not be exacted in the case. (*Shadi-Lal, C. J. and Coldstream, J.*) HARNAMMU v. EMPEROR.

110 I.C. 234=10 A.I.Cr.R. 501=29 Cr.L.J. 682=  
A.I.R. 1928 Lah. 855.

**—Murder of newly born illegitimate child—By mother—By father.**

In the murder of her newly born illegitimate child by a woman there are mitigating circumstances sufficient to reduce the appropriate penalty very much below a sentence of transportation for life; most of these apply though certainly in a less degree to the case of the father of such a child more especially where the mother is his own sister. (*Baker, O.G. J. C. and Hallifax, A. J. C.*) DHANIA KUNBI v. KING-EMPEROR. 75 I.C. 767=25 Cr.L.J. 63=  
A.I.R. 1924 Nag. 119.

**—Extreme youth.**

Extreme youth of the offender was taken into consideration along with the absence of circumstance as to how murder took place as an extenuating circumstance for reducing the sentence of death under S. 302 to one of transportation for life. (*Baker, J. C. and Kotwal, A. J. C.*) CHUNNILAL v. KING-EMPEROR.

88 I.C. 353=7 N.L.J. 144=26 Cr.L.J. 1121=  
A.I.R. 1924 Nag. 115.

**—S. 302—Intention—Absence of.**

*Accused chagrined at his melons not brought—Fit of temper—Dang lying close by—Picking up dealt a blow—No intention to cause death.*

The accused, who was chagrined because his melons were not purchased, went into a fit of temper and

**PENAL CODE (1860)—S. 302—Intention—Absence of.**

lost self-control. The dang, with which the blow on the uncovered head of the deceased came to be inflicted, was lying close at hand. The accused picked it up and at once dealt the blow which resulted in the fatal injury to the deceased.

*Held:* that there was no intention on the part of the accused to cause the death;

*Held further:* that the case fell within the purview of S. 325 instead of S. 302. (*Agha Haidar and Shadi Lal, J.J.*) KALOO MURAD v. EMPEROR.

1929 Cr.C. 639=A.I.R. 1929 Lah. 863.

**—Intention to stupefy by Dhatura—Intention to cause death—Knowledge of likelihood.**

Where the intention of the accused was certainly primarily only to stupefy his victims by Dhatura and to come back when the poison had begun to take effect and rob them, and the poisoning was fatal;

*Held:* that there is no ground for holding that he intended to bring about their death, but he must have had knowledge that he was likely to cause death and the conviction under S. 302, was correct: 15 A.L.J. 13, Ref. (*Boys and King, J.J.*) KHELAWAN v. EMPEROR.

98 I.C. 712=7 L.R. A.Cr. 188=27 Cr.L.J. 1400=  
A.I.R. 1927 All. 104.

**—Motive inadequate—Minor injuries—Neither intention nor knowledge.**

Where on a charge of murder the evidence of the motive was inadequate and the majority of the injuries inflicted were slight.

*Held:* that the safer inference to draw in such a case is that the assailants of the deceased neither intended to cause death nor knew that they were likely to cause death. (*Broadway and Fforde, J.J.*) DIAL SINGH v. EMPEROR. 93 I.C. 1043=27 Cr. L.J. 547=  
A.I.R. 1926 Lah. 419.

**—Accused grappled from behind—Striking with pocket knife—No intention—But knowledge presumed.**

Where the deceased in the course of a certain fight grappled with the accused from behind and the accused thereupon struck him with his pocket knife without any deliberate aim,

*Held:* that the accused did not intend to cause death or to inflict such injury as was likely to cause death but as he must have known that a blow with a weapon of that kind was likely to cause death, the offence committed was one under Cl. (2) of S. 304. (*Martineau and Fforde, J.J.*) JAGAT SINGH v. THE CROWN. 99 I.C. 119=8 L.L.J. 51=27 P.L.R. 6=  
28 Cr.L.J. 87.

**—Quarrel over a pumpkin—Provoked by abuse—Striking with a lump of limestone weighing 3 lbs.—No intention—Knowledge presumed.**

There was no enmity between accused and deceased. The accused's wife and the deceased who were the wives of two brothers were quarrelling about sharing a pumpkin. The accused coming along broke the pumpkin into two against the wishes of the deceased wherefore she abused him. He thereupon struck her with a lump of limestone weighing 3 pounds. This resulted in the injury.

*Held:* Accused acted from impulse of moment and had no intention either to kill her or to fracture her skull; but that as the lump of limestone weighed 3 pounds it must be taken that he knew that there was a probability of fatal injury being inflicted. 21 A.L.J. 316, Dist. (*Mukerji and Daniels, J.J.*) GANESHA v. KING-EMPEROR. 81 I.C. 320=  
5 L.R.A. Cr. 175=25 Cr. L.J. 800=  
A.I.R. 1925 All. 4.

**PENAL CODE (1860)—S. 302—Intention—Necessity of.****—S. 302—Intention—Evidence.**

*—Accused provoked by resolve of deceased to report his offence to police—Sudden and heavy blow with chopper—Intention established.*

K seized the accused in the act of stealing; but the accused escaped from him. K convened a panchayat consisting of several members of whom J was one. The accused admitted his offence and asked for pardon as it was a trivial offence. J, however, insisted that the matter must be reported to the police. On hearing this the accused suddenly struck J a heavy blow with a chopper which he had carried with him. J died of the heavy blow.

*Held:* that the accused either intended to cause J's death, or that he intended causing bodily injury to J and the bodily injury which he intended to be inflicted was sufficient in the ordinary course of nature to cause death. (*Zafar Ali and Addison, JJ.*) CHADGI v. EMPEROR. 120 I.C. 274=1930 Cr. C. 28=

31 Cr. L.J. 79=A.I.R. 1930 Lah. 60.

*—Accused frenzied by ill-treatment of elderly husband—Avenging on him by murderous attack on infant step-son—Intention.*

Where accused, a young woman of fifteen years of age being roused to frenzy by the ill-treatment of her husband who was 40 years of age and whom she did not like, seized a stick lying by and made a murderous attack on her step-son in order to avenge herself against her husband and caused the death of the infant son.

*Held:* that her intention was to cause death and she was therefore guilty of murder. (*Scott-Smith and Fforde, JJ.*) MT. DAULAN v. EMPEROR. 89 I.C. 461=26 P.L.R. 550=26 Cr. L.J. 1373=A.I.R. 1926 Lah. 144.

*—Accused ran off after causing injuries—Blood stains on his clothes—Blows perforated heart and divided intestines—Intention to cause fatal injuries.*

Where, in continuation of an altercation which had taken place between the accused's mother and the deceased's wife the two men were struggling in front of their houses when the accused suddenly struck the deceased with a weapon who collapsed and died at once whilst the accused ran off to his house where he was shortly afterwards arrested with blood-stains on his clothes, and the medical evidence showed that the person of the deceased bore two wounds of a penetrating nature one of which completely perforated the heart; the other penetrating the abdomen on the left side had divided the intestines and death was due to shock and haemorrhage and the accused himself bore no mark of injury upon his person.

*Held:* that intention of the accused was, if not to cause death, at least to cause such bodily injury as was likely to cause death. (*Le Rossignol and Fforde, JJ.*) LACHHAMAN SINGH v. EMPEROR. 92 I.C. 222=7 L.L.J. 582=27 Cr. L.J. 238=26 P.L.R. 829=A.I.R. 1926 Lah. 143.

**—S. 302—Intention—Necessity of.**

*—Love potion—Causing death—Intention to cause death absent—Administered at the instance of paramour inimical to husband—Liability.*

Where the intention to cause death cannot be clearly found without any other possible explanation of the act of the person giving poison a conviction for murder cannot stand. Unless it is shown clearly and without possible doubt that the intention was to cause death where a substance is administered as a love potion, the accused cannot be convicted of murder. The mere administering of a love potion or drug which

**PENAL CODE (1860), S. 302—Intention—Presumption of.**

a person thinks might be beneficial is not in itself an offence but when it is supposed to have effect upon persons with whom the paramour of the accused had enmity, and when she administers it without due care and caution or any enquiry as to what it really is her act falls within sec. 304-A. (*Adami and Bucknill, JJ.*) PHULMANI MUNDIN v. EMPEROR.

77 I.C. 801=1924 P.H.C.C. 13=

25 Cr. L.J. 449=A.I.R. 1924 Pat. 635.

**—S. 302—Intention—Presumption of**

*—Previous grudge—Stabbing at vital part—Intention to cause fatal injury presumed.*

It must be assumed that a person who goes armed with a stabbing weapon to assault another person against whom he has a previous grudge and actually strikes that person at a vital part of his body and causes his death, intends to cause such bodily injury as is imminently dangerous to life and such person must be held guilty of murder. (*Jai Lal and Currie, JJ.*) JOG RAI v. EMPEROR. A.I.R. 1930 Lah. 534.

*—Test of—Violent blow with lethal weapon at vital part—Intention must be presumed.*

The best criterion of the force and character of a blow is to regard the result which it has effected. A person delivering a violent blow with a lethal weapon like a lathi on a vulnerable part of the body as the head must be deemed to have intended to cause such bodily injury as he knew was likely to cause the death of the person to whom the injury was caused: A.I.R. 1928 Lah. 93, Rel. on; 5 P.R. 1893 Cr. and 9 S.L.R. 99, Dist.

Where therefore there are no indications that the accused dealt any other kind of blow or to cause any other sort of injury he can be held guilty under S. 302. (*Addison and Hilton, JJ.*) SEWA SINGH v. EMPEROR. A.I.R. 1930 Lah. 490.

*—Fatal wounds with knife—Intention to cause death presumed.*

A person who inflicts on the deceased fatal wounds with a knife intends nothing short of inflicting death and so the offence in the absence of extenuating circumstances, is murder. (*Wallace and Anantha-krishna Iyer, JJ.*) KOLANDA NAYAKKAN v. KING-EMPEROR. 1930 M.W.N. 681=32 M.L.W. 220.

*—Previous enmity—Assault lying in wait—Lathi blows—Serious injuries—Intention to cause death presumed.*

Where four persons deliberately lay in wait for the deceased intending to beat him with lathis on account of enmity in regard to a grove; there was evidence of eyewitnesses, one of whom accompanied deceased and others who were close to the scene of occurrence, who stated that they had witnessed the assault and that all the four accused beat the deceased with lathis. The first report, made without delay, named the four as assailants. In the dying declaration the deceased named all the four as his assailants. The medical evidence showed that the death was due to injuries to the lung caused by the fracture of six ribs, and haemorrhage of the brain produced by contused wound on the head, and that there were numerous other injuries.

*Held:* that the intention of the accused must have been to cause death or such injuries as would in the ordinary course of nature cause death. (*Mears, C.J. and Bennet, J.*) SUKHA v. EMPEROR.

118 I.C. 190=10 L.R.A. Cr. 138=1929 Cr. C. 291=

30 Cr. L.J. 890=12 A.I. Cr. R. 338=

A.I.R. 1929 All. 707.

*—Plunging knife into stomach—Intention to cause death or fatal injury—If can be presumed—*

**PENAL CODE (1860), S. 302—Knowledge.**

*Rule of intending natural or probable consequences of act—If applicable to Indian Criminal law.*

Per *Cuming, J.*—The natural result of plunging a knife into a man's stomach is death or such bodily injury as is likely to result in death. The man who plunges a knife into another man's stomach must know that it would cause death or such bodily injury as is likely to cause death and that hence death would be the probable result of his act. The man who does such an act therefore must be held to intend to cause death or such bodily injury as is likely to result in death, for a man is presumed to intend the natural consequence of his action. If he had not that knowledge or intention in the circumstances and he did the act with some other knowledge or intention then it is for him to prove it, for that is a fact peculiarly within his own knowledge.

Per *Mukerji, J.*—The presumption that one must be taken to intend the natural or probable consequences of his act—a rule of English criminal law which, originally but a rule of evidence, has now acquired the dignity of a legal axiom—is not always quite easy to apply to the Indian Criminal Law in view of the distinction that the Indian Penal Code makes between intention and knowledge. On the question of knowledge much depends on the intellectual capacity of the actor. (*Cuming and Mukerji, JJ.*) *HAZRAT GUL KHAN v. EMPEROR.* 109 I.C. 482=

47 C.L.J. 240=32 C.W.N. 345=29 Cr.L.J. 546=10 A.I.Cr.R. 259=A.I.R. 1928 Cal. 430.

—Violent blow with takwa cutting through skull—Intention presumed.

A *takwa* is a deadly weapon and a person who strikes a blow on the head with such a weapon and with such violence as to cut through the skull should be presumed to do so with the intention of causing death or such bodily injury as is likely to cause death. (*Shadi Lal, C. J. and Zafar Ali, J.*) *TEK SINGH v. CROWN.*

88 I.C. 995=7 L.L.J. 175=26 P.L.R. 221=26 Cr.L.J. 1251=A.I.R. 1925 Lah. 373.

—Stab in the stomach—Sufficient in ordinary course to cause death—Intention to cause injury sufficient to cause death presumed.

Common knowledge and experience tell us that any cut into peritoneum and stomach, is sufficient, in the ordinary course of nature, to cause death, unless done by a skilful surgeon under safe-guards discovered during comparatively recent years. The fact that persons have under medical treatment, recovered from wounds in the stomach affords no ground for holding that a stab in the stomach, is not sufficient in the ordinary course of nature to cause death. If a person stabs another in the abdomen with sufficient force to penetrate the abdomen walls, and the internal viscera, he must undoubtedly be held (whatever his station in life) to have intended to cause injury sufficient in the ordinary course of nature to cause death. A.I.R. 1922. All. 487, Dis. 27 M. 119, Foll. (*May Oung and Duckworth, JJ.*) *OU SHWE alias KALAW v. EMPEROR.*

76 I.C. 711=1 Rang. 436=25 Cr. L.J. 247=A.I.R. 1924 Rang. 93.

**—S. 302—Knowledge.**

—Drunken brawl—Accused assaulted, retaliated with stab at the throat—Ran about saying he had killed deceased—Knowledge and intention.

In the course of drunken brawl accused was struck by the deceased and knocked down, whereupon the accused struck the deceased with a knife in the throat, which resulted in killing the deceased. After committing the crime the accused ran about saying that he had killed the deceased, and was going to be hanged. Of the two, the deceased was the bigger man.

**PENAL CODE (1860), S. 302—Motive.**

*Held*: that the accused had knowledge and intention which would make him liable under S. 302 and was guilty of murder, but the case was one in which extreme penalty was not called for. (*Adami and Chatterji, JJ.*) *JUDAGI MALLAH v. EMPEROR.*

121 I.C. 452=8 Pat. 911=31 Cr.L.J. 243=

A.I.R. 1930 Pat. 168.

—Fight with lathis—Knowledge of probability of death presumed.

When men who expected a lathi fight use their lathis with the result that a man is killed, it must be taken, in the absence of special circumstances, that they knew that they were doing an act so eminently dangerous that it must in all probability cause such bodily injury as is likely to cause death. (*Boys and Bannerji, JJ.*) *PARSHAD v. EMPEROR.*

116 I.C. 19=1929 A.L.J. 244=

10 L.R.A.Cr. 47=11 A.I.Cr.R. 299=

30 Cr.L.J. 559=A.I.R. 1929 All. 160.

—Avoiding vital parts—Prolonged and deliberate thrashing—No intention to cause death—Knowledge that ordinarily death must result present.

If a man is killed as a result of innumerable blows none of which in itself is sufficient to cause death and if the assailants have deliberately avoided striking any vital parts, under some circumstances the inference may be drawn that by avoiding dealing blows upon vital parts of the body they showed that they did not intend to cause death but, rather, carefully avoided causing death. But on the other hand, if the circumstances show that a prolonged thrashing has been deliberately administered with the knowledge of the assailants that such a thrashing must in the ordinary course of nature result in death, the assailants are guilty of murder. They may avoid striking a vital part deliberately so as to put themselves in a position, if the assault is brought home to them, to plead that they never intended to do more than administer a thrashing. (*Rforde and Addison, JJ.*) *BASANTA v. EMPEROR.*

103 I.C. 843=8 A.I.Cr.R. 562=28 Cr.L.J. 763=A.I.R. 1927 Lah. 654.

—Knowledge that act is likely to cause death.

Knowledge that the act is likely to cause death is insufficient for conviction under Clause 4 of S. 300 but is sufficient for conviction under 2nd part of S. 304. (*May Oung, J.*) *NGA PO SAW v. EMPEROR.*

2 Bur. L.J. 99=A.I.R. 1924 Rang. 33.

**—S. 302—Motive.**

—Proof of motive—Immaterial.

Where no sufficient motive for the assault on the deceased is shown the mere fact that the prosecution does not establish any additional motive for the assault cannot be taken as a fatal defect in the prosecution case. The accused may be the only surviving person knowing the cause of enmity with the deceased, and the failure of the prosecution to elicit it is not a sufficient reason to disbelieve the eye-witnesses. (*Addison and Hilton, JJ.*) *SEWA SINGH v. EMPEROR.*

A.I.R. 1930 Lah. 490.

—Adequacy or otherwise of—Foisting of offence on accused—Probabilities.

If the Court is satisfied as to the fact of murder the adequacy or inadequacy of the motive is not of importance. It is possible to conceive that relations might make a false charge against the husband of the murder of his wife but not when the husband just before murdering his wife, assaulted them and inflicted serious injuries. The obvious thing which they would do would be to accuse the man who had assaulted them. (*Beasley, C.J., and Cornish, J.*) *PEDDA PULLAPPA v. EMPEROR.* 1929 M.W.N. 592.

—Absence of—Powerful influence or homicidal tendency—Not inferred.

**PENAL CODE (1860), S. 302—Murder or hurt.**

The circumstances of an act of murder being apparently motiveless is not a ground from which the existence of a powerful and irresistible influence or homicidal tendency can be safely inferred. (*Zafar Ali and Jai Lal, JJ.*) INAYAT v. EMPEROR.

112 I.C. 222 = 29 Cr. L.J. 1006.

—*Failure to prove motive—Immaterial—But relevant to prove intention.*

Per *Cuming, J.*—When in a case of murder facts are clear, it is immaterial that no motive has been proved. The motive which induces a man to do any particular act is known to him and to him alone. At the highest the prosecution can only suggest what is or may be the motive for any particular act. It may be known only to the accused or possibly to the deceased and it is quite impossible to prove.

Per *Mukerji, J.*—Motive though not a *sine qua non* for bringing the offence of murder home to the accused is relevant and important on the question of intention. (*Cuming and Mukerji, JJ.*) HAZRAT GUL KHAN v. EMPEROR. 109 I.C. 482 = 47 C.L.J. 240 = 32 C.W.N. 345 = 29 Cr. L.J. 546 = 10 A.I. Cr. R. 259 = A.I.R. 1928 Cal. 430.

—**S. 302—Murder or culpable homicide.**

—*Wife mixing arsenic in milk—Husband dies—Offence is murder.*

Where S who was on bad terms with her husband administered arsenic poison to him in milk by way of medicine and the husband died, and was convicted by the Court of Sessions under S. 304 of Penal Code and an appeal was made on behalf of Government,

*Held:* that S was guilty of culpable homicide amounting to murder and should have been convicted under S. 302, Penal Code. 40 All. 360 Foll. (*Raza and Pullan, JJ.*) EMPEROR v. CHATTARPAL SINGH. 7 O. W. N. 980 = A.I.R. 1930 Oudh 502.

—*Husband witnessing adultery of wife—Man slaughter—Rule restricted to man and wife.*

If a husband discovers his wife in the act of adultery and thereupon kills her he is guilty of man slaughter only and not of murder. But that rule has no application where the relationship between the parties is not that of husband and wife: *Rex v. Palmer*, (1913) 2 K. B. 29. (*Mitter and S. K. Ghose, JJ.*) EMPEROR v. DINBANDHU CORIYA. A.I.R. 1930 Cal. 199.

—**S. 302—Murder or hurt.**

—*One blow with spear on fleshy part—Not fatal in the natural course.*

A, B, C, D assembled together, three of them armed with spears with the intention of attacking another party of men. A gave only one blow with a spear on fleshy part of the body of one of his opponents.

*Held:* that such injury was not necessarily fatal and A could not be convicted under S. 302, and his case fell within the purview of S. 326, but as there had been a loss of life in the fight, a severe sentence was called for. A's companions having been acting in furtherance of a common intention were also guilty under S. 326, read with S. 34. (*Shadi Lal, C.J. and Agha Haidar, J.*) FATTEH KHAN v. EMPEROR. 1930 Cr.C. 1046 = A.I.R. 1930 Lah. 950.

—*Death due to shock from multiple injuries—No single injury fatal—Not known who inflicted which injury—No common intention—Guilty of grievous hurt only.*

Three persons were accused of having injured a person and thus causing his death. The deceased died of shock from multiple injuries which included a fracture of five ribs. None of the injuries in itself was such as could be called a fatal injury. They

**PENAL CODE (1860), S. 302—Private defence.** were believed to have been caused by a blunt weapon like a sota.

*Held:* It was not possible to attribute any particular injury to any individual assailant. Nor could it be said that any particular injury was a direct cause of death. The common intent of the assailants could not be held to have been to cause such injury as they knew was likely to result in death. The accused could not therefore be safely convicted of murder. They were guilty of grievous hurt.

(*Fforde and Jai Lal, JJ.*) YARA v. EMPEROR.

114 I.C. 704 = 30 P.L.R. 171 = 30 Cr. L.J. 368 =

1929 Cr.C. 8 = A.I.R. 1929 Lah. 456.

—*Swinging sideways blow of lathi—Intention or knowledge of rupturing liver proved—Guilty of grievous hurt only.*

Where the accused did not lift his lathi above his head, with both hands and bring it down on the head of the deceased but struck a swinging sideways blow and it was not proved that the accused intended to rupture the deceased's liver or even knew that he was likely to do so. *Held*, the offence committed was one under S. 325. (*Kendall, A.J.C.*) KARAN SINGH v. EMPEROR. 81 I.C. 969 =

11 O.L.J. 563 = 25 Cr. L.J. 1145 =

A.I.R. 1925 Oudh 135.

—**S. 302—Powers of High Court.**

—*Enhancement of sentence.*

The High Court should not enhance the sentence unless it is satisfied that the sentence of death was the only possible sentence which could have been passed by the Sessions Judge: A.I.R. 1925 Bom. 268, Rel. on. (*Beasley, C.J. and Pandalar, J.*) GUNDUTHALAYAN v. EMPEROR. 31 M.L.W. 542 =

A.I.R. 1930 Mad. 446 = 58 M.L.J. 490.

—**S. 302—Private defence.**

—*Accused being abducted—Striking in self-defence causing death—Offence under S. 304 only.*

Seizure of the person and dragging a debtor to his creditor by the peons of the creditor against his will, constitutes an offence of abduction within the meaning of S. 362 thereby giving the person so dragged the right of private defence of his body even to the causing of death subject to restrictions mentioned in S. 99. If while defending himself such person strikes the person against whom he was defending on a sudden irrational impulse thereby exceeding the power given to him under the statute and causes death of the other person, the offence comes not under S. 302 but under S. 304. (*Courtney-Terrell, C. J. and Macpherson, J.*) DAROGA LOHAR v. EMPEROR. 11 P.L.T. 381 = A.I.R. 1930 Pat. 347.

—*Free fight over the village Bandh—Resisting trespasser of rival villagers—Death caused—Right of private defence exercised—Offence under S. 326 only.*

People of the village S not heeding the Sub-Inspector's warning, having assembled, proceeded to cut the bandh. People of village K resisted but were turned back. Meanwhile a large crowd collected on both sides, armed with lathis, spears, and garases. People of K, seeing that the people of S were not likely to listen to their remonstrances, proceeded in a body to prevent them from cutting the bandh and to drive them away. A free fight ensued; one man from village S received mortal injuries and died on his way to the hospital. The Sessions Judge convicted the accused, who were residents of K under S. 302 read with Ss. 147, 148 and 149, I.P.C.

*Held:* also that under the circumstances of the case and keeping in view the fact that mortal injuries were caused to the deceased in a free fight and in the

**PENAL CODE (1860), S. 302—Private defence.**

exercise of the right of private defence of person and property, the conviction of the accused appellants under S. 302 could not be sustained, especially when the deceased had received injuries from several other assailants. The conviction was therefore altered to one under S. 326, and the sentence of transportation for life passed was reduced to one of three years' rigorous imprisonment. (*Courtney-Terrill, C. J. and Fazl Ali, J.*) **TILAK KOHAR v. EMPEROR.**

1929 Cr.C. 283 = A.I.R. 1929 Pat. 523.

—*Deadly assault on wife of accused—Accused struck with arvuul and killed—Private defence.*

A dispute occurred about the headship of a family under whom the deceased and his sister were joint tenants, and in consequence there was a quarrel between them over taking charge of paddy stored in a store room. During the quarrel, the sister cried out that she was being killed. The accused, her husband, ran to the place and saw that his wife was being wounded and gave a blow with an arvuul to the deceased. Another person who attacked accused was also wounded and he died.

*Held:* that the accused acted in private defence and was not guilty under Ss. 302 and 304. (*Waller and Madhavan Nair, JJ.*) **BERMU SHETTY v. EMPEROR.**

94 I.C. 361 = 27 Cr.L.J. 617 = 1926 M.W.N. 212.

**—S. 302—Procedure.**

—*Pleading guilty—Trial not ended—Evidence must be taken and case decided ignoring the plea.*

The trial of an accused person does not necessarily end if he pleads guilty but evidence may and should be taken in cases of murder as if the plea had been one of not guilty and case decided upon the whole of the evidence including the accused's plea. It is not in accordance with the usual practice to accept a plea of guilty in a case where the natural sequence would be a sentence of death: 8 Bom. L. R. 240; 19 All. 119; and 19 Bom. L.R. 356; Ref. (*C. C. Ghose and Jack, JJ.*) **HASARUDDIN MOHOMED v. EMPEROR.**

115 I.C. 582 = 30 Cr. L. J. 508 = 12 A.I.Cr.R. 320 = A. I. R. 1928 Cal. 775.

—*Conviction for lesser offence—No charge under that offence—Legality.*

A person charged with an offence of murder can be convicted under S. 201, Penal Code, without a further charge being made against him under that section, and such a conviction is warranted by S. 237 of the Cr. P. Code. A. I. R. 1925 P.C. 130, Foll. (*Shadi Lal, C. J., and Addison, J.*) **RANNUN v. KING-EMPEROR.**

94 I.C. 901 = 7 Lah. 84 = 27 Cr.L.J. 709 = 27 P.L.R. 583 =

A.I.R. 1926 Lah. 88.

—*Accused giving unequivocal statement of facts admitting guilt—Stated his reason to be jealousy—Conviction on the statement—Retrial ordered directing his plea of jealousy to be gone into.*

The accused was undoubtedly a man of very considerable intelligence, and having beyond question killed a woman, made a few hours later, on the same day, a perfectly clear statement about the facts, and later, on the day after the crime, gave to a Magistrate of the first class the most clear and convincing account of the whole occurrence, and stated as a preliminary to it that he knew that he could be convicted on his own statement. Before the S. J. he agreed that he had made the two statements referred to above, and he pleaded guilty and said he killed the woman with the chopper produced and the reason for killing her was jealousy. The accused elaborated in his petition of appeal to the High Court, the statement he had made before the S. J. to the effect that he killed the woman out of jealousy. That document gave rise to

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**PENAL CODE (1860), S. 302—Provocation.**

the bare possibility that the accused might be able to put forward some ground for the application of S. 304 of the I.P.C.

*Held:* that though there was before the S. J. enough material to make him perfectly confident as to the guilt of the accused, yet in view of the contents of his petition of appeal to the High Court, the safer and better course would be to return the case to the S. J. with a direction to him to put accused up for trial again, to take his plea, and whether that be guilty or not guilty, to hear the whole of the evidence in relation to the case. A.I.R. 1922 All. 233. Dist. (*Mears, C.J., and Mukerji, J.*) **LAHORI v. EMPEROR.**

89 I.C. 260 = 23 A.L.J. 587 = 26 Cr.L.J. 1316 =

6 L.R.A. Cr. 152 = A.I.R. 1925 All. 647.

—*Murder and dacoity—Separate charges for.*

Where dacoits who murdered several persons in the commission of the dacoity and set houses on fire were sentenced to death for the offences under S. 302, Indian Penal Code and to ten years' imprisonment for each of the offences under Ss. 395 and 436.,

*Held:* that it would have been proper to charge the accused persons with an offence under S. 396, I.P.C., rather than with the two offences of murder and dacoity. (*Martineau and Campbell, JJ.*) **LABH SINGH v. THE CROWN.**

88 I.C. 513 = 6 Lah. 24 =

26 Cr. L. J. 1153 = 26 P.L.R. 139 =

A.I.R. 1925 Lah. 337.

**—S. 302—Provocation.**

—*Striking to death with hatchet with knowledge of consequence—Result of foul language—Provocation sufficient.*

Where the accused knew what he was doing when he struck the deceased on the head with a hatchet and also knew that his act was imminently dangerous to life, he can be rightly convicted under S. 302.

But where there is no premeditation nor any enmity between the accused and the deceased or his relation and the attack on the deceased is the result of foul language used by him, the extreme penalty of law is not called for and sentence of transportation for life is sufficient to meet the case. (*Broadway and Qadir, JJ.*) **INDARSING v. EMPEROR.**

A.I.R. 1930 Lah. 545.

—*Improper overtures by step-mother to step-son—Not sufficient provocation.*

When the deceased makes improper overtures to the accused who is her step-son and the latter in a fit of resentment stabs her with a knife to death, the act of the deceased does not amount to grave and sudden provocation and the accused is guilty of murder. But the act, however, may be taken into consideration and is a sufficient ground for not imposing the maximum penalty of death. (*Tekchand and Johnstone, JJ.*) **ALLAH DIN v. EMPEROR.**

121 I.C. 185 =

31 Cr. L.J. 229 = A.I.R. 1930 Lah. 415.

—*Wife abducted and kept in haveli—Sufficient provocation.*

Where the wife of one of the accused appellants is abducted with the help of the deceased and kept in his haveli from time to time, the appellants being all near relatives have cause to be angry with the deceased. Therefore, this is not a proper case to impose death penalty on the murderer. (*Addison and Skemp, JJ.*) **SIRAJ v. EMPEROR.**

120 I.C. 6 = 11 L.L.J. 299 =

1929 Cr. C. 420 = 30 Cr. L.J. 1126 =

A.I.R. 1929 Lah. 788.

—*Finding wife with paramour—Sudden and grave provocation.*

Where S on entering his house found his wife sitting with her paramour on a charpoy and suspected them of having committed sexual intercourse and injured the paramour and killed his wife,



**PENAL CODE (1860), S. 302—Provocation.**

*Held*: that S committed the act under a grave and sudden provocation and is guilty under S. 304 (1) and not under S. 302. (*Zafar Ali and Dalip Singh, J.J.*) *FATTA v. EMPEROR.* 115 I.C. 476=10 L.L.J. 508=30 Cr. L.J. 481=12 A.I. Cr. R. 294.

—*Trust and hospitality returned by seduction of wife.*

Where deceased, who was trusted and treated with hospitality by the convict, seduced his wife and persisted in remaining in his house after he had been requested to leave, his conduct is certainly provoking and so this is not a case in which the extreme penalty of the law should be inflicted on the convict. (*Shadi Lal, C. J. and Jai Lal, J.*) *KHANDU v. EMPEROR.* 106 I.C. 457=9 A.I. Cr. R. 311=29 Cr. L.J. 41 (Lah.)

—*Wife deserted—Lover killed while asleep—Murder thought out and deliberate—Death, the proper sentence.*

In a case of murder of the lover of his wife by the accused, where the accused had himself left his wife for a period of several months and thereby subjected her to temptation and he killed her lover while he was asleep and the murder was thought out and deliberate and there was no grave or sudden provocation:

*Held*: that punishment of death was the fit punishment to be inflicted. (*Stuart, C. J. and Pullan, J.*) *PATESHWARI v. EMPEROR.* 109 I.C. 113=5 O.W.N. 160=29 Cr. L.J. 465=10 A.I. Cr. R. 241=A.I.R. 1928 Oudh 241.

—*Accused finding wife reproaching co-wife about the immoral conduct of her daughter—Killed in quick succession his two wives and daughter—Provocation not sufficient.*

On the morning of the day in question the appellant returned to his house from his field and found his one wife reproaching his second wife that her daughter was a loose woman and had contracted an intimacy with a Mochi. On hearing this conversation between the two women the prisoner who was holding an axe in his hand attacked and killed in quick succession his two wives and daughter.

*Held*: that the facts did not constitute any grave and sudden provocation such as is contemplated by law, and therefore the appellant had been rightly convicted of murder. (*Shadi Lal, C.J. and Fforde, J.*) *SOHRAB v. THE CROWN.* 81 I.C. 826=5 Lah. 67=25 Cr. L.J. 1050=A.I.R. 1924 Lah. 450.

—**S. 302—Sentence—Circumstantial evidence.**

—*Case clearly proved—No reason for lesser sentence.*

In a case of murder the mere fact that the conviction is based on circumstantial evidence is no reason why a lesser sentence should be passed. If the case though depending on circumstantial evidence, is perfectly clear and conclusive and excludes all other reasonable hypothesis except the guilt of the accused, death sentence can be passed: 76 I.C. 97, not Foll.; A.I.R. 1921 Mad. 423; A.I.R. 1929 Sind 179, Rel. on 7 S.L.R. 109; A.I.R. 1921 Sind 145 and A.I.R. 1925 Sind 289, Ref. (*Wild, A.J.C. on difference between Percival, J.C. and Rupchand, A.J.C.*) *MOHAMMED YUSIF v. EMPEROR.* 1930 Cr. C. 865=A.I.R. 1930 Sind 225.

—*No ground for not passing death sentence.*

The fact, that the conviction of a deliberate wife murderer rests entirely on circumstantial evidence, is no ground whatever for not passing a sentence of death on him. (*Waller and Pandalai, J.J.*) *INDRAMAL v. EMPEROR.* 118 I.C. 817=1929 M.W.N. 270=2 M. Cr. C. 158=30 Cr. L.J. 971=1929 Cr. C. 138=A.I.R. 1929 Mad. 667.

**PENAL CODE (1860), S. 302—Sentence—Ignorance played upon.**

—**S. 302—Sentence—Crime to absolve crime.**

Per *Percival, J. C. and Wild, A. J. C.*—Where an accused commits one criminal offence, it is no palliation of his guilt that to absolve himself from punishment he commits another and more grievous offence, namely murder.

Per *Rupchand, A.J.C.*—It is not improper to inflict a lesser sentence where there are circumstances demanding the exercise of such discretion as for instance the absence of strong motive coupled with the possibility of the murder having been committed without premeditation and under temporary derangement of the mind due to the fear of being prosecuted and convicted for a criminal offence. But the exercise of such discretionary powers; under S. 302, Penal Code, in any particular case must depend on its own facts considered in the light of various circumstances such as the magnitude of the mischief which the crime has a tendency to produce, the effect of the punishment in preventing similar crimes the motive or inducement to the crime, aggravating or instigating circumstances and the like. When murder is committed for lust or for rape perhaps it is necessary to take the life of the murderer not so much as to prevent him from committing similar offences but to serve as a deterrent to others for committing similar offences. Again when a crime of a particular character is rampant in any locality, extreme penalty of law is necessary to serve as a deterrent. (*Wild, A.J.C. on difference between Percival, J. C. and Rupchand, A.J.C.*) *MOHAMMED YUSIF v. EMPEROR.* 1930 Cr. C. 865=A.I.R. 1930 Sind 225.

—**S. 302—Sentence—Death.**

—Unless extenuating circumstances can be found a murderer must be sentenced to death. (*Courtney-Terrell, C. J. and Macpherson, J.*) *KHADU RAJAK v. EMPEROR.* 124 I.C. 841=11 P.L.T. 166=A.I.R. 1930 Pat. 252.

—**S. 302—Sentence—Grave provocation.**

The deceased was seen talking to her paramour L, who had been following her from place to place, and when reprimanded by the accused she replied that she did not like to live with him but would again elope with L. She persisted in this statement and repeated it shortly before the occurrence which resulted in accused strangulating her to death.

*Held*: that the accused was guilty of murder but under the circumstances the case was a fit one for lesser penalty than death. (*Tek Chand and Fforde, J.J.*) *KHANUN v. EMPEROR.* 11 L.L.J. 461=1930 Cr. C. 179=A.I.R. 1930 Lah. 171.

—*Extreme penalty—Not to be exacted.*

The extreme penalty of the law should not be exacted under S. 302, in the case of murder committed on provocation which though not sudden is undoubtedly grave and likely to leave its sting behind. (*Shadi Lal, C.J. and Agha Haidar, J.*) *SHERA v. EMPEROR.* 116 I.C. 613=30 Cr. L.J. 637=1929 Cr. C. 423=13 A.I. Cr. R. 41=A.I.R. 1929 Lah. 791.

—**S. 302—Sentence—Heat of passion.**

Where there has been some provocation and there is no premeditation, and the crime has been committed in the heat of passion, it is not necessary to inflict the death penalty. Transportation for life is enough. (*Walsh, Ag. C. J. and Pullan, J.*) *ABDUL ALIM v. EMPEROR.* 98 I.C. 608=7 L.R.A. Cr. 186=27 Cr. L.J. 1392=A.I.R. 1927 All. 105.

—**S. 302—Sentence—Ignorance played upon.**

—*Sufficient reason for passing lesser sentence.*  
Where the accused were ignorant peasants and were led to commit offences under Ss. 49 and 302 of the Penal Code by misrepresentations and preposterous



**PENAL CODE (1860), S. 302—Sentence—Intention different.**

promises of millennium which was to be brought about by courage and resolution on their part and where some of them believed that the person whose orders they believed they were carrying out was a worker of miracles. *Held*, that this was a sufficient reason for passing on the accused the lesser sentence of transportation for life. (*Mears, C. J. and Piggott, J.*) **ABDULLAH v. EMPEROR.** 92 I.C. 145 = 4 L.R.A.Cr. 145 = 27 Cr.L.J. 193 = A.I.R. 1924 All. 233.

**—S. 302—Sentence—Intention different.**

**—Gun shot intended to maim—Causing death—Extreme penalty.**

Where it appeared that the murderer shot the deceased, hoping to maim him for life, but the act in fact caused his death and there was no other justification, for the murderous act, *held*, that the sentence of death should be confirmed. (*Wallace and Jackson JJ.*) **RAMA RAJU THEVAN, In re.** 1930 M.W.N. 377.

**—S. 302—Sentence—Minor.**

**—Death penalty—Not to be inflicted.**

Where a person who was convicted of murder was a minor who had not attained a legal age of discretion, he should not, under ordinary humane principles, be made to pay the death penalty where the law allows an alternative punishment. (*Fforde and Bhide, JJ.*) **THAKUR SINGH v. EMPEROR.** 113 I.C. 177 = 10 L.L.J. 463 = 30 Cr.L.J. 65 = 11 A.I.Cr.R. 543 = A.I.R. 1929 Lah. 64.

**—S. 302—Sentence—Premeditated murder.**

**—Death penalty.**

Where a person goes to another's house with the intention of killing his enemies and others join him with full knowledge of the intention, no other punishment except death is appropriate in their case. (*Zafar Ali and Jailal, JJ.*) **FAKKAR SINGH v. EMPEROR.**

120 I.C. 180 = 11 L.L.J. 20 = 31 Cr.L.J. 41 = A.I.R. 1929 Lah. 292.

**—S. 302—Sentence—Premeditation absent.**

**—Transportation, not death sentence.**

While a wrestling match was going on, the deceased, a Kamin boy, obstructed the sight of an old Jat and consequently there was exchange of abuse. The old man ordered his sons and friends to kill the deceased. Thereupon the appellants, the sons of the old man and his followers assaulted the deceased with lathis and dangs which resulted in the death of the boy and grievous hurt to his father who tried to protect the deceased. The deceased and his father were defenceless, not having even a stick with them.

*Held*: that the appellants who attacked the deceased with dangs were guilty under S. 302 but as the elements of preparation and premeditation were absent, the sentence to transportation for life should be passed. (*Broadway and Agha Haider, JJ.*) **NIHAL SINGH v. EMPEROR.** 106 I.C. 451 = 9 L.L.J. 262 = 28 P.L.R. 674 = 29 Cr.L.J. 35 = A.I.R. 1927 Lah. 516.

**—Capital sentence may not be passed.**

Where the accused using his spear as lathi gives a violent blow over the head which has the result of fracturing the skull of the deceased and killing him on the spot, the offence committed is the offence of murder but where it is not premeditated, the Court may refuse to pass capital sentence: 3 O. W. N. 451, Ref. (*Stuart, C. J., and Raza, J.*) **SHEOPRASAD v. EMPEROR.** 101 I.C. 484 = 4 O. W. N. 445 = 28 Cr.L.J. 452 = 8 A.I.Cr.R. 88 = A.I.R. 1927 Oudh 174.

**—S. 302—Sentence—Sudden provocation.**

**—Death reduced to transportation.**

Where the murder was not a deliberate one but

**PENAL CODE (1860), S. 302—Sentence—Youth.**

occurred suddenly after mutual abuse, and the accused who did not belong to a turbulent class took up on the spur of the moment the weapon and killed the deceased with it, a sentence of transportation for life was substituted for the death sentence. (*Addison and Dalip Singh, JJ.*) **GAMAN v. EMPEROR.**

116 I.C. 187 = 11 L.L.J. 1 = 12 A.I.Cr.R. 453 = 30 Cr.L.J. 571 = A.I.R. 1928 Lah. 913.

**—S. 302—Sentence—Youth.**

**—No ground for lenience—Murder not wholly deliberate and cold blooded—Some provocation—Capital sentence not appropriate.**

In cases where the murder has been deliberately planned and is essentially of a cold blooded and contemptible nature, the death sentence is appropriate whatever be the age of the accused provided his case does not come under S. 22, Madras Children Act 4 of 1920. But where the murder by a juvenile cannot be said to be wholly deliberate and cold blooded, and where there may be a certain amount of legitimate provocation ranking, which in an immature mind might assume an exaggerated importance, the capital sentence might assume as in certain cases not be the appropriate one. (*Wallace and Ananthakrishna Iyer, JJ.*) **KOLANDA NAYAKAN v. KING-EMPEROR.** 1930 M.W.N. 681 = 32 M.L.W. 220.

**—No ground for mitigation—Inability to understand nature of the act—Influenced by older persons—Extenuating circumstances.**

There is no law which justifies a court in not passing a sentence of death on any person merely because he is young. All persons who can understand their acts are liable to the extreme penalty of the law. Youth may be a circumstance to be taken into consideration in offences where the accused person is not fully able to understand the nature of his act or has been influenced by older persons. The sentence of transportation for life is imposed in cases where there are in the opinion of the court some extenuating circumstances. (*Raza and Pullan, JJ.*) **EMPEROR v. BHAGWAN DIN.** 7 O.W.N. 767 = 1930 Cr. C. 965.

**—No reason for not giving death sentence.**

The mere fact that the murderer is 19 or 20 years of age is a wholly insufficient reason for not imposing the extreme penalty. (*Fforde and Addison, JJ.*) **AMIR v. EMPEROR.** 112 I.C. 345 = 29 Cr. L.J. 1017 = A.I.R. 1928 Lah. 531.

**—Brutal crime—No reason for mitigation.**

Murder resulting in death is a particularly ruthless and brutal crime and, therefore, the mere fact that the murderer is 18 years of age is a wholly insufficient reason for not imposing the appropriate sentence provided by law: A.I.R. 1928 Lah. 531, Foll. (*Broadway and Tek Chand, JJ.*) **MUHAMMAD SULTAN v. EMPEROR.** 107 I.C. 99 = 29 Cr. L.J. 211 = 9 A.I. Cr. R. 525 (Lah.)

**—No reason for mitigation.**

Although ordinarily in cases of deliberate murder the major sentence allowed by the law should be imposed, yet it cannot be affirmed that the tender age of an accused is not of itself a sufficient reason for passing the lesser sentence, i.e., transportation for life. Any definite standard as to the limit of age in this connexion cannot be laid down, as circumstances must vary with the particular case: 11 C.W.N. 904, Rel. on: A.I.R. 1922 Nag. 65, Diss. from (*Findlay, J.C. and Prideaux, A. J. C.*) **MADHO v. EMPEROR.** 96 I.C. 507 = 22 N.L.R. 104 = 27 Cr. L.J. 955 = 7 A.I. Cr. R. 37 = A.I.R. 1926 Nag. 461.

**—Motive for premeditated murder absent—Capital sentence not to be passed.**

**PENAL CODE (1860), S. 302—Sentence—Miscellaneous.**

Where there was no motive for a premeditated murder and the probability was that there was a violent quarrel when the accused, a young man of 20 was taking his wife and child from a neighbouring village to his own village and he killed them on the way,

*Held*: that capital sentence in such a case should not be passed. (*Scott-Smith and Zafar Ali, JJ.*) **PIRTHI v. THE CROWN.** 84 I.C. 653 = 26 Cr.L.J. 349 = 6 L.L.J. 323 = A.I.R. 1924 Lah. 654.

**—S. 302—Miscellaneous.**

**Probabilities and suspicions—Insufficient to found conviction.**

Probabilities and suspicions are not sufficient grounds in law upon which to found a conviction of an accused in a criminal trial specially in a murder trial where the maximum punishment is death. (*Nanavutty and Raza, JJ.*) **GENDAN LAL v. EMPEROR.** A.I.R. 1930 Oudh 460.

**Delay in confirming death sentence—When to be considered.**

*Per Wild, A.J.C.*—In the case of an ordinary murder the delay in confirming sentence of death may be taken into consideration but not so when the murder is not ordinary: 21 I. C. 882, Dist. (*Wild, A. J. C. on difference between Percival, J.C. and Rupchand, A.J.C.*) **MOHAMMAD YUSUF v. EMPEROR.**

1930 Cr. C. 865 = A.I.R. 1930 Sind. 225.  
**Supervening illness—Grievous injuries—Pneumonia supervening as a result—Guilty of murder.**

If a person receives grievous injuries and is detained in hospital and as a result of those injuries pneumonia supervenes and the victim dies, the perpetrators of the attack upon him are guilty of murder: 7 S.L.R. 83, Foll. (*Tek Chand and Agha Haidar, JJ.*) **FAZLA v. EMPEROR.** 110 I.C. 230 = 10 A.I. Cr. R. 517 = 29 Cr. L.J. 678 = A.I.R. 1928 Lah. 851.

**Aimed at one, another killed—Offence, the same.**

Where a blow aimed at one person alights upon another and kills him the offence committed by the assailant is the same as it would have been if blow had struck the intended victim. 8 W.R. Cr. 78, Foll. (*Broadway and Tek Chand, JJ.*) **SUBA v. EMPEROR.** 107 I.C. 764 = 29 Cr. L.J. 280 = A.I.R. 1928 Lah. 344.

**—Hallucination.**

Where accused assaulted a man believing him to be a ghost and the assault proved fatal:

*Held*: that he was neither guilty under S. 302 nor S. 304, nor S. 304-A: 11 P.R. 1888 Cr., Expl. (*Jai Lal and Dalip Singh, JJ.*) **WARIAM SINGH v. EMPEROR.** 99 I.C. 71 = 28 Cr. L.J. 39 = A.I.R. 1926 Lah. 554.

**Death doubtful—No conviction for murder—Death established, body not found.**

When a Court is not convinced that a man is dead it is impossible to convict any one of the murder, but if it is convinced that the man is dead, sentence of death may be upheld though the body has not been found: A.I.R. 1924 All. 662, Expl. (*Stuart, C.J. and Raza, J.*) **RAM NATH v. EMPEROR.**

93 I.C. 252 = 1 Luck 327 = 13 O.L.J. 484 = 3 O.W.N. 204 = 27 Cr. L.J. 460 = A.I.R. 1926 Oudh 234.

**—S. 304—**

**Burden of Proof.**

**Common Intention.**

**Death not natural consequence.**

**Evidence.**

**Ferum.**

**Knowledge and intention absent.**

**Knowledge but not intention.**

**PENAL CODE (1860), S. 304—Evidence.**

**Knowledge, when presumed.**

**Offence under.**

**Private defence.**

**Several accused.**

**Sudden quarrel and provocation.**

**Miscellaneous.**

**—S. 304—Burden of proof.**

Where eight men, none of whom carried lathies, attacked and beat a man to death by breaking his ribs, it is for the prosecution to prove that the common intention was to break the ribs or that breaking of the ribs was such an act as they knew to be likely to be committed. In the absence of such proof, however, only those of them who were proved to have actually sat on the accused's body and to have brought pressure on his ribs can be convicted under S. 304-149. Others can be convicted only under S. 323-149. (*Dalal, J.*) **JWALA v. EMPEROR.** 118 I.C. 369 = 10 L.R.A. Cr. 100 = 30 Cr.L.J. 903 = 12 A.I. Cr.R. 80 = 1929 Cr. C. 163 = A. I. R. 1929 All. 575.

**—S. 304—Common Intention.**

**S. 34 can apply to a case under S. 304, Part, 2.**

Although to constitute an offence under S. 304, Part, 2, there must be no intention of causing death or such injury as the offender knew was likely to cause death, there must still be a common intention to do an act with the knowledge that it is likely to cause death though without the intention of causing death. Each of the assailants may know that the act, they are jointly doing, is one that is likely to cause death but have no intention of causing death, yet they may certainly have the common intention to do that act and therefore S. 34 can apply to a case under S. 304, Part, 2. (*Cuming and Gregory, JJ.*) **ADAM ALI v. EMPEROR.** 100 I.C. 718 = 45 Cr.L.J. 131 = 31 Cr.W.N. 314 = 28 Cr. L. J. 334 = 7 A.I. Cr.R. 546 = A.I.R. 1927 Cal. 324.

**S. 34 which is based on a common intention cannot possibly be used with the second part of S. 304 which expressly excludes intention.** (*Walmsley and Mukerji, JJ.*) **ANIRUDDHA MANA v. EMPEROR.** 86 I.C. 475 = 26 Cr.L.J. 827 = A.I.R. 1926 Cal. 913.

**—S. 304—Death not natural consequence.**

The deceased fell down on account of two serious blows given by the accused and had to be taken away on a charpoy. After being removed to the hospital he left it when he was progressing well. A month and a half after the receipt of the injuries he died of pneumonia. Medical evidence did not show that the death was due to the injury, *held*, no offence under S. 304, was committed. (*Sulaiman, J.*) **UMURAO v. EMPEROR.** 81 I.C. 181 = 5 L.R. A.Cr. 43 = 25 Cr.L.J. 693 = A.I.R. 1924 All. 441.

**Death being not natural consequence of rape, no offence under S. 304 is committed if death occurs after rape.**

A boy of about 18 had sexual intercourse without her consent with a well developed girl probably under 12 years of age; there was no ancillary violence but her vagina was ruptured and as a result she died of shock.

*Held*: that as death is not the natural consequence to be expected from a simple sexual offence, the accused was not guilty under S. 304. (*Adami and Buckill, JJ.*) **SHAMBU KHATRI v. KING EMPEROR.** 83 I.C. 651 = 3 Pat. 410 = 26 Cr.L.J. 91 = A.I.R. 1924 Pat. 553.

**—S. 304—Evidence.**

When the prosecution witnesses are not impartial and the story put forward by them is palpably false

**PENAL CODE (1860), S. 304—Forum.**

and does not explain injuries caused to the accused, the High Court should set aside the convictions of the accused under S. 304. (2). (*Zafar Ali, J.*) JALAL v. CROWN. 95 I.C. 597=3 L.L.J. 183=27 P.L.R. 22=27 Cr.L.J. 821.

—Accused hit his brother's wife with a moosal and dragged her inside the house. Since then the woman was not to be seen.

*Held*: as there was no definite evidence about the nature of the wound inflicted and as it was not proved that she had died of the wound accused cannot be held guilty under S. 304. Offence committed fell under S. 323. (*Abdul Raoof, J.*) BHOLA v. EMPEROR. 92 I.C. 451=26 P.L.R. 642=27 Cr.L.J. 275.

**—S. 304—Forum.**

—Offence *prima facie* culpable homicide amounting to murder—Case ought to be committed to the Sessions.

Where a person is attacked and killed, it must be decided whether the assailant is guilty of culpable homicide and, if so, whether the culpable homicide amounts to murder or not. If it were found that the offence committed is culpable homicide but it does not amount to murder, it must be further made clear whether the offence falls under part 1 or 2, of S. 304. Where the offence committed is *prima facie* one of murder, the Magistrate empowered under S. 30 has no jurisdiction to try it, but he must commit the accused to the Sessions. (*Zafar Ali and Jai Lal, Jj.*) EMPEROR v. MANGA. 116 I.C. 190=12 A.I.Cr.R. 446=30 Cr.L.J. 573=30 Cr.L.J. 573=A.I.R. 1928 Lah. 868.

—In every case under the first part of S. 304, it is almost invariably proper for the case to be committed to the Sessions, if the evidence is sufficient to establish the charge.

Where the charge is one of murder under S. 302 and there is no question of the first exception to S. 300 being admitted by the prosecution and a magistrate specially empowered under S. 30, Cr. P. Code heard the case and convicted under S. 304, I.P.C. the proceedings were quashed and the accused committed to the Sessions. 69 I.C. 454 Explained. (*Pipon, J. C.*) EMPEROR v. SARDAR. 69 I.C. 459=23 Cr. L.J. 731.

**—S. 304—Knowledge and Intention absent.**

If a victim of an assault dies of peritonitis due to a rupture which could not be connected with the injuries received in the assault, there is no case of culpable homicide not amounting to murder. (*Nanavutty, J.*) IQBAL HUSAIN v. EMPEROR. 7 O.W.N. 449=A.I.R. 1930 Oudh 252.

—Drunken accused shooting at close range—Injury not fatal—Wound getting septic—Death two months after, dysentery supervening—Liability.

The accused, when he was full drunk, fired at the deceased and caused a wound on the upper portion of his thigh with a shot which was fired at point blank range. The injury was not fatal and was not such as in the ordinary course of nature would cause death. After nearly two months the injured person died, the wound having become septic and dysentery having supervened a few days before his death.

*Held*: that neither S. 300 (3) nor (4) applied to the case, and the accused was not guilty of murder; he was not also guilty under S. 304. But he was guilty under S. 326 and as the shot was fired at point blank range on the upper portion of the thigh maximum sentence should be passed. (*Harrison and Dalip*

**PENAL CODE (1860), S. 304—Knowledge and intention absent.**

*Singh, Jj.*) ZORA SINGH v. EMPEROR.

120 I.C. 183=11 L.L.J. 44=31 Cr. L.J. 44=1929 Cr. C. 4=A.I.R. 1929 Lah. 433.

—Where the accused struck two lathi blows, one severe and the other slight, on the head of the deceased, which caused death, conviction under S. 326 is safer than under S. 304 (2). (*Harrison, J.*) KHEWNA v. EMPEROR. 115 I.C. 66=

30 Cr.L.J. 378=A.I.R. 1929 Lah. 37.

—In most instances a man who strikes a person on the head with a heavy weapon such as *dang* must know that such a blow is likely to cause death. But when the blow is not a very violent one, inasmuch as skull is not fractured and the person assaulted is able to attend the hospital and walk about for at least two days, an offence is committed under S. 325 and not under S. 304 Penal Code. (*Fforde, J.*) MEHR SHAH v. EMPEROR.

106 I.C. 440=29 Cr. L.J. 24=9 A.I.Cr.R. 285 (Lah.)

—Accused not knowing that injuries were likely to cause death—No intention of causing death or injury likely to cause death—Injuries not directly responsible for death—Conviction under S. 304 is not proper, but should be under S. 325. (*King, J.*) BHURE KHAN v. EMPEROR. 101 I.C. 171=2 Luck. 433=28 Cr.L.J. 401=8 A.I.Cr.R. 46=4 O.W.N. 337=

A.I.R. 1928 Oudh 36.

—Continual ill-treatment of daughter-in-law by mother-in-law—Beating—Death—No evidence showing intention or knowledge of likelihood of causing death—Mother-in-law was held not guilty under S. 304 but under S. 323.

On the day before the death the deceased spilt some oil and her mother-in-law, the accused gave her a beating. The thing was done openly at 8 a.m. in the view of a number of neighbours. The evidence did not show that the accused either intended or contemplated the death of the deceased as a result of the beating which was inflicted on her. It was clear that the accused had taken a dislike to her daughter-in-law, that she underfed her, kept her short of clothes, and used at times to beat her. The circumstances in which the beating took place formed the strongest evidence that the accused did not realise that it was anything out of the ordinary or might produce serious consequences. There was no evidence, medical or other, to support the view that the ill-treatment by the accused would certainly have terminated in her death from natural causes if the accused had not accelerated it by beating her. The lack of nutrition had not reached a point which was in itself dangerous, or which suggested a deliberate attempt to starve the girl.

*Held*: that the evidence did not establish an offence under Section 304, still less under Section 302 against the accused. But that the offence under Section 323 of the Indian Penal Code had been committed and the maximum penalty under that section must be imposed. (*Daniels, J., on difference between Walsh, Ag.C.J., and Ryves, Jj.*) EMPEROR v. CHANDA. 85 I.C. 150=26 Cr. L.J. 470=

5 L.R.A. Cr. 161=A.I.R. 1925 All. 126.

—Fight over cattle trespass—Accused's party desirous of chastising cattle-owners—Accused holding deceased and his partisans beating him with lathis—Death caused by blows on temple—Accused is guilty only under S. 323.

There was a quarrel and fight over cattle trespass and the party in whose field trespass was committed disposed of the party of the owners of cattle as the supporters of the owners came one by one. When

**PENAL CODE (1860), S. 304—Knowledge and Intention absent.**

the deceased came up, the accused caught his hands and some of the members of his party hit deceased with lathi. There was no intention on the part of the accused's partisans of causing the death of or grievous injury to the owners of the cattle. The desire was to chastise the owners of the cattle which caused damage. One of the blows was hit on the temple and killed the deceased.

**Held:** that the accused must have expected that, simple injuries would be caused and he could not be held liable for one of his party hitting a blow on the temple and causing the death of the deceased and that the accused was guilty only under S. 323, I.P.C. (*Dalal, J. C.*) HAR PRASAD SINGH v. KING-EMPEROR. 88 I.C. 520 = 2 O.W.N. 465 =

26 Cr. L.J. 1160 = A.I.R. 1925 Oudh 482. —Where the accused were not likely to know that the deceased or any one was within a *chaupal* to which they set fire in a riot.

**Held:** a conviction under S. 304 was wrong. (*Walsh, Ag. C.J. and Ryves, J.*) KHANJAN v. EMPEROR.

82 I.C. 54 = 5 L.R.A. Cr. 140 = 25 Cr. L.J. 1190 = A.I.R. 1924 All. 781.

—Where death is caused as a result of simple injuries and where it is shown that the accused person had no knowledge that the deceased's spleen was diseased, he could only be convicted of causing simple hurt. (*Scott-Smith, J.*) BHAIJAN DAS v. EMPEROR.

72 I.C. 533 = 24 Cr. L.J. 421 = A.I.R. 1924 Lah. 218. —S. 304—Knowledge but not intention.

Where the accused inflicted many blows on the body of the deceased, and also used kicks in order to drive away an evil spirit, and thereby caused the death, the accused is guilty under S. 304 (2), 1 U.B.R. Penal Code 1, Dist.; 3 U.B. R. 54, Foll. (*Johnstone, J.*) HAKU v. EMPEROR. 114 I.C. 438 =

30 P.L.R. 611 = 12 A.I. Cr. R. 21 = 30 Cr. L.J. 299 = A.I.R. 1928 Lah. 217.

—S. 304—Knowledge, when presumed.

A person who voluntarily inflicts injury such as to endanger life must always, except in the most extraordinary and exceptional circumstances, be taken to know that he is likely to cause death. If the victim is actually killed, the conviction ought ordinarily to be of the offence of culpable homicide. A man who knows he is likely to smash the skull of his victim, knows as well he is likely to cause the death of his victim. (*Mirza and Broomfield, JJ.*) EMPEROR v. MANA GENDAL. 32 Bom. L.R. 1143 =

A.I.R. 1930 Bom. 483. —The fact that the injuries inflicted did in fact result in death, will not justify the court in reasoning backward from the result to an intention to cause death. (*Rankin C.J., C.C. Ghose and Patterson, JJ.*) EMPEROR v. DAMULLYA MOLLA. 34 C.W.N. 1127 (F.B.)

—Striking with stick weighing 62 and 1-2 tolas and measuring 28 inches—Injury resulting in death—Intention to commit murder was not presumed.

Where the medical evidence showed that the fractures as the result of blow on the head were severe and the blow as hard one, but the weapon used in the assault was a stick weighing 62 and 1-2 tolas only and measuring 28 inches in length, and the blow was struck suddenly on the spur of the moment,

**Held:** that the intention necessary for offence must be presumed under the first part of S. 304, I.P.C. As the blow had not been shown to be so severe as to justify a departure from the general rule, that when a blow only is delivered with a stick, the intention to commit murder cannot be presumed, the assailant was not guilty of murder but was guilty of cul-

**PENAL CODE (1860), S. 304—Knowledge, when presumed.**

pable homicide not amounting to murder : 2 L.B.R. 125 ; 3 L. B. R. 122 and A. I. R. 1921 L. B. 4, Ref. (*Brown, J.*) BABA NAGA v. EMPEROR. 109 I.C. 215 = 5 Rang. 817 = 29 Cr. L.J. 487 =

A.I.R. 1928 Rang. 64. —A lathi is a lethal weapon and, if a person chooses to lay about with a lethal weapon with all the force at his command, it must be presumed that he knew he was likely to cause death. (*Dalip Singh, J.*) GHULAM MD. v. EMPEROR. 94 I.C. 137 = 27 Cr. L.J. 563 = A.I.R. 1926 Lah. 426.

—Presumably everybody knows that the abdomen is a most delicate and vulnerable part of the human body, and if a man with that knowledge kicks the abdomen with such violence as to cause fracture of two ribs and rupture of the spleen which was normal he should be presumed to have done so with the knowledge that he, by so kicking, was likely to cause death. (*Zafar Ali, J.*) H. MANSEL PLEYDELL v. EMPEROR. 96 I.C. 641 = 27 Cr. L.J. 977 =

A.I.R. 1926 Lah. 313. —Beating severely but not with big lathis—Injuries simple—Knowledge of likelihood of causing death must be attributed to the accused.

Where death was caused by beating a number of blows with a lathi but the injuries inflicted upon the deceased were all simple except one which fractured a finger bone and death was due to shock.

**Held:** that the assailants did not intend to cause death or such bodily injury as was sufficient in the ordinary course to cause death, but they must be presumed to have known that they were likely to cause death and that they were therefore, guilty of an offence under S. 304 (2). (*Scott Smith and Martineau, JJ.*) BAKHSHISH SINGH v. EMPEROR.

86 I.C. 826 = 26 Cr. L.J. 890 = A.I.R. 1925 Lah. 549.

—Death caused by one blow with a lathi—Knowledge that death would be caused was presumed.

The accused struck the deceased, who was sitting with certain enemies of the accused watching an entertainment, on the head with a lathi which resulted in his death.

**Held:** that the accused must have known that he was likely to cause death and was guilty under S. 304 (2) and five years' rigorous imprisonment was appropriate sentence. (*Brasher, J.*) LAL SINGH v. EMPEROR. 81 I.C. 143 = 5 L.L.J. 180 =

25 Cr. L.J. 655 = A.I.R. 1925 Lah. 111. —Hitting on the temple with lathi—Death caused—Act is offence under S. 304.

Where the accused hit the deceased with a lathi on the temple,

**Held:** that though his intention might not be to cause death or grievous hurt yet he intended to cause such hurt as would in the ordinary course of nature cause death and that he was rightly convicted under S. 304. (*Dalal, J. C.*) HAR PRASAD SINGH v. KING-EMPEROR. 88 I.C. 520 = 2 O.W.N. 465 =

26 Cr. L. J. 1160 = A.I.R. 1925 Oudh 482.

—Kicking a prostrate woman—Knowledge that death would be caused is inferred.

The accused made a confessional statement in which he stated that he and his wife had a quarrel in the forest and that he slapped and then kicked her and unintentionally caused her death. There was nothing to suggest that the wife was suffering from any disease;

**Held:** that he must have kicked the woman with tremendous force to produce such an effect, and that a man who so kicks a prostrate woman on the side

**PENAL CODE (1860), S. 304—Knowledge, when presumed.**

must be credited with the knowledge that he is likely thereby to cause her death, even if he be exonerated from the more definite intention or knowledge required by S. 302, and that in kicking the deceased accused knew that he was likely to cause death and therefore he was guilty of an offence under S. 304, I. P. C. (latter portion). (*Ayling and Odgers, JJ.*) **MARI-MUTTU, In re.** 73 I.C. 961=18 M.L.W. 188=1923 M.W.N. 796=24 Cr. L.J. 721=

A.I.R. 1924 Mad. 41.

—Wound not on vital part—Death due to septic poisoning—Accused is guilty under 1st part of S. 304.

Where it was difficult to hold that the accused intended to inflict bodily injury sufficient in the ordinary course of nature to cause death the injuries being not on vital parts and being apparently intended to maim the victim and the deceased dying owing to septic poisoning.

*Held*, that the accused must be held to have intended to cause bodily injury which was likely to cause death, the degree of probability as to death ensuing, not being so high as to justify a finding of murder.

*Held*: further that he was therefore guilty of an offence punishable under the first part of S. 304. (*May Oung and Beasley, JJ.*) **NGA PO CHIT v. THE CROWN.** 77 I. C. 889=2 Bur. L. J. 239=

25 Cr. L. J. 489=A.I.R. 1924 Rang. 212.

**—S. 304—Offence under.**

A sudden dispute arose between the accused and another person. The deceased, who was a friend and partisan of the other party, came upon the scene and the accused thinking that he came to help his opponent, gave only one blow to him with a kasi with which he was scraping grass. The blow resulted in the death of the deceased.

*Held*: that as the culpable homicide was caused without premeditation and only one single blow was given, the offence was punishable only under S. 304. (*Banerji and Sen, JJ.*) **BIKRAM SINGH v. EMPEROR.**

115 I.C. 144=1929 A.L.J. 508=10 L.R.A. Cr. 78=

11 A.I. Cr. R. 537=30 Cr. L.J. 410=

1929 Cr. C. 77=A.I.R. 1929 All. 835.

—Wife having immoral connexion—Husband's protest resulting in abuse—Husband in agony loses self-control and deals fatal blow—Accused held guilty under S. 304, para. 2.

A woman was leading a notoriously immoral life which was the common scandal of the village. She had a young lover who was known to the accused her husband. On the night previous to the murder she had a mysterious and significant disappearance from the bed side of her husband and subsequent protest by the husband resulted only in vulgar abuse by her. The husband started beating her with a shoe, lost his control, picked up a rough stick which happened to be lying close by and struck the fatal blow to the erring wife which resulted in her death. After murder police had no difficulty in finding him out and producing him before the Court.

*Held*: that the whole unfortunate affair should be looked at as one prolonged agony on the part of the husband which must have been preying upon his mind and eventually led to the fatal assault, bringing the case within the purview of Excep. 1, S. 300: 2 Mad. 122 and 30 P.R. 1902 Cr., Ref. (*Broadway and Agha Haidar, JJ.*) **JAN MUHAMMAD v. EMPEROR.**

119 I.C. 323=30 P.L.R. 652=30 Cr. L. J. 1044=

1929 Cr. C. 637=A. I. R. 1929 Lah. 861.

—Rash driving of motor-car—Running against persons and causing serious injuries ultimately resulting in death—Sentence.

**PENAL CODE (1860), S. 304—Private Defence.**

Where the accused was proved to have driven his motor car in a rash manner during night while he was in a drunken condition and he ran his car against four persons carrying a bier and injured two of them so severely that they died subsequently. *Held*, that the accused should be convicted under Ss. 337 and 304 I. P. C., and sentenced to eighteen months' rigorous imprisonment. (*Waller and Ananthakrishna Iyer, JJ.*) **COLLET v. EMPEROR.** 1929 M.W.N. 395.

—Where accused ordered two other persons one of whom was armed with a spear and the other was armed with lathi, to beat another person who died subsequently as the result of wounds from the spear and lathi.

*Held*: that it is a reasonable inference that he intended all the results that followed and he was rightly convicted under Ss. 304-109. (*Mullick and Wort, JJ.*) **GHANSHAM SINGH v. EMPEROR.** 107 I.C. 305=

6 Pat. 627=29 Cr. L.J. 239=9 A.I. Cr. R. 460=

A.I.R. 1928 Pat. 100.

—Accused intending to cause injury likely to cause death—Punishment should be under Part I of S. 304.

If the act of the accused falls within either of the Cls. 1, 2 and 3, S. 300 but is covered by any of the five Exceptions it will be punishable under the first part of S. 304; and if the act falls within Cl. 4, S. 300 but is covered by any of the Exceptions it will be punishable under the second part of S. 304: (1887) 32 P. R. 1887 Cr. Foll: (1876) 1 Bom. 352, Ref.

Where there is an intention on the part of the accused to cause some injury which injury is likely to cause death the case comes within the middle part of S. 299 and corresponds with the third part and not the fourth part of S. 300. (*Percival, J. C. and Lobo, A.J.C.*) **GHAZI v. EMPEROR.** 103 I.C. 841=

28 Cr. L.J. 761=A.I.R. 1927 Sind 232.

—Definite charge of hiring—No conviction is tenable for constructive culpable homicide where jury held that the hired man was not guilty.

Where a person is charged with an offence under S. 304 read with S. 150 of the Penal Code and the charge against him is a definite one of having engaged or employed a particular person to commit culpable homicide not amounting to murder, and the jury holds that the latter did not commit the culpable homicide, the person charged with having engaged or employed him cannot be convicted of constructive homicide under the provisions of S. 150 of the Penal Code. (*Newbould and Mukerji, JJ.*) **NAYAN ULLAH v. EMPEROR.** 85 I.C. 818=26 Cr.L.J. 594=

A.I.R. 1925 Cal. 903.

—Knowledge that the act is likely to cause death is insufficient for conviction under Clause 4 of S. 300 but is sufficient for conviction under 2nd. part of S. 304. (*May Oung, J.*) **NGA PO SAW v. EMPEROR.** 2 Bur. L.J. 99=A.I.R. 1924 Rang. 33.

**—S. 304—Private defence.**

—Person inflicting wounds in defending himself is not guilty.

The law does not require a citizen to behave like a rank coward on any occasion. The right of self-defence as defined by law must be fostered in the citizens of every free country. If a man is attacked he need not run away and he would be perfectly justified in the eye of law if he holds his ground and delivers a counter attack to his assailants provided always that the injury which he inflicts in self-defence is not out of proportion to the injury with which he is threatened.

Where the accused is attacked by a party of men armed with dangs and having no alternative but to defend himself to the best of his ability retaliates, he



**PENAL CODE (1860), S. 304—Private defence.**  
acts in private defence although in doing so he inflicts injuries some of which prove fatal. (*Agha Haider, J.*)  
**MAHANDI v. EMPEROR.** 1930 Cr. C. 109 =  
A.I.R. 1930 Lah. 93.

—Right of killing offender found committing burglary given by S. 103 is subject to provisions of S. 99—Deceased beaten to death by lathi blow while found coming out of hole in wall after committing burglary—Accused held guilty of offence under S. 304—S. 300, Excep. (2) held applicable but accused held to have exceeded right of private defence of property. A. I. R. 1925 Oudh 425; A. I. R. 1926 Lah. 28 and A. I. R. 1923 All. 194, Dist. (*Raza and Nanavutti, JJ.*) **MAHABIR v. EMPEROR.** 1930 Cr. C. 948 =  
7 O.W.N. 797 = A.I.R. 1930 Oudh 408.

—**Abducted person killing abductor—Liability.**  
Seizure of the person and dragging a debtor to his creditor by the peons of the creditor against his will, constitutes an offence of abduction within the meaning of S. 362 thereby giving the person so dragged the right of private defence of his body even to the causing of death subject to restrictions mentioned in S. 99. If while defending himself such person strikes the person against whom he was defending on a sudden irrational impulse thereby exceeding the power given to him under the statute and causes death of the other person, the offence comes not under S. 302 but under S. 304. (*Courtney-Terrell, C. J. and Macpherson, J.*) **DAROGA LOHAR v. EMPEROR.**

11 P.L.T. 381 = A.I.R. 1930 Pat. 347.

—One person, charged with lathis by five men, killed two in exercising right of self-defence—Exact number and force of blows necessary for such right is impossible to decide in such situation. (1901) 5 P.R. 1901 Cr., Rel. on. (*Broadway, J.*) **SARDARA v. EMPEROR.** 117 I.C. 907 = 30 Cr.L.J. 863 =  
1929 Cr.C. 58 = A.I.R. 1929 Lah. 434.

—The deceased went up the roof of the accused's house and began to remove the rafters which he had no right to do. The accused flung a heavy balla at the deceased which fractured the deceased's skull and caused his death.

**Held:** that although the accused had a right to defend his property, he exceeded that right and was guilty under S. 304 (2). (*Broadway and Agha Haider, JJ.*) **MATHA SINGH v. EMPEROR.** 101 I.C. 663 =  
28 P.L.R. 279 = 8 A.I.Cr.R. 164 = 28 Cr.L.J. 487 =  
A.I.R. 1927 Lah. 780.

—**S. 304—Several accused.**

—Blows on head causing death—No uncertainty as to responsibility for offence—Sentence of five years rigorous imprisonment held proper. 29 All. 282, Dist. (*Mirza and Broomfield, JJ.*) **MANA GENDAL v. EMPEROR.** A.I.R. 1930 Bom. 483.

—One member of unlawful assembly was Sikh wearing kirpan which he unsheathed and gave fatal blow to victim—Other members are not constructively liable for causing death. (*Tapp, J.*) **GIAN SINGH v. EMPEROR.** 122 I.C. 721 = 31 Cr.L.J. 448 =  
A.I.R. 1930 Lah. 532.

—Two persons joining to assault a third—One assaulting in a manner likely to cause death—Other standing by without interfering or helping deceased—He is liable under Penal Code S. 304 read with S. 34. A.I.R. 1925 P.C. 1 Foll. (*Courtney-Terrell, C.J., and Adams, J.*) **BHAGWAT SINGH v. EMPEROR.** 114 I.C. 222 = 9 P.L.T. 826 = 30 Cr.L.J. 276 =  
12 A.I.Cr.R. 150 = A.I.R. 1929 Pat. 65.

—Where all the accused had been convicted under Ss. 304-149 and Ss. 325-149 not for any injury caused by them individually but on account of the injuries

**PENAL CODE (1860), S. 304—Sudden Quarrel and Provocation.**

caused by some members of the unlawful assembly of which they also were members.

**Held:** that a conviction under Ss. 325-149 was not legal in the face of the conviction under Ss. 304-149 as the major offence included the minor. (*Jai Lal, J.*) **QUADIR BAKSH v. CROWN.** 91 I.C. 804 =  
7 L.L.J. 368 = 26 P.L.R. 643 = 27 Cr.L.J. 132 =  
A.I.R. 1925 Lah. 539.

—Where it was clear that one of the accused caused the fatal injury, but, under the circumstances, it was impossible to say which of them caused that injury,

**Held:** that either of them cannot be convicted under S. 304. 29 All. 282 and 37 P. R. 1914 Cr. Foll. (*Scott-Smith and Martineau, JJ.*) **DILIP SINGH v. EMPEROR.** 86 I.C. 341 = 7 L.L.J. 44 =  
26 Cr.L.J. 757 = A.I.R. 1925 Lah. 318.

—Where five persons armed with dangerous weapons made an attack upon another and death was due to a single blow inflicted by one of them but who that one was, was not proved,

**Held,** they could not be convicted under S. 304 read with S. 34 but should be convicted under S. 325 read with S. 109 or rather S. 114, as they had armed themselves with dangerous weapons. (*Malan, J.*) **NIAMAT v. CROWN.** 86 I.C. 337 = 6 L.L.J. 385 =  
26 Cr.L.J. 753 = A.I.R. 1925 Lah. 117.

—Grievous hurt causing death owing to a single blow on the head justifies conviction of all the assailants under S. 325 but not under S. 304, where who gave the blow is unknown. (*Scott-Smith and Zafar Ali, JJ.*) **DATTA RAM v. DAYA RAM.**

84 I.C. 861 = 26 Cr.L.J. 381 = 5 L.L.J. 317 =  
A.I.R. 1924 Lah. 654.

—Where only one blow was struck on the head which resulted in the death and there was no evidence to show which of the accused struck the fatal blow,

**Held:** none of them can be convicted of culpable homicide. 37 P. R. 1914 Cr. Foll. (*Scott-Smith, J.*) **JHANDU v. THE CROWN.** 85 I.C. 941 =  
26 Cr.L.J. 653 = 6 L.L.J. 268 =  
A.I.R. 1924 Lah. 555.

—**S. 304—Sudden quarrel and provocation.**

Deceased wife found with paramour—Husband trying to seize paramour struck with knife by paramour who ran away—Wife preventing husband from seizing him—Husband consequently striking wife with knife—Husband held guilty not of murder but under S. 304. (*Zafar Ali and Bhide, JJ.*) **NARAINJAN SINGH v. EMPEROR.** 11 L.L.J. 485 =  
1930 Cr.C. 180 = A.I.R. 1930 Lah. 172.

—Accused inflicting in fit of provocation two lathi blows causing fracture on head of deceased—Third blow falling on chest—Conviction should be under S. 304, Part 2, and not under S. 304, Part 1. (*Jai Lal, J.*) **SUNDER SINGH v. EMPEROR.**

120 I.C. 182 = 31 Cr.L.J. 43 = 41 L.L.J. 52 =  
A.I.R. 1929 Lah. 180.

—**Husband finding wife in illicit intimacy with third person—Murder of wife offence.**

Where the husband killed his wife on finding her in illicit intimacy with another person, **held,** that the offence was committed under grave and sudden provocation and that the conviction should be under S. 304, Part 1, I. P.C. (*Zafar Ali and Dalip Singh, JJ.*) **FATTA v. EMPEROR.** 115 I.C. 476 =  
30 Cr.L.J. 481 = 10 Lah. L.J. 508.

—Where the husband and wife were not on very good terms and on one occasion, the husband asked for *pan* and the wife refused *pan* and threw dirty rice water in his face whereupon the husband beat her with stone and killed her,



**PENAL CODE (1860), S. 304—Sudden quarrel and provocation.**

*Held*: that the refusal of his wife to give him *pan* was liable to make him angry but the throwing of dirty water in the face was an act which would cause a husband to lose control of himself and would be a grave and sudden provocation and therefore the offence was not one of murder but of culpable homicide not amounting to murder. (*Adami and Chatterji, JJ.*) KRISHNA CHANDRA PATI v. EMPEROR.

117 I.C. 164 = 30 Cr. L.J. 720 =  
A.I.R. 1929 Pat. 201.

—Where as a result of the exchange of abuse between the womanfolk, the accused hit the deceased woman with a stick while he was in such a fit of temper that he could not control himself and there was only one blow struck, and where there was not the slightest suggestion anywhere that any previous ill-feeling existed between the accused and the deceased woman and the quarrel, certainly was not pre-meditated and the unfortunate incident happened in the heat of passion.

*Held*: that without in any way 'minimizing the seriousness of the offence and having regard to all the circumstances of the case, a sentence of three years' rigorous imprisonment would meet the ends of justice. (*Agha Haidar, J.*) KARAM ILAHI v. EMPEROR.

106 I.C. 449 = 29 Cr. L.J. 33 =  
9 A.I. Cr. R. 313 (Lah.)

—*Fracturing of skull with a lathi in sudden anger—Death caused—Intention to kill cannot be inferred.*

Where the wife of the accused and the deceased woman were quarrelling, and the accused being provoked by the abuse given to his wife, in sudden anger struck the deceased a heavy blow on the head with a heavy lathi and fractured her skull and caused her death.

*Held*: that the circumstances of the case did not lead to the inference of an intention to kill and it could not be inferred from the evidence that the accused had the knowledge that the act was so imminently dangerous that it must in all probability cause death. (*Ross and Wort, JJ.*) RAM JOLAHA v. EMPEROR.

102 I.C. 349 = 8 A.I. Cr. R. 189 =  
8 P.L.T. 594 = 28 Cr. L.J. 541 =  
A.I.R. 1927 Pat. 436.

—Where the accused had a pistol upon him but he did not come with the intention of using it out, and he used it in the course of a sudden fight.

*Held*: that he is guilty only of culpable homicide, not amounting to murder under the first part of S. 304. (*Shadi Lal, C.J. and Addison, J.*) KARAM SINGH v. THE CROWN.

93 I.C. 251 =  
8 L.L.J. 93 = 27 Cr. L.J. 439 = 27 P.L.R. 132 =  
A.I.R. 1926 Lah. 219.

—*Sudden quarrel—Both parties armed and receiving injuries—Proper section is 304.*

Where there was a sudden quarrel and a fight, in the course of which the deceased was stabbed by the accused and the accused himself received an injury from some weapon such as a knife.

*Held*: that the accused cannot be said to have taken undue advantage of the deceased since he himself was attacked and wounded also by a knife, and the more appropriate section under which the accused should have been convicted is S. 304. (*Wallace and Madhavan Nair, JJ.*) SENNIMALAI GOUNDAN, *In re.*

97 I.C. 952 = 27 Cr. L.J. 1192 (Mad.)

—There was no enmity between accused and deceased. The accused's wife and the deceased who were the wives of two brothers were quarrelling about sharing a pumpkin. The accused coming along broke the pumpkin into two against the wishes of the

**PENAL CODE (1860), S. 304—Miscellaneous.**

deceased wherefore she abused him. He thereupon struck her with a lump of limestone weighing 3 pounds. This resulted in the injury.

*Held*: accused acted from impulse of moment and had no intention either to kill her or to fracture her skull; but that as the lump of limestone weighed 3 pounds it must be taken that he knew that there was a probability of fatal injury being inflicted: 2 A.L.J. 317, Dist. (*Mukerji and Daniels, JJ.*) GANESH v. KING-EMPEROR.

81 I.C. 320 = 5 L. R. A. Cr. 175 =  
25 Cr. L.J. 800 = A.I.R. 1925 All. 4.

—*Death caused by knife stabbed in sudden fight—Offence falls under section.*

A sudden fight arose between accused and another person about drawing water at a tap. They abused each other and in the heat of the moment accused drew out his knife and stabbed his opponent in the chest. This resulted in the latter's death.

*Held*: that the knife though it had a blade of only three or four inches was a dangerous weapon as it had actually caused a fatal injury, and that the accused, though, he did not intend to cause death or to cause such injury as was likely to cause death yet he must have known that he was likely to cause death and that he was therefore guilty of an offence under Section 304 (2). (*Zafar Ali, J.*) KHAN MIR v. EMPEROR.

82 I.C. 361 = 25 Cr. L.J. 1289 =  
A.I.R. 1925 Lah. 148.

**—S. 304—Miscellaneous.**

It is the ultimate consequences of the act committed by the accused which will have to be taken into consideration in convicting him. (*Rankin and G. N. Roy, JJ.*) BHUSAN CHANDRA v. KANAI LAL.

99 I.C. 38 =  
44 C.L.J. 208 = 28 Cr. L.J. 6 =  
A.I.R. 1927 Cal. 73.

—Where the deceased was the aggressor and had gone to the land of the accused to molest him.

*Held*: that a sentence of five years' rigorous imprisonment would be sufficient. (*Jailal, J.*) FAJGO v. EMPEROR.

99 I.C. 56 = 7 A.I. Cr. R. 224 =  
28 Cr. L.J. 24 = A.I.R. 1927 Lah. 733.

—*Accused, a person of considerable intelligence accepting unequivocally his guilt—Accused can be convicted without taking whole evidence in the case—Accused's petition of appeal to High Court raising bare possibility of applicability of I. P. C., S. 304—Whole evidence returned to.*

The accused was undoubtedly a man of very considerable intelligence, and having beyond question killed a woman, made a few hours later, on the same day, a perfectly clear statement about the facts, and later, on the day after the crime, gave to a Magistrate of the first class the most clear and convincing account of the whole occurrence, and stated as a preliminary to it that he knew that he could be convicted on his own statement. Before the S. J. he agreed that he had made the two statements referred to above, and pleaded guilty and said he killed the woman with the chopper produced and the reason for killing her was jealousy. The accused elaborated in his petition of appeal to the High Court, the statement he had made before the S. J. to the effect that he killed the woman out of jealousy. That document gave rise to the bare possibility that the accused might be able to put forward some ground for the application of S. 304 of the I. P. C.

*Held*: that though there was before the S. J. enough material to make him perfectly confident as to the guilt of the accused, yet in view of the contents of his petition of appeal to the High Court, the safer and better course would be to return the case to the S. J. with a direction to him to put accused up for

**PENAL CODE (1860), S. 304-A—Accident.**

trial again, to take his plea, and whether that be guilty or not guilty to hear the whole of the evidence in relation to the case. A. I. R. 1922 All. 233, Dist. (Mears, C.J. and Mukerji, J.) LAHORI v. EMPEROR.

89 I.C. 260=23 A.L.J. 587=  
6 L.R. A. Cr. 152=26 Cr. L.J. 1316=  
A.I.R. 1925 All. 647.

**—S. 304-A—Accident.**

*—Hunting party—Shooting one of the party instead of the game accidentally was held to be due to accident.*

B with some companions went into a jungle to shoot pig. He took up his position and waited, while his companions proceeded to beat a pig towards him. In due course a boar was driven in his direction and B fired at him. B, however, missed the boar and hit A causing him injuries which resulted in his death.

*Held:* that the act of B in firing was neither negligent nor rash within the meaning of S. 304-A, I.P.C. (Broadway, J.) BASANT SINGH v. EMPEROR.

9 L.L.J. 482=29 P.L.R. 45=  
A.I.R. 1927 Lah. 880.

**—S. 304-A—Act amounting to negligence.**

Where a girl of 17 years of age being tired of her husband's ill-treatment attempted to commit suicide by jumping into a well and she had no consciousness that her child was on her neck and she jumped with the child and the child died of the jump though the girl survived,

*Held:* that the girl was only guilty under S. 304-A. (Pratt and Crump, J.J.) SUPADI LUKADU v. EMPEROR.

87 I.C. 840=27 Bom. L.R. 604=  
26 Cr. L.J. 1016=A.I.R. 1925 Bom. 310.

**—S. 304 A-Administering potion.**

*—Administering love potion or drug expecting benefit is no offence but where the wife administers at the instance of her paramour who was the enemy of her husband she is guilty under S. 304-A.*

Where the intention to cause death cannot be clearly found without any other possible explanation of the act of the person giving poison a conviction for murder cannot stand. Unless it is shown clearly and without possible doubt that the intention was to cause death where a substance is administered as a love potion, the accused cannot be convicted of murder. The mere administering of a love potion or drug which a person thinks might be beneficial is not in itself an offence but when it is supposed to have effect upon persons with whom the paramour of the accused had enmity, and when she administers it without due care and caution or any enquiry as to what it really is, her act falls within S. 304-A. (Adami and Bucknill, J.J.) PHULMANI MUNDAIN v. EMPEROR.

77 I.C. 801=1924 P.H.C.C. 13=  
25 Cr. L.J. 449=A.I.R. 1924 Pat. 633.

**—S. 304-A—Determination of liability.**

The accused's liability is determined by what is the proximate cause. If the proximate cause is negligence of the accused, the presence of another and contributory cause is not a defence. (Kennedy, J.C. and Rupchand Bilaram, A.J.C.) FRANK CROSSLEY WOODWARD v. CROWN.

92 I.C. 433=  
18 S.L.R. 199=27 Cr. L.J. 257=  
A.I.R. 1925 Sind 233.

**—S. 304-A—Error of judgment.**

The accused who is arraigned with negligence cannot claim the benefit of an error of judgment when he exercised none. (Kennedy, J.C. and Rupchand Bilaram, A.J.C.) FRANK CROSSLEY WOODWARD v. CROWN.

92 I.C. 433=18 S.L.R. 199=  
27 Cr. L.J. 257=A.I.R. 1925 Sind. 233.

**PENAL CODE (1860), S. 306—'Sati'.****—S. 304-A—Motor accident.**

Motor Driver must be cautious while passing stationary tram car and should slacken their speed—Driving car on wrong side—Horn not blown—Driver accelerating speed before actually clearing up a stationary tram car and in so doing fracturing the head of a boy alighting from the rear of the tram car—Mere driving on wrong side was held itself not a rash act within S. 304-A but the accused was held guilty. (Fawcett and Mirza, J.J.) BHAGWANDAS v. EMPEROR.

111 I.C. 657=30 Bom. L.R. 655=29 Cr. L.J. 897=  
11 A.I. Cr. R. 87=A.I.R. 1928 Bom. 208.

*—Driving motor at night along a road under repair—Persons sleeping on the road killed—Motor running at slow speed—Offence under S. 304-A is not committed.*

Criminal rashness is hazarding a dangerous or want-on act with the knowledge that it is so and that it may cause injury, but without intention to cause injury or knowledge that it will be probably caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequence. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted: 3 All. 776 and 7 M. H. C. 119 Foll.

There is nothing rash or negligent *per se* in driving along a road under repair or partly under repair any more than on a road not under repair except perhaps to the person driving. Any one driving on a road under repair would be called on to exercise the same caution as he would on a road in its normal condition, that is to say, to look out to see what persons or vehicles were on the road making the ordinary use of the road; but it cannot possibly be held that a driver should anticipate that he will find persons sleeping on a road even at night, though a road is under repair, and that he must look out for persons making such an abnormal use of the road, and if he does not do so he is guilty of negligence or rashness.

There is nothing to prevent a man talking and at the same time taking the ordinary precautions against accident and, therefore, engaging in conversation whilst driving is not necessarily a rash or negligent act. (Cuming and Mukerji, J.J.) SMITH v. EMPEROR.

91 I.C. 889=53 Cal. 333=  
30 C. W. N. 66=27 Cr. L.J. 153=  
A. I. R. 1926 Cal. 300.

**—S. 304-A—Negligently unloading pistol.**

*—Person killing another in act of unloading pistol he knows to be loaded is guilty of negligence.* P knowing that a pistol was loaded, tried to unload it and while doing so acted so negligently that the pistol went off, killing C's son.

*Held:* that the act had been negligent on P's part and came within the purview of S. 304-A, and that the sentence of six months' simple imprisonment and Rs. 250 fine or three months more imprisonment in default was sufficient. (Dalip Singh, J.) MOTAN RAM v. EMPEROR.

1930 Cr. C. 531=  
A.I.R. 1930 Lah. 462.

**—S. 306—'Sati'.**

*—Inducing woman to get herself burnt along with body of deceased husband—Accused are guilty.*

Accused were charged under Ss. 149 and 306 with being members of an unlawful assembly whose common object was to abet the suicide of a woman and with abetting the woman's suicide. It was found

**PENAL CODE (1860), S. 307—Evidence.**

that they induced her to get herself burnt along with the body of her deceased husband. With that object, they made her sit on the pyre with the husband on her lap and instantly a fire broke out from her hand. She tried to escape and leapt in the adjoining river wherefrom she was rescued by the police but she died ultimately three days later. The accused foiled the attempts of the police to save her at an earlier stage.

*Held*: that the accused were guilty and the method of destruction resolved on for the suicide was fire and the method of ignition of the fire whether miraculous, whether self-applied or whether applied by others was totally immaterial: 36 All. 26, Foll. (*Courtney Terrel C.J. and Adami, J.*) **EMPEROR v. VIDYASAGAR. PANDE.** 112 I.C. 363=8 Pat. 74=9 P.L.T. 683=

29 Cr. L.J. 1035=11 A.I. Cr. R. 371=  
A.I.R. 1928 Pat. 497.

**—S. 307—Evidence.**

Abrasions found on person of accused—Incriminating circumstance not proved against him—Accused cannot be called upon to explain them. (*Subhedar, A.J.C.*) **SHANTALAL v. EMPEROR.** 120 I.C. 210=31 Cr. L.J. 15=13 A.I. Cr. R. 157=1929 Cr. C. 673=A.I.R. 1929 Nag. 350.

Where it was proved that a shot was fired from the house in which the accused was residing, but it was not proved that the shot was aimed at any one in particular, and it was also doubtful whether the accused himself fired the shot:

*Held*: that the accused cannot be convicted under S. 307 as benefit of doubt should be given to him. (*Bhide, J.*) **MAHOMED KHAN v. EMPEROR.**

9 L.L.J. 331=A.I.R. 1927 Lah. 853.

**—S. 307—Facts to be considered.**

*Intention of culprits should be gathered from their acts and surrounding circumstances.*

Intention of the culprits has to be gathered from their acts and all the surrounding circumstances.

Where from the circumstances there can be no doubt that the intention of the accused was to cause the death of a person, they must be assumed to have intended the natural consequences of their act and the burden lies heavily on them to prove that they had some other intention. In absence of any such proof the accused can be held guilty under S. 307. (*Jai Lal and Bhide, JJ.*) **GOPI CHAND v. EMPEROR.**

A.I.R. 1930 Lah. 491.

*Important consideration under S. 307, is intention or knowledge of accused and circumstances under which offence is committed—Nature of injury is not necessarily guiding consideration.*

Section 307 makes a distinction between an act of the accused and its result if any. Such an act may not be attended by any result so far as the person assaulted is concerned but still there may be cases in which the culprit would be liable under S. 307. If a person knows that certain result will ensue from his act he must be deemed to intend such result by doing the act. Further it is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in S. 307: 15 Bom. L. R. 991, Dist. (*Jai Lal, J.*) **MUTALLI v. EMPEROR.**

A.I.R. 1930 Lah. 253.

In determining the intention, the act done and the manner of its doing as well as the announced intention at the time may be taken into consideration.

The accused came armed with dangs and beat the complainant to unconsciousness with whom they had

**PENAL CODE (1860), S. 320—Endangering life.**

previous enmity. Previous to giving him this beating they announced their intention of killing him.

*Held*: that the charge under S. 307 was not wholly unjustified or illegal. (*Dalip Singh, J.*) **BALBIT SINGH v. EMPEROR.** 112 I.C. 224=29 Cr. L.J. 1008=11 A.I. Cr. R. 262=A.I.R. 1929 Lah. 67.

**—S. 307—Mutual Infliction of Injuries.**

*Mutual infliction of injury on each other—No eye-witnesses—Conviction must be under S. 326 and not under S. 307.*

Where in the course of a fight the two accused inflicted upon each other injuries so serious that in both cases their dying depositions had to be taken there were no eye-witnesses to the occurrence and evidence in each trial consisted of the evidence of the complainant, the wounds on the complainant and the admission of the accused that he was himself wounded in the occurrence, and where in separate trials each was convicted of an offence under S. 307 of the Penal Code.

*Held*: as in case of either of the accused dying of the wounds, the other would have been entitled to the benefit of a reasonable doubt and to plead that the case came within exception 4 to S. 300, neither appellant could legally be convicted under S. 307.

*Held* further that as under S. 105 of the Evidence Act the burden of proof of self-defence or provocation would have been in each case on the accused, neither of them could under the circumstances claim these defences and that S. 326, was the proper section for conviction. (*Lentaigne, J.*) **NYA PO E v. EMPEROR.**

84 I.C. 1049=26 Cr. L.J. 409=2 Rang. 558=  
A.I.R. 1925 Rang. 133.

**—S. 319—Serious form.**

Where a man of thirty, even though he had been dazed by a blow on the head inflicted by somebody else, approached the prostrate body of a dying man, kicked him on neck and then pressed with his foot the dying man's head into the ground so that it became buried in the earth.

*Held*: the man was guilty of the most serious form of simple hurt and maximum sentence should be awarded. (*Stuart, C. J. and Raza, J.*) **AMAR NATH SINGH v. EMPEROR.** 113 I.C. 481=5 O.W.N. 391=12 A.I. Cr. R. 2=30 Cr. L.J. 473=A.I.R. 1928 Oudh 282.

**—S. 320—Death due to tetanus.**

*Wound not itself dangerous to life—Death within 20 days due to tetanus supervening—Hurt is not grievous.*

The designation in S. 320, Penal Code of a hurt as grievous which causes the sufferer to be during the space of twenty days in severe bodily pain, applies only when such effect actually lasts for a period of twenty days and not when the sufferer dies before that period has expired.

Where the wound was not itself dangerous to life but death was caused within 20 days, due to tetanus which supervened.

*Held*: that the wound was not 'grievous hurt.' (*Martineau, J.*) **MAHINDAR SINGH v. EMPEROR.**

84 I.C. 438=26 Cr. L.J. 294=A.I.R. 1925 Lah. 297.

**—S. 320—Endangering life.**

*Wound on neck with sharp-edged weapon is dangerous to life, but it is not sufficient in itself to cause death.*

The accused, a young man of twenty, inflicted a wound with a sharp-edged weapon on the neck of his friend in a sudden impulse as a result of a quarrel. The wound became septic and wounded man died.

*Held*: that a wound on the neck was "dangerous to life" within the meaning of Cl. 8, S. 320 and was

**PENAL CODE (1860), S. 323—Conviction and sentence.**

therefore grievous. But the wound itself was not in itself sufficient to cause death and the circumstances did not justify a finding that the accused knew that his act was likely to cause death. Considering the age of the accused and the circumstances, the sentence of seven years passed on the accused was very severe and sentence for two years was sufficient. A. I. R. 1922 Lah. 26, Ref. (*Bhude, J.*) MUHAMMAD RAFI v. EMPEROR. 120 I.C. 431=31 Cr. L.J. 77=

11 L.L.J. 519=A.I.R. 1930 Lah. 305.

**—S. 323—Conviction and sentence.**

Where the accused accompanied by certain Civil Court officers entered a house with the object of executing a Civil Court decree for ejectment and having been resisted by a person in occupation, who was not a party to the decree and who alleged a right in herself they forcibly removed her out of the house, held, that the accused were liable to be convicted under S. 323, I.P.C. (*Cuming, J.*) ABDUL SATTAR v. MOTI BIBI. 34 C.W.N. 583=A.I.R. 1930 Cal. 720.

**—Rioting and causing hurt—Separate sentences can be passed.**

Causing hurt and using force are not the same thing and the word "force" does not appear in the definition of "hurt". The use of criminal force is no doubt an ingredient of the offence of rioting, but the force necessary to constitute these offences may fall far short of "causing bodily pain," and if further force is used which does cause bodily pain, then the offences which involve and are complete by mere use of criminal force have been exceeded and that excess constitutes another offence, viz., that of causing hurt, or causing whatever more serious form of bodily hurt has been the result: Mad. Cr. Revn. Cases 248 of 1924 and 982 of 1926, Diss. from. (*Wallace, J.*) ANTHONI UDAIYAN v. RAYAPPUDAYAR.

105 I.C. 806=39 M.L.T. 543=1927 M.W.N. 850=28 Cr. L.J. 982=9 A.I. Cr. R. 160=A.I.R. 1928 Mad. 18=53 M.L.J. 653.

—The offence of causing hurt is a separate offence from that of rescuing cattle and separate sentences may legally be passed. (*Wallace, J.*) ANTHONI UDAIYAN v. RAYAPPUDAYAR. 105 I.C. 806=

39 M.L.T. 543=1927 M.W.N. 850=28 Cr. L.J. 982=9 A.I. Cr. R. 160=A.I.R. 1928 Mad. 18=53 M.L.J. 653.

—It is by no means uncommon for an offence punishable under S. 323 to require, and get, a much heavier sentence than one punishable under S. 325. (*Hallifax, A.J.C.*) EMPEROR v. AKOSH KUNBI.

97 I.C. 1033=27 Cr.L.J. 1229=A.I.R. 1927 Nag. 49.

—Separate sentences cannot be passed under Ss. 323 and 326 in the case of an assault upon a single person. Where it is found as a matter of fact, that one of the accused attacked with a spear and the others inflicted blows on legs and arms with lathis, it is not necessary to find that all the accused are guilty of an offence under S. 326. In such a case each accused should be convicted for the offence of which he is actually found to be guilty. (*Pullan, J.*) DEVI SAHAI v. EMPEROR. 103 I.C. 198=1 L.C. 199=

28 Cr. L.J. 662=A.I.R. 1927 Oudh 313.

—S. 149 merely declaratory—S. 147 and S. 323 Create distinct offences—Separate sentences not illegal.

S. 149 creates no substantive offence in itself. It is merely declaratory of the law and makes a person who has been a member of an unlawful assembly liable for the offences, committed by any other member of it. But S. 147 is a substantive offence in itself

**PENAL CODE (1860), S. 323—Injuries on fight.** and makes a person guilty of the offence of rioting as distinct from actually causing any injury or hurt. Similarly S. 323 is a distinct offence in itself; therefore there is nothing illegal in convicting a person of offences under both these sections. As soon as the first injury is caused to any person, force is used and the offence of rioting is complete. Subsequent injuries though inflicted in pursuance of the same common object, would be distinct injuries justifying a conviction under S. 323: 17 Bom. 260 (F.B.), Appr, 6 All. 21, Dist.; 9 All. 645 and 14 A.L.J. 738, Foll. (*Sulaiman, J.*) CHHIDDA v. EMPEROR. 92 I.C. 463=

24 A.L.J. 178=7 L.R.A. Cr. 13=

27 Cr.L.J. 287=A.I.R. 1926 All. 225.

**—S. 323—Death by beating.**

A strong young man, who on a very trivial incident and without any provocation hits his wife in the abdomen within a few days of her having delivered of a child and thus causes her an injury which results in her death the next day may, if the woman had an enlarged spleen, not be guilty of an offence higher than that under S. 323, but there can be no doubt that a sentence of three months' rigorous imprisonment only is ridiculously low in such a case, and should be enhanced. (*Tek Chand, J.*) KHUDA BAKSH v. FERROZE DIN. 114 I.C. 442=

30 Cr. L.J. 300=1929 Cr. C. 90=A.I.R. 1929 Lah. 531.

—Continual ill-treatment of daughter-in-law by mother-in-law—Daughter-in-law spilling oil—Beating—Death—No evidence showing intention or knowledge of likelihood of causing death—Mother-in-law was held not guilty under S. 304 but under S. 323. (*Daniels, J. on difference between Walsh, A.C.J. and Ryves, J.*) EMPEROR v. CHANDA.

85 I.C. 150=5 L.R.A. Cr. 161=26 Cr. L.J. 470=A.I.R. 1925 All. 126.

—Where death is caused as a result of simple injuries and where it is shown that the accused person had no knowledge that the deceased's spleen was diseased, he could only be convicted of causing simple hurt. (*Scott-Smith, J.*) BHAIJAN DAS v. EMPEROR.

72 I.C. 533=24 Cr.L.J. 421=A.I.R. 1924 Lah. 218.

**—S. 323—Death of person hurt.**

A criminal prosecution under Section 323 of the Indian Penal Code does not abate by reason of the death of the person injured. 44 Mad. 417, Foll. (*Dalal, J.*) MUSA v. KING-EMPEROR. 81 I.C. 719=

22 A.L.J. 520=5 L.R.A. Cr. 96=

25 Cr. L.J. 1007=A.I.R. 1924 All. 666.

**—S. 323—Injuries on fight.**

—Fight over cattle trespass—Accused's party desirous of chastising cattle-owners—Accused holding deceased and his partisans beating him with lathis—Death caused by blows on temple—Accused is guilty only under S. 323.

There was a quarrel and fight over cattle trespass and the party in whose field trespass was committed disposed of the party of the owners of cattle, as the supporters of the owners came one by one. When the deceased came up, the accused caught his hands and some of the members of his party hit deceased with lathi. There was no intention on the part of the accused's partisans of causing the death of or grievous injury to the owners of the cattle. The desire was to chastise the owners of the cattle which caused damage. One of the blows was hit on the temple and killed the deceased.

Held: that the accused must have expected that simple injuries would be caused and he could not be held liable for one of his party hitting a blow on the

**PENAL CODE (1860), S. 323—Offence under.**

temple and causing the death of the deceased and that the accused was guilty only under S. 323, I.P.C. (*Dalal, J.C.*) HAR PRASAD SINGH v. EMPEROR. 88 I.C. 520=2 O.W.N. 465=26 Cr. L.J. 1160=A.I.R. 1925 Oudh 482.

**—S. 323—Offence under.**

Removing by force a person other than a person against whom a decree for ejectment from house and possession is obtained, is punishable under S. 323, I.P.C. (*Cuming, J.*) ABDUL SATTAR v. MOTI BIBI. 34 C.W.N. 583=A.I.R. 1930 Cal. 720.

**—S. 323—Public servant.**

Where there are serious irregularities in connexion with house search and the person whose house is searched assaults and beats a constable, the offence falls under S. 323 and not under S. 332. (*Rowland, J.*) RAMJI AHIR v. EMPEROR. A.I.R. 1930 Pat. 387.

—A person beating a public servant entrusted with the duty of executing a warrant of attachment is guilty under S. 323 and is not justified in beating under S. 99. (*Shadi Lal, C.J.*) THABA SINGH v. EMPEROR. 105 I.C. 684=28 P.L.R. 280=28 Cr. L.J. 972=A.I.R. 1927 Lah. 851.

**—S. 323—Punishment by teacher.**

Child below 12 years—School-master inflicting corporal punishment necessary for school discipline is protected under Ss. 79 and 89—Extent of school-master's control over a pupil depends upon circumstances of each case. (*Brown, J.*) EMPEROR v. MG. BA THAUNE. 94 I.C. 412=3 Rang. 659=27 Cr. L.J. 636=A.I.R. 1926 Rang. 107.

**—S. 324—Mutual injuries.**

—*Fight between factions—Accused proved to have inflicted injuries—Self-defence not disproved—Conviction for hurt—Sustainability.*

Where two factions were engaged in rioting and the accused were proved to have inflicted certain blows on the other party and there was nothing to show that the injuries were not in self defence or justified by extreme provocation, *held*, that under those circumstances the conviction for hurt should be set aside. (*Beasley, C.J. and Cornish, J.*) PEDDA HAMPAYYA v. EMPEROR. 1929 M.W.N. 533.

**—S. 324—Offence under.**

Where the injury caused is simple but is caused with a cutting weapon, it falls under S. 324 and not under S. 326. (*Shadi Lal, C.J. and Agha Haidar, J.*) FATTEH KHAN v. EMPEROR. 1930 Cr. C. 1046=A.I.R. 1930 Lah. 950.

**—S. 325—Death by accident.**

—*Causing death of child by accident while beating his mother—Conviction under S. 325 is proper.*

The appellant was beating one S with his fist when the wife of S with a two months' baby on her shoulder interfered. The appellant hit at the woman and the blow struck the child on the head; the baby died two days later from the effects of the blow.

*Held*: although the child was hit by accident the appellant's act was not covered by the exception of S. 80, that he was not guilty of culpable homicide under S. 301 as, while wanting to hit the woman with his fist the appellant never intended or knew to be likely to cause the death of the woman, and that it would be proper to record a conviction under S. 325. 3 C. 623 Ref. (*Dalal, A.J.C.*) JAGESHAR v. EMPEROR. 74 I.C. 833=24 Cr. L.J. 789=A.I.R. 1924 Oudh 223.

**—S. 325—Disablement without intention.**

A poor old sweeper went out towards the latter part of the night and was taking cowdung cakes belonging to the accused's master when the accused fell on him with a dang, beating him severely on the head and

**PENAL CODE (1860), S. 325—Injuries causing death.**

arms, whereby the arms were disabled completely. There was no evidence whatever that the accused had any intention of killing the sweeper, or that he knew that he was likely to kill him.

*Held*: that the accused could not be convicted under S. 308 but was guilty of an offence under S. 325. (*Skemp, J.*) NATHA v. EMPEROR.

102 I.C. 907=28 Cr. L.J. 619=A.I.R. 1927 Lah. 801.

**—S. 325—Evidence.**

Accused admitting grievous hurt in written statement given in defence of charge under dacoity—Acquittal for dacoity—Admission in written statement cannot be used to base conviction for grievous hurt. (*Nanavutty, J.*) RAMESWAR v. EMPEROR. 110 I.C. 795=5 O.W.N. 601=11 A.I. Cr. R. 41=29 Cr. L.J. 763=A.I.R. 1928 Oudh 373.

**—S. 325—Grievous hurt, 'what is'.**

When a man has been struck on the head and a fracture is caused, to surround and beat him with lathis is to cause hurt which endangers life within S. 320. (*Dawson Miller, C.J. and Foster, J.*) PARBHU DUSADH v. EMPEROR. 104 I.C. 708=28 Cr. L.J. 868=A.I.R. 1928 Pat. 43.

—Two persons armed with lathis attacked a third person, beat him to the ground, broke his thigh and ulna bone struck him at nine places and continued to strike him after he had fallen on the ground. But there was only one injury on the head.

*Held*: that taking the injuries as a whole the legitimate inference was that they did not intend to kill him. They are therefore guilty not under S. 307 but under S. 325. (*Harrison, J.*) EMPEROR v. SHER SINGH. 100 I.C. 234=8 Lah. 521=28 P.L.R. 559=28 Cr. L.J. 266=A.I.R. 1927 Lah. 217.

**—S. 325—Injuries causing death.**

When the accused knew he would be smashing his victim's skull by his blow, he must as well have known he was likely to cause the death of his victim. He ought, therefore, to be convicted for culpable homicide not merely for grievous hurt. (*Mirza and Broomfield, JJ.*) EMPEROR v. MANA GENDAL. 32 Bom. L.R. 1143.

—*Accused in fit of temper losing self-control—Blow on head with dang—Death held not intentional.*

The accused, who was chagrined because his melons were not purchased, went into a fit of temper and lost self-control. The dang, with which the blow on the uncovered head of the deceased came to be inflicted, was lying close at hand. The accused picked it up and at once dealt the blow which resulted in the fatal injury to the deceased.

*Held*: that there was no intention on the part of the accused to cause the death;

*Held further*: that the case fell within the purview of S. 325 instead of S. 302. (*Agha Haidar and Shadi Lal, JJ.*) KALOO MURD v. EMPEROR. 1929 Cr.C. 639=A.I.R. 1929 Lah. 863.

—*Death due to multiple injuries, each not fatal by itself—No inference of common intent to cause injury likely to cause death.*

Three persons were accused of having injured a person and thus causing his death. The deceased died of shock from multiple injuries which included a fracture of five ribs. None of the injuries in itself was such as could be called a fatal injury. They were believed to have been caused by a blunt weapon like a sota.

*Held*: It was not possible to attribute any particular injury to any individual assailant. Nor could it be



**PENAL CODE (1860), S. 325—Injuries causing death.**

said that any particular injury was the direct cause of death. The common intent of the assailants could not be held to have been to cause such injury as they knew was likely to result in death. The accused could not therefore be safely convicted of murder. They were guilty of grievous hurt. (*Fford and Jai Lal, JJ.*) YARA v. EMPEROR. 114 I.C. 704=

30 P.L.R. 171=30 Cr.L.J. 368=1929 Cr. C. 8=

A.I.R. 1929 Lah. 456.

—The accused seven in number attacked the deceased with the intention of beating him. They did so after an exchange of words with the deceased, and caused two incised wounds of a trivial character, and three contused wounds sufficient to stun the victim, who subsequently died. There was no medical evidence to prove that death was due to the injuries.

*Held*: that the accused were guilty under S. 325 read with S. 149, and not under S. 304. (*Addison and Johnstone, JJ.*) SOHAN SINGH v. EMPEROR. 118 I.C. 433=30 Cr.L.J. 917=

A.I.R. 1929 Lah. 178.

—*Intention of causing death or injury likely to cause death absent—Liability.*

Where the accused could not have known that they were inflicting such injury as would be likely to cause death and the intention of causing death or of causing such bodily injury as was likely to cause death was not even imputed to them and the injuries were not directly responsible for the death, but the death was only an indirect consequence of the wounds.

*Held*: that the accused cannot be convicted under S. 304, but the conviction should be under S. 325. (*King, J.*) BHURE KHAN v. EMPEROR. 101 I.C. 177= 2 Luck. 433=8 A.I.Cr.R. 46=4 O.W.N. 337= 28 Cr.L.J. 401=A.I.R. 1928 Oudh 36.

—*Culpable homicide—More than one person aggressive—Common object to inflict grievous hurt presumed.*

Where six persons, one of whom had an iron shod lathi, came determined to take possession of a *taur* while the deceased was determined to resist them and the person having the iron-shod lathi inflicted the fatal injury on the head of the deceased and thus fractured his skull and killed him:

*Held*: that the members of the party were undoubtedly the aggressors and they certainly knew that grievous hurt was likely to be inflicted and came prepared in furtherance of their common object to inflict it.

Further, the man who inflicted the fatal injury when he aimed the blow he did, at the deceased's head, knew that there was a likelihood of his death, seeing that he had brought with him such a lathi. (*Addison, J.*) HOSHNAKH SINGH v. EMPEROR. 9 L.L.J. 522=A.I.R. 1927 Lah. 884.

—*Blow with stick on the head, in revenge for previous beating—Internal bleeding and death—Liability.*

The accused and the deceased were both young men of about 18 years. The deceased and a friend of his gave a beating to the accused. The next day the accused unexpectedly met the deceased, and forthwith formed the design of hitting him in return for the beating which he had received. Then he struck him a violent blow on the back of his head with a hockey stick which he was carrying and ran away. The deceased walked on for about 30 paces and sat down. He was taken home where, half an hour later, he was unconscious. The blow caused internal bleeding and a clot of blood on the surface of the brain. This caused death.

**PENAL CODE (1860), S. 325—Joint attack.**

*Held*: that the accused was not guilty of murder, but of an offence under S. 325 as it could not be said under the circumstances of the case that the accused knew that the blow was so imminently dangerous that it must in all probability cause death or that the bodily injury which he intended to cause was sufficient in the ordinary course of nature to cause death. (*Scott-Smith and Zafar Ali, JJ.*) GHULAM JILANI v. EMPEROR. 88 I.C. 286=26 Cr.L.J. 1118= 7 L.L.J. 573=26 P.L.R. 430=A.I.R. 1925 Lah. 559.

—Where all the accused had been convicted under Ss. 304-149 and Ss. 325-149 not for any injury caused by them individually but on account of the injuries caused by some members of the unlawful assembly of which they also were members.

*Held*: that a conviction under Ss. 325-149 was not legal in the face of the conviction under Ss. 304-149 as the major offence included the minor. (*Jai Lal, J.*) QADIR BAKHSI v. THE CROWN. 91 I.C. 804=

7 L.L.J. 368=26 P.L.R. 648=

27 Cr.L.J. 132=A.I.R. 1925 Lah. 539.

—Where a joint attack was made by two men armed with *Jatrus* on another who died of the injuries received.

*Held*: that there can be no doubt that there was a common intention to cause grievous hurt or that at least they knew that it was likely that grievous hurt would be caused, and that the accused were guilty under S. 325, though in the absence of clear proof as to who caused the fatal injury, neither of them could be convicted under S. 304. (*Scott-Smith and Martineau, JJ.*) DILIP SINGH v. EMPEROR. 86 I.C. 341=7 L.L.J. 44=26 Cr.L.J. 757=

A.I.R. 1925 Lah. 318.

—Where five persons armed with dangerous weapons made an attack upon another and death was due to a single blow inflicted by one of them but who that one was, was not proved.

*Held*, they could not be convicted under S. 304 read with S. 34 but should be convicted under S. 325 read with S. 109 or rather S. 114, as they had armed themselves with dangerous weapons. (*Malan, J.*) NIAMAT v. CROWN. 86 I.C. 337=6 L.L.J. 383= 26 Cr.L.J. 153=A.I.R. 1925 Lah. 117.

—Where the accused did not lift his *lathi* above his head, with both hands and bring it down on the head of the deceased but struck a swinging sideways blow and it was not proved that the accused intended to rupture the deceased's liver or even knew that he was likely to do so. *Held*, the offence committed was one under S. 325. (*Kendall, A. J. C.*) KARAN SINGH v. KING-EMPEROR. 81 I.C. 969=

11 O.L.J. 563=25 Cr. L.J. 1145=

A.I.R. 1925 Oudh 135.

—*Attack by four persons with lathis—Blow by one fracturing skull and killing—Liability.*

Where the skull of the deceased was fractured as a result of a blow on the head in an attack upon one man by four persons who beat him with lathis, but there was no other grievous hurt and it was not known which of the accused struck the blow which fractured the skull and resulted in his death.

*Held*: the accused did not know that death was likely to be caused but they must have known that grievous hurt was likely to be caused, and that they committed therefore the offence of causing grievous hurt. (*Scott-Smith and Zafar Ali, JJ.*) DATTA RAM v. DAYA RAM. 84 I.C. 861=6 L.L.J. 317= 26 Cr.L.J. 381=A.I.R. 1924 Lah. 654.

—**S. 325—Joint attack.**

Where three men attacked another with dangs and caused two separate grievous hurts.



**PENAL CODE (1860), S. 325—Joint attack.**

*Held*: it can fairly be presumed that all intended to cause or knew that they were likely to cause grievous hurt. (*Scott-Smith, J.*) GHANDU v. THE CROWN.

85 I.C. 941=6 L.L.J. 268=25 Cr.L.J. 653=

A.I.R. 1924 Lah. 555.

—In the case of rioting resulting in grievous hurt convictions and separate sentences under S. 325 are legal where it is shown that the accused actually joined in the assault. Some of these assaults may have resulted in simple hurt, others in grievous hurt, but all the actual assailants are under S. 149, I.P.C. liable for all the results; 17 B. 260 (F.B.) Foll. (*May Oung, J.*) NGA SON MIN v. KING-EMPEROR.

82 I.C. 473=3 Bur. L. J. 49=

25 Cr. L. J. 1305=A.I.R. 1924 Rang. 291.

**—S. 325—Sentence.**

—*Blows on head causing death—No uncertainty as to responsibility for offence—Sentence of five years' rigorous imprisonment held proper.*

The accused had caused death by blows on head of the deceased with sticks. It had been proved that the accused were the assaulters and were aware of the result of their action. There was no uncertainty as to responsibility for the offence by which death was caused.

*Held*: that under the circumstances the sentence of five years' rigorous imprisonment was reasonable whether the offence be under S. 304 (2) or S. 325: 29 All. 282, Dist. (*Mirza and Broomfield, J.J.*) MANA GENDAL v. EMPEROR. A.I.R. 1930 Bom. 483.

—*Severe beating—Death supervening owing to unforeseen internal troubles—Causing death if need be taken into account in passing sentence.*

As soon as it is found that the offence does not amount to culpable homicide it is best to leave the death out of account and look only to the injury. Where the accused gave a man severe beating and they broke no bones and it appeared that death supervened owing to some internal trouble which was unforeseen, *held*, that a sentence of three years' rigorous imprisonment was sufficient. (*Jackson, J.*) SHANMUGA KUDUMBAN, *In re.* 123 I.C. 43=1930 M.W.N. 74=

31 Cr.L.J. 477.

**—S. 325—Sentence—Severe.**

Accused who had dispute with his wife because she ran away to her father's house, beat her with a stick after her return as a result of which she died two days later. He was convicted under S. 325 for causing grievous hurt to his wife and was sentenced to one year's rigorous imprisonment.

*Held*: that under the circumstances the sentence of one year's rigorous imprisonment was too short and should be enhanced to three years' rigorous imprisonment. It was a brutal thing for a man to beat a woman with a heavy stick and hurt her on vital parts of her body causing such injuries that she died in two days. (*Beaumont, C. J., and Madgavkar, J.*) EMPEROR v. KAYA PRATAB. A.I.R. 1930 Bom. 593.

**—S. 326—Charge and conviction.**

When a charge has been framed under Ss. 326 and 149, I. P. Code, conviction under S. 326, I. P. Code, is not necessarily bad, the legality of the conviction depending on whether the accused has or has not been materially prejudiced by the form of the charge. (*Spencer, Krishnan and Ramesam, J.J.*) THEETHU-MALI GOVINDAR, *In re.* 82 I.C. 465=

25 Cr.L.J. 1297=47 Mad. 746=

20 M.L.W. 261=35 M.L.T. 21=

A.I.R. 1:25 Mad. 1 (F.B.)=47 M.L.J. 221.

**—S. 326—Firing while drunk.**

The accused, when he was full drunk, fired at the deceased and caused a wound on the upper portion of his thigh with a shot which was fired at point blank

**PENAL CODE (1860), S. 326—Mutual infliction of injuries.**

range. The injury was not fatal and was not such as in the ordinary course of nature would cause death. After nearly two months the injured person died, the wound having become septic and dysentery having supervened a few days before his death.

*Held*: that neither S. 300 (3) nor (4) applied to the case, and the accused was not guilty of murder; he was not also guilty under S. 304. But he was guilty under S. 326 and as the shot was fired at point blank range on the upper portion of the thigh maximum sentence should be passed. (*Harrison and Dalip Singh, J.J.*) ZORA SINGH v. EMPEROR. 120 I.C. 183=

11 L.L.J. 44=31 Cr.L.J. 44=1929 Cr.C. 4=

A.I.R. 1929 Lah. 433.

**—S. 326—Injuries causing death.**

A person who voluntarily inflicts injury such as to endanger life must always, except in the most exceptional and extraordinary circumstances, be taken to know that he is likely to cause death: 42 I.C. 754 Ref. (*Mirza and Broomfield, J.J.*) MANA GENDAL v. EMPEROR. A.I.R. 1930 Bom. 483.

—Where the accused struck two lathi blows, one severe and the other slight, on the head of the deceased, which caused death, conviction under S. 326 is safer than under S. 304 (2). (*Harrison, J.*) KHEWNA v. EMPEROR. 115 I.C. 66=30 Cr. L.J. 378=

A.I.R. 1929 Lah. 37.

**—S. 326—Joint attack.**

—*Blow with spear on fleshy part of body is not necessarily fatal and offence does not fall under S. 302 but under S. 326.*

A. B. C. D. assembled together, three of them armed with spears with the intention of attacking another party of men. A gave only one blow with a spear on fleshy part of the body of one of his opponents.

*Held*: that such injury was not necessarily fatal and A could not be convicted under S. 302 and his case fell within the purview of S. 326, but as there had been a loss of life in the fight, a severe sentence was called for. A's companions having been acting in furtherance of a common intention were also guilty under S. 326 read with S. 34. (*Shadi Lal, C. J. and Agha Haider, J.*) FATEKH KHAN v. EMPEROR. 1930 Cr. C. 1046=A.I.R. 1930 Lah. 950.

—*Joint assault with deadly weapons—Common intention is presumed.*

There was a quarrel over a turn of water in which several persons arrived with *Chhavis* and assaulted A who died of the injuries caused to him. It was not certain as to who inflicted the fatal blow. All the accused were convicted under S. 326 with S. 34 and inflicted equal punishment.

*Held* that considering the nature of the assault and the nature of the weapons, it cannot be said with regard to any one of them that he did not mean to cause serious injuries and S. 34, makes them equally responsible in such cases and each one of them was rightly given the same sentence. (*Abdul Qadir, J.*) INDER SINGH v. EMPEROR. 72 I.C. 513=

24 Cr. L.J. 401=A.I.R. 1924 Lah. 216.

**—S. 326—Mutual infliction of injuries.**

—*Mutual infliction of injury on each other—No eye-witnesses—Conviction must be under S. 326 and not under S. 307.*

Where in the course of a fight the two accused inflicted upon each other injuries so serious that in both cases their dying depositions had to be taken, there were no eye-witnesses to the occurrence and evidence in each trial consisted of the evidence of the complainant, the wounds on the complainant and the admission of the accused that he was himself wounded in the

**PENAL CODE (1860), S. 326—Private defence.**

occurrence, and where in separate trials each was convicted of an offence, under S. 307 of the Penal Code.

*Held*: as in case of either of the accused dying of the wounds, the other would have been entitled to the benefit of a reasonable doubt and to plead that the case came within exception 4 to S. 300, neither appellant could legally be convicted under S. 307.

*Held* further that as under S. 105 of the Evidence Act the burden of proof of self-defence or provocation would have been in each case on the accused, neither of them could under the circumstances claim these defences and that S. 326, was the proper section for conviction. (*Lentaigne, J.*) *NGA PO E v. EMPEROR.* 84 I.C. 1049=2 Rang. 558=26 Cr. L.J. 409=A.I.R. 1925 Rang. 133.

**—S. 326—Private defence.**

*—Fight over bund—Rival parties—One party seeking to cut down bund—Fight—Death of one—Liability—Plea of Private Defence.*

People of the village S having assembled, proceeded to cut the bandh. People of village K resisted but were turned back. Meanwhile a large crowd collected on both sides, armed with lathis, spears and garases. People of K, seeing that the people of S were not likely to listen to their remonstrances, proceeded in a body to prevent them from cutting the bandh and to drive them away. A free fight ensued; one man from village S, received mortal injuries and died on his way to the hospital. The Sessions Judge convicted the accused, who were residents of K under S. 302 read with Ss. 147, 148 and 149, I. P. C.

*Held*: that the people of S had no right to cut the bandh under the circumstances mentioned and when they actually proceeded to destroy it the people of K had certainly a right to prevent them from doing so.

*Held*: further that the people of K had erected a Bandh in their own village and at the time of the occurrence they were in possession of the bandh and there had been no lawful order passed by any competent Court directing them or authorising people of K to remove the bandh. This being so, it was not unlawful on the part of the appellant to prevent the people of S, from forcibly cutting the bandh, and that consequently their convictions under Ss. 147, 148 and 149, could not be sustained.

*Held*: also that under the circumstances of the case and keeping in view the fact that mortal injuries were caused to the deceased in a free fight and in the exercise of the right of private defence of person and property, the conviction of the accused appellants under S. 302 could not be sustained, especially when the deceased had received injuries from several other assailants. The conviction was therefore altered to one under S. 326, and the sentence of transportation for life passed was reduced to one of three years' rigorous imprisonment. (*Courtney-Terrell, C. J., and Fazl Ali, J.*) *TILAK KOHAR v. EMPEROR.* 1929 Cr.C. 183=A.I.R. 1929 Pat. 523.

**—S. 326—Provocation.**

*—Hurt with a penknife on provocation—Offence of grievous hurt.*

The accused had been married to a girl and the ceremony of *tabdil parchat* was to take place on the day of the occurrence. On that day accused found the deceased taking the girl away from the village where the ceremony was to take place and when he remonstrated with her she told him that the girl would not be married to him that day and abused him. The accused thereupon attacked both the girl and the deceased with pen-knife and inflicted one injury on each in the abdomen. The girl however survived.

**PENAL CODE (1860), S. 332—Essentials.**

*Held*, that the accused acted without premeditation, used only a pen-knife and gave each woman only one injury and therefore there is a very strong presumption that he neither intended to cause death nor such bodily injury as he knew to be likely to cause death and that the provocation given to him by the deceased was sufficiently grave and sudden to bring him within the first exception in Section 300. *Held*, further that when the accused wounded the women in the abdomen with a pen-knife he certainly intended to cause them grievous hurt. (*Scott-Smith and Moti Sagar, JJ.*) *ALLAH DIN v. EMPEROR.* 73 I.C. 695=24 Cr. L.J. 663=A.I.R. 1924 Lah. 234.

**—S. 326—Scope.**

Where the injury caused is simple but is caused with a cutting weapon, it falls under S. 324 and not under S. 326. (*Shadi Lal, C. J. and Agha Haidar, J.*) *FATTEH KHAN v. EMPEROR.* 1930 Cr.C. 1046=A.I.R. 1930 Lah. 950.

**—S. 326—Sudden quarrel.**

The fact that the quarrel which ends in the deceased getting a fatal hurt, was a sudden one, arising in a heat of passion, is a mitigating circumstance in favour of the accused and his sentence should be reduced. (*Hilton, J.*) *BHATTU v. EMPEROR.*

30 P.L.R. 582=A.I.R. 1930 Lah. 311.

**—S. 328—Dhatura poison.**

*—Administering Dhatura to cause a girl to fall in love with accused is an offence where delirium was caused.*

The accused a boy of about 16 years of age became infatuated with a girl Mt. Chando and began to make advances to her and did various tricks to make her inclined towards him. Ultimately he persuaded Kanhaiya, a boy of about 12 years of age to take five *Peras* one of which contained dhatura in order that they might be given to Mt. Chando and other members of her family. Kanhaiya did distribute these *peras* to various people, including Mt. Chando. All the persons who took these *peras* showed symptoms of poisoning, and Mt. Chando was in a state of delirium.

*Held*: that the intention to persuade Mt. Chando by some mysterious means or other to fall in love with him, cannot be said to be an intention to commit or facilitate the commission of any offence. But dhatura is a very common drug, and it is well known that it is poisonous and a person of the age of the accused must be presumed to know that such a drug is poisonous.

*Held* further: that if a person by the administration of dhatura is thrown into a delirium, with the possible risk of falling into coma and becoming unconscious for the time being, both bodily pain and infirmity are caused and therefore the accused was guilty under S. 328. (*Sulaiman, J.*) *ANIS BEG v. EMPEROR.*

84 I.C. 1053=46 All. 77=21 A.L.J. 844=4 L.R.A. Cr. 229=26 Cr. L.J. 413=A.I.R. 1924 All. 215.

**—S. 331—Applicability.**

Extorting a promise from complainant to restore the woman that he was alleged to have abducted does not fall within the purview of the section. (*Zafar Ali, J.*) *MAULA BAKHS v. THE CROWN.* 73 I.C. 272=5 L.L.J. 375=24 Cr. L.J. 576=A.I.R. 1924 Lah. 167.

**—S. 332—Essentials.**

*—Knowledge of complainant being public servant is necessary.*

An intention on the part of the accused person, namely to prevent or deter a public servant from discharging his duty is an ingredient of the offence. If the accused persons were unaware of the fact that

**PENAL CODE (1860), S. 332—Exceeding authorities.**

the persons confined were public servants the offence is not committed. (*Mukerji, J.*) **EMPEROR v. KISHEN LAL.** 85 I.C. 246=22 A.L.J. 501=5 L.R.A. Cr. 177=26 Cr. L.J. 501=A.I.R. 1924 All. 645.

**—S. 332—Exceeding authorities.**

*—An officer is not entitled to set fire to reeds on private property.*

Section 10 of the Act does not authorize the Collector to enter upon the property of private individuals and to set fire to plants or trees growing thereon in order to facilitate the deposit of soil or silt excavated from the canal bed. Therefore, an officer doing any of the above acts cannot be said to be acting in the discharge of his duty as a public servant within S. 332, I. P. C. (*Tek Chand, J.*) **RANJHABAL v. KING-EMPEROR.** 105 I.C. 817=9 L.L.J. 424=28 Cr. L.J. 993=A.I.R. 1927 Lah. 706.

**—S. 332—Irrregularity.**

Where there are serious irregularities in connexion with house search and the person whose house is searched assaults and beats a constable, the offence falls under S. 323 and not under S. 332. (*Rowland, J.*) **RAMJI AHIR v. EMPEROR.** A. I. R. 1930 Pat. 387.

**—S. 332—Offence under.**

*—Wrestling match—Police maintaining peace and order, interfering with the match—Arena rushed and police hustled—Offence under S. 332 is committed.*

While a very evenly contested wrestling match organised by a Municipal Board was going on, one of the constables, who had been invited by the organizers to keep peace and order happened to be a backer of one of the contestants. He interfered with the wrestling and thereupon a scuffle followed in which some of the police men were hustled and their uniform torn.

*Held:* that though in a case like this it is difficult for the crowd to resist rushing to the arena, there was no reason for the crowd to hustle the police, and therefore an offence under S. 332 was committed. (*Banerji, J.*) **MIRAN v. EMPEROR.** 92 I.C. 224=23 A.L.J. 1027=27 Cr. L.J. 240=A.I.R. 1926 All. 168.

**—S. 332—Private defence.**

*—Distraint under District Municipalities Act—Resistance to,*

A distrainer having a warrant has no right to take the front door of a house, and if he threatens to do so such a proceeding renders the house unsafe calling for immediate defence of private property. Further if the accused resists such attempts he cannot be said to have exceeded his right of self-defence and any conviction under Penal Code, S. 332, is liable to be set aside: 13 Mad. 518, Foll. (*Jackson, J.*) **MADAR SHAHIB v. EMPEROR.** 1930 Cr. G. 335=31 M.L.W. 205=1930 M.W.N. 172=3 M. Cr. C. 90=31 Cr. L.J. 639=A.I.R. 1930 Mad. 430=58 M.L.J. 193.

**—S. 332—Sentence.**

Separate sentences under Ss. 147 and 332 of the Indian Penal Code are not illegal in view of amended S. 35: A. I. R. 1926 Bom. 64 and 49 Bom. 916, Foll. (*Dalip Singh, J.*) **RAHMAN v. EMPEROR.** 95 I.C. 600=27 Cr. L.J. 824=A.I.R. 1926 Lah. 521.

**—S. 332—Unauthorised act**

Playing cards is not an offence and does not come within any of the eight clauses of S. 34 Police Act, and the act of a constable in prohibiting the men from playing cards is not in the discharge of his duty. So

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**PENAL CODE (1860), S. 337—Determination of liability.**

any assault by the persons so playing on the constable does not come under S. 332, I.P.C., but is an offence under S. 323, I. P. C. (*Broadway, J.*) **MULCHAND v. CROWN.** 92 I.C. 889=27 P.L.R. 74=27 Cr. L.J. 377=A.I.R. 1926 Lah. 250.

**—S. 334—Provocation.**

It is wrong to say that no offence is committed by an accused person who strikes a blow under provocation. (*Campbell, J.*) **GHASITA v. EMPEROR.** 94 I.C. 142=27 Cr. L.J. 574.

**—S. 334—Time of provocation.**

*—Provocation is necessary at the time of assault.*

Police Officers had been harassing one R in the course of an investigation. In order to escape the high-handedness of the police and also out of feelings of shame and humiliation felt at the treatment meted out to him, R threw himself into a well. The high-handedness on the part of police was resented by R's friends and the police were roughly handled by them. Four persons were convicted of voluntarily causing hurt to police while discharging their public duties.

*Held:* that if the assault upon the police had been made while the actual torture of harassment of R was in progress then the position of the accused would have been different and other considerations would have arisen. But as the police officers were attacked after R had thrown himself into the well and escaped oppression, the accused had no justification in law to attack the police. The grave and sudden provocation, if it was ever caused by the conduct of the police had already come to an end. (*Shadilal, C. J. and Agha Haider, J.*) **HIRDE v. EMPEROR.** 11 L.L.J. 287=1929 Cr. C. 329=A.I.R. 1929 Lah. 739.

**—S. 336—Hurt not caused.**

At the time of a communal riot in the city of Pilibhit in different parts, the accused threw brick-bats at the Muhammadans who were passing by the land close to his house, he also fired two shots at them from his house. No one was hit by the bricks or the gun shot.

*Held:* that the accused had committed no offence. (*Mukerji, J.*) **BABU RAM v. EMPEROR.** 87 I.C. 523=47 All. 606=23 A.L.J. 356=26 Cr. L.J. 987=6 L.R. A. Cr. 121=A.I.R. 1925 All. 396.

**—Person deliberately throwing bricks at temple**

*—He is guilty neither under S. 336 nor S. 153.*

G deliberately threw bricks at a temple hoping that the Hindus would believe that the bricks came from the Mahomedan quarter and that thereby the Hindus would be enraged against the Mahomedans and there would be a riot between the Hindus and Mahomedans. Nobody was hurt by the Act.

*Held:* G desired a certain result to follow from the throwing of bricks and he deliberately threw the bricks at the temple for that purpose. There was neither rashness nor negligence in the act. G was not guilty under S. 336.

*Held:* further that the throwing of a brick at a temple is not declared to be an offence, nor is it prohibited by law. G's act was not therefore illegal and he was not guilty under S. 153. (*Datal, J.*) **GAYA PRASAD v. EMPEROR.** 112 I.C. 592=1929 A.L.J. 175=11 A.I. Cr. R. 207=28 Cr. L.J. 1008=10 L.R.A. Cr. 25=51 All. 465=A.I.R. 1928 All. 745.

**—S. 337—Determination of liability.**

The accused's liability is determined by what is the proximate cause. If the proximate cause is negligence of the accused, the presence of another and contributory cause is not a defence. (*Kennedy, J., G. and Rughand Bilgram, A. J. C.*) **FRANK**

**PENAL CODE (1860), S. 337—Error of judgment.**  
CROSSLEY WOODWARD v. CROWN.

92 I.C. 433=18 S.L.R. 199=27 Gr. L.J. 257=  
A.I.R. 1925 Sind 233.

—S. 337—Error of judgment.

The accused who is arraigned with negligence cannot claim the benefit of an error of judgment when he exercised none. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*) FRANK CROSSLEY WOODWARD v. CROWN.

92 I.C. 433=18 S.L.R. 199=  
27 Gr. L.J. 257=A.I.R. 1925 Sind 233.

—S. 338—Contributory negligence.

—Contributory negligence must be considered in determining sentence.

While contributory negligence would not be a defence entitling the petitioner to an acquittal it might be a factor for consideration in determining the sentence.

In the case of a person driving a motor car the car should always be kept in a state of control sufficient to enable the driver to avoid running into any passenger who may fail to step off the road, however annoying the dilatoriness of the foot passenger may be to the driver. (*Broadway, J.*) KANSHI RAM v. EMPEROR.

100 I.C. 831=28 P.L.R. 99=  
28 Cr. L.J. 351=7 A.I. Cr. R. 288=  
A.I.R. 1927 Lah. 165.

—S. 338—Motor accident.

Where it was found that the accused while driving a motor car at moderate speed and on the correct side of the road ran over a boy who came in contact with the car while crossing the road.

*Held*: that the accused could not be convicted under S. 338. (*Chotzner and Gregory, J.J.*) PULIN BEHARY NANDI v. EMPEROR.

115 I.C. 96=  
32 C.W.N. 612=30 Gr. L.J. 402=  
12 A.I. Cr. R. 259.

—S. 338—Good faith.

—Obstruction in good faith under colour of legal right—No offence.

The defence that the accused is entitled to the exception to S. 339, Indian Penal Code must be clearly raised. Where the obstruction put up by the accused was put up in good faith because the accused believed himself to have a lawful right to obstruct the complainant from going along the passage.

*Held*: that the accused was not guilty of wrongful restraint. (*Newbould and B. B. Ghose, J.J.*) KALI DAS RADHA v. DEO DHARI MISTRI. 41 C.L.J. 633=  
30 C.W.N. 192=A.I.R. 1925 Cal. 1214.

—S. 339—Obstruction.

Projecting shed over a wall which does not prevent the owner of the wall from moving under it but which is merely an obstruction to white washing or repairing wall, does not amount to an offence under S. 339. (*Fawcett and Pathkar, J.J.*) CHHAGAN VITHAL v. EMPEROR.

106 I.C. 111=  
29 Bom. L.R. 494=28 Cr. L.J. 1023=  
A.I.R. 1927 Bom. 369.

—S. 339—Obstruction to lawful act.

S. 339 covers the case of a person reasonably wanting to go vertically upwards if he has a right to do this, and being prevented from so doing by a voluntary obstruction. (*Fawcett and Pathkar, J.J.*) CHHAGAN VITHAL v. EMPEROR.

106 I.C. 111=  
29 Bom. L.R. 494=28 Cr. L.J. 1023=  
A.I.R. 1927 Bom. 369.

—Although there is authority for the view that all that S. 339 protects is the obstruction of any person, and that it does not cover a case where he himself is free to proceed in a direction in which he has a right to proceed, but without any impediments (such as a cart) that he may have with him, this view

**PENAL CODE (1860), S. 341—Public Street.**  
of personal obstruction must obviously have some limits.

Where there was an obstruction to the complainant's proceeding with his bullocks in a direction in which he had a right to proceed with his bullocks.

*Held*: an offence under S. 339 was committed. 15 Bom. L.R. 103, Dist. (*Fawcett and Madgavkar, J.J.*) EMPEROR v. LAHANU.

91 I.C. 811=  
27 Bom. L.R. 1419=27 Cr. L.J. 139=  
A.I.R. 1926 Bom. 118.

—S. 339—Presence of restrained person.

There is nothing in S. 339, which requires the physical presence of the person obstructed at the moment of obstruction: 34 Mad. 547, Foll. (*Fawcett and Pathkar, J.J.*) CHHAGAN VITHAL v. EMPEROR.

106 I.C. 111=29 Bom. L.R. 494=28 Cr. L.J. 1023=  
A.I.R. 1927 Bom. 369.

—S. 339—Restraining horse.

—Horse on which a person is riding, stopped from proceeding—Restraint is wrongful.

If a person is prevented from proceeding at the moment of restraint, the terms of S. 339 are satisfied.

If a horse on which a man is riding is prevented from proceeding, it is causing wrongful restraint to the rider and it is no defence to say that he might have got off the horse and walked in the same direction. (*Jackson, J.*) PERIA PONNUSWAMI GOUNDAN, *In re*.

100 I.C. 544=28 Cr. L.J. 320=  
A.I.R. 1927 Mad. 506.

—S. 341—Compounding.

—Criminal P. C., S. 345 (1).

An offence of wrongful restraint is compoundable by the person restrained and it is not necessary that a composition should be arrived at after a complaint has been filed in Court: 41 Mad. 685, Rel. on. (*Dalal, J.*) TORPEY, F. M. v. EMPEROR.

101 I.C. 671=25 A. L. J. 396=8 L.R. A. Cr. 49=  
7 A.I. Cr. R. 339=28 Cr. L.J. 495=  
49 All. 484=A.I.R. 1927 All. 375.

—S. 341—Essentials of wrongful restraint.

Before convicting a person of wrongfully restraining the other from making use of a particular place or thing it is necessary for the Court to determine if that other person has right to use it. (*Cuming, J.*) GHURARAM KAHAR v. EMPEROR.

A.I.R. 1930 Cal. 760.

—S. 341—Proof.

—Party prevented from using urinal—Need for proof that party prevented had right for user.

Where the accused was convicted under S. 341, I.P.C., for wrongfully restraining the complainant, his tenant, from going to a certain urinal, *held*, that the conviction could not stand unless it was proved that the complainant had a right to use the urinal, (*Cuming, J.*) GHURARAM KAHAR v. EMPEROR.

34 C.W.N. 582.

—S. 341—Public Street.

—One section of community cannot interdict another section from lawful use of public street.

When the streets are public streets vested in a municipality all members of the public have equal rights and one section of the community has no right to interdict another section of the community from the lawful use of the public streets: 30 Mad. 185 (P.C.); A.I.R. 1925 P.C. 36 and A.I.R. 1926 Mad. 830, Foll. (*Waller and Madhavan Nair, J.J.*) SUNDARESWARA SROUTIGAL v. KING-EMPEROR.

102 I.C. 481=50 Mad. 673=  
8 A.I. Cr. R. 194=25 M.L.W. 667=  
38 M.L.T. (H.C.) 307=1927 M.W.N. 279=  
28 Cr. L.J. 545=A.I.R. 1927 Mad. 935=  
52 M.L.J. 602.

**PENAL CODE (1860), S. 342—Abetment.****—S. 342—Abetment.**

*—Absence of accused, no defence if instigation proved.*

It would be no defence against the charge under Ss. 342 and 114, Penal Code, for the accused to say that he was not present at the actual arrest, if in fact he was instrumental in getting the arrest made and, if after it was made, he instigated the bailiff to wrongfully confine a debtor, in spite of a protection order in his favour. (*Spencer, J.*) **THIRUVENGADACHARIAR v. CHOCKALINGAM CHETTY.** 76 I.C. 234=18 M.L.W. 167=25 Cr.L.J. 138=

A.I.R. 1924 Mad. 31.

**—S. 342—Arrest under invalid order.**

Where, under an order of the Commissioner of Police which was published in the Calcutta Police Gazette and which had been in force for a considerable time, the Deputy Commissioner made an order for the confinement of a Head Constable and it was afterwards discovered the order published in the Gazette had not been granted the leave required under S. 9 of the Calcutta Police Act. *Held*, in a complaint by the Head Constable against the Deputy Commissioner for wrongful confinement that the accused must be acquitted. (*Sanderson, C.J., and Walmsley, J.*) **PRAMATHA NATH v. P. C. LAHIRI.** 59 I.C. 37=47 Cal. 818=22 Cr. L.J. 5.

**—S. 342—Detention for purpose of police enquiry.**

A Sub-Inspector conducting an investigation is within the law when he sends for a person to the police station who can in his opinion give information about a crime and a constable and Chowkidar, who did no more than bring such a person to the Sub-Inspector, and tell him to sit down until the Sub-Inspector sees him, are committing no offence whatever. Elements of offence under S. 342 indicated. (*Pullan, J.*) **ABDUL KARIM v. EMPEROR.** 7 O.W.N. 957.

**—S. 342—Legality of conviction.**

Conviction of some persons who, as minor offenders, are charged as engaged in a conspiracy to conceal a minor girl after abduction, under S. 368 read with S. 109, after having acquitted the principal offenders under S. 342 is not sustainable. (*Rankin, C.J., and C. C. Ghose, J.*) **MUKTAL HOSSEIN v. EMPEROR.** 33 C.W.N. 891=1929 Cr. C. 479=

A.I.R. 1929 Cal. 767.

**—S. 342—'Mens Rea.'**

Mens Rea does not enter into offence under S. 342 at all. (*Mukerji, J.*) **S. A. HAMID v. SUDHIR MOHAN.** 30 C.W.N. 751=1929 Cr. C. 366=

A.I.R. 1929 Cal. 730.

**—S. 342—Offence under.**

Where the allegation is that a certain person was wrongfully confined by a police officer the offence falls under S. 342. (*Cuming, J.*) **TOPZAL HOSSAIN v. H. C. HUNT.** 1930 Gr. C. 1111=

A.I.R. 1930 Cal. 711.

Where a person takes a woman in broad daylight and confines her wrongfully but not secretly, he commits an offence under S. 342 and not under S. 365: A.I.R. 1925 Lah. 614, Foll. (*Agha Haidar, J.*) **INDAR SINGH v. EMPEROR.** 109 I.C. 67=

10 A.I.Cr.R. 277=29 Cr.L.J. 597 (Lah.)

When there is nothing to show that the whereabouts of the person confined were concealed by the accused from the other relations or from the person interested in the person confined, the offence amounts to one of wrongful confinement under S. 342 and not under 365. (*Jai Lal, J.*) **AKBAR ALI v. EMPEROR.** 92 I.C. 213=7 L.L.J. 520=

26 P.L.R. 733=27 Cr.L.J. 229=

A.I.R. 1925 Lah. 614.

**PENAL CODE (1860), S. 353—Discharge of duty.****—S. 342—Submission by complainant.**

Submission by the complainant to arrest does not detract from the accused's acts or diminish its legal effect. The compelling of a person to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action is an imprisonment on the part of him who exercises that exterior will, 2 M.H.C. 396, Rel. on. (*Mukerji, J.*) **S. A. HAMID v. SUDHIR MOHAN.** 30 C.W.N. 751=1929 Cr. C. 366=

A.I.R. 1929 Cal. 730.

**—S. 345—Compounding.**

Under S. 345 the only person who is authorised to compound an offence under S. 498 is the injured husband and hence an order of acquittal based on compromise entered into by any other person is erroneous. (*Broadway, J.*) **MAHBUL ALI KHAN v. EMPEROR.** 74 I.C. 444=24 Cr.L.J. 780=

A.I.R. 1924 Lah. 330.

**—S. 347—Elements of Offence.**

Where it was alleged that the police officer illegally detained a person with the object of extorting money but the Court found that no money passed.

*Held*: that the elements of an offence under S. 347 were wanting. (*Pullan, J.*) **ABDUL KARIM v. EMPEROR.** 7 O.W.N. 957.

**—S. 348—Detention by Police.**

Where the detention by the police is serious and protracted enough to amount in law to a real unauthorised prevention from proceeding beyond certain circumscribing limits the offence of wrongful confinement is complete. Limits to detention by police for purposes of investigation indicated. (*Wallace and Jackson, JJ.*) **VISWANATHA AYYAR v. EMPEROR.** 1930 M.W.N. 723.

**—S. 350—Breaking of lock.**

Breaking open of a lock is not use of criminal force. (*Abdul Raoof, J.*) **MANGIRAM v. EMPEROR.** 105 I.C. 676=26 P.L.R. 500=28 Cr.L.J. 964=

A.I.R. 1927 Lah. 830.

**—S. 352—Applicability.**

Persons may riot without actually committing an offence under S. 352 and the theory that S. 147 embraces S. 352 is fallacious. (*Jackson, J.*) **SRINIVASALU NAICKEN, In re.** 106 I.C. 338=39 M.L.T. 409=

29 Cr.L.J. 2=A.I.R. 1928 Mad. 21.

**—S. 352—Assault on police.**

Where a police officer was deputed in a private place to control the traffic on the road leading from that private place to the public road and he was assaulted while so discharging his duty.

*Held*: the police officer was acting in the lawful discharge of his duty and the accused was guilty of an offence under S. 353. (*Broadway and Zafar Ali, JJ.*) **EMPEROR v. GIAN SINGH.** 111 I.C. 665=

29 Cr.L.J. 905=A.I.R. 1928 Lah. 230.

**—S. 352—Charge and conviction.**

Where an accused is sent up on a police report for trial for an offence punishable under S. 122 of the Bombay City Police Act the trying Magistrate can alter the charge and convict him of an offence under S. 352 I.P.C. 36 Cal. 869 Foll. (*Marten and Madgavkar, JJ.*) **FRAMJI BOMANJI BANAJI v. EMPEROR.** 93 I.C. 896=28 Bom.L.R. 291=27 Cr.L.J. 496=

A.I.R. 1926 Bom. 255.

**—S. 353—Discharge of duty.**

Where the accused assaulted Tahsil peons ordered to procure camels and to persuade the owners to take them to the Tahsil, *held*, that offence under S. 353, was not committed in absence of evidence to show for what purpose the camels were sent for. As other-



**PENAL CODE (1860), S. 353—"Execution of his duty".**

wise there is no evidence to show that the peons were acting in the discharge of their duties. Conviction was altered to one under S. 323. (*Gokul Prasad, J.*)  
**GOKUL CHAND V. EMPEROR.** 59 I.C. 321=  
 22 Cr.L.J. 65=L.R. 1 A. (Cr.) 162.

**—S. 353—"Execution of his duty."**

*—Resistance to Revenue Inspector in execution of distraint for arrears of revenue is an offence though warrant of distraint is addressed only to village headman, his subordinate.*

Where the warrant of distraint was addressed to the village headman and not to the Revenue Inspector who was supervising the work of the village headman, as it was his duty to do, and who had been specially enjoined by his superior the Tahsildar to attend to the work of distraint.

*Held:* that resistance to the Revenue Inspector constituted an offence under S. 353. (*Spencer, J.*)  
**KANDASWAMI GOUNDAN, In re.** 76 I.C. 962=  
 1924 M.W.N. 50=25 Cr.L.J. 290=  
 A.I.R. 1924 Mad. 539=46 M.L.J. 45.

**—S. 353—Illegal warrant**

*—Arrest on illegal warrant—Assault by person on the officer arresting—No offence under S. 353 is committed.*

Two persons were improperly arrested on an illegal warrant by a forest watcher and they were marched from the place of arrest along public road evidently to the police station. The accused came on the scene and asked: "What is the meaning of this extraordinary warrant?" or, "What is this extraordinary procedure?" or words to that effect, and seeing two of the men under actual arrest, that is, under wrongful confinement, he gave a slap on the cheek.

*Held:* that no offence under S. 353, was committed, and that at best it was a trivial offence. (*Devadoss, J.*)  
**PASUVATHIA PILLAI V. EMPEROR.** 109 I.C. 365=  
 51 Mad. 873=1 M.Cr.C. 115=29 Cr.L.J. 541=  
 28 M.L.W. 141=1928 M.W.N. 310=  
 A.I.R. 1928 Mad. 624=55 M.L.J. 220.

*—Resistance to illegal warrant—No offence—Warrant to attach supratdar's property is illegal.*

Where the *supratdar* of the attached property of a judgment-debtor, failed to deliver it when called upon to do so, and the executing court, therefore, issued a warrant of attachment of his moveable property and with this warrant the bailiff along with some seven men went to his residence and there attached his cattle, and the accused rescued the same, and caused slight injuries while so rescuing.

*Held:* that a *supratdar* is not a receiver appointed by court and therefore, the provisions of the Code of Civil Procedure relating to a Receiver appointed by court do not apply to a *supratdar*. Therefore, the warrant was illegal and the *supratdar* and his partisans were competent to resist the removal of his cattle from his house, and were not guilty of any offence if in the exercise of that right they inflicted slight injuries to the companions of the bailiff. 11 C. W. N. 836, Foll. (*Zafar Ali, J.*) **ALLAH DAD V. THE CROWN.**

75 I.C. 731=25 Cr.L.J. 43=A.I.R. 1924 Lah. 667.

**—S. 353—"In consequence of".**

The expression "in consequence of" as used in S. 353 includes the motive which actuated the assault as well as the cause of such assault. (*Jai Lal, J.*)  
**MEHRDIN V. EMPEROR.** 99 I.C. 935=  
 28 Cr.L.J. 199=A.I.R. 1927 Lah. 162.

**—S. 353—Invalid warrant.**

*—Absence of name of person to be arrested vitiates warrant and the arresting person is not a public servant.*

**PENAL CODE (1860), S. 353—Punishment.**

The name of the witness to be arrested is the most essential part of the warrant and where that was lacking,

*Held:* the peon acted without jurisdiction and consequently was not a public servant within the meaning of Section 353.

*Held:* further the warrant clearly was bad. (*Greaves and Duval, JJ.*) **JOGENDRA NATH LASKAR V. HIRALAL CHANDRA PODDAR.** 83 I.C. 481=51 Cal. 902=  
 39 C.L.J. 452=26 Cr.L.J. 2=A.I.R. 1924 Cal. 959.

*—Where the date fixed for the return of the warrant had already expired on the day that the process-server went to execute it.*

*Held,* that he was not acting in the execution of his duty and the conviction under section 353 for assaulting him was bad. (*Baker Og. J. C.*) **NANDLAL V. EMPEROR.** 76 I.C. 655=19 N.L.R. 183=  
 25 Cr.L.J. 223=A.I.R. 1924 Nag. 68.

**—S. 353—No offence.**

Assault by the lessee of the defaulter (*pattadar*) who had failed to pay the water-tax, on the officer executing the warrant authorising distraint of the defaulter's property is no offence under S. 353. (*Spencer, J.*) **MALAMPATI NARASIMHAM V. SUB-INSPECTOR OF POLICE.** 83 I.C. 1007=  
 20 M.L.W. 669=26 Cr.L.J. 223=  
 A.I.R. 1924 Mad. 895=47 M.L.J. 447.

**—S. 353—On duty.**

Although a Police Officer may be outside the area of his jurisdiction, he is bound within the limits of the district for which he is appointed to aid another Police Officer when called on by him to do so or to keep order as required under Ss. 51 (e) and 53 of the Bombay District Police Act. Therefore, any person assaulting a Police Officer while he is engaged in discharging the duty under Ss. 51 (e) and 53 is guilty of an offence under S. 353, Penal Code. 40 All. 28 Dist. (*Kincaid J. C. and Aston, A. J. C.*) **KHAIRO V. EMPEROR.** 88 I.C. 15=26 Cr.L.J. 1071=  
 18 S.L.R. 221=A.I.R. 1925 Sind 280.

**—S. 353—Police on guard.**

*—Police on guard is a public servant in the discharge of his duty.*

A constable was on duty at the judicial lock-up and while he was patrolling, the accused came up and entered into a conversation with certain under-trial prisoners who were detained in the lock-up. The constable prevented the accused from talking with the prisoners. Thereupon the accused not only abused the constable but also threw his shoe at him.

*Held:* that accused was guilty of an offence under S. 353, Indian Penal Code. (*Shadi Lal and Lumsden, JJ.*) **EMPEROR V. KHANUN.** 76 I.C. 29=  
 4 Lah. 448=28 Cr.L.J. 93=A.I.R. 1924 Lah. 257.

**—S. 353—Punishment.**

*—Resistance to the process-server in the most open way—Deterrent punishment should not be given.*

Very many people are disposed to resist process-servers when their property is attached, and it is necessary to pass deterrent sentences even where such persons are not sure that the attachment is legal. But where the accused acted in the most open way and made an endorsement that he had resisted the process-server.

*Held:* a very heavy punishment was not required in order to deter persons from taking such action as the resistance offered was merely a technical assault. It would be different if the action was such that the chance of detection and punishment was very small. (*Macnair, A. J. C.*) **BAFUJI V. EMPEROR.** 111 I.C. 576=29 Cr.L.J. 896=A.I.R. 1928 Nag. 135.



**PENAL CODE (1860), S. 353—Resistance to illegal act.**

—Assaults on public servants cannot be lightly treated. (*Jai Lal, J.*) MEHR DIN v. EMPEROR.

99 I.C. 935 = 28 Cr. L.J. 199 = A.I.R. 1927 Lah. 162.

**—S. 353—Resistance to illegal act.**

—Resistance to public officer acting in good faith though the act be illegal or irregular is offence.

Where two bailiffs went together to the house of the petitioner who knew that they were bailiffs and had come to attach his property in execution of the warrant and where the Civil Nazir stated that his instructions to the bailiffs were that they both should work together in executing the warrant and the accused whose property was to be attached under the warrant, assaulted one of the bailiffs whose name in the warrant was not endorsed and prevented him from attaching his property.

*Held*: that the bailiff was acting in good faith as a public servant and the accused was, therefore, guilty of an offence under S. 353. 21 M. 296; Foll. (*Zafar Ali, J.*) ABDUL GHANI v. EMPEROR.

76 I.C. 186 = 25 Cr. L.J. 122 = A.I.R. 1924 Lah. 632.

**—S. 353—Search without warrant.**

—Obstruction to police officers entering house without search warrant—No harm beyond push—No offence is committed.

Where a Sub-Inspector and a constable acting under him enter the house of the accused without being in possession of a search warrant it is more than doubtful whether it could be said that they were engaged in the execution of their duty as public servants. They are technically guilty of a house-trespass and the accused has a right to resent the invasion of his house. When no harm beyond a push appears to have been sustained by the constable, no offence can be said to be committed under S. 353: 13 A. L. J. 691, Rel. on. (*Sen, J.*) FAQIRA v. EMPEROR. 120 I.C. 113 = 30 Cr. L.J. 1145 = 1929 Cr. C. 495 = 13 A.I.Cr.R. 142 = A.I.R. 1929 All. 903.

**—S. 353—Unlawful assembly.**

Where the common object of the unlawful assembly was to compel by criminal force the excise officers to stop the house searches and this was effected by smashing up the handis, and when the excise officers expostulated with the rioters, they proceeded to attack them:

*Held*: that the members thereof were liable to be convicted both under S. 147 and Ss. 353, 354: 41 Cal. 836, Foll. (*Allanson and Sen, J. J.*) GENDO URON v. EMPEROR. 106 I.C. 591 = 6 Pat. 828 = 29 Cr. L.J. 79 = 9 A.I.Cr.R. 256 = 9 P.L.T. 167 = A.I.R. 1928 Pat. 115.

**—S. 354—Attempt of rape and indecent assault—Distinction.**

—Attempt to commit rape must be distinguished from preparation to commit rape and from indecent assault.

An act which amounts to attempt to commit rape does not lose that character merely because the offender does not display a determination to effect his object at all costs. But two conditions are requisite for an attempt to commit the offence. First, there must be an attempt to commit the offence and second, some act must be done towards the commission of the offence. The word "attempt" is not itself defined in the Penal Code and must therefore be taken in its ordinary meaning. And even if an act has been done towards the commission of the offence that alone does not bring the case within the section. From the moment when the intention is formed to commit an offence every act done which facilitates the commis-

**PENAL CODE (1860), S. 354—Offence under.**

sion of the offence, and which is done with that object in view, is in one sense an act done towards the commission of the offence, but the doing of every such act does not constitute an attempt to commit the offence. It must in every case be a question depending upon the circumstances whether a particular act done (with the requisite intention) towards the commission of an offence is sufficiently proximate to its commission to constitute an attempt or is so remote as merely to constitute preparation for its commission.

When a lady who was travelling alone in a train woke up from her sleep, she found the accused sitting on her berth. She jumped up and rushed screaming to the door, but the accused caught hold of her, put his hand over her mouth and threatened her with a revolver and made her sit down. She then managed to get to the window and open it but he caught her by the hair and pushed her on the seat—in a sitting position. He threatened to strangle her if she screamed. Then he began to unbutton his trousers and had unfastened the top button when she made an attempt to reach the communication cord. The accused then caught her by the wrist and in the struggle her wristlet watch was broken. Then immediately the accused released her and asked her name. She gave it and he apologised for molesting her, saying he had mistaken her for some other lady. It was established on the evidence that the accused entered the carriage with the intention of having intercourse by force if necessary, with a woman whom he then believed to be another than the one actually assaulted.

*Held*: that the acts were acts of preparation, done towards the commission of rape, but that singly or collectively they did not amount to an attempt to commit rape. They did, however, amount to an assault with the intent to outrage the modesty of a woman or which accused knew to be likely to have that result, and thus constituted an offence punishable under S. 354 of the Penal Code. (*Carr, J.*) G. V. W. JONES v. EMPEROR. 96 I.C. 260 =

4 Bur. L.J. 83 = 27 Cr. L. J. 916 = A.I.R. 1925 Rang. 247.

**—S. 354—Essentials.**

—Intent to outrage or likelihood thereof essential.

An offence under S. 354 is only committed when a person assaults or uses criminal force to a woman in, tending to outrage or knowing it to be likely that he will thereby outrage her modesty, but where a woman has no modesty to mention or it is not such as would be outraged by a person having sexual intercourse with her, the act of a person in taking her to a room and having intercourse with her, cannot be said to outrage her modesty. (*Adami and Macpherson, J.J.*) CHAMPA PASIN v. EMPEROR. 108 I.C. 81 = 9 A.I. Cr.R. 545 = 29 Cr. L.J. 325 = A.I.R. 1928 Pat. 326.

**—S. 354—Offence under.**

—Catching a woman while sleeping by neck—Offence under S. 354 is not committed. (*Cuming, J., Graham, J., contra.*)

*Cuming, J.*—Every assault on a woman or every use of criminal force to a woman does not necessarily fall under S. 354, Indian Penal Code, namely, an assault or use of criminal force to a woman with intent to outrage her modesty.

*Graham, J.*—Catching a woman by neck while she is sleeping is an act which clearly comes within the purview of S. 354, since the accused may fairly be presumed to have known that his act was likely to outrage the woman's modesty. (*Cuming and Graham, J.*)

**PENAL CODE (1860), S. 355—Provocation.**

*ham, JJ.*) GOVERNMENT OF ASSAM *v.* KANTILA CHULIA. 103 I.C. 553=31 C.W.N. 583=

28 Cr.L.J. 697=A.I.R. 1927 Cal. 505.

**—S. 355—Provocation.**

*—Prosecution must prove absence of grave and sudden provocation—Disturbing an orthodox Hindu Brahmin in his prayer is sufficient to cause grave and sudden provocation.*

In order to prove that the assault by the accused was made with intent to dishonour a woman, absence of grave and sudden provocation has to be proved.

The accused, an orthodox Hindu Brahmin, took his bath and was sitting on a stone in the midst of a stream offering his prayers. While he was so reciting his prayer, a low caste woman passed through the stream at such close distance from that place that the surface of the water got naturally disturbed and some particles of water fell on his body. The accused was upset and after some exchange of abuses the accused caught hold of the woman's hand.

*Held*: that the accused acted under grave and sudden provocation and was not guilty under S. 355. (*Kinkhede, A. J. C.*) SHEODIN *v.* MT. JUMNI.

96 I.C. 859=9 N.L.J. 157=27 Cr.L.J. 1003=

A.I.R. 1927 Nag. 47.

**—Ss. 359 to 369.**

Completion of offence.

Consent of guardian.

Consent of Minor.

Continuing offence.

Conviction and sentence.

Defence.

Essentials.

Evidence and proof.

Intention.

Interpretation.

Lawful custody.

Lawful guardian.

Offence under.

Procedure.

What constitutes offence.

Who can abduct or kidnap.

Miscellaneous.

**—Ss. 359 to 369—Completion of offence.**

A person who finding the girl below 16 years of age takes her away from guardianship to make use of her for his own purposes, is guilty of the offence and the offence is completed the moment he takes away the girl: A.I.R. 1921 Oudh 226; 27 Cal. 1041; 38 All. 664; A.I.R. 1926 Pat. 493; A.I.R. 1924 Oudh 335, Dist. (*Nanavutty, J.*) BURMA *v.* EMPEROR.

7 O.W.N. 499=1930 Cr.C. 582=

A.I.R. 1930 Oudh 289.

*—The question as to when the offence is completed is a question of fact.*

Whether the kidnapping is complete or not, is a question of fact and must in each case be decided upon the evidence. Where the finding is that the accused took part in the actual removal of the girl immediately after she was taken out of the house of her guardian, his conviction under S. 363 read with S. 114 is correct.

Where A enticed a girl to come out of her house to the road and then to the motor car in which B was sitting, who took the car to the village in order that he might kidnap her.

*Held*: that B committed an offence under S. 363 and that kidnapping was not already completed at the moment when the girl entered the car but it was completed by A driving her off in the motor-car: 2 C.W.N. 51; 27 Cal. 1041 and A.I.R. 1926 Pat. 493, Dist.

**PENAL CODE (1860), Ss. 359 to 369—Consent of minor.**

(*Adami and Scroope, JJ.*) REKHA RAI *v.* EMPEROR. 104 I.C. 436=6 Pat. 471=28 Cr.L.J. 820=

A.I.R. 1928 Pat. 159.

*—Offence is complete as soon as minor is actually taken from the lawful guardianship.*

The offence of kidnapping from lawful guardianship is complete when the minor is actually taken from the lawful guardianship. It is not an offence continuing so long as he is kept out of such guardianship; 2 C.W.N. 81; 27 Cal. 1041 and 26 Mad. 454, Foll. (*Ross and Kulwant Sahay, JJ.*) NANHAH SAO *v.* EMPEROR. 95 I.C. 392=5 Pat. 536=7 P.L.T. 812=

1926 P.H.C.C. 176=27 Cr. L.J. 792=

A.I.R. 1926 Pat. 493.

*—The question whether the act of taking the girl out of the keeping of her lawful guardian is complete is one of fact and must in each case be decided upon the evidence.* 27 Cal. 1041 Foll. (*Ross and Kulwant Sahay, JJ.*) NANHAH SAO *v.* EMPEROR. 95 I.C. 392=5 Pat. 536=7 P.L.T. 812=

1926 P.H.C.C. 176=27 Cr. L.J. 792=

A.I.R. 1926 Pat. 493.

**—Ss. 359 to 369—Consent of Guardian.**

*—Lawful guardian (father) pledging daughter to creditor who pledged her to another—Father without demanding his daughter recovering her with the help of police—No offence under S. 361.*

The pledging of a girl to secure a loan is not a legal contract and may not be enforced in law but if a minor is retained in the custody of a person with the consent of the lawful guardian he will not commit the offence of kidnapping in S. 361. It does not matter whether the consent is given for consideration or not. If after having obtained custody of a minor in a lawful manner with the consent of guardian the minor is married or disposed of in such a manner as to make it impossible for the lawful guardian to get back the custody of the minor, an offence under S. 361 would be committed and the temporary guardian doing any such act would be liable under S. 361 but so long as nothing is done which would render the restoration or exercise of the custody of the child by the lawful guardian impossible, the mere fact of transferring the guardianship by the temporary guardian would not constitute an offence.

C the lawful guardian of his minor daughter pledged her to J for a sum due. J pawned the girl to N for a loan. C hearing that his daughter was sold by J went in search of her and found her in N's house. He got her back after lodging information but without demanding her either from J, or N.

*Held*: that as it was not proved that the girl was retained in the custody of either of the accused J or N after the guardianship temporarily created in favour of J was terminated no offence of kidnapping was committed by any of the accused. (*Jwala Prasad and James, JJ.*) JILDAB KAIYER *v.* EMPEROR.

119 I.C. 72=10 P.L.T. 326=30 Cr. L.J. 980=

1929 Cr. C. 97=A.I.R. 1929 Pat. 316.

**—Ss. 359 to 369—Consent of minor.**

*—Underlying policy is to throw protection over minor girls—Consent of girl does not exonerate seducer.*

Section 366 is an aggravated form of S. 363. The consent of the girl does not exonerate the seducer. The underlying policy of the section is to uphold the lawful authority of parents or guardians over their minor wards, to throw a ring of protection over the girls themselves and to penalise sexual commerce on the part of persons who corrupt or attempt to corrupt the morals of minor girls by taking improper advantage.

**PENAL CODE (1860), Ss. 359 to 369 — Consent of minor.**

tage of their youth and inexperience. (*Young and Sen, JJ.*) SULTAN v. EMPEROR. 120 I.C. 433 = 31 Cr. L.J. 85 = 1930 Cr. C. 35 = A.I.R. 1930 All. 19.

—On a charge under Ss. 366 and 376, the question of the age of the girl is very material and if the girl is less than 14 years of age, although she may have been love smitten and wrote love letters, her consent to acts referred to in Ss. 366 and 376 is in law immaterial. (*C. C. Ghose and Guha, JJ.*) MOHIUD-DIN v. EMPEROR. 51 G.L.J. 352 = A.I.R. 1930 Cal. 437.

—Consent of minor does not prevent commission of offences under S. 366-A.

The aim of the provisions of S. 366-A is to prevent immorality and the provisions are framed more with the desire of the safeguarding the public interest of morality than the chastity of one particular woman. The consent therefore of the minor against whom the offence is committed is immaterial. The consent might have been induced and any reason given by the accused to move the girl from one place to another is sufficient inducement. Once the offence of inducement is proved, the girl's subsequent willingness will neither prevent the offence nor reduce the gravity of the offence. (*Dalal, J.*) BHAGWATI PRASAD v. EMPEROR. 119 I.C. 14 = 30 Cr. L.J. 985 = 10 L.R.A. Cr. 143 = 10 L.R.A. Cr. 146 = 12 A.I. Cr.R. 380 = 12 A.I. Cr.R. 494 = 1929 Cr. C. 293 = A.I.R. 1929 All. 709.

—Custom of *rakshasa marriage* and subsequent consent by the girl does not prevent the acts technically constituting the offences.

The fact that the *rakshasa* form is in vogue among the Gonds and the subsequent consent by the girl to the marriage, cannot prevent the previous acts of taking away the girl by force, having sexual intercourse with her, and removal of her bracelets to prevent the girl going away, from constituting the offences of wrongful confinement and robbery when they are committed; and it does not even reduce their culpability, but under these circumstances there is no necessity for a heavy sentence. (*Hallifax, A.J.C.*) GARAB SINGH GOND v. EMPEROR.

103 I.C. 195 = 28 Cr. L.J. 659 = A.I.R. 1927 Nag. 279.

—Consent of minor is no defence—But accused should not be severely punished if other circumstances justify.

Although consent of the person kidnapped is no defence to a charge under S. 363 where the accused and the girl are neighbours and for this reason become fond of each other and when her marriage was about to take place the accused decided to take her away and she agreed:

*Held*: that it is not a bad case of kidnapping though technically it amounts to such and that the accused should not be punished severely. (*Addison, J.*) WALI MOHAMMAD v. EMPEROR. 96 I.C. 874 = 27 Cr. L.J. 1018 = A.I.R. 1926 Lah. 677.

—In a case under S. 366, the consent of the girl makes no difference to the offence but it has bearing on the sentence when she is not altogether a child although legally a minor. (*Campbell, J.*) KHEM DASS v. EMPEROR. 95 I.C. 931 = 27 Cr. L.J. 851 = A.I.R. 1926 Lah. 547.

—Ss. 359 to 369—Continuing offence.

—When after inducement offender offers girl to several persons, fresh offence is not committed at every fresh offer of sale.

An offence under S. 366-A, is one of inducement

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with a particular object and when after inducement the offender offers the girl to several persons a fresh offence is not committed at every fresh offer for sale. Several offers for sale evidence the criminal intention of the offender just as much as one offer for sale. If a person is convicted of seducing the girl he cannot be convicted over again for the same seduction unless in a case where the girl had returned to her parents and then subsequently there had been a fresh seduction. (*Dalal, J.*) SIS RAM v. EMPEROR.

118 I.C. 384 = 1929 A.L.J. 800 = 10 L.R.A. Cr. 103 = 30 Cr.L.J. 904 =

12 A.I. Cr.R. 92 = 51 All. 888 = 1929 Cr.C. 175 = A.I.R. 1929 All. 585.

—Abduction is continuing offence—Each fresh removal is offence.

Certain persons conspired together to induce a Muhammadan girl of about 18 years to accompany them. Their intention was to make her over to the accused for marriage to accused's brother. The girl was brought to a certain place where the accused arrived on receiving a pre-arranged communication. The girl was not made over to him there, but they all started by train towards another direction and at a certain other Railway station got out of the train and told the accused to take charge of the girl. The girl, however, was not ready to accept the company of the stranger, got out of the train and refused to re-enter it. The accused thereupon caught hold of her hand and dragged her.

*Held*: that the accused could not be convicted of abetment of the original offence of abduction. His was a separate offence of abduction when he tried to compel the girl by force to go along with him from the railway station in question. Abduction is a continuing offence. The abduction was not completed when the girl was removed from her home. Every fresh removal of her constituted an offence of abduction. The girl was unwilling to accompany the accused and he was compelling her by force to do so, so he abducted the woman. (*Dalal, J.C.*) SUNDAR SINGH v. KING-EMPEROR. 86 I.C. 71 =

12 O.L.J. 27 = 2 O.W.N. 17 = 26 Cr.L.J. 695 = A.I.R. 1925 Oudh 328.

—The offence of abduction is a continuing offence. (*C. C. Ghose and Cuming, JJ.*) KUSHAI MALIC v. EMPEROR. 81 I.C. 906 =

50 Cal. 1004 = 25 Cr.L.J. 1082 = A.I.R. 1924 Cal. 389.

—Ss. 359 to 369—Conviction and sentence.

Where it was not stated in the complaint that the girl alleged to be kidnapped was a minor, nor were other necessary ingredients of an offence under S. 363 disclosed in the evidence led by the prosecution, but the Magistrate *suo motu* framed an additional charge under that section and convicted the accused, who is already convicted under S. 498 at the same trial.

*Held*: conviction under S. 363 cannot stand. (*Tek Chand, J.*) FAZAL DAD v. EMPEROR.

110 I.C. 794 = 11 A.I. Cr.R. 35 = 29 Cr.L.J. 762 = A.I.R. 1928 Lah. 898.

—Though the offences under S. 366 and S. 376 may appear to overlap each other, they are essentially distinct from each other. This being so, separate conviction under the two sections are perfectly correct: A. I. R. 1927 Lah. 88, Foll. (*Aga Haidar, J.*) BAGA v. EMPEROR. 109 I.C. 213 =

10 A.I. Cr.R. 216 = 29 Cr.L.J. 485 (Lah.)

—Where the proved facts in the case established two distinct offences falling under Ss. 366 and 376,

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respectively the accused can be convicted separately for each offence: A. I. R. 1927 Lah. 88, Foll. (*Agha Haidar, J.*) **TEK SINGH v. EMPEROR.**

107 I.C. 388=29 Cr.L.J. 248. (Lah.)  
—A charge under S. 366 involves different elements and different questions of fact from a charge under S. 376, and therefore separate sentences for offences under Ss. 366 and 376 are not against the provisions of S. 71, I.P.C.: 8 Bom. L. R. 120, Foll. (*Broadway, J.*) **GHULAM MUHAMMAD v. THE CROWN.** 99 I.C. 344=7 Lah. 484=27 P.L.R. 802=28 Cr.L.J. 136=A.I.R. 1927 Lah. 88.

—*Abduction with a view to effect marriage—No desire to spoil the girl—Sentence was reduced to 2½ years.*

Where a girl was abducted forcibly but the accused was a second cousin and the motive for the abduction was evidently to bring about a marriage and that there was no evil desire to spoil the girl's future or to disgrace her:

*Held:* that the sentence of five years' rigorous imprisonment should be reduced to 2½ years. (*Mya Bu, J.*) **NGA SAN MIN v. EMPEROR.** 101 I.C. 456=6 Bur. L.J. 25=8 A.I.Cr.R. 33=28 Cr.L.J. 424=A.I.R. 1927 Rang. 336.

—If a person abducts a woman with intent to rape her and does rape her, he cannot be awarded separate sentences under Ss. 363 and 376, I.P.C. Cr.A. 101 of 1914, Appl. (*Zafar Ali, J.*) **IMAM ALI v. EMPEROR.** 92 I.C. 850=27 Cr.L.J. 338=A.I.R. 1926 Lah. 212.

—Where the real offence is rape and the abduction is an aggravating circumstance separate sentences under both the sections should not be given. (*Fforde, J.*) **BUTA SINGH v. EMPEROR.** 89 I.C. 912=26 Cr.L.J. 1440=A.I.R. 1926 Lah. 114.

—Section 368 refers to some other party who assists in concealing any person who had been kidnapped and does not refer to the kidnappers, and therefore, a kidnapper cannot be convicted under S. 368; 6 W.R. 17 (Cr.), Foll. (*Raza, J.*) **BANNU MAL v. EMPEROR.** 97 I.C. 960=2 Luck. 249=13 O.L.J. 739=3 O.W.N. 687=27 Cr.L.J. 1200=A.I.R. 1926 Oudh 560.

—*Guardian not quite opposed to the marriage—Offence less serious.*

Where a girl of 18, was abducted from the custody of her mother and married to one of the accused who were her near relations and the report made by the mother to the police was to the effect that the accused being the nearest paternal relations had certainly superior right to the possession of the girl but that they had no right to take her away forcibly without paying the mother some compensation for the trouble and expense that she had incurred in bringing up the girl.

*Held:* that an offence was technically committed and accused was guilty under S. 366, but having regard to the fact that the parties are very close relations and that the mother herself did not take a very serious view of the matter when she lodged the first information report, a nominal sentence was sufficient. (*Moti Sagar, J.*) **SHER v. THE CROWN.** 77 I.C. 606=5 L.L.J. 377=25 Cr.L.J. 430=A.I.R. 1924 Lah. 110.

—Where the girl kidnapped was not imposed upon.

*Held:* the sentence of 7 years was too severe, (*Dalal, J.C.*) **IPU v. EMPEROR.** 81 I.C. 529=27 O.C. 32=25 Cr.L.J. 913=A.I.R. 1924 Oudh 335.

**PENAL CODE (1860), Ss. 359 to 369—Evidence and proof.**

—Ss. 359 to 369—Defence.

—*Lawful entrustment means acceptance of the trust.*

To bring a case within the purview of the expression "lawfully entrusted" in explanation to S. 361 it must be clearly shown that not only the mother of the girl requested the alleged guardian to take the girl under his protection but that he accepted the trust: 8 Cal. 971, Ref. (*Percival, J.C., and Rupchand, A.J.C.*) **MOHAN SINGH v. EMPEROR.**

1930 Cr. C. 649=A.I.R. 1930 Sind 164.  
—If it turns out that the girl was under 16 years of age, the accused, even if he honestly believed her to be over 16, cannot protect himself as he must be deemed to have acted at his peril. (*Sulaiman, J.*) **PREM NARAIN v. EMPEROR.** 113 I.C. 765=1929 A.L.J. 114=10 L.R.A. Cr. 40=11 A.I.Cr. R. 257=30 Cr.L.J. 218=A.I.R. 1929 All. 82.

—Illicit intercourse does not cease to be one, merely because it is repeated. If the intention is to kidnap the girl in order to seduce her to illicit intercourse, the fact of previous intimacy with her is wholly immaterial. (*Sulaiman, J.*) **PREM NARAIN v. EMPEROR.** 113 I.C. 765=1929 A.L.J. 114=10 L.R.A. Cr. 40=11 A.I.Cr. R. 257=30 Cr.L.J. 218=A.I.R. 1929 All. 82.

—Section 361 is framed in such terms as to make it immaterial what the offender took the age of the girl or victim to be. S. 76 has no application in such a case. (*Dhavi and Fazal Ali, JJ.*) **KRISHNA MAHARANA v. EMPEROR.** 1929 Cr. C. 379=A.I.R. 1929 Pat. 651.

—*Although girl has lost her chastity she can be seduced.*

It is not a correct proposition that once a girl has lost her chastity, she cannot be seduced since she has no chastity to lose. On each occasion that a woman is persuaded to indulge in illicit intercourse, she is being tempted into sin and so seduced within the meaning of S. 366. (*Kincaid, J.C. and Barlee, A.J.C.*) **EMPEROR v. SARAN.** 99 I.C. 98=21 S.L.R. 356=7 A.I.Cr.R. 181=28 Cr.L.J. 66=A.I.R. 1927 Sind 104.

—It is not necessary for a conviction under S. 366 that the accused should know definitely who the guardian of a minor girl is, whom he finds wandering about and makes use of her for his own ends. (*Dalal, J.C.*) **IDU v. EMPEROR.** 81 I.C. 529=27 O.C. 32=25 Cr.L.J. 913=A.I.R. 1924 Oudh 335.

—Ss. 359 to 369—Essentials.

The inducement to leave must have for its object seduction by another person and not by the person who himself induces the woman to leave. (*Dalal, J.*) **RAM SARAN v. EMPEROR.** A.I.R. 1930 All. 497.

—S. 368 requires "knowledge" on the part of the accused and not merely suspicion or reason to believe. (*Suhrawardy and M. N. Mukerji, JJ.*) **GADADHAR SARKAR v. EMPEROR.** 87 I.C. 845=26 Cr. L.J. 1021=A.I.R. 1926 Cal. 226.

—Ss. 359 to 369—Evidence and proof.

A woman, while going to her home, was met by two ruffians, one of whom caught hold of the woman by her arm and dragged her a short distance, when she was rescued by her neighbours. There was no evidence to indicate as to what their real intention was.

*Held:* that under these circumstances the accused could not be convicted under S. 366 but under S. 354: 12 A.L.J. 91, Rel. on. (*Agha Haidar, J.*) **FAKIR v. EMPEROR.** 109 I.C. 127=10 A.I.Cr.R. 207=29 P.L.R. 444=10 L.L.J. 325=28 Cr.L.J. 479.

**PENAL CODE (1860), Ss. 359 to 365—Evidence and proof.**

*Incriminating evidence not inconsistent with innocence of accused—Conviction is not proper.*

In a prosecution under S. 364, where there was no incriminatory evidence whatsoever against the accused beyond the fact that he and the deceased left together and were last seen together, and that the one returned without the other :

**Held :** that although circumstances lead to a high degree of suspicion against the accused, they cannot be said to be inconsistent with any reasonable theory in accused's favour other than that the accused lured the deceased away for the purpose of having him murdered, or being exposed to the danger of being murdered, and hence no conviction could be safely had. (*Fforde and Addison, JJ.*) **ALLA RAKHA v. EMPEROR.** 103 I.C. 838=8 A.I. Cr. R. 575=9 L.L.J. 396=28 Cr.L.J. 758=

A.I.R. 1927 Lah. 638.

*Seduction resulting in abduction need not be proved to be separate from that resulting in illicit intercourse.*

In order to have conviction under S. 366 it is not necessary to establish by independent evidence that the girl was seduced to illicit intercourse and that such seduction was separate from and independent of the original seduction which resulted in her abduction. The proximity of both the events is an important factor and so long as the Court is satisfied that the effect of inducement which was the cause of abduction continued till the time of the illicit intercourse, it is legally open to it to hold that the girl was seduced to illicit sexual intercourse. (*Jai Lal, J.*) **TUFAIL v. EMPEROR.** 101 I.C. 189=28 Cr.L.J. 413=

8 A.I. Cr. R. 41=A.I.R. 1927 Lah. 370.

It is not necessary for the prosecution to prove that the woman was compelled to leave not only her house but was compelled to go from place to place in order to sustain a charge under S. 366. (*Newbould and B. B. Ghose, JJ.*) **KERAMAT MONDEL v. EMPEROR.** 92 I.C. 439=42 C.L.J. 824=27 Cr. L.J. 263=

A.I.R. 1926 Cal. 320.

*B having lived at D for some time came back to M where his wife was living and told her that as he had got work at D, she should go with him to D to cook for him. In that way he induced her to leave M for D. When they reached D, they were met by one S and they all went together to the house of a woman K. When B's wife went to the house of K, she was told by K that her husband had sold her to S for Rs. 150 and that S would give her presents and make her happy. S also told her the same thing and asked her to come and live with him. B, S and K were all charged under S. 366.*

**Held :** that the question was not merely whether the jury was satisfied that S made immoral proposal to the woman at D or whether the jury were satisfied that K was a woman who kept a house of a disorderly and disreputable character but the question which the jury had to answer was whether it was shown that the offence of the husband under S. 366 was abetted by S and K under S. 107 ; and the only way in which that could be made out was to see whether there was sufficient proof that before the husband left D for M he had a bargain with these people to that effect, that they knew that the girl could not be brought to D except by deceitful means and that, therefore, they abetted the offence under S. 366. (*Rankin and Duval, JJ.*) **BASANTA KUMAR GOSSAIN v. EMPEROR.** 99 I.C. 236=44 G. L. J. 317=28 Cr. L. J. 108.

Evidence, that the accused said that they wanted to sell the girl is not sufficient for a conviction for

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**PENAL CODE (1860), Ss. 359 to 369—Intention.** An offence under S. 368. The prosecution has to prove that the accused concealed the girl or kept her in wrongful confinement. (*Martineau, J.*) **AMAR ALI v. EMPEROR.** 93 I.C. 1050=27 Cr.L.J. 554=

A.I.R. 1926 Lah. 384.

*Abducted girl not forthcoming—Principal witness a boy of 10 and brother of abductive girl's husband—Other witnesses not giving immediate information to her relations—Conviction was set aside.*

Where the abducted girl was not forthcoming and the principal witness was a boy of ten years who was the younger brother of the husband of the abductive girl, and other witnesses were persons who saw the girl forcibly being taken away and though she was weeping and crying had not done anything to rescue her or to inform her relatives immediately.

**Held :** that the abduction was not proved and that the conviction must be set aside. (*Zafar Ali, J.*) **GHULAM v. EMPEROR.** 100 I.C. 357=27 P.L.R. 747=28 Cr. L. J. 277=7 A.I. Cr. R. 408.

*Probability of girl eloping with accused—Conviction is bad.*

Where it was not unlikely that the girl herself eloped with some of the accused and on missing her, her parents got up the story to recover her and to bring her paramours into trouble.

**Held :** that a conviction under S. 366 was improper. (*Zafar Ali, J.*) **HARDITTA v. EMPEROR.**

6 L.L.J. 622=A.I.R. 1925 Lah. 274.

**—Ss. 359 to 369—Intention.**

*Persons selling girl with knowledge or intention that she would be subjected to illicit intercourse are guilty—It is not necessary that accused should know that girl is married.*

D having quarrelled with her husband left her house with the idea of going to her grandfather. She met S and N on the way who offered to escort her. Instead of doing so, they tried to sell her and being unsuccessful concealed her in the house of S where she was later on traced by her relations. It was contended that S did not know that D was a married girl.

**Held :** that even assuming that S did not know that D was a married girl, his attempt to sell her clearly made him liable under S. 366-A. The manner in which S tried to dispose of D was clear indication of his intention or knowledge that the girl would be subjected to illicit intercourse. The conduct of N also showed his guilty knowledge and intention. A. I. R. 1927 Lah. 727, Dist. (*Jailal, J.*) **SHER SINGH v. EMPEROR.** 1930 Cr. C. 531=A.I.R. 1930 Lah. 463.

*Presumption—When woman is kidnapped it is with one or other intents mentioned in S. 366.*

It is practically impossible for the prosecution in cases of kidnapping and abduction to establish affirmatively the intention with which a woman is abducted. But it is a fair and justifiable presumption that when any woman is kidnapped or abducted it is undoubtedly with one or other of the intents specified in S. 366. The intention is more or less a matter of inference though there may be cases where the matter is capable of direct proof. It is for the accused to explain away incriminating circumstances. (*Tapp, J.*) **JOWAYA v. EMPEROR.** 120 I.C. 606=1930 Cr. C. 171=

31 Cr. L.J. 131=A.I.R. 1930 Lah. 163.

*Intention can be inferred from conduct of accused and circumstances of case.*

In a case under S.366, it is the duty of the prosecution to prove that the abduction took place with the intention mentioned in the section ; but then the intention can also be inferred from the conduct of the



**PENAL CODE (1860), S. 359 to 369—Intention.**  
 accused and the circumstances of the case. Ordinarily it is not possible for the prosecution to establish the intention except by proving the conduct. A girl of about 14 years was forcibly abducted by the accused.

*Held*: that no inference except of the intention such as is mentioned in S. 366 is possible. (*Jailal, J.*)  
**HAIDAR SHAH v. EMPEROR.** 123 I.C. 528 =  
 1930 Cr. C. 20 = 31 Cr. L.J. 529 =  
 A.I.R. 1930 Lah. 52.

—Intention under S. 366 is a matter of inference from the circumstances of the case and subsequent conduct of the accused after the abduction has taken place: A.I.R. 1921 Lah. 323, Foll. (*Agha Haidar, J.*) **BANTA SINGH v. EMPEROR.** 110 I.C. 99 = 10 A.I.R. Cr. 429 =  
 29 Cr. L.J. 643 (Lah.)

—Where the accused is not shown to have knowledge or intention that the girl might be or was likely to be forced to illicit intercourse, the offence under S. 366-A is not committed. (*Addison, J.*) **RATI RAM v. EMPEROR.** 102 I.C. 552 = 28 P.L.R. 260 =  
 8 A.I. Cr. R. 239 = 28 Cr. L.J. 584 =  
 A.I.R. 1927 Lah. 721.

—Mere abduction without criminal intent of one of the kinds specified in the Indian Penal Code is not recognized as an offence. (*Broadway, J.*) **HAZARA SINGH v. EMPEROR.** 99 I.C. 121 = 6 L.L.J. 512 =  
 27 P.L.R. 867 = 28 Cr. L.J. 89.

—S. 366 is only an aggravated form of the offence created by S. 363, and where the girl kidnapped from lawful guardianship is under the age of 16 years, the intention of the accused in kidnapping her is the material matter and not the consent or willingness or otherwise of the kidnapped girl and if the intention of the accused is to give her in marriage, conviction under S. 366 is right: A.I.R. 1922 Cal. 508, Rel. on. (*Kincaid, J.C. and Rupchand Bilaram, A.J.C.*) **HUSSAINBIBI v. EMPEROR.** 93 I.C. 248 =  
 20 S.L.R. 74 = 27 Cr.L.J. 456 = A.I.R. 1926 Sind 151.

—Section 365 makes punishable the offence of abduction with intent to cause the person abducted to be secretly and wrongfully confined. (*Jai Lal, J.*) **AKBAR ALI v. EMPEROR.** 92 I.C. 213 =  
 7 L.L.J. 520 = 26 P.L.R. 733 = 27 Cr. L.J. 229 =  
 A.I.R. 1928 Lah. 614.

—Where the abducted woman has voluntarily lived with the accused for a couple of months before abduction as his wife, and whom the accused had intended to marry. *Held* the intention which is a necessary ingredient to constitute offence under S. 366 was absent and hence no offence was committed under the section. (*Scott-Smith, J.*) **BHAJAN DAS v. EMPEROR.** 72 I.C. 533 = 24 Cr. L.J. 421 =  
 A.I.R. 1924 Lah. 218.

—If a minor girl leaves her husband's house without any persuasion, inducement or blandishment held out to her by a man, so that she has got fairly away from home, and then goes to him, he cannot be deemed to have infringed the law, even if he does not restore her to her lawful guardian. (*Shadi Lal, C.J.*) **LACHHI RAM v. THE CROWN.** 73 I.C. 260 =  
 24 Cr. L. J. 564 = A.I.R. 1923 Lah. 330.

—Abduction in itself constitutes no offence and only becomes an offence when certain criminal intents are proved. (*Pipon, J.C.*) **GHULAM YUSAF v. EMPEROR.** 75 I.C. 297 = 24 Cr. L. J. 921 (Lah.)

—To constitute the offence of kidnapping the intention to prevent the kidnapped person from returning to his guardian is not necessary.

—Where a minor runs away from lawful guardianship the person with whom he takes refuge is not "taking him" within the meaning of the law. But inducing a minor to run away or giving him encourage-

**PENAL CODE (1860), Ss. 359 to 369—Interpretation.**

ment would constitute the offence, and any question of intention would be relevant only as regards the sentence. (*Pipon, J.C.*) **JAFAR SHAH v. EMPEROR.** 69 I.C. 444 = 23 Cr. L. J. 716.

—Ss. 359 to 369—Interpretation.

The word "induce," is used in its ordinary meaning of any words of inducement flowing from one person to the girl. (*Dalal, J.*) **RAM SARAN v. EMPEROR.** A.I.R. 1930 All. 497.

—The word 'forced' as used in S. 366, is used in its ordinary dictionary sense and would include forced by stress of circumstances. (*Mukerji and Jack, JJ.*) **PRAFULLA KUMAR BOSE v. EMPEROR.** 50 C.L.J. 593 = 1930 Cr. C. 209 = A.I.R. 1930 Cal. 209.

—'Seduced' includes subsequent seduction for further acts of illicit intercourse.

The word 'seduced' as used in S. 366 should not be taken to have that narrow meaning of inducing a girl to part with her virtue for the first time but that even though a girl may have by the first act of seduction surrendered her chastity, subsequent seduction for further acts of illicit intercourse is also meant to be included: *Rex v. Moon*, (1910) 1 K. B. 818, Ref. (*Mukerji and Jack, JJ.*) **PRAFULLA KUMAR BOSE v. EMPEROR.** 50 C.L.J. 593 = 1930 Cr. C. 209 =  
 A. I. R. 1930 Cal. 209.

—Words "seduced to illicit intercourse" do not refer to first act of seduction only.

The words "seduced to illicit intercourse" do not refer to first act of seduction or surrender of chastity but they refer also to subsequent co-habitation as well. The object of the section is to punish not the seduction by itself but the kidnapping of the kidnapped: 10 Bur. L. R. 196, Foll. (*Dhawe and Fazl Ali, JJ.*) **KRISHNE MAHARANE v. EMPEROR.** 1929 Cr. C. 379 = A. I. R. 1929 Pat. 651.

—The expression "enticing" involves that, while the person kidnapped might have left the keeping of the lawful guardian willingly, still the state of mind that brought about that willingness must have been induced or brought about in some way by the accused. (*Srinivasa Ayyangar, J.*) **ABDUL SATHAR v. EMPEROR.** 109 I.C. 907 = 27 M.L.W. 683 =  
 29 Cr. L. J. 635 = 1 M. Cr. C. 65 =  
 A.I.R. 1928 Mad. 585 = 54 M.L.J. 456.

—The expression "taking" in S. 361 is not confined to mere physical taking. There is such a taking as is indicated in the common expression: "If you will come along, I shall take you." The expression taking out of the keeping of the lawful guardian must, therefore, signify some act done by the accused which may be regarded as the proximate cause of the person going out of the keeping of the guardian or in other words, an act but for which the person would not have gone out of the keeping of the guardian as he or she did.

Where it was found that the girl, alleged to be kidnapped by the accused, had written letters in which she was desperately calling for him to come and take her away and she was soon after discovered to be with the accused or under his control:

*Held*: that from these two facts it is legitimately open to a Court of law to assume that he finally yielded to the solicitations and made it possible for her to get away and that is sufficient "taking" in law for the purposes of S. 363, I. P. C. (*Srinivasa Ayyangar, J.*) **ABDUL SATHAR v. EMPEROR.** 109 I.C. 907 = 27 M.L.W. 683 = 29 Cr. L.J. 635 =  
 1 M. Cr. C. 65 = A.I.R. 1928 Mad. 585 = 54 M.L.J. 456.



**PENAL CODE (1860), Ss. 359 to 369—Interpretation.**

—Per *Kincaid, J. C. (Kennedy, A. J. C., doubting)*. Seduction is not to be confined to the first connexion with an unmarried girl.

It is not a correct proposition that because a man has induced a girl, while in the custody of her parents, to surrender her chastity, he does not commit further act of seduction to illicit intercourse, when he persuades her to live with him to a condition of concubinage not sanctioned by marriage: 10 Bur. L. R. 196 and *Rex v. Moon*, (1910) 1 K. B. 818 Foll. (*Kincaid, J. C. and Kennedy, A. J. C.*) *PESSUMAL v. EMPEROR*. 98 I.C. 188 = 27 Cr. L.J. 1252 =

A.I.R. 1927 Sind 97.

—It is doubtful whether it is possible to read into the words "the offence of kidnapping or abduction" the words "wrongfully concealing or keeping in confinement a kidnapped person", and although the punishment under S. 368 is the same as that under S. 366 the offences are not the same. (*Stuart, J.*) *BADHE SHAH v. EMPEROR*. 81 I.C. 40 = 46 All. 138 = 21 A.L.J. 912 = 5 L.R.A. Cr. 49 = 25 Cr. L.J. 552 =

A.I.R. 1924 All. 454.

**—Ss. 359 to 369—Lawful custody.**

Where the mother from whose custody a Mahomedan minor girl was removed by the accused was proved to have married in a stranger family and consequently lost her right of guardianship, *held*, that the conviction under S. 363, I. P. C., could not be sustained. (*C. C. Ghose and Pearson, JJ.*) *HARBHORSHA MAHOMED v. JHAPURAN BIBI*. 51 C.L.J. 476 =

A.I.R. 1930 Cal. 665.

**—Ss. 359 to 369—Lawful guardian.**

In case of a girl whose parents are dead and who is below 16, her brother though not over 18 years of age is deemed to be her lawful guardian. (*Johnstone, J.*) *MEHR. HUSSAIN v. EMPEROR*. 1929 Cr. C. 563 =

A.I.R. 1929 Lah. 835.

—The test of lawful guardianship is that the infant or minor should be in a position to apply to his guardian for protection. It is not necessary and the law does not require that the Crown should prove that a minor has been taken actually from the actual custody of his guardian. (*Barlee, J. C. and Kalumal, A. J. C.*) *MOHAMMAD SALEH v. EMPEROR*. 1929 Cr. C. 543 = A.I.R. 1929 Sind 249.

—Where the accused took a girl under 18 years of age about from place to place with the intention of seducing her to illicit intercourse but force or deceitful means were not used,

*Held*: that no offence under S. 366 but one under S. 366-A was committed. (*Dalal, J. C.*) *SAADAT KHAN v. EMPEROR*. 88 I.C. 463 = 2 O.W.N. 445 =

26 Cr. L.J. 1151 = A.I.R. 1925 Oudh 454.

**—Ss. 359 to 369—Offence under.**

One P who was formerly a Christian changed her religion and became a convert to Hinduism. She left the house in which she was living during the absence of her husband who had gone to another place. When the latter came back he demanded his children, but they were not handed over to him.

*Held*, that on these facts there is no question of an offence under S. 363; 41 Cal. 714 Foll. (*Harrison, J.*) *MRS. PETER v. EMPEROR*. 102 I.C. 209 =

28 Cr. L.J. 513 = 8 A.I. Cr. R. 187 =

A.I.R. 1927 Lah. 496.

**—Ss. 359 to 369—Procedure.**

Seduction is a comprehensive expression and it does not exclude the possibility of deceitful means being used in order that seduction may be practised with effect. Where, therefore, a Judge charges the jury under S. 365, and explains the whole section fully to

**PENAL CODE (1860), Ss. 359 to 369—What constitutes offence.**

them, he need not suggest that if they find that the girl was not compelled by force to leave her father's house they should next proceed to consider whether deceitful means had been practised upon her by the accused and whether by such means she was induced to leave her father's house. (*C. C. Ghosh and Guha, JJ.*) *MOHAMMED JALALLUDIN MANDAL v. EMPEROR*. A.I.R. 1930 Cal. 433.

—Notice of a charge of kidnapping under S. 366 is not a fair, proper or sufficient notice of a charge of abduction under S. 366 because on a charge of abduction the accused has got to meet that charge on facts different from those which would be involved in a charge of kidnapping.

The accused were charged of kidnapping but the jury were led to believe that it was open to them to return a verdict of guilty of abduction.

*Held*: that it was impossible to say that no prejudice was caused to the accused and the case was fit for ordering retrial: A.I.R. 1927 Cal. 200 Foll. (*C. C. Ghose and Jack, JJ.*) *FEDU SHEIKH v. EMPEROR*. 117 I.C. 862 = 32 C.W.N. 1245 = 30 Cr. L.J. 857.

—Where an accused was charged in one head under one charge with 'kidnapping or abduction':

*Held*: that the ingredient of the two offences being obviously different, the accused was entitled to know which of the charges he was asked to meet. (*Cuming and Graham, JJ.*) *MOFIZADDI v. EMPEROR*. 104 I.C. 245 = 45 C.L.J. 561 = 31 C.W.N. 940 =

28 Cr. L.J. 805 = A.I.R. 1927 Cal. 644.

—Where the Magistrate finds in a case under S. 363, I.P.C., that there is *prima facie* sufficient evidence that the girl was enticed away; the Magistrate should examine and decide whether an offence under S. 366 or some other cognate offence against a female of over 16 was committed and should not remain content with finding that the girl was not proved to be under 16. (*Campbell, J.*) *GOKAL v. PHUMAN SINGH*. 85 I.C. 36 = 6 L.L.J. 318 = 26 Cr. L.J. 420 =

A.I.R. 1924 Lah. 718.

**—Ss. 359 to 369—What constitutes offence.**

—The substantial offence under S. 366 is abduction or kidnapping—Not seduction in the sense of loss of chastity for the first time.

A conviction under S. 366 is not bad therefore merely for the reason that the accused has had intercourse with the woman even before she was kidnapped. *Rex v. Emily Moon* (1910) 1 K. B. 818 held inapplicable. (*Pandalai, J.*) *SUPPIAH v. EMPEROR*. 1930 M.W.N. 905.

—A boy under 14 years of age was kept in charge of the applicant who was to teach him Quran and feed him with the money of the boy's father. The applicant ran away with the boy to a distant place with the object of teaching him painting scenes;

*Held*, that the applicant was guilty under S. 363. (*Mukerji, J.*) *MOHAMMAD HUSAIN v. EMPEROR*. 86 I.C. 428 = 23 A.L.J. 10 = 26 Cr. L.J. 796 =

6 L.R.A. Cr. 62 = A.I.R. 1925 All. 295.

—Where a fatherless Muhomedan girl of about 10 or 11 years of age was taken away with the consent of her mother and married against the wishes of her brother who was her guardian for marriage and against her own will, *Held*, an offence under S. 366 was committed. In such a case it is unnecessary to consider whether the girl had any right to act of her own free will in the matter. (*Greaves and Panton, JJ.*) *AHMED BEPARI v. EMPEROR*. 84 I.C. 434 =

26 Cr. L.J. 290 = A.I.R. 1925 Cal. 578.

—Where persons are kidnapped with the object of holding them to ransom the kidnapper is guilty

**PENAL CODE (1860), Ss. 359 to 369—What constitutes offence.**

under S. 363 or S. 365 but not under S. 364, I. P. C. (*Scott-Smith, J.*) **SAMUNDAR v. EMPEROR.**

91 I.C. 240=27 Cr. L.J. 64 (Lah.)

—Where the accused took a girl under 18 years of age about from place to place with the intention of seducing her to illicit intercourse but force or deceitful means were not used.

*Held:* that no offence under S. 366 but one under S. 366-A was committed. (*Dalal, J.C.*) **SAADAT KHAN v. KING EMPEROR.**

88 I.C. 463=

2 O.W.N. 445=26 Cr. L.J. 1151=

A.I.R. 1925 Oudh 454.

**—Ss. 359 to 369—Who can abduct or kidnap.**

Father taking away his unhappy daughter from her husband's house and giving her as wife to another commits offence under S. 366-A. (*Dalal, J.*) **RAM SARAN v. EMPEROR.**

A.I.R. 1930 All. 497.

—Where a widow has been deceitfully induced by her mother-in-law to leave her house with intent that she might be compelled to marry one of the accused, and the other two accused compel her by force to accompany them to another place, all the three are guilty of abduction. The phraseology of Ss. 362 and 366 is very comprehensive and fully covers the case. (*Tekchand and Agha Haidar, J.J.*) **SANT RAM v. EMPEROR.**

30 P.L.R. 573=1929 Cr.C. 305=

A.I.R. 1929 Lah. 713.

—*Christian woman becoming Hindu and taking her children by Christian husband with her—She is not guilty under S. 363.*

One P. who was formerly a Christian changed her religion and became a convert to Hinduism. She left the house in which she was living during the absence of her husband who had gone to another place. When the latter came back he demanded his children, but they were not handed over to him.

*Held:* that on these facts there is no question of an offence under S. 363: 41 Cal. 714. Foll. (*Harrison, J.*) **MRS. PETER v. EMPEROR.**

102 I.C. 209=

28 Cr.L.J. 513=8 A.I.Cr.R. 187=

A.I.R. 1921 Lah. 436.

**—Ss. 359 to 369—Miscellaneous.**

—*Conspiracy to sell girl in marriage—No proof of kidnapping—Offence committed.*

Where there is conspiracy between certain persons that a girl should be brought to Sind and sold there to some person who might be willing to buy her and that to such person it should be stated that the girl was a relation of one of the party of the conspirators and it is not proved that the girl was kidnapped from lawful guardianship the offence committed falls under Ss. 420 and 511 read with S. 120-B, rather than under S. 366 read with S. 120-B. (*Perceval, J. C. and Rupchand, A. J. C.*) **MOHANSINGH v. EMPEROR.**

1930 Cr.C. 643=A.I.R. 1930 Sind. 164.

—Kidnapping is an entirely distinct offence from abduction, the necessary ingredients being entirely different. (*Cuming and Graham, J.J.*) **MOFUZADDI v. EMPEROR.**

104 I.C. 245=45 C.L.J. 561=

31 C.W.N. 940=28 Cr.L.J. 833=

A.I.R. 1927 Cal. 644.

—*Minor—Control of Guardian—Termination.*

The mere fact that the minor leaves the protection of her guardian does not put her out of the guardian's keeping. But if the minor abandons her guardian with no intention of returning she cannot be held to continue in the guardian's keeping. Which principle should be applied to a particular case depends on the facts of that case. (*Newbold and Mukerji, J.J.*) **RAW VALLIENT v. N. ELEAZER.**

87 I.C. 513=

29 C.W.N. 215=26 Cr.L.J. 977=A.I.R. 1926 Cal. 467,

**PENAL CODE (1860), S. 373—Completion of offence.**

—When there is nothing to show that the whereabouts of the person confined were concealed by the accused from the other relations or from the person interested in the person confined, the offence amounts to one of wrongful confinement under S. 342 and not under S. 365. (*Jai Lal, J.*) **AKBAR ALI v. KING EMPEROR.**

92 I.C. 213=27 Cr.L.J. 229=

7 L.L.J. 520=26 P.L.R. 733=

A.I.R. 1925 Lah. 614.

—*Attempt to abduct.*

Where the accused came on to the roof of a house and awakening the woman who was sleeping there with her husband asked her to accompany them and on her refusal they lifted her up in order to carry her away, when she raised an alarm, and the accused dropped her on the roof and ran away.

*Held:* that under S. 362 of the Penal Code, the accused were not guilty of the offence of abduction, inasmuch as the woman was not compelled to go from the place where she was, but was merely lifted up and that the action of the accused amounted to an attempt to abduct. (*Scott-Smith, J.*) **ALLU v. EMPEROR.**

86 I.C. 1007=26 P.L.R. 119=26 Cr.L.J. 943=

A.I.R. 1925 Lah. 512.

—*Persons not taking active part are not guilty.*

Where the accused appeared to have helped merely in getting the kidnapped girl married and nowhere had he taken any part in keeping the custody of the girl and he was simply carrying out orders of the other accused and took no active part in concealing or confining the girl.

*Held:* the accused was not guilty of the offence. (*Dalal, J.C.*) **ILU v. EMPEROR.**

81 I.C. 529=

21 O. C. 32=25 Cr. L. J. 913=A.I.R. 1924 Oudh 335.

**—S. 372—Interpretation.**

—*"Disposal" connotes control over minor disposal of—Mere direction to minor to go to a brothel is not "disposal."*

The word 'disposal' necessarily connotes some control by the person disposing, over the minor disposed of.

The accused, who was a customer of a brothel came across a girl, that had run away from her father's house, being unable to bear the ill-treatment of her step-mother and directed her to the brothel in order that she may be useful for the business carried on in the brothel. No pecuniary consideration passed nor was any stipulation made with regard to such consideration.

*Held:* that this was not a case of selling or letting and also that the acts of the accused did not constitute or amount to disposal of the minor, and that the accused was not guilty. (*Srinivasa Aiyangar, J.*) **SENJIMULAI, In re.**

86 I.C. 804=

21 M.L.W. 472=26 Cr.L.J. 863=

A.I.R. 1925 Mad. 716=48 M.L.J. 594.

**—S. 372—Preliminary steps.**

The ceremony which consists of tying a talimani to a minor girl, worshipping a basin of water and distributing food may be preliminary step before selling, letting out or disposing of the girl for the purpose of prostitution, but that does not make it an offence under the Indian Penal Code. (*Macleod, C.J. and Coyajee, J.*) **EMPEROR v. SAHEBAVA BIRRAPPA.**

89 I.C. 1050=27 Bom. L.R. 1022=

26 Cr. L. J. 1482=A.I.R. 1925 Bom. 478.

**—S. 373—Completion of offence.**

—Where a minor married girl was, with her husband's consent, brought from Kashmir to Bombay at the expense of the brothel keeper and was kept in a brothel in Bombay.

**PENAL CODE (1860). S. 373—Possession.**

*Held*: that what took place in Kashmir was only a preparation for committing the offence under S. 373 which was completed in Bombay. (*Fawcett and Patkar, JJ.*) **EMPEROR v. BATUHAJ GANESHU.**

101 I.C. 593=8 A.I.Cr. R. 89=29 Bom. L.R. 430=28 Cr. L.J. 465=A.I.R. 1927 Bom. 666.

**—S. 373—Possession.**

—“Possession” need not be obtained from third person.

It is not requisite for the purpose of S. 373 that the possession of the minor should be obtained from a third person. It is enough if it is established that the accused in fact obtained possession of the minor with intent that the minor shall be used for purpose of prostitution: 5 M. H. C. R. 473; 35 M. L. J. 157; 21 Cal. 97 and 11 C. P. L. R. 6 Dist.; A. I. R. 1921 Bom. 323, Foll. (*Ross and Scroope, JJ.*) **SHAM SUNDER PRUSTI v. EMPEROR.** 11 P.L.T. 341=

A.I.R. 1930 Pat. 219.

—If the accused is proved to have obtained possession of a female under the age of 18 years whether by purchase, hire or in any other manner and is proved to be a person who occupies or manages a brothel then he is to be presumed to have obtained possession of that girl with the intent that he shall use her for the purpose of prostitution.

(*Fforde and Jai Lal, JJ.*) **EMPEROR v. CHIRAGH.**

115 I. C. 65=30 Cr. L.J. 376=30 P.L.R. 414.

—S. 373 must be read with S. 372—*Object of possession is the test—Possession for two or three hours by the brothel-keeper in the night is sufficient.*

Section 373 must be read in conjunction with the previous S. 372, which is its counterpart. The law does not specify the nature of the possession, nor its duration, nor intensity. It merely specifies the object, namely, prostitution or illicit intercourse. Whether in each case, the possession is such as to be consistent with the purpose or intention or knowledge of prostitution or illicit intercourse, is the only test which in law is necessary and sufficient: 16 Bom. 737, *Rel. on.*

Where a brothel-keeper allows a girl to visit the brothel for two to three hours in the night and she is allowed to prostitute herself to customers for money, it is sufficient obtaining of possession within the meaning of S. 373.

(*Madgavkar, J.*) **EMPEROR v. VITABAI SUKHA.**

112 I. C. 209=11 A. I. Cr. R. 221=

52 Bom. 403=30 Bom. L.R. 613=29 Cr. L.J. 993=

A. I. R. 1928 Bom. 336.

**—S. 375—Attempt.**

Though rupture of the hymen is by no means necessary in law to constitute a rape the Courts are reluctant to believe that there could have been penetration without that, which is so very near the entrance, having been ruptured.

A lad of 18 was convicted of rape on a female child of 5½ years. The child, stripped of her trousers, was found seated on the naked thighs of the accused, but there was no bleeding from her private parts with the exception of fresh redness at the entrance to the vagina. The girl bore no other mark of injury and her hymen was intact. She also did not cry out;

*Held*; that this was not merely an indecent assault by the accused but that he attempted, though unsuccessfully to effect penetration and hence the offence was an attempt to commit rape. (*Zafar Ali, J.*) **MAHARAJ DIN v. EMPEROR.** 100 I.C. 116=

28 Cr.L.J. 244=7 A.I.Cr.R. 406=

A.I.R. 1927 Lah. 222.

**—S. 376—Attempt.**

Attempt is an act done in part execution of a criminal design, amounting to more than mere prepara-

**PENAL CODE (1860). S. 376—Attempt.**

tion, but falling short of actual consummation, and possessing, except for failure to consummate, all the elements of the substantive crime; in other words, an attempt consists in the intent to commit a crime, combined with the doing of some act adapted to, but falling short of its actual commission; it may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted.

Where the accused stepped across from his own roof to that of his neighbour at night and caught hold of his daughter, got on to the charpoy with her, undid the string of her pyjama and was seen struggling with her when the neighbour's wife came up in answer to her daughter's cries, and he then ran away:

*Held*: that he had been rightly convicted under Ss. 376-511: 47 Cal. 190 (S. B.) Foll. (*Harrison, J.*) **KISHEN SINGH v. EMPEROR.** 103 I.C. 199=

28 Cr.L.J. 663=8 A.I.Cr.R. 432=28 P.L.R. 575=

A.I.R. 1927 Lah. 580.

—*Attempt to commit rape must be distinguished from preparation to commit rape and from indecent assault.*

An act which amounts to attempt to commit rape does not lose that character merely because the offender does not display a determination to effect his object at all costs. But two conditions are requisite for an attempt to commit the offence. First, there must be an attempt to commit the offence and second, some act must be done towards the commission of the offence. The word “attempt” is not itself defined in the Penal Code and must therefore be taken in its ordinary meaning. And even if an act has been done towards the commission of the offence that alone does not bring the case within the section. From the moment when the intention is formed to commit an offence every act done which facilitates the commission of the offence, and which is done with that object in view, is in one sense an act done towards the commission of the offence, but the doing of every such act does not constitute an attempt to commit the offence. It must in every case be a question depending upon the circumstances whether a particular act done (with the requisite intention) towards the commission of an offence is sufficiently proximate to its commission to constitute an attempt or is so remote as merely to constitute preparation for its commission.

When a lady who was travelling alone in a train woke up from her sleep, she found the accused sitting on her berth. She jumped up and rushed screaming to the door, but the accused caught hold of her, put his hand over her mouth and threatened her with a revolver and made her sit down. She then managed to get to the window and open it but he caught her by the hair and pushed her on the seat—in a sitting position. He threatened to strangle her if she screamed. Then he began to unbutton his trousers and had unfastened the top button when she made an attempt to reach the communication cord. The accused then caught her by the wrist and in the struggle her wrist-let watch was broken. Then immediately the accused released her and asked her name. She gave it and he apologised for molesting her, saying he had mistaken her for some other lady. It was established on the evidence that the accused entered the carriage with the intention of having intercourse by force is necessary, with a woman whom he then believed to be another than the one actually assaulted.

*Held*: that the acts were acts of preparation, done towards the commission of rape, but that singly or collectively they did not amount to an attempt to commit rape. They did, however, amount to an assault.

**PENAL CODE (1860), S. 376—Consent.**

with the intent to outrage the modesty of a woman or which accused knew to be likely to have that result, and thus constituted an offence punishable under S. 354 of the Penal Code. (*Carr, J.*) Y. V. W. JONES v. EMPEROR. 96 I.C. 260=27 Cr.L.J. 916=4 Bur. L.J. 83=A.I.R. 1925 Rang. 247.

**—S. 376—Consent.**

In a rape case the question of consent does not arise when the girl is under ten years of age. The fact that the accused was found to be suffering from gonorrhoea and the other party was not infected with the disease is by no means conclusive of his innocence. (*Jwalaprasad and Ross, J.J.*) EMPEROR v. ASADALI. 106 I.C. 348=9 A.I. Cr. R. 307=9 P.L.T. 186=29 Cr. L.J. 12.

Where the accused was convicted of committing rape on a woman aged 20, but there were circumstances to show that the accused was copulating with her with her consent and when she was caught in the act of copulation, she naturally concocted a story to save her face that the accused had carried her into the room by force.

Held; that the offence of rape was not made out. (*Zafar Ali, J.*) BELI SINGH v. EMPEROR.

9 L.L.J. 337=A.I.R. 1927 Lah. 858.

The fact that the girl was *virgo intacta* upto the date of the occurrence is very strong proof against the committing of rape with consent of the victim in rape cases. (*Campbell, J.*) SULTAN v. EMPEROR.

89 I.C. 1056=26 Cr. L.J. 1488=A.I.R. 1925 Lah. 613.

**—S. 376—Essentials for conviction.**

Partial penetration, though not sufficient to cause any rupture or injury to the hymen, is sufficient penetration within the meaning of S. 376 and the offence is not attempt to commit rape but of rape. (*Jailal, J.*) ABDUL MAJED EMPEROR.

100 I.C. 113=7 A.I. Cr. R. 416=28 Cr. L.J. 241=A.I.R. 1927 Lah. 735.

**—S. 376—Evidence.**

It cannot be said that medical evidence cannot help the case for the prosecution, because the complainant is pregnant at the time when the rape is alleged to have been committed. (*Johnstone, J.*) JALAL v. EMPEROR.

11 L.L.J. 391=1930 Cr.C. 160=30 P.L.R. 662=A.I.R. 1930 Lah. 193.

The report of the chemical analyser regarding the presence of semen on the complainant's clothing is not sufficient to prove that the complainant is actually raped. (*Johnstone, J.*) JALAL v. EMPEROR.

1930 Cr.C. 160=30 P.L.R. 662=11 L.L.J. 391=A.I.R. 1930 Lah. 193.

When the offence is not proved to have been committed, accused cannot be convicted.

Where in a case of rape the only evidence was the circumstance that semen was detected on a piece of cloth which was recovered from the house of the accused, and that it was also discovered on the silwar which was alleged to have been worn by the woman at the time, and the accused was a young man who was married and the woman was a grown-up woman who admittedly passed the night before making the first information report at her husband's house.

Held, that that was a wholly neutral circumstance which did not help the case of either side. (*Tekchand, J.*) INDAR SINGH v. EMPEROR.

9 L.L.J. 384=A.I.R. 1927 Lah. 867.

Where in a case of rape and sodomy there was no evidence to implicate the accused except the statement of the girl ravished, and there was enmity between the parties and there was much delay in making

**PENAL CODE (1860), S. 376—Punishment.**

the report to police even though the police post was very near.

Held: that guilt of the accused had not been established. (*Addison, J.*) MULTANI RAM v. EMPEROR.

28 P.L.R. 235=9 L.L.J. 111=A.I.R. 1927 Lah. 836.

It is unsafe to rely on uncorroborated testimony of the woman.

Where in a case of rape the evidence of the Sub-Assistant Surgeon combined with the report of the Chemical Examiner, shows that the complainant had sexual intercourse recently with some one, but shows no more than that there and were no signs of rape:

Held; that it is notoriously very unsafe to rely on the uncorroborated evidence of the woman alone, and to make it an exception to the general rule. (*Maung Ba, J.*) MAUNG BA TIN v. KING EMPEROR.

97 I.C. 180=5 Bur. L.J. 112=27 Cr. L.J. 1284=A.I.R. 1927 Rang. 67.

Girl, young and innocent—Evidence of the girl is highly valuable—Her statement immediately after the occasion increases her credibility.

When the victim of an offence of rape is an innocent girl of tender age her evidence will carry great weight. A statement made by her by way of disclosure immediately after the occasion will strongly corroborate her credibility and go to prove the consistency of her conduct and also her want of consent. When a person is convicted of rape, his punishment will be proportioned to the greater or less atrocity of crime, his conduct and the defenceless and unprotected state of the injured female whether she is a low native or a high European. (*Kinkhede, A. J. C.*) SOOSALAL BANIA v. EMPEROR.

82 I.C. 142=

25 Cr. L.J. 1214=A.I.R. 1925 Nag. 74.

In no cases is it more difficult to arrive at a confident verdict whether evidence is false or true than in cases in which women allege that they have been outraged or that an outrage has been attempted on them. Not only one has to consider the possibility of deliberate falsehood but those who have to arrive at a verdict have to consider the possibility of unintentional mis-statements produced by hysterical conditions which are apt to be found in cases of this nature. (*Stuart and Mukerji, J.J.*) EMPEROR v. PANNA LAL.

81 I.C. 629=46 All. 265=

22 A.L.J. 162=5 L.R.A. Cr. 65=

25 Cr. L.J. 981=A.I.R. 1924 All. 411.

Uncorroborated testimony of the woman not sufficient—Evidence of resistance a good guide to determine consent.

Where there is no independent evidence in support of the statement of the complainant that she was raped by the accused it would be most dangerous to base a conviction on her uncorroborated testimony alone; the first and foremost circumstance that can be looked for in cases of rape is the evidence of resistance which one would naturally expect from a woman unwilling to yield to a sexual intercourse forced upon her. Such a resistance may lead to the tearing of clothes, the infliction of personal injuries and even injuries on her private parts. Where there is absolutely no evidence on the record of any struggle having taken place nor were marks of any injuries found on the person either of the complainant or of the accused, Held that the accused cannot be said to have had connection with the woman without her consent. (*Moti Sagar, J.*) MAHLA RAM v. THE CROWN.

75 I.C. 986=25 Cr. L.J. 74=

A.I.R. 1924 Lah. 669.

**—S. 376—Punishment.**

When a person is convicted of rape, his punishment will be proportioned to the greater or less atrocity

**PENAL CODE (1860), S. 376—Sentence.**

city of the crime, his conduct and the defenceless and unprotected state of the injured female whether she is a low native or a high European. (*Kinkhede, A.J.C.*) *SOOSALAL BANIA v. EMPEROR.*

82 I.C. 142=25 Cr. L.J. 1214=  
A.I.R. 1925 Nag. 74.

**—S. 376—Sentence.**

*—Offence under S. 376 should be put down with strong hand.*

Crimes of violence upon women who are not in a position to defend themselves must be put down with a strong hand and it would be a very sad state of affairs, if criminals were to carry an impression that to criminally assault a woman or to rape her was not a very serious matter and that they could always satisfy their unholy passion if only they were prepared to undergo a comparatively short term of imprisonment. (Five years' rigorous imprisonment was awarded). (*Agha Haidar, J.*) *KALA v. EMPEROR.*

116 I.C. 883=39 P.L.R. 437=30 Cr. L.J. 693=  
1929 Cr. C.150=13 A.I. Gr. R. 97=  
A.I.R. 1929 Lah. 584.

—Where evidence showed that the girl who was raped was unchaste the sentence of seven years' rigorous imprisonment was held to be too severe. (*Dalip Singh, J.*) *IBRAHIM v. EMPEROR.* 100 I.C. 128=

28 Cr.L.J. 256=A.I.R. 1927 Lah. 772.

*—Offences under Ss. 376 and 366—Separate sentences can be passed.*

A charge under S. 366 involves different elements and different questions of fact from a charge under S. 376, and therefore separate sentences for offences under Ss. 366 and 376 are not against the provisions of S. 71, I. P. C. : 8 Bom. L. R. 120, Foll. (*Broadway, J.*) *GHULAM MUHAMMAD v. THE CROWN.*

99 I.C. 344=7 Lah. 484=27 P.L.R. 802=  
28 Cr.L.J. 136=A.I.R. 1927 Lah. 88.

—Where the real offence is rape and the abduction is an aggravating circumstance separate sentences under both the sections should not be given. (*Fforde, J.*) *BUTA SINGH v. EMPEROR.* 89 I.C. 912=

26 Cr.L.J. 1440=A.I.R. 1926 Lah. 114.

**—S. 376—Tender child.**

Where the Court is of opinion that the child upon whom an offence under S. 376, I. P. C. is committed is unable to give relevant information in the matter by reason of tender years and consequent immaturity of judgment, it should not examine the child at all: 38 All. 49, Foll. 41 Cal. 406, not foll. (*Agha Haidar, J.*) *GHULAM HUSSAIN v. EMPEROR.*

A.I.R. 1930 Lah. 337.

**—S. 377—Chemical Examiner's Report.**

In a charge of sodomy stains of semen constitute important evidence. Great weight must therefore be attached to the Chemical Examiner's report. (*Tek Chand, J.*) *DEVI DAS v. EMPEROR.*

122 I.C. 93=10 Lah. 794=31 Cr.L.J. 343=  
A.I.R. 1930 Lah. 318.

**—S. 377—"Coitus peros."**

*Coitus per os* falls within the provisions of S. 377. (*Kincaid, J. C. and Kennedy, A. J. C.*) *KHANU v. EMPEROR.*

87 I.C. 97=19 S.L.R. 327=

26 Cr.L.J. 945=A.I.R. 1925 Sind 286.

**—S. 377—Evidence.**

A charge under S. 377 is one very easy to bring and very difficult to refute. Therefore, the evidence in support of such a charge has to be very convincing. (*Broadway, J.*) *EMPEROR v. SAIN DAS.*

94 I.C. 257=8 L.L.J. 180=27 Cr.L.J. 593=  
27 P.L.R. 353=A.I.R. 1926 Lah. 375.

**—Ss. 378 & 379.**

**Bona-fide claim.**

**PENAL CODE (1860), Ss. 378 & 379—Bona-fide claim.**

**Conviction and sentence.**

**Evidence and proof.**

**Honest belief of ownership.**

**Joint ownership.**

**Master and servant.**

**No dishonest intention.**

**Possession.**

**Procedure.**

**Theft and Mischief.**

**Theft and similar offences.**

**Types and subjects of theft.**

**Miscellaneous.**

**—Ss. 378 & 379—Bona-fide claim.**

*—Claim of right being mere pretence—Jurisdiction of Criminal Court if ousted.*

To constitute an offence under S. 379, I. P. C, the determining factor is the intention of the taker and where articles have been removed in the *bona fide* exercise of a right of ownership which is believed to exist the act does not amount to theft. The mere assertion of a claim is not sufficient to exclude the application of S. 378, I. P. C. Where the claim is no more than a pretence, the jurisdiction of the criminal Court is not ousted.

*Per Curiam.*—Not uncommonly the criminal Court is used as a lever to harass an inconvenient adversary. If there is a *bona fide* dispute as to the ownership in the property itself or as to right of way the straight course is to approach the Civil Court for the determination of the controversial questions of title as may arise between the parties. (*Sen, J.*) *MADAN LAL v. EMPEROR.* 1930 A.L.J. 457.

*—Charge of cutting in private forest—Concerted move to create evidence of right—No bona fide claim.*

The accused villagers were charged under S. 379 for illegally cutting and removing trees in the private forest of the proprietor. The entry in the Record-of-Rights that the jungle was private was not rebutted and the accused knew that they had no right to cut any trees and that to take without the landlord's consent would be theft. The mala fides of the cutting was evident from the fact that it was in wild excess of any reasonable requirements or of any customary right known. And it was in pursuance of a concerted movement to establish a right or rather to create evidence of a right to the only remaining jungle in the village in view of the approaching revisional settlement proceedings that the accused deliberately defied the law :

*Held :* that the defence of a *bona fide* claim of right was untenable as the accused had acted dishonestly. (*Macpherson, J.*) *JAIGI URAON v. EMPEROR.*

119 I.C. 887=30 Cr.L.J. 1100=

1929 Cr.C. 754=A.I.R. 1929 Pat. 502.

*—Property in possession of A and A raising crops thereon—Removal of crops by B—Plea not open.*

It is a well-settled principle of law that if property is taken under a *bona fide* claim of right, it will not amount to an offence under S. 379, even though the claim may be ill-founded in law or in fact; 44 Cal. 66; A. I. R. 1924 Pat. 125; 1 P. L. T. 121; 1 P. L. W. 155; 2 P. L. W. 49 and 4 P. L. W. 291, Ref.

It must, however, be remembered that the claim put forward by the accused must be an honest one and it will be of no avail to him as a defence if it is found to be a mere colourable pretence to obtain and keep possession of the property. The decision on this point will depend in each case on the circum-



**PENAL CODE (1860), Ss. 378 & 379—Bona fide claim.**

stances of that particular case, but it may be safely laid down as a general proposition that in cases where the alleged theft consists in the removal of crops grown on land, the most vital question to be investigated is as to which of the parties had grown the crops and a decision on this point will in the majority of cases enable the Court to come to a definite conclusion as to whether the claim of the accused is made in good faith or is a mere pretence, but it cannot be laid down as a universal rule that in every case where A removes crops grown by B, A necessarily commits an offence under S. 379, Penal Code: 9 C. W. N. 974, Expl.; 27 Cal. 501 and 4 C. W. N. 190, Rel. on; A. I. R. 1921 All. 158, Ref.

But where a person is not in actual possession of the land for a number of years and knows that the land is in possession of another person and that other person has grown the standing crops on the land and still removes the crops, he cannot contend that he removed them in a *bona fide* claim of right. (*Fazl Ali, J.*) **ABDUL V. EMPEROR.** 115 I.C. 684=

10 P.L.T. 57=30 Cr. L.J. 511=12 A.I. Cr.R. 311=A.I.R. 1929 Pat. 86.

**Disobedience of judicial order.**

Where a Magistrate issued an injunction on the accused restraining him from fishing in a certain tank but this he disregarded,

*Held*: that it was impossible to hold that the accused acted under a *bona fide* claim of right: 15 Cal. 388; 15 Cal. 390n; 15 Cal. 392n; and 15 Cal. 402; Dist. (*Chotzner and Gregory, JJ.*) **REENIBASH MAHATA V. EMPEROR.** 109 I.C. 229=

10 A.I. Cr.R. 203=29 Cr. L.J. 501 (Cal.).

**Existence of a bona fide claim—When removal amounts to theft indicated.**

It is quite possible that a person may have a claim which he believes to be good and yet in asserting that right he may do something which he knows he has no right to do. For instance he may know perfectly well that his claim is disputed and that if he wishes to enforce it his proper course is to do so by having recourse to the Courts. If knowing that, he prefers to take the law into his own hands by removing the property from the possession of his opponent, knowing that his opponent also lays claim to the property, then his act is dishonest and amounts to theft. He has caused wrongful gain or possession to himself and wrongful loss of possession to his opponent. (*Carr, J.*) **RANGASWAMY V. EMPEROR.**

109 I.C. 683=6 Rang. 54=29 Cr. L.J. 603=

10 A.I. Cr.R. 290=A.I.R. 1928 Rang. 113.

The seizure of a thing in the assertion of a *bona fide* claim of a right though illegal does not amount to an offence in the absence of proof of the element of dishonesty: 44 Cal. 63, Foll. (*Findlay, J.C.*) **ZILIA V. EMPEROR.** 105 I.C. 661=

28 Cr. L.J. 849=A.I.R. 1927 Nag. 404.

In a case under S. 379 where the accused alleges a *bona fide* claim of right to property to which the offence dealt with has reference, the question to be decided is not whether the alleged right would stand the test in a Civil Court; what is essential to consider is whether the accused establishes the plea as to the *bona fide* claim of right. (*Sen, J.*) **BHAN PRASAD CHAUDHURY V. BARAHAMDEO CHAUDHURY.**

103 I.C. 840=28 Cr. L.J. 760=

A.I.R. 1927 Pat. 385.

The removal of property under a *bona fide* assertion of right does not constitute theft, even though the claim be one which is not valid in law. Where

**PENAL CODE (1860), Ss. 378 & 379—Evidence and proof.**

such a claim is raised, the Court has no right to convict unless upon the whole of the evidence it comes to the conclusion that the claim set up is not a genuine one. (*Fforde, J.*) **ISMAIL V. EMPEROR.**

96 I.C. 879=27 P.L.R. 635=27 Cr. L.J. 1023=

A.I.R. 1926 Lah. 683.

—Claim of right though unfounded is a good defence if the claim is bona fide.

Removal of property in the assertion of a *bona fide* claim of right, though unfounded in law and fact, does not constitute theft but a mere colourable pretence to obtain or keep possession of property does not avail as a defence, 44 C. 66 Rel. on. The fact that the things alleged to be stolen were removed secretly and were despatched by railway under wrong description is not sufficient to indicate, that the accused had any dishonest intention in removing them. (*Moti Sagar, J.*) **HARNAM SINGH V. THE CROWN.**

81 I.C. 185=5 Lah. 56=25 Cr. L.J. 697=

A.I.R. 1924 Lah. 453.

—Ss. 378 and 379—Conviction and sentence.

—Theft of silver anklet from child—Deterrent sentence.

Theft of silver anklet from a child calls for a deterrent sentence because it very often leads to murder. (*Jackson, J.*) **SYED KHADER SAHIB V. EMPEROR.**

1930 M.W.N. 173.

—A conviction under S. 401 cannot be considered bad in law merely because the evidence on the record would also have justified a conviction of a specific offence under S. 379 or 392. (*Rasa, J.*) **LALE V. EMPEROR.** 118 I.C. 423=

6 O.W.N. 441=30 Cr. L.J. 922=

1929 Cr. C. 143=A.I.R. 1929 Oudh 321.

—Where cattle stealing is very rife in a particular locality, a severe sentence should be passed. (*Shadi Lal, C. J.*) **EMPEROR V. SEDA.** 103 I.C. 107=

28 Cr. L.J. 651=A.I.R. 1927 Lah. 893.

—Cattle theft in Sind—Deterrent punishment is necessary—Summary trial improper.

In Sind, where cattle-theft is so prevalent and the offences of cattle theft so often go unpunished, it is necessary that deterrent sentences should be imposed, and a Court which decides to try such a case summarily is not exercising its discretion in a proper manner. (*Percival, J.C. and Aston, A. J. C.*) **AMIR BUX V. EMPEROR.** 105 I.C. 671=28 Cr. L.J. 959=

9 A.I. Cr. R. 153=A.I.R. 1927 Sind. 287.

—The mere fact that the thing stolen is not of itself of any value does not make the offence of no importance so as not to be punished at all. (*Kennedy, J. C. and Raymond, A. J. C.*) **MOTI WALAD JAROMAL V. THE CROWN.** 83 I.C. 893=

17 S.L.R. 260=26 Cr. L.J. 189=

A.I.R. 1925 Sind 21.

—Identity of property and ownership of complainant must be proved. (*May Oung, J.*) **MAUNG E GYI V. EMPEROR.** 81 I. C. 106=1 Rang. 520=

25 Cr. L.J. 618=A.I.R. 1924 Rang. 91.

—Ss. 378 & 379—Evidence and Proof.

Accused were seen in the company of deceased on a previous night. Next morning accused were found to be in possession of clothes and other articles belonging to deceased.

*Held*, that in absence of direct evidence, circumstances, though raising a strong suspicion against accused are not sufficient to convict them either under S. 302, or under S. 392, but they are guilty either under S. 411 or S. 379. 20 C.W.N. 166; 13 Cr.L.J. 249; 40 P. W. R. 1914 Cr.; and A. I. R. 1922 All. 340; Ref. (*Zafar Ali and Goldstream, JJ.*) **MUHAMMAD, ALI**



**PENAL CODE (1860), Ss. 378 & 379—Evidence and proof.****v. EMPEROR.**112 I.C. 212=10 L.L.J. 525=  
29 Cr. L.J. 996=A.I.R. 1929 Lah. 61.*—Accused cutting jhalasi in area not included in his right—Absence of right has to be proved by prosecution.*

An area of 1,100 bighas was attached and the accused cut jhalasi within that area. Prior to the date of cutting the accused obtained delivery of possession of a portion of the attached area extending to about 345 bighas. The Trial Court below assumed, that, unless the petitioners proved that they cut from within the area of 345 bighas of which they got possession they must be considered to have committed theft and they were convicted of offences under Ss. 379 and 143, Penal Code.

*Held*, that it was for the prosecution to establish all the ingredients of the offence punishable under S. 379. The Crown ought to have shown that the petitioners were not cutting within that area of which they had obtained delivery of possession. (*Macpherson, J.*)  
**TULSI MAHTO v. EMPEROR.** 167 I.C. 529=  
29 Cr. L.J. 259=9 A.I. Cr. R. 543=  
A.I.R. 1928 Pat. 249.

*—In a prosecution under S. 379, for stealing paddy from a plot, the accused relied on a bona fide claim of right. The accused were declared by the High Court to be in possession of two plots in proceedings between the same parties under S. 145, Cr. P. Code. The complainants were the lessees of six plots of a person from whom the two plots above referred to were bought by the accused.*

*Held*, that it was incumbent on the prosecution to prove that the plot in question was not comprised in the two plots of which the accused were declared to be in possession by the High Court and that in the absence of such evidence conviction cannot be sustained. (*Sen, J.*) **BHAN PRASAD CHAUDHURY v. BARAHAMDEO CHAUDHURY.** 103 I.C. 840=  
28 Cr. L.J. 760=A.I.R. 1927 Pat. 385.

**—Ss. 378 & 379—Honest belief of ownership.**

*—Accused believing that the property was his and removing it from vendee of his partner—No theft is committed.*

The essence of the offence of theft is dishonestly taking of moveable property out of the possession of some person. Removal of property out of the possession of the vendee of accused's partner under a mistaken notion of law, believing that the property belonged to accused and that he had the right to take the goods until the balance of the money due to accused from the vendor was paid, does not amount to an offence of theft. (*Suhrawardy and Cuming, JJ.*)  
**HAMID ALI v. EMPEROR.** 91 I. C. 236=  
52 Cal. 1015=27 Cr. L. J. 80=A.I.R. 1926 Cal. 149.

*—Accused removing crops honestly believing that they were his commits no offence.*

Where the complainant and the accused had fields adjoining each other and the accused removed some crops from the complainant's field under the impression that the crops were owned by him and therefore he was entitled to them,

*Held*: that the accused was not guilty of theft in removing the crops. (*Ross, J.*) **BOND KISHAN GOALA v. EMPEROR.** 72 I.C. 614=4 P.L.T. 608=  
24 Cr. L.J. 454=A.I.R. 1924 Pat. 125.

*—Crops removed by accused thinking them to be his—No offence.*

Where accused removed crops on land which had passed to another under a civil Court decree against the landlord of accused, the accused thinking that crops had not passed under the decree,

**PENAL CODE (1860), Ss. 378 & 379—No dishonest intention.**

*Held*, the removal of crops was not dishonest: 3 L.B.R. 128, Dist. (*Heald, J.*) **SIT PEIN v. EMPEROR.** 81 I.C. 345=2 Bur. L.J. 160=25 Cr. L.J. 809=  
A.I.R. 1924 Rang. 72.

**—Ss. 378 and 379—Joint ownership.**

Jointly owned animal, in possession of one co-owner, taken away by the other—Latter is not guilty unless he acts dishonestly. (*Tek Chand, J.*) **HASNI v. EMPEROR.** 103 I.C. 847=28 Cr. L.J. 767=  
A.I.R. 1927 Lah. 650.

*—Per Fawcett, J.*—It is not necessary that there should be 'exclusive possession.' There can be theft by a person who is in joint possession of the stolen property: 10 Mad. 186 Ref. (*Fawcett and Coya jee, JJ.*)  
**VALLABHRAH v. EMPEROR.** 94 I.C. 881=  
27 Bom. L.R. 1391=27 Cr. L.J. 689=  
A.I.R. 1926 Bom. 122.

**—Ss. 378 and 379—Master and servant.**

*—Servant taking away master's goods in lieu of wages without his consent—Theft is committed.*

The accused was employed by the complainant on wages. His wages for several months were due from the complainant and so he took away 15 Baras worth about Rs. 16 belonging to the complainant and refused to give them back until his wages had been paid.

*Held*: that technically the offence of theft was committed. (*Sulainan, J.*) **MATA PRASAD v. JOKKU** 102 I.C. 339=8 L.R.A. Cr. 77=7 A.I. Cr. R. 503=  
28 Cr. L.J. 531=A.I.R. 1927 All. 470.

*—Servant knowing his master had no right to complainant's goods and assisting in removing, commits theft.*

Where accused, a servant of co-accused knew perfectly well that his master was removing the goods of complainant without even a pretence of right and yet he assisted him in doing so,

*Held* that the servant clearly acted dishonestly and was guilty of theft. (9 C. W. N. 974, Dist.) (*Macpherson, J.*) **BARHMDIO RAI v. EMPEROR.**

90 I.C. 439=7 P.L.T. 272=26 Cr. L.J. 1559=  
A.I.R. 1926 Pat. 36.

**—Ss. 378 & 379—No dishonest intention.**

*—Sale of moveable—Part of price not paid—Vendor's notice to vendee and removal of property sold.*

A woman contracted to deliver a barge to certain person on payment of money. Some earnest money and part payment were made and the barge was brought over to the place of its delivery. The vendee failed to pay the balance. After notice to the vendee the woman took away the barge.

*Held*: that under the circumstances there was no dishonest intention in seizing the barge and no theft was committed by the woman, when she took away her barge on giving notice to the vendee. (*Beaymont C.J. and Madgavkar, J.*) **SITABAI PURSHOTTAM v. EMPEROR.** 32 Bom. L.R. 1140=  
A.I.R. 1930 Bom. 488.

*—Suit for possession—Suit decreed appeal pending—Delivery of possession given to decree-holder—Judgment-debtor cutting and removing crops—Offence under S. 379 is not committed.*

The landlord sued A and B for possession of a holding transferred by A (plaintiff's rayat) to B. The suit was decreed and an appeal was filed by A. In the meantime the landlord obtained delivery of possession but A cut and removed the crops after the delivery was given and he was convicted of theft.

*Held*: that under the circumstances the accused cannot be said to have any idea of causing wrongful gain to him or wrongful loss to the decree-holder,

**PENAL CODE (1860), Ss. 378 & 379—No dishonest intention.**

S. 379 is always of most doubtful applicability to this class of cases in which the question of property is only in course of determination in a civil suit. (*Macpherson, J.*) **SOBHA MAHTON v. KING EMPEROR.**

99 I.C. 104=8 P.L.T. 79=28 Cr. L.J. 72=7 A.I. Cr. R. 446=A.I.R. 1927 Pat. 130.

—Accused purchasing trees at auction held by President of the Municipality to whom they belonged—Accused removing the trees before confirmation of sale by the Board—Accused is not guilty. (*Daniels, J.*) **FARUQ HUSAIN v. EMPEROR.**

98 I.C. 385=7 L.R.A. Cr. 140=27 Cr. L.J. 1313. (All.).

—Complainant undertaking to repair certain article, but not finishing it in time—Accused removing that article by force is not guilty.

The complainant took some article belonging to the accused for repairs on promise to finish them within 6 or 7 days. Not having finished with complete repairs within the time stipulated, the accused went to his shop and took forcible possession of the article.

**Held:** that the accused was not guilty of theft as the removal of the article was not dishonest. (*Suhrawardy and Panton, JJ.*) **E. J. JUDAH v. EMPEROR.**

90 I.C. 289=53 Cal. 174=29 C.W.N. 1011=26 Cr.L.J. 1305=A.I.R. 1926 Cal. 464.

—Theft—Guilty intention absent—Offence is not committed.

Accused, an illiterate cultivator applied for Letters of Administration with the will annexed to the estate of his deceased uncle who had made a registered Will in favour of the accused. Before Letters of Administration were granted, but at a time when the accused had no suspicion that a caveat was likely to be entered by the uncle's widow, he removed certain property which was in the possession of the widow but which formed part of the property bequeathed to the accused under the Will. Subsequently, the widow entered a caveat and charged the accused with theft.

**Held:** that the conduct of the accused did not disclose the presence of a guilty intention and, therefore, he could not be convicted of theft. (*Sanderson, C.J. and Chotzner, J.*) **DULAL BACHAR v. EMPEROR.**

85 I.C. 940=26 Cr. L.J. 652=A.I.R. 1926 Cal. 241.

—Intention to cause wrongful loss absent—Charge under S. 379—Charge under S. 427 is not sustainable.

Where a Magistrate came to the conclusion that no charge could be framed under S. 379, there being no intention of causing wrongful gain to one person or wrongful loss to another person.

**Held:** that a charge under S. 427 cannot be sustained. (*Mukerji, J.*) **GOKUL PRASAD v. DEBI PRASAD.**

86 I.C. 284=23 A.L.J. 21=6 L.R.A. Cr. 60=26 Cr.L.J. 748=A.I.R. 1925 All. 341.

—Removal of some bricks which had been left lying for eight years is not necessarily an offence of theft. (*Baguley, J.*) **TAKIL TUINI v. EMPEROR.**

84 I.C. 435=26 Cr.L.J. 291=3 Bur. L.J. 197=A.I.R. 1925 Rang. 113.

**—Ss. 378 & 379—Possession.**

In order to raise legitimately the presumption of theft, the possession of stolen property should be exclusive as well as recent. (*Rupchand Bilaram and DeSouza, A. J. Cs.*) **MALARO v. EMPEROR.**

111 I.C. 732=23 S.L.R. 5=29 Cr.L.J. 924=A.I.R. 1929 Sind. 9.

—Accused not in actual possession—Actual possession of his wife or servant or effective control must be proved.

**PENAL CODE (1860), Ss. 378 & 379—Procedure.**

\* If the accused is not in manual possession of the stolen article, there must be evidence to prove that the stolen property was found either in the manual possession of the wife, clerk or servant of the accused, or that it was found in a place and under circumstances so as to justify the inference that the accused knew of its existence at that place and that the same was under his effective control. (*Rupchand Bilaram and DeSouza, A. J. Cs.*) **MALARO v. EMPEROR.**

111 I.C. 732=23 S.L.R. 5=29 Cr.L.J. 924=A.I.R. 1929 Sind. 9.

—Conviction against more persons than one on the ground of joint possession of stolen property can be secured only on proving actual possession of each or constructive possession with intention of joint exclusive use.

To secure conviction against more persons than one on the ground that all such persons were in joint possession of the stolen property, it must be proved that the stolen property was either in the physical possession of each one of the accused or else that it was in the possession, physical or constructive, of one or more of them on behalf of and to the knowledge of the other accused persons and that each one of them intended to possess it for their joint use and to the exclusion of persons other than themselves.

Applicants with two other porters and a constable were travelling in a train. At the station the van was searched. A jar containing ghee was found covered with bedding and clothing said to belong to applicants and other porters. On this evidence, the applicants were convicted of theft.

**Held:** that possession of the jar could not be attributed to any of the applicants, individually or jointly. The conviction was, therefore, bad. (*Rupchand Bilaram and De Souza, A. J. Cs.*) **MALARO v. EMPEROR.**

111 I.C. 732=23 S.L.R. 5=

29 Cr.L.J. 924=A.I.R. 1929 Sind. 9.

—Where accused was caught at night time in the vicinity of some cattle which had been tethered on the complainant's square and near which complainant and his brother were sleeping,

**Held:** he cannot properly be held guilty of an attempt to commit theft but no doubt that he committed the offence of criminal trespass. (*Brasher, J.*) **NAURANGA v. EMPEROR.**

71 I.C. 792=

24 Cr.L.J. 248=A.I.R. 1924 Lah. 223.

**—Ss. 378 & 379—Procedure.**

—Accused acquitted because of incomplete evidence—Subject of theft should not be made over to him—Complainant retaining possession of the property cannot be required to execute bond till disposal of question of title.

It is an ordinary rule of law that when an accused is acquitted of a charge of theft and the property found with him is not found to be the subject of theft he is entitled to recover that property, but where the property is found to be the subject of theft and an acquittal is due to incomplete evidence property will not be delivered to him.

There is no authority for holding that a criminal Court is competent to direct the complainant to execute a fresh bond till the disposal of the question of title to the property, which was the subject of theft, by a civil Court. (*Duval and G. N. Roy, JJ.*) **RASUL KHAN v. EMPEROR.**

99 I.C. 91=44 C.L.J. 205=

28 Cr.L.J. 59=A.I.R. 1927 Cal. 61.

—Stealing fish—Accused separately engaged—No evidence as to common object—Convictions were set aside because of illegal joint trial.

Several accused were tried together and fined under Ss. 379 and 447 for stealing fish in the course of the

**PENAL CODE (1860), Ss. 378 & 379—Procedure.**  
same transaction; they were all separately engaged in fishing and there was no evidence of common object or common intention. They were merely several poachers gathered in the same place at the same time.

**Held:** that their joint trial was not a mere irregularity, and that their conviction must be set aside: (A. I. R. 1926 All. 334 and 33 Mad. 502, Dist. (Jackson, J.)) **SAMIULLAH SAHIB v. KING EMPEROR.**

98 I.C. 597=50 Mad. 735=24 M.L.W. 848=  
38 M.L.T. 37=27 Cr.L.J. 1381=  
A.I.R. 1927 Mad. 177=51 M.L.J. 692.

—**Offence charged must be explained to jury—Theft case—Removal must be dishonest—"Dishonestly" must be explained to jury.**

It is the duty of the Sessions Judge to explain clearly to the jury the offence with which the accused are charged and in doing so the Judge should keep before him the words of the section defining the offence.

In case of theft removal must be done dishonestly and the word "dishonestly," must be explained to the jury. (*Devadoss and Waller, J.J.*) **VENKATIGADU v. EMPEROR.**

97 I.C. 951=24 M.L.W. 415=  
27 Cr.L.J. 1191=A.I.R. 1926 Mad. 1121.  
—**Ss. 378 & 379—Theft and Mischief.**

Where theft of an animal has been committed, the mere killing of it afterwards by the person who stole it, for the purpose of eating it himself cannot add another offence. (*Adami and Bucknill, J.J.*) **HUSSAIN BUKHSH MIAN v. KING-EMPEROR.**

84 I.C. 341=7 P.L.T. 36=3 Pat. 804=  
26 Cr.L.J. 277=A.I.R. 1925 Pat. 34.

—Where after a thief has stolen and slaughtered an animal, another person joins him in skinning the dead body, the latter is not guilty either under S. 379 or S. 429. (*Adami and Bucknill, J.J.*) **HUSSAIN BUKHSH v. EMPEROR.**

84 I.C. 341=3 Pat. 804=  
26 Cr.L.J. 277=7 P.L.T. 36=A.I.R. 1925 Pat. 34.  
—**Ss. 378 & 379—Theft and similar offences.**

—**Difference between offence of theft, cheating, criminal misappropriation and criminal breach of trust.**

An easy method of differentiating between the offence of theft, cheating with delivery of property, criminal misappropriation and criminal breach of trust is to find out whether the original taking was honest or dishonest and whether it was with the consent of the owner or without it. In theft the original taking is without honesty and without the consent of the owner, and in criminal breach of trust it is with both. In obtaining property by cheating the taking is dishonest but with the consent of the owner, and in criminal misappropriation it is honest but without the consent of the owner. (*Hallifax, A. J. C.*) **NAR-SINGHDAS MARWARI v. EMPEROR.**

106 I.C. 678=  
9 A.I.Cr.R. 282=29 Cr.L.J. 86=  
A.I.R. 1928 Nag. 113.

—**Ss. 378 & 379—Types and subjects of theft.**

A creditor by taking any moveable property of the debtor from the debtor's possession without his consent with the intention of coercing him to pay his debt commits the offence of theft as defined in S. 378: 18 All. 88 and 22 Cal. 1017 (F.B.), Foll. (*Mirza and Broomfield, J.J.*) **EMPEROR v. GANPAT KRISHNAJI.**

32 Bom. L.R. 351=A.I.R. 1930 Bom. 167.  
—**Licensee cutting timber not covered by license—Removal pass given under mistake—No consent.**

Where the licensee cuts down trees in the Government forest which are not covered by his license and where the person authorized to give consent to remove them out of the possession of Government gives it by

**PENAL CODE (1860), Ss. 378 & 379—Types and subjects of theft.**

issuing removal pass and the bill of title to timber on the understanding that timber to be removed was timber covered by the license and thus the consent is given under a misconception of fact there is no such consent as is meant by S. 378 and in such circumstances offence of theft of timber is committed: 1 Bom. 610, Dist. (*Brown, J.*) **MAUNG BA CHIT v. EMPEROR.**

122 I.C. 273=7 Rang. 821=  
31 Cr. L.J. 387=A.I.R. 1930 Rang. 114.

—X, a Mahomedan, sacrificed a cow in the house and with the apprehension that a she-calf in his house also would be similarly sacrificed by him, Hindus gathered near his house. With the interference of the police a compromise was arrived at and X agreed that the calf should be tied in the courtyard of his neighbour, who was a Hindu. But after the calf was so tied the petitioner arrived and at his order the calf was removed elsewhere.

**Held:** that although the calf was at the time of removal in the neighbour's courtyard, it was still in the possession of X.

**Held:** further that the facts of the case brought the petitioner within Ss. 23 and 24 and so he was guilty under S. 379 and a sentence of 3 months' rigorous imprisonment was not excessive: 25 Cal. 416, not Appr.: 15 All. 22, not Appl.: 22 Cal. 1017 (F. B.), Rel. on and 15 All. 299, Appr. (*Macpherson, J.*) **JAGANNATH v. EMPEROR.**

115 I.C. 895=  
30 Cr.L.J. 546=10 P.L.T. 483=  
12 A.I.Cr.R. 360=A.I.R. 1929 Pat. 329.

—**Removing cattle from pound without paying fee amounts to theft.**

Where a person, whether he is the owner or a stranger, removes cattle from the pound where they are secured, without paying the legitimate fee, he has undoubtedly the dishonest intention of saving himself the fee, and his act amounts to theft. 1 Weir 716 Not Appr. (*Krishna Pandalai, J.*) **VEERASAMI NAICKEN In re.**

1930 M.W.N. 529.  
—**Owner reserving cattle attached under warrant—Irregularities in warrant—Jurisdiction of amin to attach if affected—Attachment of cattle not permitted by law—Effect.**

Under certain circumstances an owner of property may be guilty of stealing his own property if he takes it out of the possession of another person. Where an amin in good faith and under the authority of a warrant attached certain buffaloes belonging to the accused and the latter subsequently effected reserve of the cattle in the possession of the amin, **Held**, that an offence under S. 379, I.P.C. had been constituted. In such a case the mere fact that there were certain irregularities in the warrant, namely that it did not contain particulars of the date or month, or the circumstance that under the law the cattle were not liable to be attached was immaterial.

**Per Krishna Pandalai, J.**—"Only in cases where an irregularity goes to the root of the authority of the person executing a warrant does that warrant cease to be legal. The omission of the date although an irregularity was not such as to deprive the amin or his jurisdiction to execute the process". (*Beasley, C.J., and Krishna Pandalai, J.*) **VENKANNA, In re.**

1930 M.W.N. 90.  
—**Fish confined in a pond from where they cannot escape, but can be caught by baling out the water, can be the subject of theft.** (1914) M.W.N. 168 Foll. (*Ananthakrishna Aiyar, J.*) **NOKOLO BEHARA, In re.**

105 I.C. 826=51 Mad. 333=  
1 M. Cr. C. 185=9 A.I. Cr. R. 216=  
28 Cr. L.J. 1002=1927 M.W.N. 788

**PENAL CODE (1860), Ss. 378 & 379—Types and subjects of theft.**

26 M.L.W. 651=39 M.L.T. 588=  
A.I.R. 1928 Mad. 20=53 M.L.J. 759.

—Crops attached by Magistrate—Removal of the crops, knowing attachment, amounts to theft.

Where the Magistrate attached certain crops about which there was a dispute pending between the accused and the other party, and the accused subsequently removed the crops with the knowledge that the crops had been attached :

*Held* : that the subsequent removal of the crops was a dishonest removal and the offence committed was theft. (*Percival, J. C., and Aston, A. J. C.*)  
RAHIMDINO v. EMPEROR. 105 I.C. 813=

22 S.L.R. 151=9 A.I. Gr. R. 165=  
28 Cr. L.J. 989=A.I.R. 1928 Sind 68.

—Where the property is attached by receiver, any person removing the same with knowledge of such attachment, from receiver's possession without receiver's knowledge is guilty of theft even though he may be a person legally entitled to the property :  
8 A.L.J. 656, Ref. (*Sulaiman and Mukerji, J.J.*)  
KAMLA PAT v. EMPEROR. 95 I.C. 940=48 All. 368=

24 A.L.J. 364=7 L.R.A. Gr. 81=  
27 Cr. L.J. 860=A.I.R. 1926 All. 382.

—Cash is not property except if it can be identified in specie.

Cash is not, strictly speaking, property except in so far as it is capable of being possessed and identified in specie. If it is certain that the actual coins found on the thieves or receivers of stolen property are the actual coins which have been the subject of theft then it is permissible to treat such cash as stolen property. It is often safer in such cases to inflict a fine and to apply the coins found on the person of the accused towards the payment of fine, and then to apply the amount of fine if necessary to compensation. But in no conceivable way can coins which have been put into circulation and passed on to the public be treated in the same way as stolen coins actually remaining in the possession of the thieves. The principle of caveat emptor never applies to currency coins. (*Kennedy, J.C. and DeSouza, A.J.C.*) PURSU v. EMPEROR.

89 I.C. 259=18 S. L.R. 218=26 Cr. L.J. 1315=  
A.I.R. 1926 Sind. 17.

—If a person extracts one of the papers from the file in the possession of another, which the person extracting has been allowed to inspect, he is guilty of theft. (*Martineau, J.*) RADHA KISHEN v. THE CROWN. 86 I.C. 671=1 L.L.J. 118=26 Cr. L.J. 847=  
26 P.L.R. 95=A.I.R. 1925 Lah. 327.

—Buffalo attached—Accused claiming as owner and taking it away by force is guilty.

Where the accused took away forcibly a buffalo which was under attachment,

*Held*, that he was guilty of theft notwithstanding he claimed the buffalo as his own. If he thought himself aggrieved he was bound to seek his remedy in a lawful way and was not entitled to take the buffalo out of the custody of the Court in which, so long as it was under attachment, it was. 8 A. L. J. 656 Foll. (*Daniels, J.C.*) LAL BAHARI v. KING-EMPEROR.

86 I.C. 969=12 O.L.J. 159=2 O.W.N. 202=  
26 Cr. L.J. 905=A.I.R. 1925 Oudh 464.

—A thing does not become res-nullius merely on the owner of it determining to destroy or abandon it. It continues to be his property until completion of the process of abandonment or destruction—Abstraction of currency note which had been held up by currency officer for destruction is theft, though the process of destruction was partly done at the time of abstraction.

**PENAL CODE (1860), Ss. 378 & 379—Miscellaneous.**

A very clear distinction must be drawn between an intention to destroy and to abandon and an actual destruction and abandonment. The very fact that the owner of the property intends to destroy or abandon that property and hands it over to some person to effect those purposes is a clear indication that he still maintains his rights as the owner of that property and that those rights subsist until the abandonment or destruction is completed. 16 S.L.R. 197. (Referred to). As long as the destruction or abandonment is not fulfilled and as long as it is still in the hand of the owner to countermand such destruction or abandonment, the property is still the property of the owner and the taking it out of his possession is theft, and improper use of it is breach of trust. Abstraction of currency note which has been held up by the currency officer for destruction is theft though at the time of abstraction, the process of destruction had partly been done. (*Kennedy, J.C. and Raymond, A.J.C.*) MOTI WALAD JAROMAL v. THE CROWN.

83 I.C. 893=17 S.L.R. 260=26 Cr. L.J. 189=  
A.I.R. 1925 Sind 21.

—Water when conveyed in pipes and so reduced into possession can be subject of theft. (*Daniels, J.*)  
MAHADEO PRASAD v. THE CROWN. 75 I.C. 159=  
45 All. 680=21 A.L.J. 654=4 L.R.A. Gr. 134=

24 Cr. L.J. 911=A.I.R. 1924 All. 131.  
—Rightful owner of land allowing another to cultivate land and taking crops when ready is guilty of theft.

When a person is appointed guardian of a minor's property his duty is to get into his own hands all the property belonging to the minor that he can. But if it is held against him by others it is not his duty to take forcible possession of it. He should resort to the law Courts. If he allows others to prepare the land, sow and cultivate it and then when the crops are ripe with his companions takes forcible possession, the motive in doing so is clearly dishonest and he is guilty of theft. (*Prideaux, A. J. C.*) TUKARAM v. KING-EMPEROR.

77 I.C. 237=25 Cr. L.J. 349=  
A.I.R. 1924 Nag. 311.

—Where a property is attached by an officer without a warrant for attachment and the accused removed the property, *held*, that there was no valid attachment and that the accused could not therefore be convicted for an offence under S. 379 of the Code. (*Gokul Prasad, J.*) MOLAI v. EMPEROR.

59 I.C. 411=22 Cr. L. J. 107=  
2 U. P. L. R. (All.) 335.

**—Ss. 378 & 379—Miscellaneous.**

—Attempt is an intentional preparatory action—Entering into cattle enclosure which is prevented by owner is attempt to commit theft.

When a man does an intentional act with a view to attain a certain end and fails in his object through circumstances independent of his own will, then that man has attempted to effect the object at which he aimed: 13 P.L.R. 1919 Cr., Foll.

Where the accused entered a thorned enclosure at the well of the complainant and was about to enter a smaller enclosure in which the cattle were tethered when he was interrupted by the complainant:

*Held*: that the accused intended to steal the cattle and that he could not carry out his intention on account of intervention by the owner and so he was guilty of attempt to commit theft. (*Shadi Lal, C.J.*)  
JAIMAL v. EMPEROR. 89 I.C. 846=

26 Cr. L.J. 1424=A.I.R. 1926 Lah. 147.

—Theft of two articles belonging to two different persons, committed in one enterprise constitutes only one offence of theft and not two. (*Hallifax, A.J.C.*)

**PENAL CODE (1860), Ss. 378 & 379—Miscellaneous.**

**BHURA v. EMPEROR.** 90 I.C. 151 = 26 Cr. L.J. 1495 = A.I.R. 1926 Nag. 89.  
 —Where the accused in order to punish a boy tied him to a tree and then his cloth was taken away from him in order to put him to shame. *Held* that it was not a case of either theft or robbery. (*Odgers, J.*) **P. C. PERUMAL, In re.** 77 I.C. 290 = 19 M.L.W. 272 = 34 M.L.T. 165 = 1924 M.W.N. 303 = 25 Cr. L.J. 354 = A.I.R. 1924 Mad. 587 = 46 M.L.J. 325.

**—S. 380—Bona fide claim.**

Where coins were unearthed from field and taken possession of by several individuals, without the landlord's consent, and then the landlord's manager exacted by force the coins from many persons by house searches and other means and took the man who had actually unearthed the coins, to the police station to get a statement from him,  
*Held*: that the manager was acting under a *bona fide* claim of right and his offence fell under S. 448 and not S. 380. (*Foster, J.*) **THAKUR PRASAD SINGH v. KING-EMPEROR.** 84 I.C. 346 = 2 Pat. L. R. Cr. 205 = 26 Cr. L.J. 282 = A.I.R. 1924 Pat. 665.

**—S. 380—Building.**

—"Building includes structure whether covered or not and made of any material."

A building within the meaning of Ss. 380 and 442, includes a structure whether covered or not and made of any materials whatsoever. The limitations imposed by the legislature on buildings referred to in Ss. 380 and 442 are not as to the nature of their structures or the materials of which they are made but to the use to which such structures are intended to be put.

A court-yard attached to the living rooms walled in on all sides and provided by a door leading to the street comes within the purview of the section: *Moir v. Williams*, (1892) 1 Q.B. 264, Ref.; 35 P. R. 1879 Cr; A.I.R. 1926 Lah. 28; 6 N.W.P.R. 307 and A. I. R. 1925 Lah. 117, Foll. 57 P. R. 1887 Cr; 28 P. R. 1905 Cr; 24 P.R. 1914 Cr. and 11 P. W. R. 1919 Cr., Dist. (*DeSouza and Rupchand Bilaram, A.J.Cs.*) **WALI MAHOMED v. EMPEROR.** 111 I.C. 459 = 22 S.L.R. 466 = 29 Cr. L.J. 875 = A.I.R. 1929 Sind 17.

—Owner of cattle rescuing them from cattle-pound, consisting of only a fencing, by opening its door—No offence under Ss. 380 and 454 but under Ss. 378 and 441.

The expression "building" must be regarded as indicating some structure intended for affording some sort of protection to the persons dwelling inside it or for the property placed there for custody. Any structure which does not afford any such protection by itself but merely serves as a fencing or other means of merely preventing ingress or egress cannot make the place a building or a house within the meaning of either of those two sections. Therefore, an owner of a cattle who rescues the cattle from such a cattle-pound by opening its door, does not commit an offence either under S. 380 or S. 454. He is guilty under Ss. 378 and 441, Penal Code, in addition to the offence under S. 24, Cattle Trespass Act. (*Srinivasa Aiyangar, J.*) **LAKSHAMANA KOUNDAN v. EMPEROR.** 100 I. C. 120 = 38 M.L.T. 163 = 28 Cr. L.J. 248 = 7 A.I. Cr. R. 410 = A.I.R. 1927 Mad. 343 = 52 M.L.J. 143.

**—S. 380—Sentence.**

—Separate sentences under both are bad.

Separate sentences cannot be passed under S. 457

**PENAL CODE (1860), S. 384—Extortion.**

and S. 380 of the Indian Penal Code for housebreaking followed immediately by theft: 2 W. R. (Cr.) 63; 8 W. R. (Cr.) 31; 6 W. R. (Cr.) 49; 6 W. R. (Cr.) 92 and 5 W. R. (Cr.) 49; Foll. (*Ross and Kulwant Sahay, JJ.*) **MAKHRU DUSADH v. EMPEROR.** 96 I.C. 528 = 5 Pat. 464 = 7 P.L.T. 794 = 7 A.I. Cr. R. 3 = 27 Cr. L.J. 976 = A.I.R. 1926 Pat. 367.

**—S. 380—What is theft.**

Removal of goods from debtor's possession by force to compel the debtor to discharge the debt is theft. (*Moti Sagar, J.*) **BAKHTAWAR v. EMPEROR.** 81 I.C. 138 = 25 Cr. L.J. 650 = A.I.R. 1925 Lah. 131.

**—S. 381—Jurisdiction.**

—Third Class Magistrate.

The trial of an offence under S. 381 by a 3rd Class Magistrate is illegal. (*May Oung, J.*) **KING-EMPEROR v. NGA THAUNG PE.** 2 Bur. L.J. 75 = A.I.R. 1924 Rang. 12.

**—S. 381—Theft.**

—Taking official papers out of officers custody for showing to a party's *vakil* is theft by servant.

Where a clerk took official papers out of the possession of another clerk of the Tahsil office without Mamlatdar's consent with a view to show them to the *vakil* of one of the parties to the case.

*Held*: the facts constituted theft by clerk within S. 381. (*Fawcett and Coyajee JJ.*) **VALLABHRAM v. EMPEROR.** 94 I. C. 881 = 27 Bom. L. R. 1391 = 27 Cr.L.J. 689 = A. I. R. 1926 Bom. 122.

**—S. 383—No extortion.**

—Demanding money for doing what one is not bound to do.

A Nikah Khawan is not bound to read a Nikah for a person unless he chooses to do so, and it is certainly no offence for him to demand any fee he likes for doing so. (*Scott-Smith, J.*) **NIZAM DIN v. THE CROWN.** 75 I. C. 542 = 4 Lah. 179 = 24 Cr. L. J. 958 = A. I. R. 1924 Lah. 162.

**—S. 383—Picketing.**

—Fines realised by picketing—Extortion.

Realising fines by means of picketing is extortion within the meaning of S. 383, Penal Code. (*Kotval, A.J.C.*) **LOCAL GOVT. v. HANMANTRAO.** 75 I. C. 764 = 25 Cr. L. J. 60 = A. I. R. 1924 Nag. 19.

**—S. 384—Extortion.**

—Threat to omit to do some act which accused is not legally bound to do—If punishable.

After the crops of judgment-debtor were attached by officer of Court, the accused took money from judgment-debtor promising to get the crops released.

*Held*, no offence was committed.

Before a person can be said to put any person into fear of any injury to that person, it must appear that he has held out some threat to do or to omit to do what he is legally bound to do in the future. On the other hand if all that a man does is to promise to do a thing which he is not legally bound to do and says if money is not paid to him he would not do that thing, such an act does not amount to an offence.

But a threat held out by the accused that he would not release the cattle belonging to complainant and taken away by the accused without his consent, unless he was paid some money for their release, does amount to extortion inasmuch as he did put him in fear of injury to his property, namely the cattle, as he must have felt that his cattle would remain with the accused so long as the money was not paid to him. This would be sufficient injury within the meaning of S. 44 of the Indian Penal Code. (*Sultman, J.*)



**PENAL CODE (1860), S. 384—Extortion and cheating.**

**HABIBUL RAZAK v. KING-EMPEROR.** 81 I. C. 609 =  
46 All. 81 = 21 A.L.J. 850 = 4 L.R.A. Cr. 253 =  
25 Cr. L. J. 961 = A. I. R. 1924 All. 197.

**—S. 384—Extortion and cheating.**

Although there is a common feature between the offence of extortion and that of cheating, yet they cannot be regarded as two aspects of one offence. (*Mirza and Patkar, J.J.*) **RAMACHANDRA v. EMPEROR** 112 I. C. 586 = 30 Bom.L.R. 967 = 29 Cr. L.J. 1082 =  
A. I. R. 1928 Bom. 346.

**—S. 384—Gist of offence.**

A conviction under S. 384, I. P. C. cannot be maintained when the accused had no dishonest intention in removing the property. (*Jai Lal, J.*) **UJAGAR SINGH v. CROWN.** 86 I.C. 426 =  
26 P. L. R. 97 = 26 Cr. L.J. 794 = 7 L.L.J. 121.

**—S. 385—Attempt.****—If punishable.**

Section 385 does not expressly provide for the punishment of an attempt at extortion; and the limitation in S. 511 evidently relates to such offences as an attempt to commit suicide or an attempt to obtain illegal gratification which are expressly punishable by other sections of the Code. Therefore, a charge under S. 384 read with S. 511 is not bad. (*Ross, J.*) **HEM CHANDRA SINGH v. EMPEROR.** 98 I.C. 60 =  
27 Cr. L.J. 1244 = A.I.R. 1927 Pat. 89.

**—S. 385—Requisites of the offence.**

In order to constitute an offence under S. 385, it is not necessary that the threat should be of some conduct which might either constitute an offence in criminal law or which might be made the basis of a civil action for damages. Anything forbidden by law is unlawful and by virtue of the wide language of S. 43 illegal and the threat of any such act with a view to exact money constitutes extortion. (*Courtney-Terrell, C.J. and Macpherson, J.*) **EMPEROR v. FAZLUR RAHMAN.** 9 Pat. 725.

**—S. 396—Extortion and robbery.****—Essentials.**

It is not necessary that the extortion should follow immediately upon the restraint in order to constitute robbery, provided that there is fear of restraint at the time. (*Jackson, J.*) **KUTHIVA ROWTHER v. SUPPAN ASARI.** 99 I.C. 596 = 25 M.L.W. 86 =  
28 Cr. L.J. 144 = 7 A.I. Cr. R. 280 =  
A.I.R. 1927 Mad. 307.

**—S. 390—Restraint—Meaning.****—Person asleep if can be restrained.**

"Restraint" implies abridgement of the liberty of a person against his will. Where he is deprived of his will power by sleep or otherwise he cannot while in that condition be subjected to any restraint. (*Zafar Ali, J.*) **FATEH MUHAMMAD v. EMPEROR.**

109 I.C. 682 = 29 P.L.R. 90 = 29 Cr. L.J. 602 =  
10 A.I. Cr. R. 274 = A.I.R. 1928 Lah. 446.

**—S. 391—Personal grievance.****—If necessary.**

For the offence of dacoity, it is not necessary, that the accused should have known their victims previously and should have had some personal grievance against them before they would commit dacoity. (*Wallace and Walsh, J.J.*) **MOTTAYYA PILLAI v. EMPEROR.** 111 I.C. 787 = 29 M.L.W. 396 =  
1929 M.W.N. 194 = 2 M. Cr. C. 31 =  
30 Cr. L.J. 843 = A.I.R. 1929 Mad. 138 =  
56 M.L.J. 103.

**—S. 392—Conviction.**

A conviction under S. 401 cannot be considered bad in law merely because the evidence on the record would also have justified a conviction of a specific

**PENAL CODE (1860), S. 394—Robbery and murder.**

offence under Ss. 379 or 392. (*Raza, J.*) **LALE v. EMPEROR.** 118 I.C. 423 =  
6 O.W.N. 441 = 1929 Cr. C. 143 = 30 Cr. L.J. 922 =  
A.I.R. 1929 Oudh 321.

**—S. 392—Evidence.****—Prosecution evidence insufficient—Admission of accused that complainant paid as hush money—Conviction if justifiable.**

It is not open to a Court to base a conviction under S. 392, on insufficient evidence coupled with the mere fact that accused in his statement admitted to have taken the property from the complainant for some other purpose, which was not believed by the Court.

In the darkness of night, accused were alleged to have robbed the complainants of Rs. 50, which one of the complainants had on his person. The prosecution evidence was insufficient by itself to justify conviction. But the accused, while being examined under S. 342, Criminal P.C., admitted receiving Rs. 50 by way of fine, to hush up a criminal offence committed by one of the complainants. This admission, though not believed by the Court, was taken into consideration while convicting the accused.

**Held**: that the evidence was insufficient by itself to justify the conviction of the accused. (*Percival, J.C. and Aston, A.J.C.*) **SALEH v. EMPEROR.**

120 I.C. 95 = 30 Cr. L.J. 1185 = 24 S.L.R. 10 =  
1929 Cr. C. 683 = A.I.R. 1929 Sind 255.

**—S. 392—House breaking, robbery and hurt.****—Accused breaking into a house and carrying away property stolen by him—Complainant trying to recover—Accused is guilty under Ss. 392, 394 & 457.**

Where the accused committed house-breaking in the house of the complainant and abstracted from it a chembu, and, when the complainant attempted to catch him and recover his property the accused, in order to the carrying away of this property caused him hurt,

**Held**: that the accused committed offences under Ss. 457, 392 and 394. (*Wallace and Madhavan Nair, J.J.*) **S. KUSANGADU, In re.** 86 I.C. 715 =  
21 M.L.W. 37 = 26 Cr. L.J. 859 =  
A.I.R. 1925 Mad 466.

**—S. 392—Misdirection to jury.****—Offence under S. 392—Direction to jury if jewels were removed after death—The offence was one under S. 404.**

Where shortly after the murder, the murdered girl's jewellery was discovered in the possession of the accused who was charged with robbery and murder and the Judge told the jury that, if it had been removed from her person after her death, the offence committed was one under S. 404, I.P.C.:

**Held**: that that was not a proper direction, but that the question for consideration was whether the murder had been committed for the purpose of stealing the jewels, and if it had been committed for that purpose, the offence was one under S. 392. (*Devadoss and Waller, J.J.*) **MANIVAN, In re.**

98 I.C. 488 = 27 Cr. L.J. 1368 = 7 A.I.Cr. R. 450 =  
A.I.R. 1927 Mad. 243.

**—S. 394—Nature of offence.**

The offence under S. 394 cannot be said to be a minor offence so far as dacoity is concerned. (*Devadoss and Madhavan Nair, J.J.*) **VIRUWANDITHEVAN, In re.**

105 I.C. 831 = 28 Cr. L.J. 1007 =  
9 A. I. Cr. R. 211 = 1 M. Cr. C. 196 =  
A.I.R. 1928 Mad. 207.

**—S. 394—Robbery and murder.****—Robbery by four—Murder by two—Offences.**

Where four persons armed with deadly weapons fully prepared to commit murder in the event of



**PENAL CODE (1860), S. 394—Sentence.**

resistance and two of them actually committed murder before any resistance was offered to them. *Held* that each of the robbers is equally guilty of the offence of murder, A.I.R. 1925 P.C. 1 (P.C.) Foll. (Shadi Lal, C.J. and Zafar Ali, J.) SAID NUR v. EMPEROR. 89 I.C. 718=26 Cr. L.J. 1406= A.I.R. 1926 Lah. 63.

**—S. 394—Sentence.****—Whipping—When justifiable.**

Before a sentence of whipping, in addition to imprisonment, can be passed on a person found guilty under S. 394, I.P.C., there must be also a finding that he himself caused hurt while committing the robbery. (Carr, J.) PO THAUNG v. EMPEROR. 109 I.C. 810= 6 Rang. 48=29 Cr. L.J. 618=10 A. I. Cr. R. 276= A.I.R. 1928 Rang. 112.

**—Consecutive sentences—Legality.**

Consecutive sentences in respect of convictions under Ss. 394 and 397 are illegal, if they are based on the same set of facts. (Fforde, J.) MAMREZ v. EMPEROR. 89 I.C. 390=26 Cr. L.J. 1350= A.I.R. 1926 Lah. 47.

**—S. 395—Charge and conviction.****—Common object—Proof of.**

A conviction for dacoity founded on a common object not charged, or on evidence, which does not prove the necessary ingredients of the offence, is not sustainable. (Odgers and Wallace, J.J.) KOTTOORA THEVAN, *In re*. 77 I.C. 444=19 M.L.W. 211= 34 M.L.T. 307=1924 M.W.N. 238=25 Cr. L.J. 396= A.I.R. 1924 Mad. 584=46 M.L.J. 311.

**—S. 395—Conviction of some only.****—Five charged of dacoity—One acquitted—Others if can be convicted.**

Where three known and named persons were charged with dacoity along with two other unknown men and the jury acquitted one of the three and convicted the other two of dacoity.

*Held*: that the conviction is not illegal. It was open to the jury, while holding that one of the accused who was supposed to have been known to the witnesses had not been properly identified, to find that the total number of dacoits was five but at the same time the Judge ought to have asked the jury whether they had considered the possible result of the acquittal and whether they found, even after the acquittal of one accused that the number of robbers was five. (Waller and Madhavan Nair, J.J.) ABBAS ALI SAHEB v. EMPEROR. 106 I.C. 341= 1927 M.W.N. 853=29 Cr. L.J. 5=9 A.I. Cr. R. 248= 1 M. Cr. C. 72=A.I.R. 1928 Mad. 144= 53 M.L.J. 732.

**—Five alleged to have committed dacoity—One turning approver—Two acquitted—Remaining two if can be convicted under S. 395.**

Where a dacoity was alleged to be committed by 5 persons, one of whom turned an approver and two were acquitted. *Held*: the remaining two cannot be convicted of dacoity but should be convicted under S. 392 (robbery): 39 All. 348; (1910) M. W. N. 52, Foll. (Tekchand, J.) GIRDHAR v. EMPEROR. 102 I.C. 483=28 Cr. L.J. 547=8 A.I. Cr. R. 191= A.I.R. 1927 Lah. 519.

**—S. 395—Corroboration.****—Approver's story—Sufficiency of.**

Where some common things were found in the search and some other things found, claimed by the accused to be their own, were not mentioned in the first report and a gun and a sword were found which were proved to belong to complainant but which were concealed because the complainant did not hold a licence.

**PENAL CODE (1860), S. 395—Evidence.**

*Held*: that there was no sufficient corroboration of approver's story to justify conviction. (Broadway, J.) SULEMAN v. THE CROWN. 76 I.C. 716= 25 Cr. L.J. 252=A.I.R. 1923 Lah. 385.

**—S. 395—Directions to jury.****—Duty of Judge in dacoity and robbery cases.**

In cases of offences under S. 395, I.P.C. (dacoity) the Judge ought to explain to the jury what is necessary to constitute the offence of robbery as that offence is defined in Section 390 of the Indian Penal Code. If he does not, it is a real and not merely a technical defect. It is not to be assumed that every jurymen knows the legal distinction between theft and robbery and the defect arising from the omission by the Judge to explain to the jury the essential elements of the offence of robbery is not cured by the fact that evidence was given in the particular case which if believed by the jury would warrant their conviction of the accused on the charge of dacoity. 25 Cal. 711; 8 M. L. T. 82; 39 All. 348; 4 C. W. N. 193; 30 Mad. 44; (1903) A. W. N. 232, Ref. and Foll. (Wazir Hasan, J. C.) NAWAB ALI v. EMPEROR 81 I.C. 953=11 O.L.J. 315=25 Cr. L.J. 1129= A.I.R. 1924 Oudh 411.

**—S. 395—Essentials.****—Finding as to number of persons.**

The offence under S. 395 can be committed only if the number of persons concerned in the robbery is not less than five. Hence a finding as to the number of persons concerned being five or more is essential.

(Martineau and Campbell, J.J.) LABH SINGH v. CROWN. 88 I.C. 513=6 Lah. 24=26 Cr. L.J. 1153= 26 P.L.R. 139=A.I.R. 1925 Lah. 337.

**—Causing fear—If necessary.**

In order that the offence of robbery be committed it is not necessary that fear should be caused to the owner of the house after the robbers have entered the house. If the robbers scared away the owner on account of the fear caused in his mind before they had been able to make an entry in his house the offence of robbery would be quite complete. (Sulaiman, J.) YAMINI v. EMPEROR. 83 I.C. 708= 5 L.R.A. Cr. 81=26 Cr. L.J. 145= A.I.R. 1924 All. 701.

**—S. 395—Evidence.****—Stolen property not found in accused's possession—Their names not entered in the first information report—No identification proceedings by any Magistrate—Conviction solely based on testimony of complainant—Legality.**

Where no stolen property was found in possession of the accused charged under S. 395 and their names were not entered in the first information report and no identification proceedings were conducted by any Magistrate.

*Held*: their conviction solely based upon the testimony of the complainant was not sustainable. (Nanavutty, J.) PARSHODI v. EMPEROR.

112 I.C. 109=5 O.W.N. 732=29 Cr. L.J. 989= A.I.R. 1928 Oudh. 447.

**—Taking part, in dacoity—Proof of—Knowledge of dacoity—Sufficiency of.**

The facts were that a gang of thirteen persons had assembled at the accused's hut at night before the dacoity was committed, that he was aware of their purpose, that he did not give any information to the authorities and that after the dacoity was over the dacoits once more came to his hut and told him what had happened. He, next morning informed the Mukhia. Some property proved to have been stolen in the dacoity was found in the crop surrounding the

**PENAL CODE (1860), S. 395—Evidence.**

accused's hut, and this was thrown away by the dacoits because he began to raise an alarm.

*Held:* the evidence was insufficient to prove that the appellant actually took part in the dacoity. (*Neave, A.J.C.*) *UM RAO KHAN v. EMPEROR.*

81 I.C. 597 = 11 O.L.J. 356 = 25 Cr. L.J. 949 = A.I.R. 1924 Oudh. 367.

—Several accused—Discussion of evidence against each separately.

The only satisfactory way of dealing with the evidence and identification of accused in a dacoity case, is to give at first a general outline of the case, the dacoity, the course of the investigation and the arrest of the various accused, then the case against and for each accused should be dealt with in detail, and a conclusion arrived at with regard to each individual. (*May, Omg, J.*) *NGA MU v. EMPEROR.*

76 I.C. 573 = 2 Bur. L.J. 199 = 25 Cr. L.J. 205 = A.I.R. 1924 Rang. 67.

**—S. 395—Robbery and Rioting.**

—Mahomedan rioters—Common object proved—Any person taking part in disturbance guilty of riot as well as dacoity.

Where it is established that the common object of the Mahomedan rioters was both to hurt any members of the Hindu community whom they might happen to find and to rob the shops and houses of the Hindus, any person who is proved to have taken a part in the disturbance must be found guilty not only of the offence of riot but also of the offence of dacoity. (*Stuart, C.J.*) *DOULAT v. KING-EMPEROR.*

99 I.C. 238 = 2 Luck. 264 = 3 O.W.N. Sup. 304 = 28 Cr. L.J. 110 = A.I.R. 1927 Oudh. 70.

**—S. 396—Act in dacoity.**

—Shot fired to keep off rescue party.

A dacoity begins as soon as there is an attempt to commit robbery. A shot fired in order to keep off the rescue party, and allow the theft to be committed, is an act committed in committing dacoity. (*Simpson and Gokaran Nath Misra, A.J.Cs.*) *SITA RAM, v. EMPEROR.*

89 I.C. 452 = 12 O.L.J. 421 = 2 O.W.N. 550 = 26 Cr. L.J. 1364 = A.I.R. 1925 Oudh 723.

**—S. 396—Charge.**

—Dacoity and murder—Separate charges under S. 395 and S. 302 are unnecessary.

Where dacoits who murdered several persons in the commission of the dacoity and set houses on fire were sentenced to death for the offences under S. 302, Indian Penal Code and to ten years' imprisonment for each of the offences under Ss. 395 and 436.

*Held:* that it would have been proper to charge the accused persons with an offence under S. 396, I.P.C., rather than with the two offences of murder and dacoity. (*Martineau and Campbell, JJs.*) *LALJI SINGH v. CROWN.*

88 I.C. 513 = 6 Lah. 24 = 26 Cr. L.J. 1153 = 26 P.L.R. 139 = A.I.R. 1925 Lah. 337.

**—S. 396—Evidence.**

—Accused sent to prison for not being able to furnish security—Relevancy.

The fact that the accused was sent to jail for being unable to furnish security under S. 110, Cr. P. Code is irrelevant in a proceeding against him under S. 396, Penal Code. A presumption under S. 114, Evidence Act, will not alone justify fixing a person with more than knowledge that the goods were obtained by dacoity. (*Wansley and Huda, JJs.*) *ASIMUDDIN SIKHAR v. EMPEROR.*

89 I.C. 204 = 22 Cr.L.J. 60 = 32 C.L.J. 89.

**PENAL CODE (1860), S. 397—Applicability.**

—S. 396—Joint Commission of murder.

—Necessity for proof.

For a charge under S. 396 it is not necessary for the prosecution to prove that the murder was committed jointly by all the accused. (*Wazir Hasan and Simpson, A.J.Cs.*) *BHULAN v. EMPEROR.*

91 I.C. 233 = 27 Cr. L.J. 57 = A.I.R. 1926 Oudh 245.

—S. 396—Liability for Crime.

—Proof of dacoity by five—Identification of four only—Liability.

Where it is fully established that a dacoity was committed by a party of five persons one of whom committed a murder and the identity of four of them is established beyond question, the fifth remaining unidentified the four accused are equally guilty under S. 396, though it is not possible to trace and identify one of the culprits. (*Fforde and Tekchand, JJs.*) *MOHAMAD AHSAN v. EMPEROR.*

120 I.C. 490 = 31 Cr.L.J. 112 = A.I.R. 1930 Lah. 263.

—S. 396—Murder in dacoity.

—Murder committed while retreating for facilitating escape.

Murder committed by dacoits while retreating or carrying away the stolen property in order to facilitate their escape is murder committed in the commission of the dacoity and all the accused are liable to the enhanced punishment. (*Shadi Lal, C.J. and Fforde, J.*) *SUNDAR v. EMPEROR.*

81 I.C. 188 = 25 Cr.L.J. 700 = A.I.R. 1925 Lah. 142.

—S. 396—Sentence.

—Accused already convicted and sentenced for dacoity—Sentence under S. 400, if barred.

A conviction can be had under S. 400 even where no actual commission of a dacoity is proved. The element of the offence is association with the knowledge that it is formed for the purpose of committing dacoities habitually. Hence where sentence is already passed for the offence of committing dacoity there is no bar to the passing of a sentence under S. 400. (*Dalai and Neave, A.J.Cs.*) *MURLI BRAHMAN v. EMPEROR.*

89 I.C. 836 = 27 O.C. 385 = 26 Cr. L.J. 1412 = A.I.R. 1925 Oudh 374.

—S. 397—Applicability.

Section 397 is wholly different in scope from Ss. 34 or 149. To render S. 397 applicable it must be established that "the offender" himself committed the act. (*Boys, J.*) *DONNA v. KING-EMPEROR.*

108 I.C. 689 = 9 A.I.Cr.R. 194 = 9 L.R.A.Cr. 27 = 29 Cr.L.J. 449.

—Offender not using deadly weapon himself. It is only the offender who actually uses the deadly weapon that can be convicted under S. 397, and the constructive liability of his companions in the crime does not arise under the section: A. I. R. 1924 Lah. 409, Foll. (*Jailal, J.*) *KHUDU DAD v. EMPEROR.*

99 I.C. 412 = 28 Cr.L.J. 158 = A.I.R. 1927 Lah. 791.

—Section 397 only applies to a person who himself uses a deadly weapon or causes grievous hurt: 28 All. 404 and 23 All. 404n, Foll. (*King, J.*) *ABDUL KARIM v. KING-EMPEROR.*

102 I.C. 216 = 4 O.W.N. 459 = 28 Cr. L.J. 520 = A.I.R. 1927 Oudh 193.

—Person actually causing hurt.

The section only applies to the person who actually causes grievous hurt or is himself armed with a deadly weapon. 21 All. 263 Dist. 28 All. 404; 15 F. R. 1904 Cr.; and 15 P. R. 1901 Cr. Foll. (*Scott-Smith and Zafar Ali, JJs.*) *MOHAR SINGH v. EMPEROR.*

88 I.C. 456 = 7 L.L.J. 537 = 26 P.L.R. 398 = 27 P.L.R. 829 = 26 Cr. L.J. 1444 = A.I.R. 1926 Lah. 40.

**PENAL CODE (1860), S. 397—Applicability.**

—*Several committing dacoity—One causing hurt—Liability of others.*

In a case where a number of persons jointly commit robbery or dacoity S. 397 applies to those only who actually use any deadly weapon but the others cannot be convicted under S. 397: A. I. R. 1926 Lah. 48, Foll. (*Addison, J.*) *FAZAL v. EMPEROR.*

97 I.C. 362=27 Cr.L.J. 1098 (Lah.)

—*Person actually armed.*

Both Ss. 397 and 398 of the Penal Code are what may be styled individualistic. They only apply to the person actually armed, and cannot be utilized as against companions, who themselves were not armed with deadly weapons at the time when the substantive offence in question was committed. (*Duckworth, J.*) *NGA PU v. EMPEROR.*

98 I.C. 181=

5 Bur.L.J. 103=27 Cr.L.J. 1285=

A.I.R. 1926 Rang. 207.

—Where a dacoity has been committed and not merely attempted and weapons were not merely carried by dacoits but were actually used by them, may be only by being shown or brandished even without verbal threats of using them, S. 397 and not S. 398 applies to the case. (*Hallifax, A. J. C.*) *SHEAK GHASSU v. EMPEROR.*

82 I.C. 45=

25 Cr.L.J. 1181=A.I.R. 1925 Nag. 136.

—*Actual offenders—Associates.*

The terms "offender" and "such offender" in Ss. 397 and 398, denote those persons only who have personally committed the acts therein described, and do not refer to other persons who in combination with such persons have committed the offences of robbery or dacoity. 28 All. 404; 22 M.L.J. 186, foll. (*Page, J.*) *EMPEROR v. ALI MIRZA.*

81 I.C. 800=51 Cal. 265=25 Cr.L.J. 1024=

A.I.R. 1924 Cal. 643.

—*Person actually using the weapon.*

The words "such offender" in S. 397 clearly refer to the offender who uses a deadly weapon or causes grievous hurt to any person and not to those who jointly commit robbery or dacoity with him. 16 P. R. 1901 Cr. Dissented from. (*Scott-Smith, J.*) *ILAHIA v. EMPEROR.*

72 I.C. 517=24 Cr.L.J. 405=

A.I.R. 1924 Lah. 409.

—**S. 397—Charge and conviction.**

—*Charge for dacoity—Conviction for grievous hurt—Legality.*

Dacoity is an offence against property, whereas S. 325, is an offence affecting human body. It is therefore not open to the Court to charge the accused under S. 392-397, and to convict them of an offence under S. 325: A. I. R. 1925 P. C. 130, Dist. (*Nanaoutty, J.*) *RAMESHWAR v. EMPEROR.*

110 I.C. 795=5 O.W.N. 601=11 A.I.Cr.R. 41=

29 Cr.L.J. 763=A.I.R. 1928 Oudh 373.

—**S. 397—Common intention.**

—*One alone carrying deadly weapon.*

Section 34 does not apply to S. 397, so that if one in a party of dacoits carries a deadly weapon it cannot be said that it would increase the gravity of the offence in the case of his associates who were not similarly armed: A. I. R. 1923 Lah. 104, Foll.; 16 P. R. 1901 and 15 P. R. 1901, not Foll. (*Agha Haidar, J.*) *BACHAN v. EMPEROR.*

99 I.C. 49=

28 Cr.L.J. 17=A.I.R. 1927 Lah. 149.

—**S. 397—Construction.**

—*'Uses' Meaning.*

The word "uses" in S. 397 should be construed in a wide sense so as to include not merely cutting, stabbing, shooting (as the case may be) but also carrying the weapon for the purpose of overawing the person robbed.

Cr. D—133

**PENAL CODE (1860), S. 398—Abetment.**

Where the complainant overawed by the deadly weapon carried by the accused made no resistance and the accused effected his purpose by a mere blow with the handle.

*Held*: that the offence committed falls under S. 397 and the Legislature requires his imprisonment for not less than seven years. (*Kincaid, J.C. and Kennedy, A.J.C.*) *NAZAR SHAH v. EMPEROR.*

92 I.C. 750=

20 S. L. R. 46=27 Cr. L. J. 334=

A. I. R. 1926 Sind 150.

—**S. 397—Deadly weapon.**

—*Lathi or Dang.*

A lathi or dang is not a deadly weapon within S. 397. (*Agha Haidar, J.*) *BACHAN v. EMPEROR.*

99 I.C. 49=28 Cr. L. J. 17=A. I. R. 1927 Lah. 149.

—*Sticks.*

In a country like this where many murders if not most, are committed with sticks, sticks are deadly weapons within the meaning of S. 397, I.P.C.

(*Hallifax, A. J. C.*) *SHEAK GHASSU v. EMPEROR.*

92 I.C. 45=25 Cr. L. J. 1181=

A. I. R. 1925 Nag. 136.

—**S. 397—Punishment.**

Section 397 provides minimum punishment for the substantive offences created by Ss. 392 & 395. As there is no substantive offence created by S. 397, there can be no punishment under S. 397 only. The highest punishment under S. 397 can be inflicted only on the offender who actually uses a deadly weapon, or causes or attempts to cause death or grievous hurt. S. 34 cannot be applied to other offenders to make them liable to enhanced punishment. (*Maung Kin, J.*) *PO MYAING v. EMPEROR.*

62 I.C. 865=

13 Bur. L. T. 158=22 Cr. L.J. 593=

10 L. B. R. 269.

—**S. 397—Scope.**

—*No substantive offence—Effect.*

Section 397 of the Indian Penal Code does not contain any substantive offence, but merely prescribes the minimum punishment which can be passed if robbery or dacoity is attended with certain circumstances mentioned therein. Therefore, a conviction merely under S. 397 has no meaning. The conviction in the case of a dacoity should be under S. 395 read with S. 397 of the Penal Code. (*Sulaiman, J.*) *DUTTI v. EMPEROR.*

85 I.C. 714=47 All. 59=

6 L. R. A. Cr. 10=26 Cr. L. J. 570=

A. I. R. 1925 All. 305.

—*Exclusion of Ss. 34 and 114.*

The words of S. 397 are not such as to exclude the operation of Ss. 114 and 34 of the Code. (*Hallifax A.J.C.*) *SHEAK GHASSU v. EMPEROR.*

82 I.C. 45=25 Cr.L.J. 1181=A.I.R. 1925 Nag. 136.

—*Limiting punishment.*

Neither S. 397 nor S. 398 creates an offence. They merely limit the minimum of punishment which may be awarded if certain facts are proved. (*Page, J.*) *EMPEROR v. ALI MIRZA.*

81 I.C. 800=51 Cal. 265=

25 Cr.L.J. 1024=A.I.R. 1924 Cal. 643.

—**S. 397—Sentence.**

—*Period of imprisonment.*

Where a convict under S. 397, Penal Code has been sentenced to four years' rigorous imprisonment when the minimum sentence provided for by S. 397 is seven years' rigorous imprisonment, the sentence, must be enhanced from four years to seven years' rigorous imprisonment. (*Kulwant Sahay and Allanson, JJ.*) *EMPEROR v. RADHIA.*

106 I.C. 451=

29 Cr. L.J. 35=9 P.L.T. 572=9 A.I. Cr. R. 279.

—**S. 398—Abetment.**

A man cannot be convicted of abetting an offence under S. 398, I.P. Code. (*Duckworth, J.*) *NGA PU.*

**PENAL CODE (1860), S. 398—Applicability.**

v. EMPEROR. 98 I.C. 181=5 Bur. L.J. 103=

27 Cr. L.J. 1285=A.I.R. 1926 Rang. 207.

**—S. 398—Applicability.****—Using weapon.**

Where a dacoity has been committed and not merely attempted and weapons were not merely carried by dacoits but were actually used by them, may be only by being shown or brandished even without verbal threats of using them, S. 397 and not S. 398 applies to the case. (*Hallifax, A.J.C.*) SHEAK GHASSU v. KING-EMPEROR. 82 I.C. 45=

25 Cr. L.J. 1181=A.I.R. 1925 Nag. 136.

**—S. 398—Construction.**

Section 34 has no application in the construction of S. 398. (*Mirza, J.*) EMPEROR v. NABIBUX KARIM-BUX MULLA. 107 I.C. 705=29 Cr. L.J. 383=10 A.I. Gr. R. 11=30 Bom. L.R. 88=52 Bom. 168=A.I.R. 1928 Bom. 52.

**—S. 398—Interpretation.****—Offender 'Meaning.'**

The word "offender" appearing in the section refers only to the person who is proved to have been armed with any deadly weapon and not to any other who, in combination with such person, may have committed robbery. (*Mirza, J.*) EMPEROR v. NABI BUX KARIMBAX MULLA. 107 I.C. 705=

52 Bom. 168=30 Bom. L.R. 88=29 Cr. L.J. 383=

10 A.I. Gr. R. 11=A.I.R. 1928 Bom. 52.

**—S. 398—Scope.****—No substantive offence—Charge under S. 114 with S. 398—Legality.**

Section 398 does not relate to a substantive offence. It only regulates the measure of punishment when certain facts are found to exist in the commission of the substantive offence which is robbery, and a charge under S. 114 read with S. 398 is not sustainable: A.I.R. 1924 Cal. 643, Foll. (*Mirza, J.*) EMPEROR v. NABI BUX KARIMBAX MULLA. 107 I.C. 705=

52 Bom. 168=30 Bom. L.R. 88=29 Cr. L.J. 383=

10 A.I. Gr. R. 11=A.I.R. 1928 Bom. 52.

**—S. 398—Sentence.****—Adequacy.**

A sentence of five years in a dacoity case where a gun was fired to keep villagers away from coming to the help of the complainants is very inadequate. (*Dalal, J. C.*) EMPEROR v. RAM CHARAN.

27 O.C. 29=11 O.L.J. 210=25 Cr. L.J. 785=

A.I.R. 1924 Oudh 314.

**—S. 399—Essentials.**

To establish an offence under S. 399, I. P. C. it is not necessary that the persons shown to be making the preparation should be five or more in number. But it is necessary to prove that the raid for which they were making preparation was to be committed by five or more persons. Otherwise it would not be dacoity but merely robbery and mere preparation for committing robbery unless it ends in an actual attempt is not punishable by law. (*Pipon, J. C.*) KHWAJA HASSAN v. EMPEROR. 71 I.C. 360=

24 Cr. L.J. 136.

**—S. 399—Preparation what is.**

The mere "assemblage" to commit dacoity does not amount to "preparation" within the meaning of S. 399, Penal Code; but where the members of the gang take into their possession instruments of house-breaking and arms for the purpose of offence and defence and actually proceed to a place near the scene of the contemplated dacoity, they are guilty of an offence under S. 399: 6 P. R. 1916 Cr., Foll. (*Tej Chand, J.*) KARIM BAKSH v. EMPEROR. 109 I.C. 593=

24 Cr. L.J. 577=10 A.I. Gr. R. 298=

A.I.R. 1928 Lah. 193.

**PENAL CODE (1860), S. 400—Evidence.**

**—Persons hiding near a village armed with gun—Conviction for preparation for committing dacoity—If proper.**

Where certain persons were found attempting to conceal their identity and were also found armed with a gun which they used while pursued by the villagers.

**Held:** that they were rightly convicted for preparation to commit dacoity: 6 P. R. 1916, Foll. (*Coldstream, J.*) INDAR SINGH v. EMPEROR. 97 I.C. 745=

8 L.L.J. 406=27 P.L.R. 752=

27 Cr. L.J. 1161.

**—S. 400—Conviction and sentence.**

**—No actual offence under S. 396—Legality of conviction—Conviction under S. 396 if a bar to conviction under this section.**

A conviction can be had under S. 400 even where no actual commission of a dacoity is proved. The element of the offence is association with the knowledge that it is formed for the purpose of committing dacoities habitually. Hence where sentence is already passed for the offence of committing dacoity there is no bar to the passing of a sentence under S. 400. (*Dalal and Neave, A. J. Cs.*) MURLI BRAHMAN v. EMPEROR. 89 I.C. 836=27 O.C. 385=

26 Cr. L.J. 1412=A.I.R. 1925 Oudh 374.

**—S. 400—Evidence.****—Actual participation in dacoity.**

It is not necessary for a conviction under S. 400 that the person convicted must have taken part in any dacoity. Evidence showing the actual participation by an accused in any given dacoity is evidence both of his association with the gang and his object in such association. Evidence which though not believed for the purpose of a conviction under S. 393, I. P. C. may yet be relied upon for the purpose of a conviction under S. 400. A conviction under S. 400 cannot be considered bad in law merely because the evidence on the record would also have justified a conviction of a specific offence under S. 395. (*Raza and Nana-vutty, JJ.*) BACHCHU v. EMPEROR.

7 O. W. N. 862=1930 Cr.C. 1079=

A.I.R. 1930 Oudh 435.

**—Evidence as to commission of offence and proceedings under S. 110, Cr. P. C.—Admissibility.**

In a trial for offence punishable under S. 400, Penal Code, namely, of belonging to a gang of dacoits the evidence of commission of an offence and that the accused were bound down under S. 110 of the Criminal Procedure Code is admissible. 47 C. 154 and 27 C. 139 Dist. 38 C. 408 and 16 C. W. N. 69 Appr. (*Newbould and B. B. Ghose, JJ.*) LEDU MOLLA v. EMPEROR.

87 I.C. 925=52 Cal. 595=

26 Cr. L.J. 1037=42 C.L.J. 501=

A.I.R. 1925 Cal. 872.

**—Proof of existence of gang—Crimes committed.**

When examining the general question of the existence of a gang the Court need not look for the complicity of every one of the accused in every one of the dacoities proved to have been committed. It is sufficient to find that out of the accused one or more had taken part in the dacoities so that the presumption is strong that a gang had committed all these dacoities. (*Dalal and Neave, A. J. Cs.*) MURLI BRAHMAN v. KING-EMPEROR. 89 I.C. 836=27 O.C. 385=

26 Cr. L.J. 1412=A.I.R. 1925 Oudh 374.

**—Existence of gang—Crimes committed.**

The existence of a gang associated for the purpose of habitually committing dacoity is the first element that the prosecution has to prove in the charge under S. 400. In such a case evidence that members of the same gang committed several burglaries, i.e. crimes

**PENAL CODE (1860), S. 400—Evidence.**

other than dacoity would be relevant to the charge (32 Mad. 179, Not Foll.) (*Kendall and Pullan A. J. Cs.*) NIDHI v. KING-EMPEROR. 83 I.C. 683 = 11 O.L.J. 632 = 26 Cr. L.J. 123 = A.I.R. 1925 Oudh 144.

**—Previous conviction—Value of.**

Where the evidence of previous conviction or the evidence that a man has been bound over under the preventive sections can be considered only as evidence of character it must be excluded, but where such evidence is admissible *aliunde*, it should not be excluded. Where the accused is charged under S. 400, I. P. C., such evidence is admissible, not as evidence of character but as evidence to prove habit and association. (*Raza and Nanavutty, JJ.*) BACHCHU v. EMPEROR. A.I.R. 1930 Oudh 455.

**—S. 400—Interpretation.****—'Belong'—Meaning.**

The word "belong" in S. 400 implies something more than a casual association. It involves the idea of continuity rather than of permanency and also of a connexion extending long enough to warrant the inference that the accused has identified himself with the gang which has for its object the habitual commission of dacoity. The essence of the section is the agreement habitually to commit dacoity not the actual commission or attempted commission of dacoities. The existence of such an agreement and the participation of any person in that agreement may be inferred from circumstances, (*Rankin, C.J. and Chotzner, J.*) SURESH CHANDRA v. EMPEROR.

110 I.C. 449 = 47 C.L.J. 471 = 10 A.I. Cr. R. 371 = 29 Cr. L.J. 705 = A.I.R. 1928 Cal. 309.

**—'Belong' Meaning.**

The term "belong" in S. 400, implies something more than the idea of casual association: it involves the notion of continuity and indicates a more or less intimate connexion with a body of person extending over a period of time sufficiently long to warrant the inference that the person affected has identified himself with a band, the common purpose of which is the habitual commission of dacoity: 13 O. C. 243 Ref. (*Raza and Nanavutty, JJ.*) BACHCHU v. EMPEROR. A. I. R. 1930 Oudh 455.

**—S. 401—Belonging to gang.****—Meaning—Receiver of stolen property if within the expression.**

It cannot be laid down as a general proposition that a person who receives stolen property from a gang of the character prescribed in S. 401 is a member of the gang. The word "belong" used in S. 401 is no doubt very comprehensive, but the expression "to belong to a gang of persons, etc." conveys the same idea as "to be one of a gang of persons; etc." The object of the section obviously is to punish the persons who organize thieving expeditions and form a party to commit theft. A person who receives stolen property from them cannot be said to belong to their gang. (*Zafar Ali, J.*) ABDULLA v. EMPEROR. 99 I.C. 851 = 28 P.L.R. 19 = 28 Cr. L.J. 179 = A.I.R. 1927 Lah. 524.

**—S. 401—Conviction.****—Legality—Offence also under Secs. 379 or 392.**

A conviction under S. 401 cannot be considered bad in law merely because the evidence on the record would also have justified a conviction of a specific offence under S. 379 or 392. (*Raza, J.*) LALE v. EMPEROR. 118 I.C. 423 = 6 O.W.N. 441 = 30 Cr. L.J. 922 = 1929 Cr.C. 143 = A.I.R. 1929 Oudh 321.

**PENAL CODE (1860), S. 401—Sentence.****—S. 401—Essentials.****—Proof of taking part in particular theft or robbery—If necessary.**

It is not necessary for a conviction under S. 401 that the person convicted must have taken part in any one theft or robbery. Evidence showing the actual participation by an accused in any given theft or robbery is evidence both of his association with the gang and of his object in such association. Evidence which though not believed for the purpose of a conviction under S. 379 or S. 392 may yet be relied upon for the purpose of conviction under S. 401: A.I.R. 1928 Oudh 430, Rel. on. (*Raza, J.*) LALE v. EMPEROR. 118 I.C. 423 = 6 O.W.N. 441 = 30 Cr. L.J. 922 = 1929 Cr.C. 143 = A.I.R. 1929 Oudh 321.

**—S. 401—Evidence.****—Existence of gang of cattle lifters—Names of suspects in reports to Police Officers—Admissibility.**

Although there is no objection to police officers being called to prove the existence of a gang of cattle lifters and the frequency of thefts in the area where that gang operated, the reports made to them from time to time or brought to their notice showing the names of particular suspects are inadmissible as being hearsay and should be excluded, (*Percival, J. C. and Rupchand, A.J.C.*) BAKSHO v. EMPEROR.

A.I.R. 1930 Sind. 211.

**—Previous proceedings under Sec. 110, Cr. P.C.—Admissibility.**

Previous convictions and proceedings under S. 110, Criminal P.C., are admissible in a case under S. 401 for the purpose of proving habit though not of general bad character and are not excluded by S. 54, Evidence Act: 13 Cr. L.J. 539: 38 Cal. 438 and A.I.R. 1925 Bom. 195, Rel. on.; 32 Mad. 179 and A.I.R. 1923 Bom. 71, Discussed and Dist. (*Percival, J.C. and Rupchand, A.J.C.*) BAKSHO v. EMPEROR.

A.I.R. 1930 Sind. 211.

**—Enquiry into theft by panchayat and calling a person suspect, or accepting money for search of stolen property—Sufficiency.**

The evidence that a panchayat enquired into a theft and called a person before it as a suspect, or that a person accepted money and agreed to make a search for stolen property and to restore it to the owner does not as against that person prove any of the ingredients of the offence punishable under S. 401. (*Zafar Ali, J.*) MUNSHI v. THE CROWN. 94 I.C. 264 = 27 P.L.R. 276 = 27 Cr. L.J. 600 = A.I.R. 1926 Lah. 439.

**—Existence of gang not proved—Stolen property traced through accused's information—Legality of conviction.**

The evidence against accused was that several thefts and several articles which had been stolen from different houses were discovered on the information supplied by him, that he was suspected in one of those theft cases and that he made promises to restore certain stolen cattle.

*Held*: that such evidence did not prove that he was a member of a gang of habitual thieves the very existence of which had not been proved. (*Zafar Ali, J.*) BANWARI v. EMPEROR. 87 I.C. 848 = 26 Cr. L.J. 1024 = A.I.R. 1925 Lah. 604.

**—S. 401—Sentence.****—Points to be considered.**

In determining to what extent in any particular case the punishment should approach to or recede from the maximum limit prescribed by the section, the trying Magistrate has to take into account several



**PENAL CODE (1860), S. 402—Evidence.**

factors, *inter alia* the antecedents of the prisoner whether such antecedents speak well or ill of him, such as his character and state of life of whether good or bad including the previous convictions, if any. So while assessing sentence under S. 401 the Magistrate can take into consideration previous convictions and orders under S. 110, Penal Code, even when S. 75, Penal Code, does not apply: 39 Bom. 326, Rel. on, (Percival, J.C. and Rupchand A.J.C.) **BUKSHO v. EMPEROR.** **A.I.R. 1930 Sind 211.**

**—S. 402—Evidence.**

*—Accused coming from different villages—Arrested on suspicion by villagers—Various circumstances showing their guilty intention—Legality of conviction.*

The accused were all residents of different villages and they mostly lived at a great distance from the village where they were caught. They gave a number of separate reasons, for the most part entirely improbable, to account for their being caught in the particular village. Different portions of the same manual on bayonet training were found in the possession of different accused who came from different villages. A lot of ammunition was recovered from some of the accused and they were all armed. A series of armed dacoities had occurred recently in the district. The accused were arrested by the villagers themselves on suspicion. (Daniels, J.) **BHOTA v. EMPEROR.** **84 I.C. 860=**  
**22 A.L.J. 1028=26 Cr. L.J. 380=**  
**5 L.R.A. Cr. 156=A.I.R. 1925 All. 62.**

**—S. 402—What is offence under.**

*—Accused assembled together on the night of dacoity—Two of them armed with revolvers and one with spear.*

Where the accused, three of whom were residents of another village, assembled on the night of the dacoity under a shisham tree, outside a village and two of them were armed with revolvers and one with a spear:

*Held:* that the accused committed an offence falling within the purview of S. 402, I.P.C.: 37 P.W. R. 1916 Cr., Foll. (*Broadway and Zafar Ali, JJ.*) **EMPEROR v. AHMAD.** **106 I.C. 360=9 A.I. Cr. R. 346=**  
**29 Cr. L.J. 14=A.I.R. 1928 Lah. 144.**

*—Accused found assembled, fully prepared for dacoity.*

Where the accused are caught at a lonely well at a long distance from their respective homes in different villages fully armed and equipped for committing a dacoity, their conviction under S. 402 is competent: 6 P. R. 1916; A. I. R. 1925 All. 62 and 23 All. 124, Appl. (*Addison, J.*) **WARYAM SINGH v. EMPEROR.**

**94 I.C. 269=27 Cr. L.J. 605.**

**—S. 403—Applicability.**

*—Municipal Committee selling receipt books relating to sale transaction of cattle in fair—Licensee making entry in receipts contrary to rules fixed—If offence under S. 403 or 405.*

The Municipal Committee of Amritsar issued licenses to a number of persons to write receipts relating to sale transactions of cattle in a certain fair. A receipt book was issued to each licensee who was to pay the price of each receipt book at the rate of eight annas per receipt in advance and when he wrote the receipt in the fair he was to charge eight annas per head of cattle from the seller plus his own writing charges. If an animal sold had a calf with it, two separate and consecutive receipts were to be issued for both respectively. P purchased two receipt books paying full price therefor during the fair, he wrote receipts relating to two transactions of sale of buffaloes, each one of whom had a katti with it, but instead

**PENAL CODE (1860), S. 403—Failure to return.**

of issuing four receipts as required by the rules he issued only two and charged one rupee from each purchaser. P was prosecuted under S. 409 and S. 420 but was convicted under S. 406.

*Held,* that the case could not possibly fall under Ss. 403 and 405. P was not entrusted with any property or with any dominion over any property and there was no criminal breach of trust by him. The mere making of wrong entries in the receipt books might have rendered P liable to the forfeiture of his license but could not possibly bring his action within the purview of S. 403 and S. 405. (*Tekchand, J.*) **LABHU v. EMPEROR.** **A.I.R. 1930 Lah. 408.**

*—Two articles lost found with accused—Nature of offence.*

A Packet containing a loose diamond and a diamond-ring was lost and was found with accused two years later.

*Held:* only one offence of retaining stolen property was committed under S. 411 and not two offences under S. 403 one in respect of diamond and the other in respect of the ring. (*Lentaigne, J.*) **RAM PERSHAD v. KING-EMPEROR.** **81 I.C. 443=**  
**2 Rang. 80=25 Cr. L.J. 907=**  
**A.I.R. 1924 Rang. 256.**

**—S. 403—Denial of receipt.**

*—Goods delivered in pursuance of contract—Denial of their receipt if an offence.*

If goods are delivered to the purchaser in pursuance of a contract for purchase, there is no entrustment so as to give rise to a trust and the mere fact that the person denies receipt of goods delivered, does not render him guilty either under S. 403 or S. 406, the matter being one purely in the nature of a civil dispute. (*Krishnan, J.*) **VELAYUTHAM CHETTY, In re.** **72 I.C. 172=24 Cr. L.J. 332=**  
**A.I.R. 1924 Mad. 516.**

**—S. 403—Essentials.**

*—Setting apart for use of another—If misappropriation.*

If a person sets apart an article for the use of another person, of which article he is a trustee, he misappropriates it, even though he has not put it to his own use. S. 403 is in no way restricted to appropriating property to one's own use. If a trustee repudiates the trust and asserts that he now holds the property on behalf of a person other than the one who entrusted him with it, he has misappropriated the property just as much as he would have been said to misappropriate it if he had been putting forward his own claim to it. (*Sulaiman, J.*) **INDAR SINGH v. EMPEROR.** **92 I.C. 585=48 All. 288=**  
**7 L.R.A. Cr. 34=24 A.L.J. 270=**  
**27 Cr. L.J. 297=A.I.R. 1926 All. 302.**

**—S. 403—Failure to return.**

*—Receiver entrusting property to be returned at auction—Covenant to pay money as security—Failure to return the property if an offence.*

When a Receiver attaches property and entrusts it to some person, he does not purport to sell it to him or dispose of it at that time. The Receiver may not even be in a position to know its true value. The intention of the parties is that the articles should be returned in specie or produced at the time when the auction-sale is to take place. The covenant by the person entrusted that he would be liable to pay a certain amount is more by way of security than because the property is transferred to him with liberty to dispose of it or withhold it. In such cases it is the true intention of the parties which must be taken into account. So if the person entrusted fails to produce the property, he is guilty under S. 403,



**PENAL CODE (1860), S. 403—Mere retention.**(Sulaiman, J.) *INDAR SINGH v. EMPEROR.*92 I.C. 585=48 All. 286=7 L.R.A. Cr. 34=  
24 A.L.J. 270=27 Cr. L.J. 297=  
A.I.R. 1926 All. 302.**—S. 403—Mere retention.**Ordinarily mere retention of money will not suffice to constitute the offence of criminal misappropriation. (*Fawcett and Mirza, J.J.*) *LALA ROOJI v. EMPEROR.*111 I.C. 730=11 A.I.Cr.R. 82=  
30 Bom. L.R. 624=29 Cr. L.J. 922=  
A.I.R. 1928 Bom. 205.**—S. 403—Misappropriation and similar offences.****——Distinction.**

An easy method of differentiating between the offence of theft, cheating with delivery of property, criminal misappropriation and criminal breach of trust is to find out whether the original taking was honest or dishonest and whether it was with the consent of the owner or without it. In theft the original taking is without honesty and without the consent of the owner, and in criminal breach of trust it is with both. In obtaining property by cheating the taking is dishonest but with the consent of the owner, and in criminal misappropriation it is honest but without the consent of the owner. (*Hallifax, A.J.C.*) *NAR-SINGHDAS MARWARI v. EMPEROR.* 106 I.C. 678=  
9 A.I. Cr. R. 282=29 Cr.L.J. 86=  
A.I.R. 1928 Nag. 113.

**——Re-payment on demand—Inference.**

It is a possible view that an accused is guilty of criminal breach of trust between the misappropriation and the re-payment, but Court should be slow when re-payment is at once made on demand to assume guilt in accused person. Criminal liability is not the same as civil liability: *Lanter v. Rex*, (1914) A.C. 221, Rel. on. (*Kincaid J.C. and Rupchand Bilaram, A.J.C.*) *EMPEROR v. STEWART.* 97 I.C. 1041=  
21 S.L.R. 55=27 C.L.J. 1217=  
A.I.R. 1927 Sind 28.

**—S. 403—Owner not known.****——Accused picking up spanner on road not knowing owner—If guilty.**

A was convicted on his plea of guilty under S. 403 (he having tried to sell a spanner which he found lying on a public road).

*Held*: that it was not a case where the accused had reasonable means of discovering and giving notice to owner of the spanner, of having found it. The spanner was not of any appreciable value. The accused's plea of guilty was merely his admission of the facts alleged against him. The case therefore fell under illustration of S. 403 and the accused therefore was not guilty. (*Mirza and Broomfield, J.J.*) *EMPEROR v. MAHADEO GOVIND.* 32 Bom. L.R. 356=  
A.I.R. 1930 Bom. 176.

**——Sub-Inspector catching bullock—Owner not known for 20 days—Sale thereafter—If offence.**

Accused, a Sub-Inspector of Police, caught a lawaris bullock, kept it for 20 days and ultimately not being able to trace out the owner sold it thereafter.

*Held*: that the accused was not guilty of any offence. (*Banerji, J.*) *AMIR HASAN KHAN v. EMPEROR.* 91 I.C. 37=24 A.L.J. 128=27 Cr. L.J. 5=  
7 L.R.A. Cr. 147=A.I.R. 1926 All. 251.

**——Wandering cow—Taking possession—If an Offence.**

A person finding a property of which, from nature of it, there must be an owner, must take reasonable care of it and endeavour to find out the owner; but he is not bound to adopt extraordinary means for the discovery; nor is he bound to be out of pocket in discovering the owner by means of advertisement.

**PENAL CODE (1860), S. 403—What is Misappropriation.**

Where the accused person took possession of a wandering cow of which no owner could be discovered he is not guilty of an offence under S. 403, I. P. C. (*Jwala Prasad, J.*) *SARAJUL HAQUE v. EMPEROR.*

67 I.C. 497=23 Cr.L.J. 401.

**—S. 403—Partners.****——Taking joint property—If offence.**

Taking of joint property by partner is not criminal misappropriation unless the partner appropriates the joint property to his sole use. (*Newbould and Suhrawardy, J.J.*) *KRISHNA CHANDRA BANIK v. HAR KISHORE MADAK.* 81 I.C. 157=25 Cr.L.J. 669=  
A.I.R. 1925 Cal. 154.

**—S. 403—Proof.****——Misappropriation proved to some of the amount—Sufficiency.**

In a case of criminal misappropriation it is sufficient if the prosecution establishes that some of the money mentioned in the charge has been misappropriated by the accused, even though it may be uncertain what is the exact amount so misappropriated: (1893) Rat. Unrep. Cr. Case 659, Foll.: 42 All. 522, Diss. from: A. I. R. 1925 Cal. 260, Expl. (*Fawcett and Mirza, J.J.*) *EMPEROR v. BYRAMJI.* 108 I.C. 505=  
52 Bom. 280=30 Bom.L.R. 325=  
29 Cr.L.J. 407=10 A.I.Cr.R. 71=  
A.I.R. 1926 Bom. 148.

**—S. 403—What is Misappropriation.****——Trying to sell missing bullock found by accused.**

A's bullock which was missing was found in the possession of B. B had tried to sell it to C who later on refused to purchase it thinking that it was acquired by B by theft.

*Held*: that offence under S. 403 was committed by B. B knew that the bullock did not belong to him. He did not make any inquiry as to real owner but set up a title to the bullock himself and tried to dispose of it with a view to make a wrongful gain to himself and a wrongful loss to the original owner. His act therefore amounted to dishonest misappropriation or conversion to his own use within the meaning of S. 403: 36 P. W. R. 1911, Cr. Rel. on. (*Sen, J.*) *PHUL CHAND DUBE v. EMPEROR.* 119 I.C. 863=  
10 L.R.A. Cr. 156=30 Cr.L.J. 1133=  
1930 A.L.J. 220=13 A.I.Cr.R. 30=  
1929 Cr.C. 645=A.I.R. 1929 All. 917.

**——Post-master opening a V.P. article addressed to himself and extracting a railway receipt from it without paying for it for six days and making false entries in the P. O. books—Nature of offence.**

A branch postmaster who was also a shop-keeper ordered a consignment of flour in order to meet the requirements of his shop and a value-payable envelope containing the railway receipt for the flour arrived at the branch post office. The postmaster opened it extracted the railway receipt, went down the station where the goods had by that time arrived, and took delivery. After six days he paid the price of the goods into the post office. In the meantime he made in the books of the post office entries and repeated daily "on account of the absence of the addressee".

*Held*: that, although the offence was a technical one in the sense that no loss was incurred by the post office and the money involved was voluntarily returned, it amounted to criminal misappropriation within the meaning of S. 403, Penal Code, and the postmaster was guilty under S. 52, Post. Office Act: 39 P. L. R. 1902, Dist. (*Eforde and Tek Chand, J.J.*) *EMPEROR v. DES RAJ.* 109 I.C. 236=8 Lah. 662=

**PENAL CODE (1860), S. 403—What is Misappropriation.**

29 P.L.R. 151=29 Gr.L.J. 508=  
A.I.R. 1928 Lah. 92.

—*Railway Claims Inspector realising sale-proceeds of certain bags of goat-skins but not paying to the railway—Nature of offence.*

The duty of a Claims Inspector of a Railway Company was to investigate claims and to report what arrangements he could make with persons making claims against the railway. He arranged, with the representative of a firm which had submitted a claim against the railway for loss of certain bags of goat-skins, to sell certain other bags of skins in addition to the bags sold to him by the A. T. S. and received from him a certain sum in payment, for the bags of skins. He never credited the money to the railway.

*Held*: that he was guilty of the offence of criminal misappropriation under S. 403 and not under S. 408. (Broadway, J.) MATHRA DAS v. THE CROWN.

99 I.C. 593=8 L.L.J. 515=28 Gr.L.J. 161.

**—S. 404—'Property.'**

—*Immovable property—If can be subject of criminal misappropriation.*

Section 404 is not expressly limited to moveable property alone and criminal misappropriation or conversion is easily possible of immovable property where the materials have been severed from the building and removed, 6 B.H.C. Cr. 33, Diss.

Where the property removed by the accused consisted of the rafters used in the house left by the deceased.

*Held*: the rafters were immovable property so long as they were attached to the house, but became moveable property when they were severed from the house and as the accused had no title to the house and the house was not in the possession of any person legally entitled to its possession, S. 404 applied, if, after severing the rafters from the house, they dishonestly removed them and misappropriated or converted them to their own use. (Kanhaiya Lal, J.) DAUD KHAN v. EMPEROR.

91 I.C. 49=

24 A.L.J. 153=27 Gr. L.J. 17=6 L.R.A. Cr. 200=

A.I.R. 1925 All. 673.

**—S. 405—Criminal Breach of trust.**

Loss to the principal or anybody else is by no means a necessary ingredient of the offence. (Beaumont, C.J., Madgavkar and Baker, JJ.) JIVAN DAS SAO CHAND, In re. 32 Bom. L.R. 1195 (F.B.).

**—S. 406—Entrusting.**

—*Goods entrusted for sale and sale proceeds to be held for the person delivering the goods—If realisation operates as trust.*

Where certain goods were entrusted to the accused, and under the contract between him and the complainant he had to sell those goods and obtain money for them, which he would hold on account of the complainant, subject to deduction of certain charges:

*Held*: that when he received that money, although he did not receive it actually from the complainant, he was "entrusted with" it within the meaning of S. 405: 41 Cal. 844, Expl. (Fawcett, Ag. C.J. and Mirza, J.) DWARRA DAS v. EMPEROR.

114 I.C. 399=

30 Cr. L.J. 329=30 Bom.L.R. 1270=

A.I.R. 1928 Bom. 521.

—*Meaning—Transfer of possession—Retention of property.*

The expression "entrusted" in S. 405 is used in its legal and not in its figurative or popular use. The section makes no distinction between different kinds of immovable property. If the expression "entrusted" is applied to a thing which is not money it would not be a breach of trust that such thing continues

**PENAL CODE (1860), S. 405—Offence by public servant.**

to remain the property of the prosecutor during the period in which the accused is permitted to retain its possession or is permitted to have any domain over it. When money is "entrusted" within S. 405 to the accused it should be transferred to him under such circumstances which show that, notwithstanding its delivery, the property in it continues to vest in the prosecutor, and the money remains in the possession or control of the accused as a bailee, and in trust for the prosecutor as bailor, to be restored to him or applied in accordance with his instructions: Case-law discussed. (Percival, J.C. and Rupchand Bilaram, A.J.C.) EMPEROR v. GHANISHAM DAS.

108 I.C. 663=23 S.L.R. 13=29 Gr. L.J. 431=  
A.I.R. 1928 Sind. 106.

**—S. 405—Essentials.**

—*Proof of entrustment.*

The property in respect of which Criminal breach of trust can be committed must be the property of some person other than the accused, or the beneficial interest or ownership of it must be in some other person and the offender must hold such property on trust for such other person or in some other way for his benefit. There can be entrustment and therefore no breach of trust merely because the owner of the property repudiates his obligations or commits other breach of contract in respect of them. (Krishna Pandalai, J.) RAMASWAMI REDDI v. EMPEROR.

1930 M.W.N. 790.

—*Transfer of money from another's account to one's own—No actual taking—Nature of offence.*

In order to establish a charge of dishonest misappropriation or criminal breach of trust it is not necessary that the accused should have actually taken tangible property such as cash from the possession of another and transferred it to his own possession. The transfer of certain amount from the account of another to one's own account is sufficient to constitute the offence. (Jai Lal, J.) RAM CHAND GURUVALA v. KING-EMPEROR.

98 I.C. 599=27 Gr. L.J. 1383=

A.I.R. 1926 Lah. 385.

—*Something more than breach of trust is necessary to bring the case within the purview of a Criminal Court. (Jackson.) RUKMANI AMMAL v. MUTHURAMA REDDI.* 92 I.C. 747=24 M.L.W. 603=

27 Gr. L.J. 331=50 M.L.J. 94.

**—S. 405—Offence by public servant.**

—*Disappearance of property under control of public servant—If proof of breach of trust.*

Without the slightest evidence of any money having been received by public servants they could be convicted of criminal breach of trust when property under their control has disappeared and their connection with the conspiracy is brought home to them. (Dalal, J.C.) F. S. HAY v. EMPEROR.

88 I.C. 833=2 O.W.N. 469=28 O.C. 230=

26 Cr. L.J. 1217=A.I.R. 1925 Oudh 469.

—*Public servant entrusted with money to buy building materials—Obtaining them free and appropriating money—Offence.*

A public servant who being entrusted with Government funds for the purpose of constructing a building obtains the materials free of costs from somebody and appropriates a certain amount to himself as their price, is guilty of Criminal breach of trust. (Mullick and Bucknill, JJ.) SAIVAD MOHIUDDIN v. EMPEROR.

86 I.C. 459=4 Pat. 488=

6 P.L.T. 154=3 Pat. L.R. Cr. 110=

26 Cr. L.J. 841=1925 P.H.C.C. 112=

A.I.R. 1928 Pat. 444.

**PENAL CODE (1860), S. 405—Return of deposit to brother.**

—S. 405—Return of deposit to brother.

—Criminal breach of trust or civil liability.

The return of a deposit to the brother of a depositor under circumstances indicating the best of intention and an absence of moral turpitude, may render a person civilly liable to the depositor but does not amount to criminal breach of trust as that offence involves moral turpitude. (*Percival, J.C. and Aston, A.J.C.*) **HUSSANALI MAHOMEDALI v. EMPEROR.**

117 I.C. 157=1929 Cr. C. 104=

30 Cr. L.J. 735=A.I.R. 1929 Sind 119.

—S. 405—Scope.

—Applicability to any person in any manner entrusted with any property.

Section 405 does not limit the offence to the case of persons who are entitled to be called trustees in the technical sense. The section is couched in broad terms and covers any person who is in any manner entrusted with any property. Where a person manages a large property under a definite agreement that he should get 3/5ths for his own use and spend 2/5ths on certain religious and educational objects, if it can be proved that he has converted to his own use some portion of the 2/5ths share of the profits which he should devote to these objects, he may be properly convicted of an offence of breach of trust: A. I. R. 1927 Oudh 113, Dist. (*Pullan, J.*) **SHAH NAIM ATA v. EMPEROR.**

126 I.C. 395=7 O.W.N. 663=

1930 Cr. C. 941=A.I.R. 1930 Oudh 401.

—Section 405 refers only to moveable property: 23 Cal. 372; 6 Bom. H. C. Cr. 33 and 36 Cal. 758, Foll. (*Baguley, J.*) **UKA DOE v. EMPEROR.**

8 Rang. 13=A.I.R. 1930 Rang. 158.

—The trust contemplated by Ss. 405 and 406 need not be in furtherance of a lawful object: 1 Weir 463, Ref. (*Findlay, J. C.*) **MAHADEO v. NARAYAN.**

101 I.C. 890=10 N.L.J. 79=

28 Cr. L.J. 506=8 A.I. Cr.R. 143=

23 N.L.R. 106=A.I.R. 1927 Nag. 225.

—S. 405—Wagering contract.

—Receipt of money—If offence.

A person cannot be convicted under the second part of S. 405 if the contract in respect of which the money is received, is a wagering contract. (*Curgenven, J.*) **K. R. UPPASINI v. KING-EMPEROR.**

100 I.C. 899=28 Cr. L.J. 381=

7 A.I. Cr.R. 474=A.I.R. 1927 Mad. 425=

52 M.L.J. 179.

—S. 406—Breach of trust, what is.

—Unpaid vendor—Sale by vendee—When offence.

Disposal, prior to payment to vendor, by vendee of goods given him under an arrangement that property in them should pass to him on payment is an offence. (*Greaves and Panton, JJ.*) **KHITISH CHANDRA DEB ROY v. EMPEROR.**

82 I.C. 163=51 Cal. 796=

25 Cr.L.J. 1235=A.I.R. 1924 Cal. 816.

—S. 406—Extent of evidence.

—No evidence of manner of misappropriation

—Proof of dishonest intention.

It is neither necessary nor possible in every case of criminal breach of trust to prove in what precise manner the money was spent or appropriated by the accused, since by law even temporary retention provided it is dishonest is an offence. But where there is no direct evidence of misappropriation and one is left to surmise as to what use was made by the accused of money, one ought to require clearer evidence of dishonest intention than in a case where there is direct evidence to prove that the money was appropriated by the accused for a particular use which is inconsistent

**PENAL CODE (1860), S. 406—Retention of money against debt.**

with his position as a trustee of the money. (*Fazl Ali and Dhavle, JJ.*) **HARAKRISHNA MAHATAB v. EMPEROR.**

121 I.C. 321=31 Cr.L.J. 249=

11 P.L.T. 319=A.I.R. 1930 Pat. 209.

—S. 406—Giving accounts.

—Failure to give account or giving false account—If conclusive.

In cases of criminal breach of trust failure to account for the money proved to have been received by the accused or giving a false account as to its use is generally considered to be a strong circumstance against the accused. But accused must not be convicted on it alone. It is only an indication or piece of evidence pointing to dishonest intention and must be considered along with other facts of the case; A. I. R. 1927 Cal. 409, Diss. from. (*Fazl Ali and Dhavle, JJ.*) **HARAKRISHNA MAHATAB v. EMPEROR.**

121 I.C. 321=31 Cr.L.J. 249=11 P.L.T. 319=

A.I.R. 1930 Pat. 209.

—S. 406—Immovable property.

—If can be subject of criminal breach of trust.

Criminal breach of trust cannot be committed in respect of immovable property: 23 Cal. 372, Foll. (*Martineau, J.*) **CHANDAN LAL v. EMPEROR.**

95 I.C. 280=27 Cr.L.J. 760=A.I.R. 1926 Lah. 478.

—S. 406—Ingredients.

—Loss if necessary—Intention to cause loss—Sufficiency.

Loss is not an ingredient of the offence under S. 406 as the intention to cause wrongful loss by itself amounts to dishonesty. 28 P. R. 1916 Cr. Ref. (*Shadi Lal, C. J.*) **ABDUL HAQ v. EMPEROR.** 69 I.C. 631=A.I.R. 1924 Lah. 353.

—S. 406—Jurisdiction.

—Goods held on trust at Calcutta—Payment to be made at Delhi—Fraudulent sale at Calcutta—Jurisdiction of Delhi Court.

The accused who was carrying on business at Calcutta ordered certain goods through complainant, a commission agent at Delhi. The goods were to be delivered at Calcutta and payment was to be made at Delhi. The goods arrived in Calcutta and the accused was allowed to take delivery on condition that he would hold them in trust till payment but he disposed of them before making the payment.

Held: that the offence was complete as soon as he misappropriated the goods by selling them without authority at Calcutta. And the fact that he did not first pay at Delhi as agreed upon did not affect the case. The loss at Delhi was not a "consequence" such as is referred to in S. 179 of the Code. 7 P. R. 1910 Cr.; 34 A. 487 Ref. (*Shadi Lal, C. J.*) **ABDUL HAQ v. EMPEROR.**

69 I.C. 631=

A.I.R. 1924 Lah. 353.

—S. 406—Misappropriation and breach of trust.

—Re-payment on demand—Inference as to guilt.

It is a possible view that an accused is guilty of criminal breach of trust between the misappropriation and the re-payment, but Court, should be slow when re-payment is at once made on demand to assume guilt in accused persons. Criminal liability is not the same as civil liability. (*Legg, J. v. Rex*, (1914) A.C. 221, Rel. on. (*Kincaid, J. C. and Rupchand Bilaram, A.J.C.*) **EMPEROR v. STEWART.**

97 I.C. 1041=27 Cr. L.J. 1217=21 S.L.R. 55=

A.I.R. 1927 Sind 28.

—S. 406—Retention of money against debt.

—If offence.

Where money is placed in the hands of the accused

**PENAL CODE (1860), S. 406—Suit.**

by the complainant and is retained by the accused against a debt due from the complainant, the accused cannot be said to have acted dishonestly within S.406. (*Daniels, J.*) **PURAN v. EMPEROR.** 92 I.C. 895 = 27 Cr.L.J. 383 = 7 L.R.A. Cr. 89 = A.I.R. 1926 All. 288.

**—S. 406—Suit.**

**—Money advanced in respect of a contract—Breach of contract—Remedy.**

Where money is advanced in respect of a contract, and there is no entrustment in a fiduciary form, any dispute arising out of the breach of contract is one of civil nature and capable of settlement not in the criminal but in the civil Courts. (*Bucknill, J.*) **MUKHLAL RAI v. EMPEROR.** 96 I.C. 501 = 7 A.I.Cr.R. 24 = 27 Cr.L.J. 943.

**—S. 408—Charge and conviction.**

**—Misappropriation by general agent of net balance—Conviction for indefinite portion—Sustainability.**

Where a charge of criminal breach of trust is made against a general agent of a trader with general authority to expend the monies, the cases must be rare in which it is sufficient to charge a net balance as having been misappropriated. It is not permissible to allege a net balance and convict on proof of an offence in regard to some more or less indefinite portion of the amount. The use of criminal courts to litigate a civil claim must be condemned. (*Walsh, J.*) **MOHAN SINGH v. EMPEROR.** 59 I.C. 372 = 42 All. 522 = 2 U.P.L.R. (A) 360 = 22 Cr. L.J. 84 = 18 A.L.J. 633.

**—Charge specifying gross sums as also items misappropriated in one year—Legality of conviction.**

Where an accused person is charged under S. 408, I.P.C. with having committed criminal breach of trust in respect of a gross sum of money misappropriated by him within the period of one year and the charge not only specifies the gross sum taken and the dates between which it was taken, but also sets out the items composing such gross sum giving the dates and the amounts alleged to have been misappropriated, the charge comes within the provision of Cl. (2). S. 222, Cr. P. Code. and that if by specifying the items composing the gross sums the charge went beyond what was necessary instead of prejudicially affecting the accused it is to that extent favourable to the accused; 31 Cal. 928, Foll.; 24 All. 254; 29 Mad. 558 and 33 All. 26, Ref. (*Suhrawardy and Costello, JJ.*) **RAHIM BUX SARKAR v. EMPEROR.** 34 C.W.N. 901 = 1930 Cr.C. 1117 = A.I.R. 1930 Cal. 717.

**—S. 408—Delay in remitting.**

**—If Breach of trust.**

Where the accused did not convert the money to his own use, there was no falsification of accounts and the delay in making the remittance was explainable by an assignment of goods.

**Held:** that in these circumstances mere delay in making the remittance did not amount to criminal breach of trust. (*Jwala Prasad and Ross, JJ.*) **PARMOD BAN BEHARI v. EMPEROR.** 106 I.C. 682 = 29 Cr.L.J. 90 = 9 A.I.Cr.R. 350 (Pat.)

**—S. 408—Essentials for conviction.**

**—Definite finding as to definite sum.**

Though under S. 222 (2) of the Cr.P.C. the accused may be charged in respect of the gross sum received by him still the prosecution must decide what amount they are prepared to prove the accused lawfully received and lawfully expended and what sum was lost. To convict there must be a definite finding

**PENAL CODE (1860), S. 408—Innocent disobedience.**

of a definite sum traced to the accused. (*Walsh, J.*) **MOHAN SINGH v. EMPEROR.** 59 I.C. 372 = 42 All. 522 = 18 A.L.J. 633 = 22 Cr. L.J. 84 = 2 U.P.L.R. (A) 360.

**—S. 408—Failure to account.**

**—Presumption as to misappropriation.**

It is settled law that where property is entrusted to a servant, it is the duty of the servant to give a true account of what he does with the property so entrusted to him. If such a servant fails to return the property or to account or gives an account which is shown to be false and incredible, it is ordinarily a reasonable inference that he has criminally misappropriated the property so entrusted to him and dishonestly converted it to his own use. In such cases the Courts are entitled to draw hostile inferences and presumptions from the action and statement of the servant. (*Lentaigne, J.*) **SONA MIAH v. EMPEROR.** 84 I.C. 331 = 26 Cr.L.J. 267 = 2 Rang. 476 = A.I.R. 1925 Rang. 47.

**—S. 408—Fresh proceedings.**

**—Long delay—Procedure.**

A complainant who allows a long period to elapse before resurrecting a case under S. 408, I.P.C. cannot possibly be allowed to re-agitate the matter on the ground that his feelings have been outraged by the action taken by the accused and that as a sort of retaliation he should be so allowed. (*Harrison, J.*) **HARKISHAN LAL v. KHUSHABI RAM.** 96 I.C. 388 = 27 Cr. L.J. 932 = A.I.R. 1926 Lah. 213.

**—S. 408—Gist of offence.**

**—Dishonest misappropriation—Mere delay in payment—Effect.**

Mere retention of money or mere failure to return it does not necessarily raise a presumption of dishonest misappropriation. The mere fact that the payment was delayed is no ground for imputing a criminal intention. Though the ingredients of the offence of criminal breach of trust are somewhat broadly stated, there is no doubt as to their meaning. The sections dealing with the offence of criminal breach of trust were intended to punish an offence of which dishonesty is the essence. Any breach of trust is not an offence. It may be intentional without being dishonest or it may appear dishonest without being really so. In such cases the Magistrate should be slow to move. This caution is all the more necessary since there is a natural desire to secure speedy justice by having recourse to criminal law: 42 All. 522, Ref. (*Raza, J.*) **RANGI LALL v. EMPEROR.** 7 O.W.N. 556 = A.I.R. 1930 Oudh 321.

**—Intention to deprive master of property.**

The mental act or intent to deprive the master of his property is the gist of the offence under S. 408. The accused was engaged as a tonga driver, to drive his tonga on hire within the limits of Ludhiana Municipality. The accused had to bring back the tonga each evening and pay over his earnings while he was to receive a salary of Rs. 15 a month. He did not return one evening, and on the following day was pursued and arrested some 36 or 37 miles from Ludhiana. The accused in his defence at first denied the title of complainant,

**Held:** that the accused was guilty under S. 408. (*Scott-Smith and Zafar Ali, JJ.*) **CROWN v. DINA.** 88 I.C. 461 = 6 Lah. 257 = 26 Cr. L.J. 1449 = 26 P. L. R. 401 = A.I.R. 1925 Lah. 441.

**—S. 406—Innocent disobedience.**

**—Repayment of loan to Clerk—Clerk existing himself as member and getting it as loan—If offence.**

**PENAL CODE (1860), S. 408—Jurisdiction.**

A clerk in the employment of a Co-operative Bank affiliated to another Co-operative Bank received some repayments of loans from three members of the Bank with instructions to pay the said sums to the Chief Bank. Previous to these repayments the clerk had sufficient amount in hand to make up Rs. 240 together with repayments. The moneys were duly entered in cash book and receipt given as customary, but disobeying the instructions he retained the money. Subsequently in contravention of rules he got himself enlisted as a member and procured the loan of the amount. Apart from disobedience there was no evidence that the accused appropriated the sums to his own use. The clerk was convicted under S. 408.

**Held :** that the accused was not guilty under S. 408. Disobedience of the clerk was not criminal and the subsequent procuring of loan though *ultra vires* being in contravention of rules would not turn the innocent act into criminal. (*Wort, J.*) **SUKHDEO NARAIN v. EMPEROR.**

117 I.C. 632=1929 Gr.C. 266=

30 Gr. L.J. 812=A.I.R. 1929 Pat. 506.

**—S. 408—Jurisdiction.**

**—Applicability of Cr. P. C. Sec. 179.**

Section 179 does not govern the jurisdiction of a Court to try the offence of criminal misappropriation or of criminal breach of trust for which a special provision is to be found in Section 181 (2). 22 P.R. 1915 (Cr. foll. (*Shadi Lal, C. J.*) **MAHTAB DIN v. THE CROWN.**

77 I.C. 490=25 Gr.L.J. 410=

A.I.R. 1924 Lah. 663.

**—S. 408—Legality of finding.**

**—Absence of definiteness of sum misappropriated—Effect of Cr. P. C. Sec. 222 (2).**

The case was one of criminal misappropriation. As to the amount embezzled, the jury were not unanimous and they said they were not able to ascertain it definitely, but the majority of them were of opinion that it might be a thousand rupees or so out of the amount mentioned in the charge. The Judge agreed in the verdict. He, however, was of opinion that the amount embezzled was not a thousand rupees or so but nearly rupees five thousand. He accepted the verdict and convicted the accused.

**Held :** that the object of the amendment made by the introduction of Sub-section (2) to Section 222, Criminal Procedure Code was "not to amend the Penal Code, but merely to get rid of a technical difficulty in framing a formal document, *viz.*, the charge." By this amendment the procedural law was altered to meet two difficulties. Under the law as it stood before, there was very great difficulty in convicting where there was a running account and where the prosecution was unable to put their hands on a specific item of which the particular sum was embezzled or to which it was attributable. The other difficulty was that under Section 234, Criminal Procedure Code, it was not allowed to have more than three offences of the same kind, and so the charge could not legally stand. The law on these two points was altered and altered for the better. It was not intended either to throw the onus on the accused by bringing a charge against him of a deficiency in his accounts or to do away with the necessity of proving the elements of the offence as laid down in the Indian Penal Code.

The offence of criminal breach of trust involves entrustment or dominion over property and dishonest misappropriation, conversion, use or disposal thereof. It is not possible to find these elements unless one can form a conception as to what the property is. There must therefore be a definite finding of a certain definite sum traced to the accused in order to form

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**PENAL CODE (1860), S. 409—Abetment, what is the basis of his conviction. (*Walmsley and Mukerji, JJ.*) **KAIRODE KUMAR MUKERJEE v. EMPEROR.****

85 I.C. 372=40 C.L.J. 555=29 C.W.N. 54=

26 Gr. L.J. 532=A.I.R. 1925 Cal. 260.

**—S. 408—Misappropriation by liquidator.**

**—Applicability.**

A liquidator who misappropriates money, which has come into his custody as liquidator, cannot be said to be acting or purporting to act in the discharge of his official duty : 7 B.H.C. (Cr.) 61 and A.I.R. 1929 Bom. 375, Rel. on ; 33 I.C. 648 ; A.I.R. 1927 Mad. 566 and A.I.R. 1928 Bom. 352, (F.B.) Ref. ; A.I.R. 1929 Mad. 659, Diss. from. (*Mirza and Broomfield, JJ.*) **GULABMIYA DAGUMIYA v. EMPEROR.**

A.I.R. 1930 Bom. 487.

**—S. 408—Property.**

**—Cheque.**

Cheque is property within the meaning of S. 408. (*Dalal, J.*) **S.F. RICH v. EMPEROR.**

1930 A.L.J. 849=A.I.R. 1930 All. 449.

**—S. 408—Sentence.**

**—Imprisonment—Benefit of Cr. P.C. Sec. 562.**

Where a person was convicted under S. 408, Penal Code and was given the benefit of S. 562, Criminal P.C., by the trial Court and by the time the case went to the High Court in revision, considerable time had passed.

**Held :** that though usually imprisonment should be given in cases of embezzlement, it was not proper to interfere with the Magistrate's discretion after such a length of time : A.I.R. 1925 Oudh 673 ; 19 P.W.R. 1910 ; A.I.R. 1925 Bom. 192 ; and A.I.R. 1926 Sind 101 ; Rel. on. (*Addison, J.*) **EMPEROR v. KHAIRATI LAL.**

107 I.C. 775=10 A.I. Cr. R. 27=

29 Gr. L.J. 291=A.I.R. 1928 Lah. 926.

**—S. 408—Validity of charge.**

**—Specific sum misappropriated during a certain time—Effect of Cr. P.C. Sec. 222 (2).**

Accused was employed as a pay clerk in complainant's office and his duties were to receive from his master cheques in respect of certain amounts which had become due and payable on certain bills. He had to cash the cheques, keep the proceeds with him and from time to time make payments thereout as and when those bills were presented to him. He was charged with criminal breach of trust in respect of a specific sum misappropriated during a certain period.

**Held :** that the provisions of S. 222, sub-S. (2) were satisfied : 42 All. 522, Dist. ; A.I.R. 1928 Bom. 148, Rel. on.

**Held :** further, that the misappropriation amounted to a criminal breach of trust. (*Mirza and Pathar, JJ.*) **VINAYAK LAXMAN BHATKHANDE v. EMPEROR.**

113 I.C. 612=30 Bom. L.R. 1530=

12 A.I. Cr. R. 73=30 Gr. L. J. 185=

53 Bom. 119=A.I.R. 1928 Bom. 557.

**—S. 409—Abetment, what is.**

**—Offence complete—Subsequent help to real offender to conceal embezzlement—If abetment.**

Where the offence of embezzlement was ex hypothesi complete long before, anything done subsequently to help the real offender to conceal the embezzlement might be punishable under some other section but does not amount to abetment of the offence under S. 409 : A.I.R. 1921 Pat. 286. Ref. (*Tek Chand J.*) **FRICHARD v. EMPEROR.**

112 I.C. 850=

30 Gr.L.J. 18=11 A.I. Cr. R. 405=

A. I. R. 1928 Lah. 382.



**PENAL CODE (1860), S. 409—Accepting brokerage.**

—S. 409—Accepting brokerage.

—President purchasing articles for Municipality and taking brokerage from vendor—If offence.

A President of Municipality purchased some articles for the Municipality and after its price was paid, got a certain amount from the vendor as brokerage for which he gave the vendor a receipt.

**Held:** that the President was not guilty of criminal breach of trust as this brokerage, commission or discount was paid for his own personal use and not for the benefit of the Municipal Committee. (*Carr, J.*)  
EMPEROR v. U MAUN GALE 97 I. C. 64 =

4 Rang. 128 = 27 Gr. L.J. 1088 =  
A.I.R. 1926 Rang. 171.

—S. 409—'Bona-fide' claim.

—Dominion over property—Claim unsustainable—Effect.

Unless the claim of the accused is merely a pretence and not a *bona fide* claim, no offence under S. 409 is committed where the accused not only has got dominion over the property but is laying some claim over it even though it turns out that the claim is not in law sustainable. Generally in cases under S. 409 the property is non-existent or at least leaves the dominion of the accused. Where these facts are wanting, ordinarily a Criminal Court should refer the matter for decision by the Civil Court especially where the important witnesses are living far away beyond the jurisdiction of the Court. (*Greaves and Panton, JJ.*) HARRY JONES v. EMPEROR.

81 I. C. 829 = 28 C.W.N. 831 = 25 Cr. L. J. 1053 =  
A.I.R. 1924 Cal. 908.

—Goods entrusted to firm and not to its manager personally—Liability of manager.

A person who is the manager of the firm cannot be held criminally liable for breach of trust where there is no personal entrustment of goods to him but to the firm in respect of which the offence was alleged to have been committed. (*Baguley, J.*) S. C. GUHA v. EMPEROR.

1930 Cr. G. 1168 =  
A.I.R. 1930 Rang. 332.

—S. 409—Breach of trust, what is.

—War bond entrusted to Bank for sale—Endorsement by owner in favour of Bank—Bank dealing with bond contrary to instructions of endorser—Offence.

A Municipal Committee handed over a war bond to a Bank with instructions to sell it at its market value and to remit the sale proceeds to the Committee. The bond was endorsed in favour of the Bank in order to facilitate its sale. Instead of selling the war bond, according to instructions received by the Bank, the directors of the Bank pledged it with another Bank against cash payment and that amount was utilized by the directors to meet some urgent demands made on their Bank as the Bank was short of cash at that time and the customers were pressing for payment.

**Held:** that the property in the bond as between the Municipal Committee and the Bank was still retained by the Municipal Committee and did not vest in the Bank. By making use of the bond in a manner which was contrary to the conditions under which it was entrusted to the Bank the directors, who knew of this fact, caused unlawful loss to the Municipal Committee and unlawful gain to the Bank and were guilty under S. 409. (*Jai Lal, J.*) RAM CHAND GURVALA v. KING EMPEROR. 98 I. C. 599 = 27 Cr. L.J. 1833 =  
A.I.R. 1926 Lah. 385.

**PENAL CODE (1860), S. 408—By postal servants.**

—Public servant receiving money and not handing it over to his successor—Offence.

Where a public servant receives money in his capacity as such, the fact that he does not include it in his cash balance entered in the remarks column of the register maintained by him on the day it was received, is very strong *prima facie* evidence of its having been misappropriated on that date and he is guilty of embezzlement if he does not hand over to his successor the money in his hands due to Government. (*Ashworth and Misra, JJ.*) EMPEROR v. DAYA SHANKAR. 94 I. C. 205 = 1 Luck. 345 =

29 O.C. 245 = 3 O.W.N. 382 = 27 Cr. L.J. 589 =  
A.I.R. 1926 Oudh 398.

—Accused bound to lodge money into treasury in excess of certain sum—Accused removing the excess to a Government godown—Offence.

Where it is necessary for the accused to lodge in the Treasury any Government money in excess of that shown due to Government by the registers which he might have in his hands under certain rules, he is guilty under S. 409 if he removes the excess from the office cash box and it makes no difference that he removes it to a godown belonging to Government. (*Ashworth and Misra, JJ.*) EMPEROR v. DAYA SHANKAR. 94 I. C. 205 = 1 Luck. 345 = 29 O.C. 245 =  
3 O.W.N. 382 = 27 Cr. L.J. 589 =  
A.I.R. 1926 Oudh 398.

—S. 409—Burden of proof.

—Trust—Misapplication.

In cases of criminal misappropriation the *onus* lies on the prosecution to prove not only that money was paid to the accused in trust but also that he did not apply it for the purpose for which it was given: *Ratan Lal U.R. Cr. C. 872 and 860, Rel. on. (Tek Chand, J.) PRITCHARD v. EMPEROR. 112 I.C. 850 =*  
30 Cr. L.J. 18 = 11 A.I.Cr.R. 405 =  
A.I.R. 1928 Lah. 382.

—Receipt—No misappropriation.

When the prosecution has proved the receipt by the accused of the several amounts, it is for the accused to show that he had not converted them to his own uses. (*Suhravarday and Duval, JJ.*) HARENDRA KUMAR v. EMPEROR. 101 I.C. 597 = 45 C.L.J. 207 =  
28 Cr. L.J. 469 = A.I.R. 1927 Cal. 409.

—S. 409—By postal servants.

—Postmaster taking V. P. P. without payment—Manipulation of accounts—Effect.

Where a sub-postmaster of 13 years' service taking possession of the V.P.P. cover addressed to him and also of the railway receipt, obtained delivery of the goods, but in order to put off payment manipulated the register maintained in the post office, sentence of one year's rigorous imprisonment and a fine of Rs. 100 was adequate punishment. (*Odgers, J.*) SANKARAN PILLAI v. EMPEROR. 118 I.C. 456 = 52 Mad. 534 =  
29 M.L.W. 522 = 1929 M.W.N. 275 = 2 M.Cr.C. 90 =  
30 Cr. L.J. 929 = A.I.R. 1929 Mad. 447 =  
56 M.L.J. 551.

—Money order not paid to payee—Receipt bearing thumb-impression of the postman himself—Offence.

Where a postman did not pay money to the payee of the money order, and put his own thumb-impression on the receipt, but after two months when enquiries were made, he paid the money and took receipt of the payee,

**Held:** that the postman was guilty of a deliberate misappropriation of the money entrusted to him. (*Schwabe, C.J. and Waller, J.*) PUBLIC PROSECUTOR v. KANDASAMI THEVAN. 98 I.C. 99 = 50 Mad. 462 =  
27 Cr. L.J. 1251 = 27 M.L.W. 184 =  
A.I.R. 1927 Mad. 696 = 53 M.L.J. 597.



**PENAL CODE (1860), S. 409—By postal servants.**

—*Delivery of V.P. by Postmaster without payment—Alteration of date of delivery in account—Offence.*

Where the accused, a Sub-Postmaster, handed over a V.P. letter to the addressee without getting payment, on or before 20-10-25 and then altered his accounts so as to make it appear that he only handed over the letter on 24-10-25,

*Held:* that the accused was guilty of the offence of criminal breach of trust and falsification of accounts under Ss. 409 and 477-A of the Penal Code. (*Wallace, J.*) *V. KANDASAMI AIYAR v. KING-EMPEROR.*

102 I.C. 488=38 M.L.T. 318=25 M.L.W. 656=

28 Cr. L.J. 552=A.I.R. 1927 Mad. 626=

52 M.L.J. 703.

—*Post office clerk delivering V. P. F. to party and receiving money—Entry not made in register nor money credited—Offence.*

A post office clerk delivered some value payable parcels on 30th May 1925, 27th May 1925 and 23rd May 1925 and kept moneys which were entrusted to him as a public servant up to 9th June 1925 in violation of the rules by which he was bound, and gave a false explanation that the money had not been received until the 9th of June. He also made entries in his register showing that the articles were still undelivered in the post office long after they had been delivered and the money for them had been received,

*Held:* this amounts to a denial of the receipt of the money and is conclusive evidence of criminal breach of trust. *R. v. Jackson*, (1 C. & K. 384), Appl.; 26 I.C. 307; 40 I.C. 303; and 10 Bom. 256, Dist.

*Held:* further that the negligence of the postmaster in charge whose duty was to check the delivery register, in not properly checking the register, cannot take the place or proof that the money received on account of these articles was entrusted to his care, and he cannot therefore be charged of a criminal breach of trust. (*Ross and Kulwant Sahay, JJ.*)

*CHANDRA PRASAD v. EMPEROR.* 24 I.C. 355=

5 Pat. 578=7 P.L.T. 807=1926 P.H.C.C. 190=

27 Cr. L.J. 611=A.I.R. 1926 Pat. 299.

**—S. 409—By President of Co-operative Society.**

—*President of Co-operative Society retaining money drawn from bank with permission of fellow members—No offence.*

A President of a Co-operative Credit Society was authorised to draw a certain amount of money from a bank. After so doing, he himself retained the amount instead of crediting it to the Society. It was proved that he did this with the permission of his fellow members of the managing committee, as he needed it for some work.

*Held:* that under the circumstances the offence committed may be said to be purely of a technical nature and even this is doubtful. (*Tappra, J.*) *AZAD KHAN v. KING-EMPEROR.* 12 L.L.J. 165.

**—S. 409—Charge and conviction.**

—*Series of embezzlements—Single charge but separate sentences to run concurrently—Legality.*

Where the accused was prosecuted for an offence under S. 409, I.P.C., and only one charge was framed in which four sums of money said to have been embezzled were specified and the Magistrate convicted the accused but passed sentence for each embezzlement and directed that the sentences should run concurrently,

*Held:* that there was no misjoinder of charges and that the separate sentences though invalid did not prejudice the accused so as to render the conviction liable to be set aside. (*Mears, C.J. and King, J.*)

*EMPEROR v. PREM NARAIN.* 1930 A.L.J. 1130.

**PENAL CODE (1860), S. 409—False paper entries.****—S. 409—Consequence.**

—*Offence of criminal breach of trust—Causing wrongful loss if a necessary consequence—Applicability of Cr. P.C., Sec. 179.*

The word "consequence" in S. 179 does not include all the possible results of an act, but is restricted in its scope to certain specified results; those are the results specified in the provision of the law making the act an offence. The offence of criminal breach of trust is complete with the act of conversion and the intention to cause wrongful gain or wrongful loss. That intention can only be formed or at least can only be proved to have been formed at the place where the conversion takes place. For the purposes of S. 179 it is immaterial where the wrongful loss actually takes place, and indeed whether any such loss actually does take place or not. A.I.R. 1922 Bom. 39, Dissent; 38 Mad. 639, Foll. (*Hallifax, A.J.C.*) *BANERJI v. POTNIS.* 81 I.C. 538=20 N.L.R. 72=

25 Cr. L.J. 922=A.I.R. 1924 Nag. 253.

**—S. 409—Delay in remitting.**

—*Head of office negligent in seeing to the observance of rules about remitting money to treasury—Intention of wrongfully keeping Government out of the money—Offence.*

Section 409 cannot properly be construed as involving that any head of an office, who is negligent in seeing that the rules about remitting money to the treasury are observed, is *ipso facto* guilty of the offence of criminal breach of trust, but something more than that is required to bring home the dishonest intention, which is one of the essentials of a conviction under S. 409. There should be some indication which justifies a finding that the accused definitely had the intention of wrongfully keeping Government out of the money; and ordinarily that would be shown by some overt act, which went beyond mere retention of money that should have been remitted to the treasury. He is guilty of gross dereliction of duty in not seeing that the rules are observed: 11 P.R. 1908 Kel. on; 12 Mad. 49, Ref. (*Fawcett and Mirza, JJ.*) *LALA ROOJI v. EMPEROR.*

111 I.C. 730=30 Bom. L.R. 624=29 Cr. L.J. 922=

11 A.I. Cr. R. 82=A.I. R. 1928 Bom. 205.

—*No obligation to pay at a certain date—If offence.*

It does not follow, merely because an instalment of an agricultural loan is not paid the very next day into the treasury, that thereupon and therefrom an inference begins to be drawn against the village Munsif that he has misappropriated the amount so omitted to be paid. Mere delay in payment of money entrusted to a person, when there is no particular obligation to pay it at a certain date, does not amount to and does not furnish by itself a sufficient proof of misappropriation: A.I.R. 1925 Cal. 613, Rel. on. (*Pandalai, J.*) *MUNUSWAMI NAINAR v. EMPEROR.*

A.I.R. 1930 Mad. 507=58 M.L.J. 649.

**—S. 409—False paper entries.**

—*Entries in cash book—Conversion effected as no cash passed—Offence.*

A loan of Rs. three lacs was made to one of the accused who was a director of a Bank. The professed object of the accused was to bolster up the affairs of the closely allied concern known as the Hindustan Assurance and Mutual Benefit Society, which would otherwise have been obliged, under Cl. 179 of its Articles of Association to go into liquidation. What he did in effect was that with one of the three lacs of rupees he converted a debt owed by the Society into a credit balance; with another lac he created a fixed deposit for the Society with the Bank; with the third lac he converted his own debt

**PENAL CODE (1860), S. 405—Inference of intention.**

into a credit balance and also created a fixed deposit of Rs. 30,000 in his wife's favour. He sent intimation to the Society regarding their credits. At the time when he made these changes in the Bank's financial position, he had no authority except his own and his subsequent transactions do not show that he had an honest intention.

**Held :** that although the changes made were mere paper entries, the conversions were no less conversions because no cash passed and that an offence under S. 409 had been committed : A. I. R. 1926 Lah. 385, Ref. (*Johnstone, J.*) **MANGAL SEN v. EMPEROR.** 118 I.C. 653 = 30 Cr. L.J. 954 = 1930 Cr. C. 25 = A.I.R. 1930 Lah. 57.

**—S. 405—Inference of intention.**

The criminal intention in a charge under I. P. C. S. 409 is a matter of inference from proved facts. (*Wazir Hasan, A. J. C.*) **BISHAMBHAR NATH v. EMPEROR.** 87 I.C. 962 = 26 Cr. L.J. 1042 = A.I.R. 1925 Oudh 676.

**—S. 405—Lessee of Government.**

**—Accused a lessee from Government to collect rent and deposit it in treasury—Failure to deposit within agreed time—Offence.**

The petitioner had executed a kabuliya in favour of the Government whereby he agreed to realize the gross rent of a Mouzah payable to the Government lying within his jurisdiction and to deposit the said amount in the Government Treasury on or before the date to be fixed by the Chief Commissioner or any other authorized officer from time to time, and if he failed to deposit the grass rent from his kist within the time fixed, the Government should be competent to realize from him or from his surety or sureties the said sum in arrears according to law prescribed for the realization of arrears of rent. The petitioner failed to deposit the rent as agreed to by him.

**Held :** that the penalty would be that the amount would be recovered from his sureties or himself; the kabuliya did not contemplate his being criminally prosecuted for failure to deposit the amount realized. The position of the petitioner was not that of a servant but a lessee. (*Cuming and Gregory, J.J.*) **NRIPENDRA NATH v. EMPEROR.** 110 I.C. 97 = 47 C.L.J. 442 = 29 Cr. L.J. 641 = A.I.R. 1928 Cal. 321.

**—S. 405—No dishonest intention.**

**—Remedy.**

Where an agent produces his lists of accounts and admits the withdrawal of money, if he be recalcitrant, even if there is good ground for suspicion that he was not altogether honest, yet so long as there is no intention to misappropriate money belonging to his principal, the agent's prosecution under S. 409 for criminal breach of trust is not the proper remedy; the proper remedy lies in a suit for accounts in a civil Court. (*Adami and Fazl Ali, J.J.*) **KAPILDEO NARAIN v. EMPEROR.** A.I.R. 1930 Pat. 221.

**—Legality of conviction.**

Where a President of a Taluk Board drew out certain money from Taluk Board funds on contingent bills in respect of certain works but before they were completed with the object of preventing the moneys from lapsing at the end of the financial year although it was against the Fund Rules to do so,

**Held :** that the facts were not sufficient to import any dishonest intention and the President could not be convicted of criminal breach of trust. (*Wallace and Madhavan Nair, J.J.*) **BISVANATH DAS, In re,** 100 I.C. 365 = 28 Cr. L.J. 285 = A.I.R. 1927 Mad. 533.

**PENAL CODE (1860), S. 409—Wrong accounts.****—S. 409—Presumption of misappropriation.**

**—Non-payment for a long time.**

Where a Court Amin collects a large sum of money and does not pay it into Court until five months have elapsed, it is a fair presumption that he has misappropriated the amount, unless he can explain his action. (*Jackson, J.*) **DEWASIKHAMANI ASARI v. THE CROWN.** 95 I.C. 943 = 23 M.L.W. 718 = 27 Cr. L.J. 863 = A.I.R. 1926 Mad. 727.

**—S. 409—Release of accused.**

**—Applicability of Cr. P.C. Sec. 562.**

The offence under S. 409, Penal Code, is beyond the scope of S. 562, Cr. P. Code, and so a Magistrate acts without jurisdiction if he releases under S. 562, Cr. P. Code an accused convicted under S. 409, I. P. C. (*Shadi Lal, C.J.*) **EMPEROR v. RAHMATKHAN.** 100 I.C. 225 = 7 A.I. Cr. R. 360 = 28 Cr. L.J. 257 = A.I.R. 1927 Lah. 735.

**—S. 409—Sentence.**

The law always regards the offence of criminal breach of trust by persons in charge of public moneys as one of a specially serious nature warranting a severe sentence. (*Fforde, J.*) **PARMA NANDA v. EMPEROR.** 106 I.C. 337 = 29 Cr. L.J. 1 (Lah).

**—A sentence of imprisonment is obligatory under the law for an offence either under S. 409 or under S. 420.** (*Campbell, J.*) **EMPEROR v. SOHAN SINGH.** 94 I. C. 130 = 27 Cr. L. J. 562 = A. I. R. 1926 Lah. 350.

**—S. 405—Power to grant bail.**

Under the provisions of S. 497 a Magistrate has no power to grant bail in cases falling under S. 409, Penal Code. 3 Rang. 538 Rel. on. (*Doyle, J.*) **MAUNG BA MAUNG v. EMPEROR.** A.I.R. 1930 Rang. 335.

**—S. 405—Similar offences distinguished.**

**—Difference between offence of theft, cheating, criminal misappropriation and criminal breach of trust.**

An easy method of differentiating between the offence of theft, cheating with delivery of property, criminal misappropriation and criminal breach of trust is to find out whether the original taking was honest or dishonest and whether it was with the consent of the owner or without it. In theft the original taking is without honesty and without the consent of the owner, and in criminal breach of trust it is with both. In obtaining property by cheating the taking is dishonest but with the consent of the owner, and in criminal misappropriation it is honest but without the consent of the owner. (*Hallifax, A. J. C.*) **NARSINGDAS MARWARI v. EMPEROR.** 106 I.C. 678 = 9 A. I. Cr. R. 282 = 29 Cr. L. J. 86 = A. I. R. 1928 Nag. 113.

**—S. 405—Violation of account rules.**

**—Appropriation of money drawn for payment of one bill towards another of same firm—If misappropriation.**

Appropriation of money drawn from the Bank for payment of particular bill, towards payment of another bill due to the same firm or person does not amount to embezzlement of Government money; it may at the most amount to deliberate violation of the account rules making the person liable for departmental punishment. (*Nanavutty, J.*) **CHANDRIKA PRASAD v. EMPEROR.** 7 O.W.N. 564 = A.I.R. 1930 Oudh 324.

**—S. 409—Wrong accounts.**

**—Wrong account and wrong entry do not by themselves prove criminal breach of trust.**

The fact that the accounts have been wrongly kept will not of itself prove that the person keeping the

**PENAL CODE (1860), S. 411—Applicability.**

account committed criminal breach of trust unless it can be shown that the person misappropriated proceeds of cheque or remittance transfer receipt or any cash proved to have been received by him; and the wrong entries may raise strong suspicion which may serve as a ground for scrutiny but cannot justify the conviction of the person for criminal breach of trust. (*Nanavutty, J.*) **CHANDRIKA PRASAD v. EMPEROR.**

7 O.W.N. 564 = A.I.R. 1930 Oudh 324.

**—S. 411—Applicability.**

When receipt or retention of property, not necessarily for disposal, is dishonest, S. 411 is the appropriate section. If, on the other hand, dishonest receipt or retention cannot be proved but only dishonest concealment or disposal, S. 414 is more appropriate. (*Fawcett and Madgavkar, J.J.*) **EMPEROR v. ABDUL.**

91 I.C. 690 = 49 Bom. 878 = 27 Bom. L. R. 1373 = 27 Cr. L. J. 114 = A. I. R. 1926 Bom. 71.

**—S. 411—Burden of proof.**

**—Discovery of stolen property—Long lapse of time—Effect.**

Where there is long lapse of time between the theft and the discovery of the stolen property (in this case over 15 months), the *onus* of proving innocent possession should not be cast on the accused: 62 P. L. R. 1916, Rel. on. (*Fforde, J.*) **NARAIN SINGH v. EMPEROR.**

108 I.C. 912 = 29 Cr. L. J. 464 = 29 P. L. R. 441 = A.I.R. 1928 Lah. 687.

**—Dishonesty—Duty of prosecution.**

In a trial for an offence under S. 411, it is for the prosecution to prove that the accused received the property dishonestly and the *onus* that he had received the property honestly does not lie on him. (*Jai Lal, J.*) **KARTAR SINGH v. EMPEROR.**

109 I. C. 674 = 10 A. I. Cr. R. 354 = 10 L. L. J. 316 = 29 Cr. L. J. 594.

**—S. 411—Essentials.**

In order to bring home the guilt under S. 411 it is essential that some stolen property should have been found in the possession of the accused and there should have been evidence that the accused retained possession of the property either knowingly or having reason to believe that the same was stolen property. (*Sen, J.*) **PHUL CHAND DUBE v. EMPEROR.**

119 I.C. 863 = 10 L. R. A. Cr. 156 = 30 Cr. L. J. 1133 = 1930 A. L. J. 220 = 13 A. I. Cr. R. 30 = 1929 Cr. C. 645 = A. I. R. 1929 All. 917.

**—Proof of facts from which knowledge can be presumed.**

The knowledge or belief which is required to be established in order to bring the case under S. 411 implies the existence and the presence of facts or circumstances from which the accused was either made aware or ought to have been made aware of the nature of the property. It may be sufficient to show that the circumstances were such as to make him believe that the property was stolen. The word "knowledge" means a mental cognition and not necessarily visual perception. It implies a notice to the Receiver of such facts as could not but have led him to believe that the property was stolen and could not but have been dishonestly obtained. It therefore lies on the prosecution to prove the presence of certain facts from which the accused might have drawn the inevitable conclusion that the property was stolen property. It is not sufficient in such a case to show that the accused person was careless or that he had reason to suspect that the property was stolen or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired: 6 Bom. 402, Foll. (*Kinshede, A. J. C.*) **ABDUR RAHIM v. EMPEROR.**

27 B.C. 664 = 27 Cr. L. J. 1134 = A.I.R. 1927 Nag. 40.

**PENAL CODE (1860), S. 411—Evidence.**

**—Proof of theft.**

It is not correct that for a conviction under S. 411 there must be proof of theft. (*Dalip Singh, J.*) **ISMAIL v. EMPEROR.** 96 I.C. 869 = 27 Cr. L. J. 1013 = A. I. R. 1926 Lah. 640.

**—Proof that the article was stolen.**

The offence of receiving stolen property under S. 411 is the offence of receiving a particular article of stolen property or property stolen in a particular theft and so it is necessary that the particular article stolen should be alleged to be stolen and if possible traced to its origin. (*Kennedy, J. C. and Rupchand Billaram, A. J. C.*) **HYDER v. EMPEROR.** 91 I.C. 64 = 20 S. L. R. 3 = 27 Cr. L. J. 32 = A. I. R. 1926 Sind 129.

**—Proof that the article was stolen.**

Though there may be cases in which it may not be necessary under S. 411, or 414, to prove that the property was stolen from a particular individual yet as a rule it may be taken as a settled law that a person cannot be called upon to account for the possession of property when there is no evidence whatever that the property has been stolen. 14 Bom. L. R. 893, Foll. (*Prideaux, A. J. C.*) **YASIN KHAN v. EMPEROR.** 75 I.C. 544 = 19 N. L. R. 176 = 24 Cr. L. J. 960 = A. I. R. 1924 Nag. 48.

**—S. 411—Evidence.**

**—Possession of stolen bullocks left for pasture—Effect of.**

Where bullocks were stolen from one village and taken to another village at a distant place and handed over to a person resident of that another village to pasture them with his own, the mere fact of possession of the bullocks by such person would not warrant the inference that the possession was dishonest so as to cast upon such person the *onus* of displacing the inference of dishonesty. (*Macpherson, J.*) **MAHAHAR PANDAY v. EMPEROR.** 122 I.C. 586 = 31 Cr. L. J. 437 = 1930 Cr. C. 584 = A. I. R. 1930 Pat. 353.

**—Accused knowing where stolen property was buried and producing it but falsely stating that they did it under instructions from police who themselves had buried it—Value of.**

Whether the fact of the accused pointing out stolen property is or is not evidence of possession is a question of fact.

Where the accused know that a considerable amount of stolen property is buried in the ground and concealed from the public view in a certain field and produce the same but falsely state that they had pointed out the property on the instructions to do so by the police who had themselves buried the property there, their knowledge cannot be held to be innocent knowledge and such production is sufficient for conviction under S. 411: 5 S. L. R. 257, Rel. on; 3 S. L. R. 136, Considered, (*Percival, J. C. and Havelwala, A. J. C.*) **BILLU v. EMPEROR.**

1930 Cr. C. 654 = A. I. R. 1930 Sind 168.

**—Possession of missing bullock.**

In order to bring home the guilt under S. 411 it is essential that some stolen property should have been found in the possession of the accused and there should have been evidence that the accused retained possession of the property either knowingly or having reason to believe that the same was stolen property.

A's bullock was missing. After several months it was found in the possession of B. B was prosecuted and convicted under S. 411. B. appealed.

**Held:** that a missing bullock could not be stolen within the meaning of S. 410 as no offence was committed with reference to it by theft or by extortion or by robbery etc. This being so the conviction under S. 411 could not be sustained: 36 P. W. R.

**PENAL CODE (1860), S. 411—Evidence.**

1911 Cr. Rel. on. (*Sen, J.*) **PHUL CHAND DUBE v. EMPEROR.** 119 I.C. 863=10 L.R.A.Cr. 156=

30 Cr.L.J. 1133=1930 A.L.J. 220=13 A.I.Cr.R. 30=

1929 Cr.C. 645=A.I.R. 1929 All. 917.

—*Stolen article found by Police in a house occupied by accused and his mother—No evidence as to accused knowing of it—Conviction if sustainable.*

An ornament called a kangni, stolen in a burglary, was found by the Police in a jar of chillies in a house occupied by the accused and his mother. There was nothing to show that the accused put the kangni in the jar or knew that it was there.

**Held:** that he cannot be convicted under Penal Code, S. 411. (*Martineau, J.*) **EMPEROR v. CHHOTU.**

94 I.C. 909=27 Cr.L.J. 717 (Lah.)

—*Stolen property found in dung heap in courtyard of a house belonging to several persons—Value of.*

Where some of the stolen property was found in the dung heap situated in the courtyard of the house belonging to several persons, it could not be said with certainty as to who was in exclusive possession of the stolen articles and none of them could be convicted either under S. 457 or S. 411. (*Abdul Raof, J.*) **QAIM DIN v. EMPEROR.**

92 I.C. 425=

7 L.L.J. 223=26 P.L.R. 522=27 Cr.L.J. 249.

—*Accused found seated around the stolen property disputing as to its distribution—Value of.*

The evidence that the accused were all in the house wherefrom the stolen property was recovered disputing as to what was to be done with the booty, is sufficient for their conviction. (*Ross and Kulwant Sahay, JJ.*) **PARAMESHWAR DAYAL v. EMPEROR.**

94 I.C. 705=7 P.L.T. 567=

1926 P.H.C.C. 139=27 Cr.L.J. 657=

A.I.R. 1926 Pat. 316.

—*Property found in room accessible to persons other than accused.*

Where the goods which were alleged to be stolen property were found in a room which had no shutters and which was accessible to all the members of the accused's family,

**Held:** that the accused could not be conclusively said to have been in possession of the stolen articles. 15 All. 129 and 22 All. 445 App. (*Mukerji, J.*) **RAM AUTAR v. EMPEROR.**

87 I.C. 846=41 All. 511=

23 A.L.J. 421=26 Cr.L.J. 1022=

A.I.R. 1925 All. 478.

—*Evidence Act, S. 114 ill. (a)—Articles of ordinary type found 2½ years after theft—Presumption as to guilt.*

2½ years before the discovery, at the house of accused, of the articles (four silver ornaments of ordinary type worth Rs. 100) these had been removed from the houses of the two complainants by means of a dacoity. The accused was a goldsmith by caste and profession and when asked, he explained that he himself had made them for his wife. The articles were found, except in one case, on the person of the wife of the accused.

**Held:** that the accused cannot be presumed to be in possession of the articles with guilty knowledge. 29 All. 138 Foll. (*Mukerji, J.*) **CHHOTY LAL v. EMPEROR.**

85 I.C. 122=5 L.R.A.Cr. 199=

26 Cr.L.J. 878=A.I.R. 1925 All. 220.

—*Mere discovery of stolen article in a roofless*

*room of accused's house—Value of.*

A burglary was committed in the house of one *Maharaji* and she made a report the next morning giving list of articles including wearing apparel.

**PENAL CODE (1860), S. 411—Presumption of guilty knowledge.**

Among the articles she mentioned was a *dhoti* said to have had a tear in the border. A few days after the police searched the accused's house and in the presence of two search witnesses a *dhoti* was found hanging on a peg in a roofless room. This room contained some other articles of household besides the *dhoti*. In front of this room there was another room covered by a roof and then there was a thatched portion of the house in which the accused, his wife and children lived. *Mt. Maharaji* and her son both recognised the *dhoti* as belonging to them.

**Held:** that an accused person cannot be convicted under S. 411 merely on showing that he was in possession of certain property and failed to account for its possession. The prosecution must prove both that the property was stolen and that the accused received it or retained it dishonestly. But under certain circumstances a Court is entitled to draw presumption under S. 114 of the Evidence Act from the fact of possession. In the present case however there is no necessary inference that the accused had knowledge that the *dhoti* was concealed in the room attached to this house. (6 All. 224, Ref.) (*Sulaiman, J.*) **BHARAS AHIR v. THE CROWN.**

81 I.C. 558=

21 A.L.J. 836=4 L.R.A.Cr. 245=

25 Cr.L.J. 942=A.I.R. 1924 All. 192.

—**S. 411—Inference of possession.**

—*Accused joint owner of shop where goods were recovered.*

Where the accused was not only a joint owner of a shop but also had the key by which the lock of the shop was opened on the day the property was recovered,

**Held:** that he must be regarded to be in possession of the goods found in the shop. (*Shadi Lal, C.J.*) **GANESHILAL v. EMPEROR.** 74 I.C. 271=4 L.L.J. 484.

—**S. 411—Interpretation.**

—*'Believe'—Meaning.*

The word "believe" in S. 411 is stronger than the word "suspect" and involves the necessity of showing that the accused must have felt convinced in his mind that the property with which he was dealing was a stolen property. Mere carelessness, or omission to inquire, or existence of reasons to suspect are not sufficient grounds to accuse him: 6 Bom. 402, Foll. (*Raza, J.*) **SURAJ PRASAD v. EMPEROR.**

118 I.C. 759=6 O.W.N. 208=30 Cr. L.J. 969=

A.I.R. 1929 Oudh 213.

—*'Believe'—Meaning.*

The word "believe" in S. 411 is a very much stronger word than "suspect" and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. It is not sufficient to show that the accused was careless for that he had reason to suspect that the property was stolen or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. (*Greaves and Panton, JJ.*) **A. G. EDGECOMBE v. EMPEROR.**

A.I.R. 1928 Cal. 264.

—**S. 411—Presumption of guilty knowledge.**

—*Property found 2½ months after dacoity.*

There can be no hard and fast rule as to time, within which the stolen article should be found with accused, to hold him guilty of being in possession of stolen articles but two and a half months after a dacoity is not a long time. 29 All. 138, Dist. (*Pullan, J.*) **JWALA v. EMPEROR.** 103 I.C. 62=

1 L.C. 163=28 Cr. L.J. 638=

8 A.I. Cr. R. 312=A.I.R. 1927 Oudh 277.

**PENAL CODE (1860), S. 411—Presumption of guilty knowledge.****—Property found 19 months after theft.**

Possession of stolen property 19 months after theft raises no presumption that the holder thereof was either the thief or received the goods knowing them to be stolen : 22 C.W.N. 597, 11 M. L.W. 43 and 22 Cr. L.J. 595, Foll. (*Addison, J.*) *NAGALI v. EMPEROR*. 95 I.C. 471=27 Cr. L.J. 807= A.I.R. 1926 Lah. 528.

**—Possession of property 2 years after loss—refusal to explain.**

Though usually a Court is not justified in drawing the presumption of guilty knowledge from possession of property such as jewellery nearly two years after the property had been stolen or otherwise lost to the real owner, the Court is always entitled to request the possessor to disclose the name of the person from whom he had obtained the articles and the particulars as to the origin of the possession and the Court is entitled to draw unfavourable inferences, if the accused refuses to disclose such facts or gives an explanation which can be shown to be false. (*Lentaigne, J.*) *RAM PERSHAD v. EMPEROR*. 81 I.C. 443= 2 Rang. 80=25 Cr. L.J. 907= A.I.R. 1924 Rang. 256.

**—S. 411—Procedure.****—Cr. P. Code, S. 234—Accused charged with removing six animals belonging to five specific persons—Legality of trial.**

Where the accused is charged jointly with having stolen six specific animals belonging to five specific persons by five different acts of theft from those five specific persons,

**Held :** that the error is not a mere technicality which can be set right under S. 537. The trial is wholly illegal. 25 Mad. 61 (P. C.), Foll. (*Kennedy, J.C., and Rupchand Bilaram, A.J.C.*) *HAIDAR v. EMPEROR*. 91 I.C. 64=20 S. L.R. 3=27 Cr. L.J. 32. A.I.R. 1926 Sind. 129.

**—Trial in Native State—Further trial in British India for same offence—Maintainability.**

Where accused committed dacoity in British India but were caught with the stolen property in a Native State and were tried and convicted under S. 411 by the State Court and had undergone the period of imprisonment, **held** another trial for the same offence on the same facts in British India was barred. (*Harrison, J.*) *TEJA SINGH v. EMPEROR*. 73 I.C. 939=5 L.L.J. 574=24 Cr. L.J. 715= A.I.R. 1924 Lah. 238.

**—S. 411—Several articles.****—Accused in possession of property belonging to several owners—Several offences—Proof of receipt at different times—Necessity.**

A person who is found in possession of properties identified as belonging to different owners should not be convicted of several offences of receiving in respect of the property identified by each owner unless the prosecution proves that they were received by him at different times. It is not for the accused to prove that the act of receiving was only one: 15 All. 317; A. I. R. 1923 All. 547; 15 Cal. 511; A.I.R. 1923 Cal. 557; Foll.; 26 P. R. 1889 (F. B.) and 27 Cr. L.J. 872, Diss. from. (*Addison, J.*) *HAYAT v. EMPEROR*. 110 I.C. 673= 29 P.L.R. 541=11 A.I. Cr. R. 9= 29 Cr. L.J. 737=10 Lah. 158= A.I.R. 1928 Lah. 637.

**—Properties stolen at different places—Separate convictions for receiving stolen property.**

When an accused person produces property known to have been stolen at different places he can be

**PENAL CODE (1860), S. 412—Punishment.**

convicted separately of receiving stolen property. (*Kincaid, J.C., and Kennedy, A.J.C.*) *GHULAMO v. EMPEROR*. 96 I.C. 120=27 Cr. L.J. 872. (Sind).

**—Accused found with two stolen articles—Source of possession not known—Number of offences.**

A Packet containing a loose diamond and a diamond-ring was lost and was found with accused two years later.

**Held :** only one offence of retaining stolen property was committed under S. 411 and not two offences under S. 403 one in respect of diamond and the other in respect of the ring. (*Lentaigne, J.*) *RAM PERSHAD v. KING-EMPEROR*. 81 I.C. 443= 2 Rang. 80=25 Cr. L.J. 907= A.I.R. 1924 Rang. 256.

**—S. 411—Time limit.****—Possession recent or otherwise—Value of.**

No fixed time-limit can be laid down to determine whether possession of articles is recent or otherwise. But every case must be judged on its own facts. If a few stolen articles were found in possession of a person under circumstances which may give rise to the probability of his coming by them honestly some time after the theft the presumption under the law might not arise against him. (*Suhrawardy and Pantan, JJ.*) *EMPEROR v. EKABBOR*. 94 I.C. 361=27 Cr. L.J. 617= A.I.R. 1926 Cal. 925.

**—S. 412—Article of small value.****—Opinion of assessors.**

In a case of identification of ornaments of small value the opinion of the assessors is of considerable value as they are well acquainted with the ways and habits of men of ordinary standing. (*Dalal, A.J.C.*) *BEHARI v. KING-EMPEROR*. 89 I.C. 185= 12 O.L.J. 339=2 O.W.N. 330=26 Cr. L.J. 1291= A.I.R. 1925 Oudh 452.

**—S. 412—Directions to jury.****—Case of dacoity—Possession of stolen property with accused—Charge that there is in law a presumption of guilt—Misdirection.**

Where in a case of dacoity the Judge charged to the jury saying that if the articles are stolen properties and were found in possession of the accused it is sufficiently proved that they were thieves or dacoits and the rebuttable presumption that arises in law is that the accused are either thieves or dacoits until they succeed by adducing sufficient proof in establishing their innocence.

**Held :** that the direction was a serious misdirection. 31 C.L.J. 310; Ref.

In a case where the evidence of the guilt of the accused rests upon discovery of stolen property from his possession, and which is tried by the jury the proper course is to direct that the jury are entitled to take the explanation offered by the accused of their possession. It is not necessary that such claim by the accused must be proved. 52 Cal. 223, Ref. (*Suhrawardy and Pantan, JJ.*) *KABATULLA v. KING-EMPEROR*. 90 I.C. 542=83 Cal. 187= 42 C.L.J. 212=26 Cr. L.J. 1582= A.I.R. 1925 Cal. 1241.

**—S. 412—Punishment.****—Dacoit—Receiver of stolen property.**

A receiver of the articles of petty value stolen at a dacoity should not be treated in practically the same manner as though he were one of the actual dacoits. (*Pullan, J.*) *JWALA v. EMPEROR*. 103 I.C. 62= 1 L.C. 163=28 Cr. L.J. 638=8 A.I. Cr.R. 312= A.I.R. 1927 Oudh 277.



**PENAL CODE (1860), S. 414—Applicability.****—S. 414—Applicability.**

S. 414 requires that the accused should have assisted some one else in the disposal of the property and does not cover a case where a person receives and then disposes of stolen property entirely on his own account. (*Fawcett and Madgavkar, JJ.*) **EMPEROR v. ABDUL.**  
 91 I.C. 690 = 49 Bom. 878 =  
 27 Bom. L.R. 1373 = 27 Cr. L.J. 114 =  
 A.I.R. 1926 Bom. 71.

**—S. 414—Essentials.****—Finding that property is stolen—Circumstantial evidence.**

The finding that the property in question was stolen property is an essential finding for a conviction under S. 414. Sufficiently strong circumstantial evidence may support such a finding. An accused concealing property believing it to be stolen while really it was not, commits no offence.

It is not necessary to prove in what theft or in what manner the property was stolen. 13 C.L.J. 793, Expl.; 6 Bom. 402, Foll. (*Krishnan, J.*) **SAMACHARI, In re.**  
 81 I.C. 310 = 18 M.L.W. 743 =  
 33 M.L.T. 182 = 25 Cr. L.J. 790 =  
 A.I.R. 1924 Mad. 350 = 45 M.L.J. 728.

**—Proof that property is stolen.**

In a case under S. 414 the ownership of the property need not be traced. It is sufficient if it is proved that the property is stolen. 14 Bom. L.R. 893, Foll. (*Fawcett and Madgavkar, JJ.*) **EMPEROR v. ABDUL.**  
 27 Bom. L.R. 1373 = 91 I.C. 690 = 49 Bom. 878 =  
 27 Cr. L.J. 114 = A.I.R. 1926 Bom. 71.

**—Proof that property is stolen.**

Though there may be cases in which it may not be necessary under S. 411, or 414, to prove that the property was stolen from a particular individual yet as a rule it may be taken as a settled law that a person cannot be called upon to account for the possession of property when there is no evidence whatever that the property has been stolen. 14 Bom. L.R. 893 Foll. (*Prideaux, A.J.C.*) **YASINKHAN v. EMPEROR.**  
 75 I.C. 544 = 19 N.L.R. 176 = 24 Cr. L.J. 960 =  
 A.I.R. 1924 Nag. 48.

**—S. 415—Adulteration of articles.****—Adulteration of saccharine with bicarbonate of soda—Sale of the mixture as saccharine through a broker—Abetment of cheating.**

One B procured quantities of saccharine and bicarbonate of soda and mixed them and put the mixture into tins which he gave to a broker to sell. The broker sold the mixture as genuine saccharine and received money for it which he made over to B from whom he received his brokerage for the transaction. The Broker was discharged though tried jointly with B and examined as prosecution witness.

**Held:** that under the circumstances B was guilty of abetment of cheating.

In order to prove the offence of cheating (Ss. 415 and 420 of the Indian Penal Code) it is necessary to establish: (1) that some one was deceived (2) fraudulently or dishonestly or intentionally; and (3) by means of such deceit he was induced to change his position either by parting with property or by doing something to his own injury. (*Macleod, C. J. and Shah, J.*) **EMPEROR v. BHOLASINGH AMERSINGH.**  
 81 I.C. 926 = 26 Bom. L.R. 211 =  
 25 Cr. L.J. 1102 = A.I.R. 1924 Bom. 303.

**—S. 415—Cheating by cheque.****—Payment by cheques which were dishonoured—Bets on credit in return—No loss caused—No cheating.**

The petitioner was a licensed book-maker of the Royal Casino Turf Club. On the assurance of the

**PENAL CODE (1860), S. 415—Essentials.**

opposite party, that he would pay up his losses, if any, punctually on the settling day, the petitioner allowed the Opposite Party to take bets on credit on the 9th of December, 1922. The debts due to the Petitioner, by the Opposite party in respect of bets on credit amounted to a sum of Rs. 1,591, for which the Opposite Party sent to the Petitioner, on the 15th December, 1922, a crossed cheque for Rs. 1,591 on the Indian Industrial Bank. The cheque was presented for payment on the 18th December, 1922, when it was dishonoured.

**Held** that although the Petitioner was deceived and thereby induced to take bets on credit from the Opposite Party, the act which the petitioner was induced to do by reason of such deception has not caused or was not likely to cause damage or harm to him in body, mind, reputation or property. It does not follow that if the Petitioner had refused to take bets on credit from the Opposite Party, the latter would of a certainty have had to offer bets by paying cash. The Opposite Party might not have offered any bets at all. (*C. C. Ghosh and Cuming, JJ.*) **H. K. BHEDWAR v. RAO SHAHEB C. S. R. RAO.**  
 74 I.C. 76 = 39 C.L.J. 273 = 24 Cr. L.J. 748 =  
 27 C.W.N. 919 = A.I.R. 1924 Cal. 111.

**—S. 415—Criminal liability.****—Attempt by person cheated to obtain from the person cheating—Security for the amount—Effect.**

When a person is cheated by another, any attempt on the part of the former to obtain sufficient security from the latter for the payment of the money due by him and the temporary fresh accommodation given to the offender as the result of negotiations, to save his reputation in business do not affect the criminal liability of the offender. (*Dalal, J. C.*) **BISHAMBHAR NATH TANDON v. EMPEROR.**  
 90 I.C. 706 =  
 26 Cr. L.J. 1602 = 2 O.W.N. 760 =  
 A.I.R. 1926 Oudh 161.

**—S. 415—Delivery.****—Wagons taken to colliery siding belonging to Railway, if amounts to delivery.**

Property is delivered when something in the ownership or possession of one man is delivered into the ownership or possession of another. Railway wagons are no doubt "property." They are not as property delivered to a colliery merely by being taken to the colliery siding which belonged to Railway. The colliery is entitled to load the wagons but the amount of control exercised for that purpose is of a very limited character (*Richardson and Suhrawardy, JJ.*) **SUPDT. AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. MANMATHA BHUSAN CHATTERJEE.**  
 84 I.C. 554 = 51 Cal. 250 = 28 C.W.N. 160 =  
 26 Cr. L.J. 330 = A.I.R. 1924 Cal. 495.

**—S. 415—Essentials.**

In order to prove the offence of cheating (Ss. 415 and 420 of the Indian Penal Code) it is necessary to establish: (1) that some one was deceived (2) fraudulently or dishonestly or intentionally; and (3) by means of such deceit he was induced to change his position either by parting with property or by doing something to his own injury. (*Macleod, C. J. and Shah, J.*) **EMPEROR v. BHOLASINGH AMERSINGH.**  
 81 I.C. 926 = 26 Bom. L.R. 211 = 25 Cr. L.J. 1102 =  
 A.I.R. 1924 Bom. 303.

**—Direct damage from deceit.**

The person deceived must have acted under the influence of the deceit. The facts must establish damage or likelihood of damage and the damage must not be too remote. The word "cause" doubtless excludes damage occurring as a mere fortuitous sequence unconnected with the act induced by the



**PENAL CODE (1860), S. 415—Facts to be considered.**

deceit, except as every event is connected with preceding events in an unending chain but the definition as it stands, is wide enough to include all damage resulting or likely to result as a natural consequence of the induced act. However the damage must be direct, natural or probable consequence of the induced act. (*Richardson and Suhrwardy, J.J.*) SUPDT. AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. MANMATHA BHUSAN CHATTERJEE.

84 I.C. 554=51 Cal. 280=28 C.W.N. 160=26 Cr. L.J. 330=A.I.R. 1924 Cal. 495.

**—S. 415—Facts to be considered.**

*—Intention at the time of the offence—Damage a necessary consequence—Using false name with object of not fulfilling contract—Remote damage—Effect.*

In a case of cheating the intention of the accused at the time of the offence is to be seen and the consequence of the act or omission itself is to be judged. The damage or harm caused or likely to be caused must be the necessary consequence of the act done by reason of the deceit practised or must be necessarily likely to follow therefrom, and the law does not take into account remote possibilities that may flow from the act. The proximate and natural result of the act has to be judged and not any vague and contingent injury that may possibly arise.

Where the accused used the name of a bogus or non-existent firm, with the object of not fulfilling the contract in the event of the market going up and as the market did go up he did not supply the goods with the result that the party suffered loss :

*Held :* such remote consequences must be ignored for the purpose of S. 415.

*Held :* also that the damage likely to be sustained by the other party on account of the fact of entering into a contract with a bogus firm was a remote contingency. (*Wainsley and Mukerjee, J.J.*) HARENDRA NATH DAS v. JOTISH CHANDRA DATT. 85 I.C. 641=40 C.L.J. 283=52 Cal. 188=26 Cr. L.J. 545=A.I.R. 1925 Cal. 100.

**—S. 415—False insurance of letter.**

*—Sending insured cover containing waste paper though purporting to contain notes—If cheating.*

The accused sent to one N. an insured cover purporting to contain currency notes worth Rs. 800. The envelope was handed over by the accused in person to the despatching Postmaster, and was delivered to an agent of N. On the addressee opening the envelope, the same was found to contain a letter advising the despatch of a sum of Rs. 800 and several bits of waste paper, but no currency notes.

*Held :* All that the person deceived had been induced to do was that he had signed a receipt acknowledging the delivery of a cover, and not of any sum of money alleged to be contained in the cover. (*C. C. Ghosh and Cuming, J.J.*) RAMAN BEHARI ROY v. EMPEROR. 73 I.C. 780=24 Cr. L.J. 684=28 C.W.N. 252=50 Cal. 849=A.I.R. 1924 Cal. 215.

**—S. 415—Jurisdiction.**

*—V.P.P. purporting to contain tea but really sawdust sent from Madras to Hyderabad—V.P.P. paid for at Hyderabad—Completion of offence—Jurisdiction of Madras Court.*

Accused sent by V.P.P. certain boxes purporting to contain tea at the order of A to Hyderabad. A paid the value payable amount and took delivery of the boxes but on opening found them to contain merely sawdust.

*Held :* the delivery contemplated by S. 415, Penal Cr. D—135

**PENAL CODE (1860), S. 415—Omission to disclose facts.**

Code is 'delivery to any person', a phrase which will include even an agent. The deceit and the delivery in consequence of the deceit were complete when the money was handed over to the Post Office and the subsequent delivery by the Post Office to accused was not a necessary ingredient of the offence and therefore the offence was completely committed in Hyderabad and the Madras Court had therefore no jurisdiction. (*Wallace, J.*) M. A. KALEEK v. EMPEROR. 101 I.C. 484=1927 M.W.N. 221=28 Cr. L.J. 452=8 A.I. Cr. R. 69=A.I.R. 1927 Mad. 544=52 M.L.J. 511.

**—S. 415—No dishonest intention.**

*—Decree-holder given a crossed cheque by judgment-debtor for being accommodated—Cheque dishonoured—No cheating.*

A the decree-holder made on 3rd February 1927 a settlement with the judgment-debtor by which C executed a surety bond for the latter and an application was made to the Court for the stay of execution proceedings. At the same time, a crossed cheque was given by the judgment-debtor to A. The cheque on presentation on 10th February 1927 was dishonoured and found its way back into the hands of A. On 11th February 1927 a sum of Rs. 350 was paid by the judgment-debtor to A's pleader towards part realization of the decree. On the 16th February 1927 A renewed the execution of his decree with a prayer for attachment of the judgment-debtor's property. The judgment-debtor was prosecuted for the offence of cheating under S. 415, I. P. C. in respect of the dishonoured cheque.

*Held :* that the judgment-debtor could not be convicted of the offence of cheating because the cheque was not, to the knowledge of the decree-holder, issued in token of the immediate satisfaction of the decree as an accomplished fact but only as a security and as an accommodation to enable the judgment-debtors to provide means for the honouring of the cheque within a convenient period of time after issue or to otherwise satisfy the decree. Fraudulent or dishonest intention did not accompany the act of issuing the cheque. (*Wazir Hasan and Raza, J.J.*) SHEO SARAN VAISH v. JITENDRA NATH DAS. 110 I.C. 209=5 O.W.N. 357=10 A.I. Cr. R. 445=29 Cr. L.J. 687=A.I.R. 1928 Oudh 292.

*—Delivering to and inducing another to give receipt for—Bought Note signed by accused's firm as brokers for a bogus firm—No cheating.*

Where the accused induced another to give him a receipt for a Bought Note which the accused's firm had signed as brokers on behalf of another firm (which was a bogus one),

*Held :* that as in fact the Bought Note was made over to the person received, the accused had no dishonest intention even assuming that his intention was to hold the other party down to the contract. (*Wainsley and Mukerji, J.J.*) HARENDRA NATH DAS v. JOTISH CHANDRA DATT. 85 I.C. 641=40 C.L.J. 283=52 Cal. 188=26 Cr. L.J. 545=A.I.R. 1925 Cal. 100.

**—S. 415—Omission to disclose facts.**

*—Advance obtained for purchase of motor on its security—Car already mortgaged to another—Omission to disclose the mortgage—Cheating.*

Applicant obtained an advance for purchase of a motor car from the Government on the security of a mortgage of the car. When he obtained the advance he had already mortgaged the car to a Chetty.

*Held :* that the omission to disclose the fact of the mortgage was clearly a dishonest concealment.

**PENAL CODE (1860), S. 415—Promise to remove untouchability.**

(Pratt, J.) L. M. ISMAIL v. KING-EMPEROR.

103 I.C. 845=5 Rang. 274=28 Cr. L.J. 765=  
A.I.R. 1927 Rang. 239.**—S. 415—Promise to remove untouchability.****—Investiture of sacred thread—Cheating.**

The accused gave out that he was the President of a certain association which had undertaken the task of socially elevating a certain community of people by investing its members with the sacred thread on the footing that they were kshatriyas, and by other means. Much was made of this. Money was realised for the professed objects. But the arrangements that were made were ridiculously inadequate. The idea of being made touchables on investiture of the sacred thread as kshatriyas did not originate with the accused. The community themselves believed that they were entitled to be classed as such and had petitioned the authorities for the purpose.

**Held:** upon the facts of the case, that it was absolutely necessary to come to a finding in the negative on the question whether the members of the community in question could legitimately claim to be kshatriyas before the accused could be held to be guilty. (Newbould and Mukerjee, JJ.) KEDAR NATH CHAKRAVARTI v. EMPEROR. 86 I.C. 705=

26 Cr.L.J. 849=29 C.W.N. 408=41 C.L.J. 172=  
A.I.R. 1925 Cal. 603.**—S. 415—Thumb impression on blank paper.****—If offence.**

Mere taking thumb-impression on a blank piece of paper is not sufficient to prove an intention to use the paper dishonestly and does not constitute an offence under S. 415. (Adami, J.) SHEO PRASAD v. EMPEROR.

94 I.C. 353=7 P.L.T. 772=1926 P.H.C.G. 110=  
27 Cr.L.J. 609=A.I.R. 1926 Pat. 267.**—S. 415—Untrue praise of goods.****—If offence.**

The giving of untrue praise of an article offered for sale does not come within S. 415.

The accused advertised that he was willing to sell an almost new jazz set. The complainant purchased the goods. On receipt of the goods the complainant found that they were not of the quality he expected and also that certain articles mentioned in the list had not been sent to him.

**Held:** that the facts were insufficient to justify the prosecution of the accused for a criminal offence. (Newbould and Chakravarti, JJ.) W. H. DeCOSTA v. G. P. DEEPHOLTS. 86 I.C. 985=26 Cr. L.J. 921=

29 C.W.N. 362=A.I.R. 1925 Cal. 605.

**—S. 415—Using invalid hundi.**

Where the accused obtained money from the complainant on the strength of a Hundi which he knew was worth nothing, **Held,** that he was guilty of cheating. (Macleod, C. J. and Shah, J.) EMPEROR. v. UTTAMAL NAROTTAMDAS. 60 I.C. 993=

23 Bom. L.R. 340=22 Cr.L.J. 305.

**—S. 415—'Valuable security.'****—If includes decree copy.**

A "decree" does not come within the definition of a "valuable security"; a decree merely declares the existence of legal rights or extinguishment, extension, transfer or restriction of legal rights, etc.; the rights are there, and all that the decree does is that it formally expresses the adjudication by the Court on the rights of the parties. When the Court passes a decree, it does not deliver any property, because the original decree remains in Court and the term "valuable security" assuming that the term is wide enough to include a decree, can only apply to original documents and not to any copy of a decree which may be

**PENAL CODE (1860), S. 417—False insurance of letter.**

supplied on application to the parties. The same arguments would apply to orders in execution. (C. C. Ghosh and Cuming, JJ.) CHARU CHANDRA GHOSH v. EMPEROR. 81 I.C. 810=39 C.L.J. 122=

28 C.W.N. 414=25 Cr. L. J. 1034=  
A.I.R. 1924 Cal. 502.**—S. 417—Cheating by cheque.**

The giving of a cheque on a bank as payment for goods, or in payment of a debt does not amount to a representation that the person giving the cheque has money to the amount in the Bank at the time, but does amount to a representation: (1) that he has authority to draw on the bank for that amount; (2) that the cheque is a good and valid order for the payment of its amount and that the cheque will be paid, i.e., that the existing state of facts is such that in the ordinary course the cheque will be met: 23 B. L. R. 340; A. I. R. 1925 Cal. 14 Dist.; *Queen v. Hazelton* (1874) 2 C. C. 134 Foll. (*Mirza and Broomfield, JJ.*) KESHEOJI MADHAVJI v. EMPEROR.

32 Bom. L.R. 532=A. I. R. 1930 Bom. 179.

**—Duty of prosecution—Proof that non-payment was not accidental but intentional.**

What the prosecution has to do in a case of cheating by means of cheque is to establish facts which point *prima facie* to the conclusion that the failure to meet the cheque was not accidental but was a consequence expected and therefore intended by the accused. It will then be for the accused to establish any facts there may be in his favour which are specially within his knowledge and as to which the prosecution could not be expected to have any information. (*Mirza and Broomfield, JJ.*) KESHEOJI MADHOWJI v. EMPEROR. 32 Bom. L.R. 562=

A.I.R. 1930 Bom. 179.

**—S. 417—False insurance of letter.****—Accused sending waste paper by insured packet, purporting to contain currency notes—Applying to file the acknowledgment in suit by the addressee—Nature of offence.**

A owed B certain amount. He sent a registered and insured packet to B, purporting to contain currency notes in settlement of debt and got acknowledgment of the receipt of the packet. The packet was found to contain waste paper. B sued A for the debt. A applied to Court to admit the acknowledgment in evidence.

**Held:** that A was neither guilty under S. 417 for cheating, nor of attempt to cheat. A's action amounted to preparation.

To satisfy the definition of cheating there must be immediate causation, and the act itself must involve the probability. It is not enough to say that the signed acknowledgment is likely to be used as to cause damage; the act of signing itself must be likely to cause damage.

**Held:** further that A was guilty under S. 193 for fabricating false evidence in relation to judicial proceedings and sanction under S. 195. Cr. P. Code, was necessary. (Jackson, J.) KUNJU v. KING-EMPEROR. 99 I.C. 102=24 M.L.W. 725=28 Cr. L.J. 70=

38 M.L.T. 187=7 A.L.Cr. 7=

A.I.R. 1927 Mad. 199=51 M.L.J. 800.

**—Cheating or fabricating false evidence.**

Sending Khilafat bonds in an insured postal cover, instead of Government Currency Notes is no offence under this section. It may amount to an offence of fabricating false evidence. (Sulaiman, J.) TULA RAM v. EMPEROR. 83 I.C. 993=21 A.L.J. 868=

5 L.R.A.Cr. 15=26 Cr. L.J. 209=

A.I.R. 1924 All. 205.

**PENAL CODE (1860), S. 417—Nature of offence.****—S. 417—Nature of offence.**

The offence under S. 417 is cheating generally; but that under S. 420 is an aggravated type of the offence involving delivery or destruction of valuable security. (*Venkatasubba Rao, J.*) **RANGAYYA v. SOMAPPA.**

82 I.C. 57=20 M.L.W. 919=

25 Cr.L.J. 1193=A.I.R. 1925 Mad. 367.

**—S. 417—No offence.**

**—Decree against the judgment-debtors—Two declared insolvent—Creditor getting his name in Schedule—Creditor obtaining fresh bond from the third party and debt also paid by Receiver subsequently.**

The accused had obtained a decree against three judgment-debtors. Two out of them had subsequently applied to be adjudicated as insolvents. The accused got his name entered in the list of creditors and proved his debts against them. He then proceeded against the third and obtained from him a fresh bond. Subsequently the Official Receiver made payment to the accused.

**Held:** that the receipt of the amount cannot in any way render the accused criminally liable. It is a matter for adjustment in civil Court. (*Tek Chand, J.*) **AMAR NATH v. EMPEROR.**

113 I.C. 536=

10 L.L.J. 485=12 A.I.Cr.R. 85=

30 Cr.L.J. 162=A.I.R. 1928 Lah. 245.

**—S. 417—No offence under.**

**—R mortgaging his property to D—Property already sold by a farzi deed to C—D filing a complaint against R under S. 417.**

R mortgaged certain property to D. In respect of the same property R had already executed a deed of sale in C's favour who was a minor. D later filed a complaint to the effect that R had executed a farzi deed of sale in favour of C prior to the execution of the mortgage and that the execution of the farzi deeds of sale had been concealed from him and thus he committed an offence of cheating.

**Held:** that the facts of the case disclosed no cheating and R could not be convicted under S. 417 as the deed of sale to C was a farzi transaction, that is to say, the property was clearly free from any encumbrance created by the deed of sale. (*Kulwant Sahay, J.*) **RAMDAYAL MAHTO v. EMPEROR.**

110 I.C. 332=

9 P.L.T. 303=29 Cr.L.J. 700=A.I.R. 1928 Pat. 337.

**—Misrepresentation for taking daughter home.**

Petitioners were alleged to have gone to a person and asked him to send his daughter-in-law (petitioner's daughter) with them for paying a visit to a goddess. He sent the daughter-in-law with them, but they did not return her to him. He further stated that the daughter-in-law took away with her ornaments, and that the petitioners made a false representation to him in order to take away the girl with her ornaments. The petitioners were charged under S. 417.

**Held:** that the facts alleged did not constitute an offence under S. 417. (*Zafar Ali, J.*) **TAHIRU v. JALLU.**

106 I.C. 224=9 L.L.J. 351=

28 Cr. L.J. 1040=9 A.I. Cr.R. 176=

A.I.R. 1927 Lah. 825.

**—S. 418—Offence under.**

**—Representation by a Mahomedan that he is a Hindu with an object of securing service.**

An offence under Section 418 of the Penal Code is committed where a Mahomedan with a view to secure service with a Hindu who would not engage him if the fact that he is not a Hindu is known to him, represents himself to be an orthodox Hindu. (*Kennedy, A. J. C.*) **SHERBAZ v. EMPEROR.**

81 I.C. 309=18 S.L.R. 59=25 Cr. L.J. 789=

A.I.R. 1925 Sind. 57.

**PENAL CODE (1860), S. 420—Attempt.****—S. 418—Sentence.**

**—Previous convictions for theft—If can be considered.**

It seems somewhat anomalous that previous convictions of an accused for theft and burglary should be taken into account in increasing his sentence where the subsequent offence is cheating by personation under S. 419. (*Addison, J.*) **QAIMI v. EMPEROR.**

100 I.C. 536=28 Cr. L.J. 312=A.I.R. 1927 Lah. 220.

**—S. 420—Absence of intention.**

**—Ingredients of—Mere handing over of the rules of a club by its servant—Liability of members.**

Officials of a so-called Royal Sports Club whose object was to receive from its clients bets on horse races and employing agents on the race course to put their clients' bets were charged with deceiving certain persons by publishing the rules of the club and inducing them to pay money to the club, whereas no agent at the race was appointed and it was proved that a book of rules was handed over by a servant of the club.

**Held:** that under the circumstances members were not criminally responsible for representations contained in the rules, and as the ingredients of the offence of cheating were absent in this case, they could not be liable for conviction under S. 420. (*Wallace, J.*) **CHELLAM CHETTY, In re.**

109 I.C. 905=

39 M.L.T. 596=9 A.I. Cr. R. 396=29 Cr. L.J. 633=

1 M. Cr. C. 174=A.I.R. 1928 Mad. 224.

**—S. 420—Attempt.**

**—A asking Currency Office for payment for two halves of two currency notes—Currency Office making payment already to L—Non-execution of an indemnity bond by A—Nature of offence by A.**

An attempt to commit an offence punishable under S. 511 though the final act short of actual commission of that offence has not been accomplished.

A informed the Currency Office that he had lost two halves of two currency notes of Rs. 100 during a journey and after getting instructions received in reply to his enquiries, he forwarded to the Currency Office the halves of these two notes still in his possession with the prescribed application forms and affidavits testifying that he was the owner of the notes. The Currency Officer had however already paid the value of these notes to a firm on representation by that firm that the halves of the notes had been stolen from L, one of the partners who was carrying them from Delhi to Ahmedabad. A was prosecuted under S. 511 read with S. 420, Penal Code. The Trying Magistrate, without recording any clear finding as to the dishonest intention of the accused in endeavouring to recover the value of the currency notes, acquitted him on the ground that it was the practice of the Currency Offices not to make payment in such cases until the claimant had executed an indemnity bond, and as no such indemnity bond had been executed by A, his conduct had not amounted to an attempt to cheat but had remained within the stage of preparation for the offence.

**Held:** that acquittal was bad as the execution of the bond of indemnity was not a portion of the application and was an act which would ordinarily take place before the act of cheating is completed. The applicant would be willing to take the money without an indemnity bond and by his making a false attempt in asking for the money the offence would be just as complete, whether an indemnity bond was or was not insisted upon: 15 All. 173 and 16 Cal. 310, Foll.: 16 All. 409 and 14 P.R. 1914 Cr., Ref.; 8 All. 303 and 45 P.R. 1882 Cr., Dist. (*Addison and Coldstream, J.J.*) **EMPEROR v. SHIB CHARAN.**

110 I.C. 812=

**PENAL CODE (1860), S. 420—Attempt.**

10 A.I. Cr. R. 567=29 Cr. L.J. 780=30 P.L.R. 405=  
10 Lah. 263=A.I.R. 1928 Lah. 581.

—In the offence of cheating the actual transaction must have begun and an act to bear upon the mind of the victim must have been done before a preparation can be said to be an attempt. (*Jackson, J.*)  
**E. RAMAN CHETTIAR v. KING-EMPEROR.**

99 I. C. 127=28 Cr. L. J. 95=

A.I.R. 1927 Mad. 77=51 M. L. J. 635.

—*Attempting to obtain money from another by inducing him to believe that God has ordered him to pay—Nature of offence.*

Where the accused attempted to deceive one J. by making him believe that God had ordered him (*i.e., J.*) to pay money to the accused and thereby dishonestly induce J. to pay him Rs. 300.

**Held:** that the accused was guilty of an attempt to cheat but neither under S. 503 nor under S. 508. 6 M. 381 Foll. (*Krishnan, J.*) **DORAISWAMY AIYAR,**  
86 I.C. 339=26 Cr. L.J. 755=

48 Mad. 774=21 M. L. W. 174=

1925 M.W.N. 113=A.I.R. 1925 Mad. 480=

48 M.L.J. 190.

—It is not correct to say that there can never be an attempt to commit the offence described in S. 420. (*Kotwal, A.J.C.*) **SAMUEL ILANAH v. KING-EMPEROR.**

77 I.C. 827=25 Cr. L.J. 475=

A.I.R. 1924 Nag. 120.

—*Sending false claim as to quantity of insured goods lost—Lessor of premises aiding in the claim—Abetment of attempt.*

The appellant had insured his stock of paddy which was burnt by fire; he made a claim on the basis that 75,040 baskets of paddy were stored. It was found that the mill godowns could not accommodate more than 15,000 baskets.

**Held:** that the claim was not a mere exaggeration but was a false statement as to the quantity stored: that the first appellant having sent the notice of the fire and also the claim papers, must be regarded as having gone beyond the mere stage of preparation to the stage of attempt.

Where A let B use his mill for storing paddy and his cover notes on the mill and stated to witnesses that 75,000 baskets of paddy were in the mill when it was burnt knowing that the capacity of his mill was only 15,000 baskets, and further having stocked paddy refuse in the godowns pretended it was paddy.

**Held:** A had aided and abetted the attempt to cheat under the second clause of S. 107 I. P. C. (*May Oung, J.*) **MG. PO HWYIN v. EMPEROR.**

82 I.C. 39=2 Rang. 53=3 Bur. L.J. 1=

25 Cr. L.J. 1175=A.I.R. 1924 Rang. 241.

**—S. 420—Charge.**

—*Absence of statement that any person suffered loss by the false representation—Defect if cured by S. 537, Cr. P. C.*

F borrowed money from M on security of N, on basis of two mortgage bonds and having arranged to sell the mortgaged property induced M to accompany him to a petition writer to get a sale deed drafted. The bonds were left with the petition writer and M went away to get a document registered. N and F making a false representation to petition writer that M wanted to see to the bonds, took them away. F and N were followed, but the bonds, could not be recovered. In the charge it was recited that F and N obtained the bonds after making false representation to the petition writer and that as a result of the misrepresentation M suffered loss. It was contended that the charge was defective.

**Held:** that it was not necessary to state in the

**PENAL CODE (1860), S. 420—Denial of liability.** charge that as a result of false representation made by F and N, M suffered any loss. The mere fact that the petition writer as a result of the deception of N handed the bond to him was sufficient to bring his conduct within the definition of cheating. The addition in the charge that M suffered loss as a result of the misrepresentation was a mere surplusage and the defect was cured by S. 537, Cr. P. Code. (*Jai Lal, J.*)  
**FATEH HAIDAR v. EMPEROR.**

A.I.R. 1930 Lah. 407.

**—S. 420—Civil dispute.**

—*Applicability.*

Where the dispute between the parties seems to be of a civil nature, the conviction on a charge of cheating is unsustainable. (*Allanson, J.*) **THAKUR DAS v. EMPEROR.**

104 I.C. 450=28 Cr. L.J. 834=

A.I.R. 1928 Pat. 13.

—*Applicability.*

The complainant sold two huts to the accused for a sum of Rs. 150. Out of the consideration to be paid a sum of Rs. 47 was to be set off on account of a debt which the complainant owed to the accused and the balance was to be paid to the complainant by the accused on the execution of the document. The accused got the *kobala* executed and registered but failed and neglected to pay the balance of the consideration.

**Held:** that the dispute was of a civil nature and was not one covered by S. 420. (*C. C. Ghose and Duval, JJ.*) **RAM CHANDRA DE v. GAJENDRA NATH DAS.**

94 I.C. 204=43 C.L.J. 287=27 Cr. L.J. 588. (Cal.)

**—S. 420—Compounding.**

—*No sanction of Court—Sec. 345 (2), Cr. P. C.—Effect.*

In cases governed by S. 345 (2), Cr. P. Code, the permission of the Court before which a prosecution is pending is essential before the case can be validly compounded, and so no effect can be given to a compromise as a plea in bar of conviction unless the court has given its sanction. Without the sanction of the Court, the so-called compromise arrived at between the parties, outside the Court, is of no legal effect and cannot be taken cognizance of by any Court dealing with the offence: 41 Mad. 685, Rel. on: 39 Mad. 946, Dist. (*Shadi Lal, C.J. and Agha Haider, J.*) **NAURANG RAI v. KEDAR NATH.**

109 I.C. 601=9 Lah. 400=

29 P.L.R. 516=29 Cr. L.J. 585=10 A.I. Cr. R. 302=

A.I.R. 1928 Lah. 232.

**—S. 420—Deception by conduct.**

It is not necessary that deception should be by express words and it may be by conduct or implied in the nature of the transaction itself. (*Percival, J. C. and Rupchand Bilaram, A. J. C.*) **HAIJ SAMO v. EMPEROR.**

101 I.C. 458=8 A.I. Cr. R. 11=

28 Cr. L.J. 426=A.I.R. 1927 Sind 161.

**—S. 420—Deception through agent.**

Deception may be practised by representation made through an innocent agent, and so more through a conspirator.

It is not necessary that deception should be by express words and it may be by conduct or implied in the nature of the transaction itself. (*Percival, J. C. and Rupchand Bilaram, A. J. C.*) **HAIJ SAMO v. EMPEROR.**

101 I.C. 458=

8 A.I. Cr. R. 11=28 Cr. L.J. 426=

A.I.R. 1927 Sind 161.

**—S. 420—Denial of liability.**

—*Refusal to admit legal liability—Liability otherwise provable—If offence.*

A mere refusal to admit a legal liability, the existence of which does not depend upon admission by the person who is to be made liable, is not such a

**PENAL CODE (1860), S. 420—Evidence.**

breach of the promise made at the time of the offence, as would amount to make false representation at the time of the payment. (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*) *UDHARAM v. EMPEROR.*

89 I.C. 247=26 Cr. L.J. 1303=  
A.I.R. 1925 Sind 231.

**—S. 420—Evidence.**

*Contradiction in material particular—Effect.*

Where the only witness of the complainant on whom any reliance could be placed had contradicted himself on a very material particular.

*Held*: that it would be most unsafe to convict the accused of the offence charged against him, especially when there was previous enmity between the accused and the complainant. (*Addison, J.*) *SAEDUL SINGH v. EMPEROR.*

28 P.L.R. 461=  
A.I.R. 1927 Lah. 797.

**—S. 420—Getting money without inducement.**

*Temporary service during leave—Discharge on getting a month's pay in lieu of notice—Rejoining permanent work and getting pay—No inducement and no offence.*

The applicant Sarada Saran was a temporary clerk at Lucknow, and took leave from the 23rd January 1923, till the 31st of January of that year. While he was on casual leave he went to Cawnpore, and was appointed a permanent head clerk of the Cawnpore Cantonments by a temporary Cantonment Magistrate. He applied to the Lucknow authorities for an extension of his leave but originally this leave was not granted. His casual leave expired on the 31st January, 1923. On the 2nd of February 1923, he had been informed that he was ineligible under the rules for a permanent appointment. Captain Pocock told the accused that he could not consider his retention in the Cantonment Magistrate's office, whereon the accused informed him that he had resigned his post in the Military Accounts Department, and that it would entail considerable loss to him if he did not retain him. He even offered to accept the position of an apprentice clerk. Captain Pocock could not retain him in his office, and so he paid him a month's pay in lieu of notice amounting to Rs. 145. The accused took the pay in lieu of notice and went back to Lucknow. He then got his leave extended and rejoined on the 5th of February. He again drew his pay at Lucknow, where the accused made it clear that he had already drawn his pay for the month at Cawnpore and he would have to refund one of the two sums.

*Held*, that it is very difficult to say that the accused induced Captain Pocock to pay him Rs. 145. (*Sulaiman, J.*) *SARADA SARAN v. EMPEROR.*

83 I.C. 997=21 A.L.J. 873=  
5 L.R.A. Cr. 30=26 Cr. L.J. 213=  
A.I.R. 1924 All. 209.

**—S. 420—Graver and lesser offence.**

The offence under S. 417 is cheating generally; but that under S. 420 is an aggravated type of the offence involving delivery or destruction of valuable security. (*Venkatasubba Rao, J.*) *RANGAYYA v. SOMAPPA.*

82 I.C. 87=20 M.L.W. 919=25 Cr. L.J. 1193=  
A.I.R. 1925 Mad. 367.

**—S. 420—Introducing cheat.**

*Offence—Proof of fraud and dishonesty.*

In order to sustain a conviction of a middle-man who introduced a cheat to the complainant, under S. 420, it is necessary for the prosecution to establish that he acted dishonestly and fraudulently in the transaction. (*Jai Lal, J.*) *MAHOMED JAN v. EMPEROR.*

102 I.C. 553=28 P.L.R. 171=  
8 A.I.Cr.R. 217=28 Cr. L.J. 585=  
A.I.R. 1927 Lah. 746.

**PENAL CODE (1860), S. 420—Sentence.****—S. 420—Jurisdiction.**

*Accused living at C—Bogus telegram despatched from T—Jurisdiction of T Court.*

Where the accused at C gave the telegram for despatch from T to one J,

*Held*: that he caused the despatch of the telegram at T and the T Court had jurisdiction to try the offence under Ss. 468-109 and 420-511, Indian Penal Code. (*Jackson, J.*) *E. RAMAN CHETTIAR v. EMPEROR.*

99 I.C. 127=28 Cr. L.J. 95=  
A.I.R. 1927 Mad. 77=51 M.L.J. 635.

**—Second Class Magistrate.**

A Second Class Magistrate is not competent to try an offence under S. 420 of the Penal Code though he has jurisdiction to try an offence under S. 417. (*Venkatasubba Rao, J.*) *RANGAYYA v. SOMAPPA.*

82 I.C. 57=20 M.L.W. 919=25 Cr. L.J. 1193=  
A.I.R. 1925 Mad. 367.

**—S. 420—Offence under special law.**

*Sending blank papers in insured cover addressed to self—Offence under S. 64 of the Post Office Act—Conviction under Penal Code—Is sustainable.*

Where the accused was shown to have sent blank papers in an insured cover addressed to himself and claimed the value of currency notes from the Post Office and proceedings were instituted against him for offences under Ss. 420 and 511, I.P.C. and under S. 64 of the Post Office Act and he was convicted for offences under the Penal Code, *Held*: that, assuming that the minor offence under S. 64 of the Post Office Act was proved, it was not illegal to convict the accused for the major offence only. (*Macpherson and Dhavle, J.J.*) *SUCHIT RAUT v. EMPEROR.*

125 I.C. 770=9 Pat. 126=11 Pat. L. T. 224=  
31 Cr. L.J. 934.

**—S. 420—Procedure.**

*Evidence of deception—First trial.*

In a charge of cheating the complainant must disclose all the evidence of deception at the first trial and he cannot institute a series of trials each based upon different evidence of deception: 28 All. 313, Rel. on. (*Jackson, J.*) *MOOKA PILLAI v. EMPEROR.*

99 I.C. 1035=25 M.L.W. 220=28 Cr. L.J. 235=  
7 A.I.Cr.R. 390=A.I.R. 1927 Mad. 444.

**—S. 420—Rash identification.**

*No dishonesty—No offence.*

Person identifying before Treasury Officer another as the proper payee of a certain money, rashly and without taking care to ascertain as to the truth of his identity is not guilty under S. 182 or S. 420 where it is held that his intention was not dishonest. (*Rankin and Mukerji, J.J.*) *EMPEROR v. CHANDRA KUMAR DE.*

99 I.C. 57=44 C.L.J. 230=28 Cr. L.J. 28=  
7 A.I.Cr.R. 177=A.I.R. 1927 Cal. 78.

**—S. 420—Restoration of property.**

*Accused acquitted—Order, if legal.*

Where a Magistrate finds the accused not guilty of the offence of cheating and acquits him, he cannot order that the property in respect of which the offence was alleged to be committed, and which is in possession of the accused, should be restored to the complainant. The proper order which the Magistrate should make is that the goods should remain in the possession of the person in whose custody they were found. (*Chotzner and Mukerji, J.J.*) *RAM DAN DAMANI v. HARI DAS DAMANI.*

95 I.C. 933=  
27 Cr. L.J. 853=A.I.R. 1926 Cal. 1048.

**—S. 420—Sentence.**

The offender convicted under S. 420 "shall be punished with imprisonment and shall also be liable to fine." This means that some sentence of imprisonment must be given and the Court has a discretion



**PENAL CODE (1860), S. 42c—Sentence.**

to add or refrain from adding a fine, for, to the latter an offender is only "liable" (*Boys and Sen, J.J.*)  
**EMPEROR v. DURG.** 114 I.C. 733=

1929 A.L.J. 400=10 L.R.A.Gr. 59=

11 A.I.Gr.R. 422=30 Gr.L.J. 340=

A.I.R. 1929 All. 260.

—*Sentence of imprisonment is obligatory.*

A sentence of imprisonment is obligatory under the law for an offence either under S. 409 or under S. 420. (*Campbell, J.*) **EMPEROR v. SOHAN SINGH.**

94 I.C. 130=27 Gr.L.J. 562=

A.I.R. 1926 Lah. 350.

**—S. 420—Silence.**

—*Dishonest concealment—Offence.*

Silence of accused may be rendered into dishonest concealment by the circumstances of the case and may amount to deception within the section. (*Walmsley and Mukerji, J.J.*) **T.C.S. MARTINDALE v. EMPEROR.**

84 I.C. 1041=40 C.L.J. 256=

52 Cal. 347=29 C.W.N. 447=26 Gr.L.J. 401=

A.I.R. 1925 Cal. 14.

**—S. 420—Similar offences distinguished.**

—*Extortion and cheating.*

Although there is a common feature between the offence of extortion and that of cheating, yet they cannot be regarded as two aspects of one offence. (*Mirza and Patkar, J.J.*) **RAMCHANDRA BHIKAJI v. EMPEROR.**

112 I.C. 586=29 Gr.L.J. 1082=

30 Bom. L.R. 967=A.I.R. 1928 Bom. 346.

—*Difference between theft, cheating, criminal misappropriation and criminal breach of trust.*

An easy method of differentiating between the offence of theft, cheating with delivery of property, criminal misappropriation and criminal breach of trust is to find out whether the original taking was honest or dishonest and whether it was with the consent of the owner or without it. In theft the original taking is without honesty and without the consent of the owner, and in criminal breach of trust it is with both. In obtaining property by cheating the taking is dishonest but with the consent of the owner, and in criminal misappropriation it is honest but without the consent of the owner. (*Hallifax, A.J.C.*) **NARASINGHDAS MARWARI v. EMPEROR.**

106 I.C. 678=9 A.I.Gr. R. 282=

29 Gr.L.J. 86=A.I.R. 1928 Nag. 113.

**—S. 420—What is offence under.**

—*Person inducing another to give on credit certain articles not intending to pay—Offence.*

Where a person by falsely pretending to be a pensioned Subedar, intentionally deceives the complainant and dishonestly induces the complainant to let him have on credit certain articles for which he did not intend to pay, is guilty under S. 420 and not under S. 417, (*Shadilal, C. J. and Johnstone, J.*) **SHER SINGH v. EMPEROR.**

115 I.C. 471=

10 Lah. 513=12 A.I.Gr. R. 258=30 Gr.L.J. 480=

30 P.L.R. 514=A.I.R. 1928 Lah. 935.

—*Decree-holder inducing judgment-debtor to part with the amount—Receipt for the same withheld—Offence—Second Class Magistrate framing charge under Ss. 417, 384 and 511, I.P.C.—Legality.*

After filing a civil suit as to whether a sum of money had been paid by the judgment-debtor to the decree-holder who was alleged to have granted a receipt, the judgment-debtor instituted a complaint under Ss. 417, 384 and 511, I.P.C., against the decree-holder alleging that the decree-holder inclined him to take the receipt out of his *dupatta* and then put out his hand to take it but the decree-holder was not able to touch the receipt which the judgment-debtor replaced in his *dupatta*. The Second Class Magistrate fram-

**PENAL CODE (1860), S. 424—Procedure.**

ed a charge under Ss. 417, 384 and 511, I.P.C. Held, in revision that if any offence was committed it was one under Ss. 420 and 511, I.P.C. and that the Second Class Magistrate had no jurisdiction to deal with such a complaint. Held: also that the whole complaint amounted to an abuse of the process of the Court. (*Addison, J.*) **JWALA PERSHAD v. CROWN.**

11 Lah. L.J. 95.

—*Railway servant obtaining free pass for wife and mother and giving it to another woman who used it—Offence.*

Where a railway servant applied for and obtained a free pass for his wife and mother and handed over this pass to another woman, who was neither his wife nor his mother, and she used it,

Held: the railway servant was guilty under Penal Code S. 420 and not Railways Act, S. 68. (*Simpson, A. J. C.*) **RAM DAYAL v. KING-EMPEROR.**

88 I.C. 524=2 O.W.N. 510=12 O.L.J. 508=

26 Gr.L.J. 1164=A.I.R. 1925 Oudh 479.

—*Receiving money to exert influence to restore the complainant back into the caste—If cheating.*

Where two persons who were outcasted were introduced to part with their money on the promise made by the applicant that he and his friends would smoke with them and that they would attempt to have them brought back into caste and the person deceived knew that the applicant could not give a definite promise that they would be received back into the brotherhood as the decision rested not with him but with the panchayat. Held that no offence under S. 420 was committed. (*Lyle, A. J. C.*) **MOHAN v. EMPEROR.**

69 I.C. 152=8 O.L.J. 583=

A.I.R. 1924 Oudh 113.

—*Advance made to a broker on representations not proved to be false—If cheating.*

The accused, a paddy broker, represented to the complainant, a Rice Mill, that he would supply a certain amount of paddy within a certain time and got Rs. 4,000 as an advance. It could not be said that the accused had not made arrangements for the supply of paddy but the arrangements failed and paddy could not be supplied.

Held: that the accused was not guilty under S. 420, 6 L. B. R. 38 Dist. (*May Oung, J.*) **MAUNG PO LU v. EMPEROR.**

76 I.C. 700=1 Rang. 397=

2 Bur. L.J. 139=25 Gr.L.J. 236=

A.I.R. 1924 Rang. 31.

**—S. 421—Offence by insolvent.**

—*Jurisdiction of Magistrate.*

The Presidency Towns Insolvency Act does not take away a Magistrate's jurisdiction to try the insolvent for an offence under Ss. 421 and 424: 35 Bom. 63, Foll. (*Maung Ba, J.*) **U MO GAUNG v. U PO SIN.**

114 I.C. 681=6 Rang. 664=

30 Gr.L.J. 345=A.I.R. 1929 Rang. 14.

**—S. 424—Avoiding attachment.**

—*Concealment of property by debtor—If offence.*

Concealment of property by debtors or taking away of property by others to avoid its attachment if done with a dishonest intention is an offence under S. 424. (*Pandalai, J.*) **PINNAMRAJU RAJAMRAJU v. POTTURI TIRUPATIRAJU.**

1930 M.W.N. 347=

3 M.Gr.C. 172=32 M.L.W. 23=

A.I.R. 1930 Mad. 670.

**—S. 424—Procedure.**

—*Complainant and opposite party joint proprietors—Removal of part of joint property—Partition suit pending—Duty of Magistrate.*

If on a complaint under S. 424, I. P. C., the complainant and the opposite party are joint proprietors of



**PENAL CODE (1860), S. 424—Property under attachment.**

the same and a partition suit with regard to their joint property is pending in the civil Court, and property with regard to which the complaint is made is a subject matter in dispute in that suit, if the decision of the Magistrate entail prejudging the order of the civil Court the Magistrate can discharge the accused persons allowing them to retain the custody of the property on deposit of the proportionate value of the complainant's share of the property or make it over to the complainant on his depositing the proportionate value of the share of the accused persons. (*Fazl Ali, J.*) **DASI SINGH v. EMPEROR.**

1929 Gr. C. 273 = **A.I.R. 1929 Pat. 513.**

**—S. 424—Property under attachment.**

*Removal of property under attachment by third person claiming title to it—Determination of title by court.*

The crucial question for determination under S. 424 is whether the alleged removal of property is dishonest or fraudulent and therefore if persons claiming title to a property under attachment in execution of a decree on another remove the same, the matter whether such property belonged to the accused or no has to be determined by criminal Court before deciding upon conviction: 22 Mad. 151, Dist. (*Sen, J.*) **GHASI v. EMPEROR.**

124 I.C. 716 =

**A.I.R. 1930 All. 329.**

*Removing crop attached by Madras Village Courts—Attachment illegal—Removal if offence.*

Since a village Court cannot attach crops which are not moveables within the meaning of S. 52 by virtue of Madras General Clauses Act and S. 22, I. P. C., there is no fraud in removing such crops so as to sustain a conviction under S. 424, I. P. C. (*Jackson, J.*) **NALLAMADAN CHETTIAR v. EMPEROR.**

1930 M.W.N. 352 = 31 M.L.W. 719 =

3 M. Cr. C. 143 = **A.I.R. 1930 Mad. 509 =**

58 M.L.J. 509.

*Accused not judgment-debtor removing crops grown by him but under attachment—Consequent suit to establish his title—Absence of intention to cause wrongful loss—Legality of conviction.*

The accused who was not a judgment-debtor was convicted under S. 424 for dishonestly harvesting and appropriating crops grown by him but under attachment in execution of a decree against his uncle. Consequent upon the attachment the accused had filed a case contending that the crops in question could not be legally attached and that he was entitled to the same.

*Held:* that the crops could not be considered to have been removed with the intention to cause wrongful loss to the decree-holder and hence the conviction could not be sustained under S. 424: A. I. R. 1921 Lah. 185, Ref.; 22 Mad. 151 and 1 B. L. R. 515, Dist. (*Fazl Ali, J.*) **SOHAN MUNDARI v. EMPEROR.**

1929 Gr. C. 280 = **A.I.R. 1929 Pat. 520.**

*Attachment not legal—Removal if offence.*

Where mode has not been followed, there is no legal attachment and conviction for dishonest removal of property attached is bad. (*Maung Ba, J.*) **MYA GYOK v. EMPEROR.**

117 I.C. 243 = 30 Gr. L.J. 748 =

**A.I.R. 1928 Rang. 285.**

**—S. 425—Essentials.**

Intention to cause wrongful loss or damage is an essential for the offence of mischief. (*Baguley, J.*) **U KA DOE v. EMPEROR.**

8 Rang. 13 =

**A.I.R. 1930 Rang. 158.**

**—S. 425—Interpretation.**

*'Destruction'—'Change' graziers allowing goats to graze—If mischief.*

**PENAL CODE (1860), S. 425—Ownership.**

The expressions "destruction of any property, such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously," contained in S. 425, carry the implication that something should be done to the property contrary to its natural use and serviceableness.

Where graziers, by allowing their goats to graze, did no more than put the grass to its normal use, their act would not amount to mischief: 1 Weir. 492; Dist. 21 W.R.Cr. 38 and 4 Pat. L. W. 291, Rel. on: 18 W. R. Cr. 10 and 7 C. W. N. 713, Ref. (*Curgenvin, J.*) **RAGHUPATHI IYER v. NARAYANA GOUNDUN.**

114 I. C. 589 = 52 Mad. 151 =

28 M.L.W. 759 = 1 M. Cr. C. 264 = 30 Gr. L.J. 315 =

**A.I.R. 1929 Mad. 5 = 55 M.L.J. 767.**

**—S. 425—Mischief—What does not amount to.**

Property under S. 425 means tangible property capable of being forcibly destroyed but does not include an easement.

If the owner of land over which other people have a right of passage throws earth upon that land so that the use of the land by the others becomes disadvantageous or impossible, that does not amount to mischief for the reason that what is affected is not any property or its value but only a right of easement (*Pandalai, J.*) **RAMARAJU v. EMPEROR.**

1930 M.W.N. 909.

**—S. 425—Offence under.**

*Hindu god over a chabutra of a mosque surrounded by a wall belonging to Mohamedans—Breaking the wall for widening the doorway—Mischief.*

Over the chabutra of a mosque there was an image of a Hindu god, which was surrounded by a wall, the wall being the property of Muhammadans. The accused who is a Hindu widened the doorway in the south wall of the compound round the image of the idol by demolishing part of the wall on both sides of the doorway.

*Held:* by breaking the wall and taking out the bricks the accused caused wrongful loss to the Muhammadan public and, therefore, an offence under S. 425 was committed. (*Banerji, J.*) **MAHADEO SINGH v. EMPEROR.**

96 I.C. 210 =

27 Gr. L.J. 898 = **A.I.R. 1926 All. 704.**

**—S. 425—Ownership.**

*Removal of one's own property—No mischief.*

A got a decree for possession of land with mesne profits and took out execution which was struck off for want of notice under Civil P. C., O. 21, R. 22. He took out a fresh execution, but before it was concluded the judgment-debtor raised a crop on the land which was taken away by servants of the decree-holder. In an action for mischief against the servants,

*Held:* that they were not guilty of mischief as the crop, though raised by the judgment-debtor, really belonged to the decree-holder whose right thereto had been declared by a competent Court. (*Jwala Prasad, J.*) **JANG BAHADUR SINGH v. EMPEROR.**

93 I.C. 40 = 7 P.L.T. 79 = 27 Gr. L.J. 392 =

**A.I.R. 1926 Pat. 244.**

*Property exclusively belonging to accused—No mischief.*

No person can commit mischief in respect of property which belongs exclusively to himself. This is perfectly clear from explanation 2 to section 425 which provides that mischief may be committed where the acts affects property belonging to the offender and another jointly. (*Ashworth, A.J.C.*) **KESHO SINGH v. EMPEROR.**

72 I.C. 883 = 24 Gr. L. J. 487 =

**A.I.R. 1924 Oudh 132.**

**PENAL CODE (1860), S. 426—'Bona fide' claim.**

—S. 426—'Bona fide' claim.

—*Removal of property—No mischief.*

Where a servant of the landlord *bona fide* claimed and therefore cut and removed a dead jack fruit tree standing on the homestead of a tenant.

*Held*: that the offence of mischief was not committed. (*Newbould and C. C. Ghose, JJ.*) **SURAT CHANDBA SEN v. YAKUB TALUKDAR.**

83 I.C. 898=28 C.W.N. 736=26 Cr.L.J. 194=  
A.I.R. 1924 Cal. 808.

## —S. 426—'Bona fide' dispute.

Where a *bona fide* contest exists as to the title of the property, no offence is committed. (*Mukerji, J.*) **KALKA v. EMPEROR.**

86 I.C. 36=  
26 Cr. L.J. 660=6 L.R.A. Cr. 31=  
A.I.R. 1925 All. 231.

—*Jurisdiction of Magistrate.*

A *bona fide* dispute with regard to the right in and possession of the contending parties ousts the jurisdiction of the Magistrate altogether from taking cognizance of a charge of mischief. (*Jwala Prasad, J.*) **GAINU PANDAY v. EMPEROR.**

68 I.C. 40=  
2 P.L.T. 394.

## —S. 426—Change in property.

—*Diminishing value or utility—If sufficient.*

Mere omission to give light to the house by failing to switch on the light does not involve change in the property, even though it may diminish its value or utility, and therefore does not constitute the offence of mischief. (*Percival, J. C. and Aston, A. J. C.*) **ABDUL RAHMAN v. EMPEROR.**

105 I.C. 672=  
22 S.L.R. 393=9 A.I. Cr. R. 158=  
28 Cr.L.J. 960=A.I.R. 1928 Sind 43.

—*Meaning.*

The word "change" in S. 426 means physical change in composition or form. (*Percival, J. C. and Aston, A. J. C.*) **ABDUL RAHMAN v. EMPEROR.**

105 I.C. 672=22 S.L.R. 393=9 A.I. Cr. R. 158=  
28 Cr.L.J. 960=A.I.R. 1928 Sind 43.

## —S. 426—Deterioration.

—*Proof that it was caused by accused—Necessity.*

In order to give jurisdiction to the Magistrate to summon the accused under S. 426, it is essential for complainant to make out a *prima facie* case in his petition or in his statement on oath of any deterioration having been caused by the accused in the value or utility of the fruits, and unless such a deterioration was made out, there is no offence disclosed under S. 426 for causing mischief.

A *bona fide* dispute with regard to the right in and possession of the contending parties ousts the jurisdiction of the Magistrate altogether from taking cognizance of a charge of mischief. (*Jwala Prasad, J.*) **GAINU PANDAY v. EMPEROR.**

68 I.C. 40=  
2 P.L.T. 394.

## —S. 426—Easement.

—*Injunction to remove obstruction to right of way obtained by accused—Injunction not complied with—Accused removing obstruction—Mischief.*

Where the accused obtained an injunction from the Mamlatdar's Court restraining the complainants from obstructing the way of accused by dams and the complainants did not remove the dams which were obstructing his way, he had the dams removed himself :

*Held*: that he was not justified in taking the law in his own hands and removing the dams, thereby causing damage to the complainants and that the loss caused to the complainants was caused by unlawful means in abetting the nuisance contrary to the provisions of S. 30 of the Easements Act. (*Fawcett and*

**PENAL CODE (1860), S. 427—Absence of intention.***Patkar, JJ.* **ZIPRU TANAJI v. EMPEROR.**

101 I.C. 604=51 Bom. 487=29 Bom. L.R. 484=  
28 Cr. L.J. 476=8 A.I. Cr. R. 72=  
A.I.R. 1927 Bom. 363.

## —S. 426—Intention.

—*Absence of complainant at the time of the act—Intention to annoy—Inference if justifiable.*

Although there is no presumption that a person intends what is merely a possible result of his action or a result which though reasonably certain is not known to him to be so, still it must be presumed that when a man voluntarily does an act knowing at the time that in the natural course of events a certain result will follow he intends to bring about that result.

But where complainant was absent when the act was done.

*Held*: there was not such practical certainty the annoyance being caused at its result as is sufficient to justify an inference of intent to annoy.

Where there was *bona fide* claim of right by the accused to the wall in dispute and the accused had entered the complainant's house and pulled down the addition in his absence.

*Held*: the offence of mischief or house trespass was not made out against the accused. (*Marten and Fawcett, JJ.*) **KING-EMPEROR v. BALAKRISHNA NARHAR VELHANKAR.**

84 I.C. 254=  
26 Bom. L.R. 978=26 Cr.L.J. 254=  
A.I.R. 1924 Bom. 486.

## —S. 426—Offence under.

—*Branches of complainant's trees cut at accused's instance—Accused knowing that such cutting would cause wrongful loss to complainants—Mischief.*

Where the branches of complainant's trees were cut at the instance of the accused with the knowledge that the cutting of branches was likely to cause wrongful loss or damage to the complainant, the offence of mischief is complete. (*Iqbal Ahmad, J.*) **MAHOMED HUSAN v. EMPEROR.**

8 L.R.A. Cr. 103=  
8 A.I. Cr. R. 60=A.I.R. 1927 All. 610.

## —S. 426—Ownership.

—*Property believed to be one's own—Removal of obstruction—No mischief.*

No offence under S. 426, I. P. C., is committed when a person only removes an obstruction from a well which he believes to be his own, by removing a few bricks from the wall. (*Shadi Lal, C. J.*) **IHAR DAS v. EMPEROR.**

99 I.C. 414=28 Cr. L.J. 158=  
A.I.R. 1927 Lah. 145.

## —S. 426—Presumption of intention.

Where a person cut his own tree and allowed it to fall on another's tree to protect his own trees in spite of his being told not to do so by such another :

*Held* : that he must be presumed to have intended to cause damage to such tree. (*Ross, J.*) **KHOBHARI SINGH v. EMPEROR.**

98 I.C. 181=27 Cr. L.J. 1285.

## —S. 427—Absence of intention.

—*Charge under Sec. 427—If sustainable.*

Where a Magistrate came to the conclusion that no charge could be framed under S. 379, there being no intention of causing wrongful gain to one person or wrongful loss to another person.

*Held* : that a charge under S. 427 cannot be sustained. (*Mukerji, J.*) **GOKUL PRASAD v. DEBI PRASAD.**

86 I.C. 284=23 A.L.J. 21=  
6 L.R.A. Cr. 60=26 Cr. L.J. 748=  
A.I.R. 1925 All. 311.

**PENAL CODE, (1860) S. 427—Fresh charge on same facts.**

—**S. 427—Fresh charge on same facts.**

—**Trial and acquittal for mischief—Subsequent charge for rioting on same facts—Maintainability.**

Where an accused was alleged to have gone with a number of others to a palmyra tope and it was alleged that some of the members in that assembly climbed up the trees and cut the spathes of the palmyra trees and threw down the plots attached to the spathes in which toddy was being collected and the accused was once charged with mischief under S. 427 of the Penal Code and acquitted on the ground that he was not present at the scene of occurrence. *Held*: he could not subsequently be charged with rioting under S. 147 of the Penal Code on the allegation that he along with the same body of people as on the former occasion went to the tope and that some of them destroyed the spathes in pursuance of the common object, *viz.*, of committing mischief by destroying the spathes and breaking the pots because the two transactions were so closely overlapping that it was open to the prosecution to have framed an alternative charge of mischief and rioting under S. 236. Section 403 is not a section easy of construction but the general principle underlying it is to be borne in mind namely that a man should not be put upon his trial twice over on the same facts as it is a great hardship for a man to stand more than one trial for any one offence. (*Krishnan, J.*) CHINNAPPA NAIDU *In re*. 76 I.C. 708=19 M.L.W. 31=33 M.L.T. 269=1924 M.W.N. 153=25 Cr. L.J. 244=A.I.R. 1924 Mad. 478.

—**S. 427—Jurisdiction.**

—**Intentional—Exaggeration of damage for purposes of jurisdiction—Effect.**

The jurisdiction of the Court to hear a case depends on the allegations with which its help is sought. It may be that after a trial, it is found that the case has been materially exaggerated; but unless it has been found at the very outset that the allegations are exaggerated with the intention of seeking a particular Court for redress, the statement of the complainant has to be accepted for the purposes of jurisdiction.

Where the complainant in a case of mischief, alleged the damage to be Rs. 250 and a third class Magistrate tried the offence and found the damage to be Rs. 140 and awarded Rs. 40 as compensation to the complainant.

*Held*: that the third class Magistrate had no jurisdiction to try the offence. (*Mukerji, J.*) RAGHUNANDAN PRASAD *v.* EMPEROR. 85 I.C. 730=26 Cr. L.J. 586=47 All. 64=6 L.R. A.Gr. 39=A. I. R. 1925 All. 290.

—**S. 427—Ownership of property.**

—**Proof by complainant—If necessary.**

Possession is *prima facie* proof of title and for a conviction for mischief the complainant need not prove his ownership in the property in respect of which mischief is done. (*Ashworth, J.*) SRIPAT NARAIN SINGH *v.* GAHBAR RAI. 25 A.L.J. 1010=8 A.I. Cr.R. 337=8 L.R. A.Gr. 135=A. I. R. 1927 All. 724.

—**S. 427—Security order.**

No order under S. 106 can be passed upon conviction of an offence under S. 143 or S. 427, I.P.C. (*Ashworth, J.*) NAUBAT *v.* EMPEROR.

99 I.C. 348=8 L.R. A.Gr. 11=28 Cr. L.J. 140=7 A.I. Cr. R. 130=A.I.R. 1927 All. 136.

—**S. 429—Mischief and theft.**

—**Killing stolen animal—If mischief.**

Where theft of an animal has been committed, the mere killing of it afterwards by the person who stole

**PENAL CODE (1860), S. 430—Essentials.**

it for the purpose of eating it himself cannot add another offence. (*Adami and Bucknill, JJ.*) HUSSAIN BUKHSH *v.* EMPEROR. 84 I.C. 341=3 Pat. 804=7 P.L.T. 36=26 Cr. L.J. 277=A.I.R. 1925 Pat. 34.

—**Skinning dead body of 'stolen animal—If mischief.**

Where after a thief has stolen and slaughtered an animal, another person joins him in skinning the dead body, the latter is not guilty either under S. 379 or S. 429. (*Adami and Bucknill, JJ.*) HUSSAIN BUKHSH MIAN *v.* KING-EMPEROR. 84 I.C. 341=7 P.L.T. 36=3 Pat. 804=26 Cr. L.J. 277=A.I.R. 1925 Pat. 34.

—**S. 430—Civil matter.**

—**Jurisdiction of criminal Court.**

In a complaint under S. 430 regarding cutting off of a supply of water by the accused:

*Held*: that the matter being pre-eminently for a civil Court, Criminal Court should not convict the accused. (*Banerji, J.*) GULAB SINGH *v.* EMPEROR. 98 I.C. 474=27 Cr. L.J. 1354=A.I.R. 1927 All. 112.

—**S. 430—Damage.**

—**Act done on another's property affecting it injuriously—Proof of actual damage—Necessity.**

Every person has a perfect right to do a particular act upon his own land, and if a person breaks open his bund or opens his own sluice, no one can complain of it, until some injurious consequence follows from it. As soon as such a consequence follows, the injury and not the original act, becomes a cause of action. In such a case the mischief would consist, not in breaking the bund, or in opening the sluice but in flooding or withering up the complainant's crops.

But where the property was not of the accused but Government property (*kotwah*) and the mischief complained of as giving a cause of action to the Crown was the change in the *kotwah* which diminished its utility and affected it injuriously.

*Held*: it was not necessary for the Crown to rely on the injury caused to the lands of other persons who were receiving water as giving a cause of action and to prove actual damage resulting therefrom. (*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*) EMPEROR *v.* LUKMAN. 98 I.C. 49=21 S.L.R. 107=27 Cr.L.J. 1233=A.I.R. 1927 Sind 39.

—**S. 430—Essentials.**

—**Intention to cause wrongful loss.**

To constitute an offence punishable under S. 430 it is not sufficient to show that loss has been caused to the complainant but it is necessary to show that the loss was a wrongful loss and the accused had the intention to cause or had knowledge that their act was likely to cause loss to the complainant. (*Krishnan, J.*) KRISHNA AYYAR *v.* AYYAPPA NAIR. 88 I.C. 185=26 Cr.L.J. 1100=21 M.L.W. 641=1925 M.W.N. 45=A.I.R. 1925 Mad. 577.

—**Elements of mischief—Wrongful loss.**

Offence under S. 430 is particularly a grave form of the offence of committing mischief as defined in S. 425. It is necessary to prove in such cases the elements that constitute mischief under S. 425. No doubt a person who takes water from a tank causes loss but it should be shown that whether he has caused a diminution of the supply of water for agricultural purposes, (*Rankin, C. J.*) ISMAIL BISWAS *v.* EMPEROR. A.I.R. 1930 Cal. 289.

—**Infringement of rights of complainant.**

To substantiate an offence under S. 430 of the Penal Code, the prosecution must prove that there has been unlawful and intentional interference by the accused with the admitted or proved rights of the com-

**PENAL CODE (1860), S. 420—Interpretation.**

plainant. (*Sanderson, C. J. and Mookerjee, J.*)  
*BANWARI KARMAKAR v. BEHARI KARMAKAR.*  
 61 I.C. 655 = 22 Cr. L.J. 415 = 32 C.L.J. 476.

**—S. 430—Interpretation.**

*“Diminution of supply for agricultural purposes”—Meaning.*

The “words ‘diminution of the supply of water for agricultural purposes’ in S. 430 cannot be limited to those cases only where the water has been allowed either to go waste or has been diverted for non-agricultural purposes. The section read as a whole also refers to case where the water is intended for use by particular persons for particular purposes and is diverted by an accused persons for his own purposes though of a like nature : 34 M. L. J. 206 : 10 Bom. 183 and 35 Cal. 437, Rel. on : 34 All. 210, Expl. and Dist. (*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*)  
*EMPEROR v. LUKMAN.* 98 I.C. 49 = 21 S.L.R. 107 = 27 Cr. L.J. 1233 = A.I.R. 1927 Sind 39.

**—S. 430—Landlord and tenant.**

*Interference with Water—Proof of absence of right.*

Before a landlord or his agent can be convicted under S. 430 on a complaint by tenants, for interfering with water supply of tenants, it is absolutely necessary to prove that there was intentional inflicting of loss and that the landlord had no such right to interfere in any way and the tenants had a right to the supply or preservation of water. (*Rankin C. J. and Patterson, J.*) *ASHUTOSH GHOSE v. EMPEROR.*  
 50 C.L.J. 589 = 34 G.W.N. 86 = A.I.R. 1930 Cal. 318.

**—S. 430—Offence under.**

*Intentionally obstructing a channel for supply of water.*

If a supply channel is filled up or is obstructed by a dam put up or by raising a dam already existing, there is a change made in the channel which diminishes its value or utility and which, if it was done with intention to cause or with knowledge that it was likely to cause and if it does cause, wrongful loss to any person, would constitute the offence of mischief. (*Krishnan, J.*) *DEENBANDU RAJGURU v. V. LACH-ANNA DURA.*  
 74 I.C. 862 = 1923 M.W.N. 634 = 24 Cr. L.J. 830 = A.I.R. 1924 Mad. 176.

Accused knowingly diminishing supply of water without a *bona fide* claim are guilty. (*Adami, J.*)  
*BASDEO SINGH v. KING-EMPEROR.* 84 I.C. 322 = 2 Pat. L.R. Cr. 194 = 26 Cr. L.J. 258 = A.I.R. 1924 Pat. 704.

**—S. 436—Essentials.**

*Proof that the building destroyed came within one of the classes mentioned in the section.*

It is absolutely necessary in order to convict an accused under S. 436 to prove that the building which he destroyed came within one of the classes mentioned in the section and the words “ordinarily used” do not mean that other buildings are from time to time used for such purposes but they mean that that particular building is itself used. (*Walsh, A.C.J. and Ryves, J.*)  
*KHANJAN v. EMPEROR.* 82 I.C. 54 = 5 L.R.A. Cr. 140 = 25 Cr. L.J. 1190 = A.I.R. 1924 All. 781.

*Proof of common motive.*

It is necessary to prove a charge of arson under Ss. 436 and 149, that the accused were, from the inception or at any stage of the offence, actuated by common motive to set fire to the house or knew that the act would probably be committed. Mere presence does not raise a presumption against them. (*Prasad, J.*) *HARDEO SINGH v. EMPEROR.*  
 81 I.C. 587 = 22 Cr. L.J. 267 = 3 P.L.R. (Pat.) 29.

**PENAL CODE (1860), S. 441—Bona fide claim.**

**—S. 436—Sentence.**

*Whipping.*

An additional punishment of whipping cannot be passed on a person who has received an adequate substantive sentence for an offence under S. 436, Penal Code. (*Stuart, C.J.*) *JAGANNATH v. EMPEROR.*  
 110 I.C. 218 = 1 L.C. 668 = 29 Cr. L.J. 666 = A.I.R. 1928 Oudh 111.

*Disproportionate sentence.*

A sentence of ten years' imprisonment is wholly disproportionate to any possible aspect of the crime from a moral point of view provided that that part of their misconduct namely the setting of fire is reasonably included in and taken to aggravate the general lawless conduct of which the accused have been convicted under S. 147 and 325. (*Walsh, A.C.J. and Ryves, J.*) *KHANJAN v. KING-EMPEROR.*

82 I.C. 54 = 5 L.R.A. Cr. 140 = 25 Cr. L.J. 1190 = A.I.R. 1924 All. 781.

**—S. 441—Absence of intention.**

*Entering stealthily—No intent to annoy.*

A person entering another's house after having taken all precautions to avoid discovery cannot be said to have entered with intent to cause annoyance to the persons in possession : 12 P. R. 1906 Cr. (F.B.), Expl ; 17 P.R. 1908; Dissented from. (*Harrison and Dalip Singh, JJ.*) *SULAIMAN v. EMPEROR.*

96 I.C. 871 = 27 P.L.R. 385 = 27 Cr. L.J. 1015 = A.I.R. 1926 Lah. 600.

*Trespass without the specified intent—If offence.*

A girl shortly before she was to be married disappeared from the house of her parents. The accused went to the house of complainant with whom she was said to be living after her disappearance. They also removed the girl who was not lawfully married to the complainant from that place.

*Held* : that no offence was committed as there was no criminal intent as defined in S. 441, I.P.C. Every trespass is not criminal trespass. There must be an intent specified in S. 441. Although the Act may be unlawful and may be one which the civil law will restrain or which the Civil Court will compensate the injured party in damages still it does not necessarily constitute an offence under S. 441. (*Moti Sagar, J.*)  
*REHVA v. EMPEROR.* 81 I.C. 351 = 5 Lah. 20 = 25 Cr. L.J. 815 = A.I.R. 1924 Lah. 449.

**—S. 441—Applicability.**

*Entering cattle pound.*

Entering the cattle pound with intent to commit an offence under S. 24, Cattle Trespass Act amounts to criminal trespass within the meaning of S. 447 and entering the pound with intent to intimidate the person in charge of the pound amounts to an offence under S. 447. (*Fforde and Addison, J.*) *EMPEROR v. BHOLA.*

103 I.C. 201 = 8 Lah. 331 = 28 Cr. L.J. 665 = 28 P.L.R. 519 = 8 A.I. Cr. R. 293 = 9 L.L.J. 354 = A.I.R. 1927 Lah. 495.

**—S. 441—Bona fide claim.**

*No trespass.*

Without criminal intention there can be no criminal trespass ; therefore even where the property is in the possession of another, if a person *bona fide* goes upon it to assert his right and not intimidate, insult or annoy the person in possession, no offence is committed. (*Kinkhede, A. J. C.*) *RAJARAM v. GOVINDA.*

81 I.C. 888 = 25 Cr. L.J. 1064 = A.I.R. 1925 Nag. 86.

*No offence.*

Entering a house under a claim of right is no offence provided the claim is a *bona fide* one. (*Ross,*

**PENAL CODE (1860), S. 441—Continuing offence.**  
*J.* DEBI DAYAL *v.* KING-EMPEROR. 81 I.C. 823=  
 25 Cr.L.J. 1047=A.I.R. 1925 Pat. 167.

—**S. 441—Continuing offence.**

—*Unlawful entry on property and remaining there—Nature of offence.*

The continuance in possession of a trespasser is a recurring wrong and constitutes a new entry every time that the true owner goes upon the land or as near to it as he dares to make a claim to it. There is a fresh cause of action each time he is resisted and the persons entering subsequently with the permission of the first trespassers and resisting the entry of the owner are equally guilty. (*Mullick, Ag. C.J. and Wort, J.*) **EMPEROR *v.* BANDHU SINGH.**

106 I.C. 691=6 Pat. 794=29 Cr.L.J. 99=  
 9 A.I.Gr.R. 258=A.I.R. 1928 Pat. 124.

—**S. 441—Criminal intention.**

—*Alienor trying to take possession by force without legal justification—Inference of criminal intention—If justifiable.*

Where the alienor had transferred possession for good consideration to the alienee and then tried to take it back by force without any legal justification.

**Held:** that the presence of criminal intention may be rightly inferred; 12 P.R. 1906 Cr. (F.B.) Foll.; 41 Mad. 156; A.I.R. 1926 Lah. 600 and 17 I.C. 415, Dist. (*Bhide, J.*) **PREMAN *v.* EMPEROR.**

11 Lah. 238=31 P.L.R. 499=A.I.R. 1930 Lah. 666.

—**S. 441—Entry by Income-tax officer.**

—*Inspection of accounts—Legality.*

Although an Income-tax officer is empowered under S. 22 (4) of the Income-Tax Act to serve the proprietors of a firm with a notice to produce their accounts there is no provision of law by which he can insist on their producing the accounts if they decline to comply with the notice. He has no authority under the act to enter the firm's premises in order to inspect the account or to remain on the premises for that purpose against the will of the proprietors and if he does so he commits criminal trespass and the proprietors have a right to forcibly turn him out as S. 99 Penal Code, would not deprive them of their right of private defence. (*Martineau, J.*) **ACHHRU RAM *v.* EMPEROR.**

95 I.C. 308=7 Lah. 104=27 P.L.R. 298=  
 27 Cr. L.J. 772=A.I.R. 1926 Lah. 326.

—**Ss. 441 and 456—Entry for sexual intercourse.**

—*Mere entry with intent to have sexual intercourse with a woman—No offence—Inmates unknown and started at entry—Offence.*

A mere entry into a house occupied by another with intent to carry on an intrigue or to have sexual intercourse with a woman living in that house will not in itself be a criminal trespass. In such a case it is supposed that the entry has been with the consent or connivance of the woman living in the house. However if she along with other inmates is in possession of the house, as in the case of a joint Hindu family, the trespass in the house must cause an insult and annoyance to the other members in the house. If the object is to force an intrigue upon a woman in the house and to have a forcible intercourse with her, the intention of the entry will necessarily be to insult and annoy that woman.

Where there was no pre-arrangement between the accused and any lady in the house and all the ladies in the house were startled at the bold attempt on the part of the accused to force himself into the house.

**Held:** that the intention of the accused was not to carry on a peaceful intrigue and intercourse with any of the ladies in the house and with the consent or connivance of any one of them, but the intention of the accused was to commit a criminal trespass into

**PENAL CODE (1860), S. 441—Essentials.**

the house and an indecent and unjustifiable trespass upon the persons of the occupants of the house. 4 C.L.J. 169, 19 Mad. 240 and 41 Mad. 156 F.B. Dist. 22 Cal. 391 Ref. (*Jwala Prasad, J.*) **MOHAMMAD NASIRUDDIN *v.* EMPEROR.**

87 I.C. 106=4 Pat. 459=  
 6 P.L.T. 588=26 Cr. L.J. 954=A.I.R. 1925 Pat. 713.

—**S. 441—Essentials.**

In order to constitute criminal trespass under S. 441 the entry into the house or property in the possession of another must be with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property and in order to sustain a conviction under S. 456, it must be proved that there was in the first instance criminal trespass as defined in S. 411. (*Jwala Prasad, J.*) **MOHAMMAD NASIRUDDIN *v.* EMPEROR.**

87 I.C. 106=4 Pat. 459=  
 6 P.L.T. 588=26 Cr. L.J. 954=  
 A.I.R. 1925 Pat. 713.

—An intent to commit an offence or to intimidate, insult or annoy any person in possession of the property is an essential ingredient of the offence of criminal trespass. Accordingly entering a house under a claim of right is no offence provided the claim is a *bona fide* one. (*Ross, J.*) **DEBI DAYAL *v.* KING-EMPEROR.**

81 I.C. 823=  
 25 Cr. L.J. 1047=A.I.R. 1925 Pat. 167.

—*Guilty intention of the nature described in the section.*

The offence of trespass is not complete unless there is an intent to commit an offence or to intimidate, insult or annoy some one in possession of property. It is not enough that the accused should know that his act is likely to have such an effect.

Where an acting *taliari* with two others learnt that there was in the house of the complainant a pot of toddy in excess of the quantity which one might possess without license and went inside the house brought the toddy pot to the verandah outside and remained there waiting for the arrival of the Revenue Officials.

**Held:** that though the *taliari* had no authority to enter into the house, he was not liable for criminal trespass. (*Spencer, J.*) **NARAYANA, In re.**

82 I.C. 149=20 M.L.W. 239=  
 25 Cr.L.J. 1221=A.I.R. 1924 Mad. 816.

—*Intention of the nature described in the section.*

Trespass is an offence under S. 441 only if it is committed with one of the intents specified in the section and proof that a trespass committed with some other object known to the accused to be likely or certain to cause insult or annoyance is insufficient to sustain a conviction. Where the servant of a landlord illegally takes possession of tenant's land with the main object of illegally ejecting the tenant an intention to annoy cannot be presumed; at the same time there may be circumstances which may raise a direct inference of an intention to annoy the tenant. 26 A. 194; 41 M. 156; 40 A. 221 Foll. (*Dalal, J. C.*) **ABDUL SHAKUR *v.* EMPEROR.**

76 I.C. 4033=  
 25 Cr. L. J. 813=A.I.R. 1924 Oudh 342.

—*Intention to cause annoyance.*

To constitute criminal trespass as distinguished from a civil trespass there must be an intention by the trespasser to cause annoyance. Where a decree-holder under colour of enforcing his decree invades the privacy of the judgment debtor's household, he is guilty of an offence under S. 441, I. P. C. (*Dundas, J.*) **LAKSHMI DAS *v.* THE CROWN.**

73 I.C. 527=24 Cr. L.J. 639=4 Lah. L.J. 532.



**PENAL CODE (1860), S. 441—Obstruction in cultivation.**

—S. 441—Obstruction in cultivation.

—Accused obstructing tenant having title in cultivation of field—Offence.

Where the accused wishes to obstruct the person who has the title, not by legitimate means but by going upon the land and obstructing his tenant in cultivation of the field, it is clearly a case where the natural consequences of the accused's act would be to annoy the tenant and the landlord and the claim cannot be said to be a *bona fide* one: 26 Bom. 558, Foll.; 35 Mad. 186, not Foll. (*Fawcett and Mirza, J.J.*) DAGA BHKA KUNBI, *In re.* 112 I.C. 97=

30 Bom. L.R. 631=29 Gr. L.J. 977=  
11 A.I. Cr. R. 233=A.I.R. 1928 Bom. 221.

—S. 441—Possession.

Section 441 does not require the land to be in the actual possession of the complainant: 21 Bom. 536, Foll. (*Fawcett and Mirza, J.J.*) DAGA BHKA KUNBI, *In re.* 112 I.C. 97=30 Bom. L.R. 631=

29 Gr. L.J. 977=11 A.I. Cr. R. 233=  
A.I.R. 1928 Bom. 221.

—Possession given under Civil Court's decree binds party to suit in possession—Absence of judgment-debtor at the time of giving possession—Effect.

If possession is given under a Court's decree or order that possession binds a party to the suit, who was formerly in possession. This rule applies to symbolical possession also, and there is no authority for the proposition that the mere absence of the judgment-debtor at the time of giving possession affects the validity of such possession; nor does prior possession of the land by the accused, and his predecessor-in-title: 1 Bom. L.R. 48; A.I.R. 1917 P.C. 197 and A.I.R. 1922 Bom. 27, Foll. (*Fawcett and Mirza, J.J.*) DAGA BHKA KUNBI, *In re.* 112 I.C. 97=

30 Bom. L.R. 631=29 Gr. L.J. 977=  
11 A.I. Cr. R. 233=A.I.R. 1928 Bom. 221.

—Trespasser—Right of true owner to re-enter—Use of limited force.

A mere trespasser cannot, by the very act of trespass, immediately and without acquiescence give himself possession against the person whom he ejects, and drive him to produce his title, if he can, without delay reinstate himself in his former possession. The owner may, if he does not acquiesce, re-enter upon the land and reinstate himself provided he does not use more force than is necessary. He must not commit a breach of the peace. His entry will be viewed as a resistance to an intrusion upon a possession which he had never lost. If he takes the risk of a forcible entry and uses more violence than is necessary he will not be able to plead the right of private defence; but he cannot be sued by the trespasser who has entered by force or fraud either for recovery of possession under S. 9, Specific Relief Act, or for ejectment upon the strength of his temporary prior possession. Therefore, possession being still with the owner, he can prosecute the intruder for committing trespass within the meaning of S. 411. (*Mullick, Ag. C. J. and Wort, J.*) EMPEROR v. BANDEHU SINGH.

106 I.C. 691=6 Pat. 794=  
29 Gr. L.J. 99=9 A.I. Cr. R. 238=  
A.I.R. 1928 Pat. 124.

—S. 441—Private defence.

—Right how long exercisable.

In the case of criminal trespass, the right of private defence continues so long as the trespass continues, and is controlled by S. 99, Penal Code. It extends to causing death in case the act of trespasser causes a reasonable apprehension that death or grievous hurt

**PENAL CODE (1860), S. 442—Building, what is.** may result. (*Jwala Prasad, J.*) DUKHIT SHA v. EMPEROR. 60 I.C. 33=22 Gr. L.J. 177 (Pat.).

—S. 441—Proof of intention.

Intention cannot be inferred from the actual or probable results. It is necessary to show the actual intention to insult or annoy before the acts were complete, to constitute the offence under S. 441: A.I.R. 1925 All. 540; 41 Mad. 156 and 19 Mad. 240, Rel. on. (*Wort, J.*) RAMZAN MISTRY v. EMPEROR.

116 I.C. 783=30 Gr. L.J. 684=  
11 P.L.T. 80=13 A.I. Cr. R. 108=  
A.I.R. 1929 Pat. 111.

—S. 441—Tenant not vacating.

—Tenant at will refusing to vacate property—If offence.

Where the accused was a tenant on sufferance who had come upon the property by right but had continued to remain by wrong.

*Held*: that this would not, without proof of intent, required to constitute the offence under S. 441, make his wrongful stay punishable as criminal trespass. Mere knowledge on his part that he was likely to cause annoyance would not by itself be sufficient. (*Percival, J. C. and Rupchand Bilaram, A. J. C.*) KHURSETJI NANABHOY v. EMPEROR.

100 I.C. 829=21 S.L.R. 263=  
28 Gr. L.J. 349=7 A.I. Cr. R. 541=  
A.I.R. 1927 Sind 159.

—S. 441—Agra Tenancy Act, S. 95—Tenant re-entering.

—Decree for ejectment—Execution before the time prescribed by S. 94—Re-entry by tenant—Tenant if guilty.

Where a decree for ejectment of the tenant was executed before the time fixed by S. 94 of the A. T. Act but the tenant subsequently re-entered upon the land, *held*, that the ejectment being illegal, the tenant must be considered to have been legally in possession and cannot be convicted of criminal trespass. (*Dalal, J.*) NANDLAL v. EMPEROR.

112 I.C. 680=1927 A.L.J. 92=  
29 Gr. L.J. 1096.

—S. 441—'Trespass'.

—Meaning.

Section 441 cannot be read into S. 297 with any intelligible result. The term "trespass" in S. 207 appears to mean any violent or injurious act committed in such place and with such knowledge or intention as is defined in that section. 40 C. 548 and 23 P. R. Cr. 1915 Ref. (*May Oung, J.*) MUSTAN v. KING-EMPEROR.

81 I.C. 41=1 Rang. 690=  
25 C. L. J. 553=A.I.R. 1924 Rang. 106.

—S. 442—Building, what is.

—Open space adjoining a house, surrounded by thorns—Enclosure not having door or any means to prevent entry—Entry in the enclosure—If house trespass.

The appellants went to an enclosure of P and beat him. P had a thatched house, and he was sitting outside this house. Some thorny bushes were placed round about. Except for a few thorns the place was open. There was no roof above. The thorns were merely put down to indicate the extent of the courtyard, and not to prevent entry. There was no door or gateway, even of thorns, which had to be opened before making entry to this enclosure:

*Held*: that the place was not a building within S. 442. (*Dalal, J.*) MUNSHI v. EMPEROR.

110 I.C. 798=26 A.L.J. 855=  
9 L.R.A. Rev. 129=10 A.I. Cr. R. 387=  
29 Gr. L.J. 766=A.I.R. 1928 All. 697.



**PENAL CODE (1860), S. 442—Building, what is.****—Wara.**

Where the *Wara*, of which the small gate was locked, adjoined the room in which the accused lived and was for practical purposes one of the rooms of the house, and an integral part of the building.

*Held* that though the *wara* was unroofed it was a "building" within the meaning of S. 442, Penal Code. 208 P. L. R. 1915 and 56 P. L. R. 1919, Dist.; 35 P. R. (Cr.) 1879, Foll. (*Harrison, J.*) *ISMAIL v. THE CROWN*.

91 I.C. 70 = 6 Lah. 453 =  
27 Cr. L.J. 38 = 26 P. L. R. 713 =  
A. I. R. 1926 Lah. 28.

**—Building—Yard enclosed on 3 sides is not building—Courtyard.**

A Courtyard enclosed by low walls on three sides only, is not a building. (*Scott-Smith, J.*) *MUL CHAND v. EMPEROR*.

84 I.C. 863 =  
6 L. L. J. 578 = 26 Cr. L. J. 383 =  
A. I. R. 1923 Lah. 279.

**—Wohra.**

A *wohra* used for the custody of property is a building. (*Malan, J.*) *NIAMAT v. CROWN*.

85 I.C. 337 = 6 L. L. J. 335 =  
26 Cr. L. J. 753 = A. I. R. 1923 Lah. 117.

**—Courtyard.**

A walled courtyard which is not provided with a door is not a building. (*Martineau, J.*) *BURA v. EMPEROR*.

77 I.C. 809 = 25 Cr. L. J. 437 =  
6 L. L. J. 571 = A. I. R. 1924 Lah. 623.

**—S. 442—Use covered by section.****—Question of fact.**

Whether any particular structure or any part of it was intended as a human dwelling or as a place of worship or for custody of property must necessarily depend on the facts of each case. (*De Souza and Rupchand Bilaram, A. J. Cs.*) *WALI MAHOMED v. EMPEROR*.

111 I.C. 439 = 22 S. L. R. 466 =  
29 Cr. L. J. 875 = A. I. R. 1929 Sind. 17.

**—S. 445—Sentence.****—House breaking to commit adultery—Whipping.**

The offence of outraging a woman's modesty not being punishable with whipping, house-breaking in order to commit that offence cannot be so punished. (*Sulaiman, J.*) *DARBARI LAL v. EMPEROR*.

89 I.C. 145 = 6 L. R. A. Cr. 135 = 23 A. L. J. 894 =  
26 Cr. L. J. 128 = A. I. R. 1925 All. 591.

**—S. 447—Abetment.**

Where a person inciting others to commit an offence under S. 447 is himself present when the offence is committed, he is guilty under S. 447: A. I. R. 1925 P. C. 1, Foll. (*Fawcett and Madgavkar, JJ.*) *PATILBUVA RAOJIBALA v. EMPEROR*.

97 I.C. 737 = 28 Bom. L. R. 1029 = 27 Cr. L. J. 1153 =  
A. I. R. 1926 Bom. 512

**—S. 447—Against whom committed.**

The offence of criminal trespass can only be committed against a person who is in actual physical possession of the land in question: 33 All. 773; 17 O. C. 21; and 43 I. C. 405; Dist. (*Nanavutty, J.*) *BISMILLAH v. EMPEROR*.

110 I.C. 681 =  
5 O. W. N. 598 = 11 A. I. Cr. R. 39 =  
29 Cr. L. J. 745.

**—S. 447—Applicability.****—Entering cattle pound.**

Entering the cattle pound with intent to commit an offence under S. 24, Cattle Trespass Act amounts to criminal trespass within the meaning of S. 447 and entering the pound with intent to intimidate the person in charge of the pound amounts to an offence

**PENAL CODE (1860), S. 447—Intention.**

under S. 447. (*Pforde and Addison, JJ.*) *EMPEROR*

*v. BHOLA*.

103 I.C. 201 = 8 Lah. 331 =  
9 L. L. J. 354 = 28 Cr. L. J. 665 = 28 P. L. R. 519 =  
8 A. I. Cr. R. 293 = A. I. R. 1927 Lah. 495.

**—S. 447—Bona fide claim.****—No offence.**

When a person who has an ostensible title sells, land to another and that man goes and ploughs it, it cannot be said that he commits criminal trespass, and it is a *bona fide* claim of civil right on the part of the accused and their act in ploughing the field is not an offence under S. 447; nor is it an assault if the person objects to an assault in maintaining possession of the land. (*Deva Doss, J.*) *ABDUL ALI v. AMIRUDDIN*.

91 I.C. 392 = 23 M. L. W. 423 = 27 Cr. L. J. 88 =  
A. I. R. 1926 Mad. 349.

**—Entry with consent of person asserting claim to property.**

To enter upon a vacant piece of land with the consent of a person who asserts his title thereto as against a rival claimant, and to put up a water-pandal do not amount to the offence of criminal trespass, though the land may not be in the possession of the person permitting the act but in that of the complainant. (*Krishnan, J.*) *JAMBULINGA CHETTY v. EMPEROR*.

83 I.C. 1003 =  
1924 M. W. N. 546 = 26 Cr. L. J. 219 =  
A. I. R. 1924 Mad. 862 = 47 M. L. J. 437.

**—S. 447—Intention.****—Proof.**

An intention to commit an offence or to intimidate insult or annoy must be proved before a conviction is recorded under S. 447: 26 All. 194, Rel. on and 39 All. 722, Ref. (*Dalal, J.*) *MATHURA RAI v. EMPEROR*.

109 I.C. 506 = 50 All. 637 = 26 A. L. J. 421 =  
9 L. R. A. Cr. 67 = 29 Cr. L. J. 570 =  
9 A. I. Cr. R. 441 = A. I. R. 1923 All. 671.

**—Civil and Criminal trespass—Distinction—Inference of intention—Circumstances of the case.**

The essence of the offence for which a man can be convicted under S. 447 of the Indian Penal Code lies in the intent of the accused to commit an offence or to intimidate, insult or annoy any person in possession of the property with reference to which the trespass is made. A trespass as an actionable wrong giving rise to a cause of action for a claim in a Civil Court must be distinguished from Criminal trespass and it is only Criminal trespass which is punishable by S. 447 of the Indian Penal Code. There may be an intent to annoy without any primary desire to annoy. A man is presumed to intend the natural consequences of his acts, and if annoyance must inevitably attend his acts, and he does those acts without any reasonable justification he must be held to intend to annoy, even though he has no desire to do so, and his only desire is to obtain some advantage for himself. Whether a man should be presumed to have intended the natural consequences of his acts, when the intention impelling the commission of the act is stated to be one by the prosecution and another by the accused, is a question of inference to be drawn from all the circumstances of the case, and to do that, is the primary duty of the Trial Court. When either of the two explanations of the act of the accused is equally or more or less reasonable the finding must be one of doubt as to the intention of the accused. (*Wazir Hasan, A. J. C.*) *EMPEROR v. JAGMOHAN DAS*.

75 I.C. 292 =  
A. I. R. 1924 Oudh 297.

**PENAL CODE (1860), S. 447—Offence within court compound.****—S. 447—Offence within court compound.****—Wrongful restraint—No trespass—Nature of offence.**

Where the accused wrongfully restrained the complainant, an arrack renter, from going and bidding at the arrack sales held in the Sub-Magistrate's office and abused him :

*Held*, that the facts constitute the offences defined in Ss. 341 and 504 but no offence under S. 447 is made out on these facts. (*Spencer, J.*) *AVUDAYAPPA MUDALIAR v. EMPEROR.* 74 I.C. 856 =

18 M.L.W. 181 = 1923 M.W.N. 451 =

33 M.L.T. 184 = 24 Cr. L.J. 824 =

A.I.R. 1924 Mad. 40.

**—S. 447—Possession.**

The offence of criminal trespass can only be committed against a person who is in actual physical possession of the land in question : 33 All. 773; 17 O.C. 21 and 43 I.C. 405, Dist. (*Nanavutty, J.*) *BISMILLAH v. EMPEROR.* 110 I.C. 681 = 3 Luck. 661 =

11 A.I.Cr.R. 39 = 29 Cr.L.J. 745 = 5 O.W.N. 595 =

1929 Cr.C. 345 = A.I.R. 1929 Oudh 369.

**—Actual and formal possession—Offence.**

The bare defence "I have not given up and I will not give up actual possession though I have been legally ejected" is tantamount to and should be treated as a plea of guilty when the complaint is one of trespass. (*Boys, J.*) *GOVIND RAM v. NAUBAT.* 83 I.C. 719 =

5 L.R.A.Gr. 147 = 26 Cr.L.J. 159 =

A.I.R. 1924 All. 762.

**—S. 447—Sentence.****—Consecutive sentences—If proper.**

When the accused enter into a Hindu Temple and damage its property, the offence under S. 447 is inseparable from that under S. 295 and it is improper to pass consecutive sentences for each of the offences under the sections, for both really are one and same offence. (*Pullan, A. J. C.*) *BAHRA v. EMPEROR.*

82 I.C. 37 = 25 Cr.L.J. 1173 =

A.I.R. 1925 Oudh 50.

**—S. 447—Trespass by decree-holder.**

A decree-holder trying to get possession of the land of the Judgment-debtor by arbitrary means instead of resorting to the civil Courts, commits criminal trespass. (*Findlay, J. C.*) *HABIB MUSALMAN v. EMPEROR.*

105 I.C. 664 = 28 Cr. L.J. 952 = 9 A.I.Cr.R. 157 =

A.I.R. 1928 Nag. 79.

**—S. 447—Who can complain.****—Trespass on land in tenant's possession—Complaint by landlord—Maintainability.**

Where accused has entered upon property in the possession of a tenant with intent to commit an offence or to intimidate, insult or annoy that tenant, *held* that he is clearly guilty of an offence of criminal trespass and a complaint by the landlord is sufficient to set the law in motion just as much as a complaint by the tenant. (*Chevis, J.*) *FAKIR CHAND v. FAKIR.*

69 I.C. 379 = A.I.R. 1924 Lah. 286.

**—Trespass on land of third person and beating complainant—Right of complainant to charge for trespass.**

One B trespassed into the fields of the accused. The accused remonstrated upon which B ran into an adjoining field belonging to one S. The accused went in pursuit, overtook him there and gave him a slight beating. *Held*, that no case under S. 447 has been established. First because the field into which the petitioner is alleged to have trespassed did not belong to the complainant B; And secondly there is no evidence of any interest on the part of the accused to commit an offence or to intimidate, insult or annoy

**PENAL CODE (1860), S. 448—Essentials.**

any person. (*Moti Sagar, J.*) *BISHEN SINGH v. EMPEROR.* 74 I.C. 534 = 24 Cr.L.J. 790 =

A.I.R. 1924 Lah. 252.

**—S. 448—'Bona fide' claim.****—Intent to assert title and gain possession against complainant—No offence.**

The words of the section must be closely adhered to and there must be found an intent to cause intimidation, insult or annoyance. A conviction cannot follow merely because one can pronounce with certainty that the accused must have known that his act would, as one of its inevitable incidents, cause annoyance. 38 All. 517 Foll.

Where accused's intention in doing the act complained of was to assert his title and gain and hold possession of the premises as against the complainant,

*Held* : that he was not guilty. (*Mears, C. J. and Mukerji, J.*) *MOTILAL v. EMPEROR.* 88 I.C. 1049 =

47 All. 855 = 23 A.L.J. 679 = 26 Cr. L.J. 1273 =

6 L.R.A. Cr. 132 = A.I.R. 1925 All. 540.

**—Entering house under claim of right—No offence.**

An intent to commit an offence or to intimidate, insult or annoy any person in possession of the property is an essential ingredient of the offence of criminal trespass. Accordingly entering a house under a claim of right is no offence provided the claim is a *bona-fide* one. (*Ross, J.*) *DEBI DAYAL v. EMPEROR.* 81 I.C. 823 = 25 Cr. L.J. 1047 =

A.I.R. 1925 Pat. 167.

**—Acting under—No offence.**

Where coins were unearthed from field and taken possession of by several individuals, without the landlord's consent, and then the landlord's manager exacted by force the coins from many persons by house searches and other means and took the man who had actually unearthed the coins, to the police station to get a statement from him,

*Held* : that the manager was acting under a *bona fide* claim of right and his offence fell under S. 448 and not S. 380. (*Foster, J.*) *THAKUR PRASAD SINGH v. EMPEROR.* 84 I.C. 346 =

2 Pat. L.R. Cr. 205 = 26 Cr. L.J. 282 =

A.I.R. 1924 Pat. 665.

**—S. 448—Entry after formal possession.****—No offence.**

Where a *dakhlanama* only gave formal possession of the house to the complainant against the accused,

*Held* : that the accused by entering or remaining on the land was not liable to be convicted. 2 All. 465 Foll. (*Ryves, J.*) *KEWAL v. TUFAIL AHMAD.*

88 I.C. 357 = 26 Cr. L.J. 1125 = 6 L.R. A.Gr. 104 =

A.I.R. 1925 All. 592.

**—S. 448—Entry to execute decree.****—Entry into house in order to execute Civil Court decree—Accused accompanied by Civil Court officers—No offence.**

Where the accused were proved to have gone to a house with Civil Court officers and entered the same in order to execute a Civil Court decree which they had obtained against one of the inmates of the house, *held*, that they were not liable to be convicted for criminal trespass. (*Cuning, J.*) *ABDUL SATTAR v. MOTI BIBI.* 34 C.W.N. 583 = A.I.R. 1930 Cal. 720.

**—S. 448—Essentials.****—Actual possession by complainant.**

Actual possession, by the person alleged to be intended to be annoyed, insulted or intimidated, is essential for an offence under S. 448, 2 All. 465 and 12 A.L.J. R. 151 Foll. (*Mears, C. J. and Mukerji, J.*) *MOTILAL v. EMPEROR.* 88 I.C. 1049 = 47 All. 855 =

**PENAL CODE (1860), S. 448—Finding.**

23 A.L.J. 679=26 Cr.L.J. 1273=6 L.R.A.Cr. 132=  
A.I.R. 1925 All. 540.

**—S. 448—Finding.****—Intention of accused—Necessity.**

The Court is justified in inferring an intent to insult or annoy on the part of a trespasser who knows that it is practically certain that in the natural course of events his trespass is likely to cause insult and annoyance to the owner of the property. But the trespasser cannot be convicted under S. 448 unless there is a clear finding as to his intentions though the antecedent circumstances and the conduct of the parties may be and must be considered in determining the intention of the accused. (*Kinkhede, A. J. C.*) BHAGWANT RAO v. CHAMPAT RAO. 81 I.C. 716=25 Cr.L.J. 1004=A.I.R. 1925 Nag. 50.

**—S. 448—Ingredients.****—Intention—Nature of claim.**

For an offence under S. 448 intention is one of the most important ingredients and in order to determine the intent it is necessary to consider the circumstances under which the act was done by the accused as also the *bona fide* nature or otherwise of the claim which the accused may have in respect of the property itself. (*Mukerji and Chakravarti, JJ.*) SHAMA-CHARAN v. ASHUTOSH DAS. A.I.R. 1928 Cal. 263.

**—S. 448—Procedure.**

**—Intention to cause annoyance not expressly found—Procedure under S. 256, Cr. P. Code, not followed—Effect.**

Where in a case under S. 448 the Magistrate did not expressly find that the accused intended to cause annoyance and further omitted to follow the requirements of S. 256, Cr. P. Code, in that the accused was not called upon to enter upon his defence and produce his evidence, the proceedings were quashed: 5 S. L. R. 29, Rel. on. (*Percival, J. C. and Tyabji, A.J.C.*) CHARAG DIN v. EMPEROR. 101 I.C. 457=8 A.I.Cr.R. 50=23 Cr.L.J. 425=A.I.R. 1927 Sind 261.

**—S. 448—Search by excise officer.**

**—Excise officer searching house—Excise Act, S. 53 infringed—No criminal intention present—No offence.**

A Sub-Inspector searched the applicant's house for cocaine. He omitted to record his reasons as required by Sec. 53 of the Excise Act for not first obtaining a search warrant from a Magistrate. He had no intention of any of the types mentioned in Penal Code, S. 448.

**Held:** the Sub-Inspector had not committed an offence under Penal Code S. 448. (*Daniels, J. C.*) ALI ABBAS v. SUBBA SINGH. 88 I.C. 725=2 O.W.N. 463=26 Cr. L.J. 1205=A.I.R. 1925 Oudh 505.

**—S. 451—Entry for adultery.**

**—House trespass with intent to commit offence of adultery with a married woman—Absence of husband on business—Presumption of consent—If justifiable.**

A man who enters the house of another at night with intent to commit adultery with his wife is guilty of an offence under S. 451, and if in such a case it is shown that the husband was at the time of the occurrence absent from the house in the legitimate pursuit of his occupation, it may safely be presumed that he neither consented to nor connived at any adultery or immorality on the part of his wife: 22 Cr. L. J. 266 Poll. (*Moti Sagar, J.*) KALA RAM v. EMPEROR. 89 I.C. 319=26 Cr.L.J. 1343=A.I.R. 1925 Lah. 635.

**PENAL CODE (1860), S. 452—Proof.**

**—Absence of husband on business—Presumption of consent—If justifiable.**

Where a person enters the house of another at night to commit adultery with his wife he is guilty under S. 451 and if it is found that the husband was in the legitimate pursuit of his occupation, he cannot be presumed to have connived at or consented to, the immorality. (*Shadi Lal, C.J. and Broadway, J.*) KHANON RAM v. EMPEROR. 60 I.C. 666=22 Cr. L.J. 266=3 U.P.L.R. (Lah.) 18.

**—S. 451—"Human dwelling".****—Meaning.**

Where the question is whether a courtyard forming an integral and indivisible part of a house and surrounded by walls on all sides is a "building used as a human dwelling" within the meaning of S. 451, the determining factor is not the existence of the shutters, or the fact that the door was shut or open, at the time of entry by the accused, but the nature of the structure as a whole, and the purpose for which it was intended to be and was being used: 11 P. W. R. 1919 Cr.; A.I.R. 1924 Lah. 623; A.I.R. 1925 Lah. 279, Dist. (*Tekchand, J.*) BHAG V. EMPEROR.

121 I.C. 427=31 Cr.L.J. 268=A.I.R. 1930 Lah. 414.

**—S. 451—Intention.**

**—Absence of complainant at the time of offence—Inference.**

"Although there is no presumption that a person intends what is merely a possible result of his action or a result which though reasonably certain is not known to him to be so, still it must be presumed that when a man voluntarily does an act knowing at the time that in the natural course of events a certain result will follow he intends to bring about that result".

But where complainant was absent when the act was done.

**Held:** there was not such practical certainty of annoyance being caused at its result as is sufficient to justify an inference of intent to annoy.

Where there was *bona fide* claim of right by the accused to the wall in dispute and the accused had entered the complainant's house and pulled down the addition in his absence,

**Held:** the offence of mischief or house trespass was not made out against the accused. (*Marten and Fawcett, JJ.*) KING-EMPEROR v. BALKRISHNA NARHAR VELHANKAR. 84 I.C. 254=26 Bom. L.R. 978=26 Cr.L.J. 254=A.I.R. 1924 Bom. 486.

**—S. 452—Charge and conviction.**

**—Charge under S. 452, I. P. C.—Conviction under S. 19 (e) Arms Act—Legality.**

An accused charged under Penal Code, S. 452 for house trespass with preparation to cause hurt cannot be convicted under Arms Act, S. 19 (e) without a specific charge under the latter and with no opportunity to the accused to meet the altered charge. (*Chari, J.*) NGA SHWE ZON v. KING-EMPEROR.

98 I.C. 480=4 Rang. 355=27 Cr. L.J. 1380=A.I.R. 1927 Rang. 32.

**—S. 452—Proof.**

**—Collection of lathis and brickbats on the property unlawfully entered.**

The collection, by the trespassers, of lathis and brickbats on the property is clear evidence of their threatening behaviour and indicates an intention to annoy and intimidate. (*Mullick, Ag. C. J. and Wort, J.*) EMPEROR v. BANDHU SINGH. 106 I.C. 691=6 Pat. 794=29 Cr. L.J. 99=9 A.I. Cr. R. 258=A.I.R. 1928 Pat. 124.

**PENAL CODE (1860), S. 454—Building.****—S. 454—Building.**

*Owner of cattle rescuing them from cattle-pound, consisting of only a fencing, by opening its door—Nature of offence.*

The expression "building" must be regarded as indicating some structure intended for affording some sort of protection to the persons dwelling inside it or for the property placed there for custody. Any structure which does not afford any such protection by itself but merely serves as a fencing or other means of merely preventing ingress or egress cannot make the place a building or a house within the meaning of either of those two sections. Therefore, an owner of a cattle who rescues the cattle from such a cattle-pound by opening its door, does not commit an offence either under S. 380 or S. 454. He is guilty under Ss. 378 and 441, Penal Code, in addition to the offence under S. 24, Cattle Trespass Act. (*Srinivasa Aiyangar, J.*) **LAKSHMANA KOUNDAN v. EMPEROR.**

100 I.C. 120=38 M.L.T. 163=

28 Cr. L.J. 248=7 A.I. Cr. R. 410=

A.I.R. 1927 Mad 343=52 M.L.J. 143.

**—S. 456—Non-production of owner.**

A mere non-production of the owner or person in actual possession of house does not vitiate conviction under S. 456. (12 A. L. J. 151 Dist.) (*Boys, J.*) **MANNI v. EMPEROR.**

5 L.R.A. Cr. 127=

A.I.R. 1924 All. 764.

**—S. 457—Adultery.**

*Consent or connivance by the husband—No offence.*

It is the duty of the Court when trying an offence under S. 457 to satisfy itself that when the accused committed the alleged house trespass with the intent of committing adultery he had not the consent or connivance of the husband. (*Greaves and Duval, J.J.*) **BALARAM KUNDU v. EMPEROR.**

82 I.C. 50=

25 Cr. L.J. 1186=A.I.R. 1925 Cal. 160.

**—S. 457—Attempt.**

Where the accused, with intent to commit house-breaking, tried to enter a shop but were disturbed and captured as soon as they had opened the door,

*Held:* that the offence committed was an attempt to commit house-breaking by night with intention to commit theft punishable under Ss. 511 and 457, Penal Code, as the offence of house-breaking cannot be committed without entry. (*Coldstream, J.*) **MHAMMAD HUSSAIN v. EMPEROR.**

106 I.C. 340=

9 A. I. Cr. R. 323=29 P.L.R. 54=29 Cr. L.J. 4.

**—S. 457—Evidence and proof.**

*Tank indicated by statement of accused—Vessels recovered from the tank not within sole control of accused—Sufficiency of evidence for conviction.*

Where an accused arrested on the charges under Ss. 457 and 380, makes a statement indicating a tank from which vessels, corresponding to the description of articles stolen, are recovered, but where the tank is not the particular property, or within the sole control of the accused, but accessible to the public in general and it is doubtful whether the accused or some other person concealed the stolen articles, such evidence of itself is not sufficient for a conviction: 17 All. 576, Rel. on; 16 C. W. N. 238; 1 P.R. 1917 Cr. and A. I. R. 1923 Lah. 335, Ref. (*Curgenvon, J.*) **PUBLIC PROSECUTOR v. PAKKIRISWAMI.**

30 M.L.W. 791=1929 M.W.N. 785=

2 M. Cr. C. 307=1929 Cr.C. 614=

A.I.R. 1929 Mad. 846=57 M.L.J. 548.

*Accused, producing articles identified as belonging to the houseowner—But articles incapable*

**PENAL CODE (1860), S. 457—Robbery.**

*of identification—Accused seen carrying away bundles on the night in question—No evidence that bundles contained the stolen articles—Evidence if sufficient for conviction.*

The accused was charged with an offence under I.P.C., S. 457. The only evidence against him was that he produced certain articles (clothes) which the owner of the shop in which the house-breaking was committed, identified as belonging to him. The articles were incapable of identification and were such as any cloth merchant might stock and sell. One of the P. Ws. deposed that he saw the accused early morning, shortly after the offence was committed, somewhere in the village, carrying away bundles of cloth. It was contended that this evidence coupled with the production of the articles by the accused proved his guilt.

*Held:* that unless it was established beyond all possible doubt that the bundles contained the goods stolen from the shop in which the offence had been committed or that the articles produced by accused were the stolen property belonging to the owner of the shop, accused could not be convicted. (*Abdul Raouf, J.*) **WASAL v. CROWN.**

92 I.C. 887=

7 L. L.J. 277=26 P.L.R. 583=27 Cr. L.J. 299=

A.I.R. 1925 Lah. 495.

*Accused wearing gold ornaments and carrying large sum of his own money at the time of his being caught inside another's house—Accused's explanation corroborated by eye-witness—No evidence of door having been broken open or wall having been punctured—Evidence if sufficient for conviction.*

The accused was caught in the house of another. He had with him at the time a large amount which belonged to him and he was wearing his earrings and a gold ring. He was a goldsmith by caste and calling. The story of the accused was that he went to the house to negotiate the acquisition of the widowed daughter-in-law of the proprietor of the house for a relation of his own. This story was corroborated by the statement of a man who was admittedly present at the time. He was also a goldsmith by caste. This man was not mentioned in the first information report. Although the accused was caught inside the house shortly before dawn, the house having been duly shut up the night before; it was nowhere said that any door was broken open nor any hole was made through the wall.

*Held:* that under the circumstances the accused could not be convicted under S. 457. (*Harrison, J.*) **DHANUN v. EMPEROR.**

86 I.C. 156=

26 Cr. L.J. 716=26 P. L.R. 31=

A.I.R. 1925 Lah. 459.

**—S. 457—Invitation or connivance.**

*Entering house by invitation or connivance of woman living in the house—No offence.*

If the accused succeeds in showing that his presence in the house was in consequence of an invitation from or by the connivance of a woman living in the house with whom he was carrying on an intrigue, and that he desired that his presence there should not be known to the person in possession, he cannot be convicted of criminal trespass. (*Martineau, J.*) **ASA RAM v. EMPEROR.**

81 I.C. 239=

25 Cr. L.J. 781=A.I.R. 1925 Lah. 23.

**—S. 457—Robbery.**

*Hurt to complainant while accused escaped—Offences.*

Where the accused committed house-breaking in the house of the complainant and abstracted from it a chembu, and when the complainant attempted to

**PENAL CODE (1860), S. 457—Sentence.**

catch him and, recover his property the accused, in order to the carrying away of this property, caused him hurt,

*Held* : that the accused committed offences under Ss. 457, 392 and 394. (*Wallace and Madhavan Nair, JJ.*) S. KUSUNGADU, *In re*. 86 I.C. 715 = 21 M.L.W. 37 = 26 Cr. L.J. 859 = A.I.R. 1925 Mad. 466.

**—S. 457—Sentence.**

When a policeman whose duty it was to protect the lives and property of the subjects of the Crown was convicted of a serious offence of burglary, sentence of five years' rigorous imprisonment was held not excessive. (*Agha Haider, J.*) SARDARA v. EMPEROR. A.I.R. 1930 Lah. 667.

**—Consecutive sentences.**

Separate consecutive sentences under Ss. 457 and 380 cannot be passed. 2 W.R. Cr. 63; 8 W.R. Cr. 31; 6 W.R. Cr. 49; 6 W.R. Cr. 92 and 5 W.R. Cr. 49, *Ref.* (*Adami and Scroope, JJ.*) KHATIR JAMA KHAN v. EMPEROR. 123 I.C. 343 = 31 Cr. L.J. 492 = 1930 Cr. C. 767 = A.I.R. 1930 Pat. 385.

—The offence of house-breaking by night in order to commit theft, under Cl. 2, S. 457 I. P. C. is punishable with imprisonment for a term of 14 years and therefore S. 562, Cr. P. Code, is not applicable to this offence in the case of an adult. (*Cunliffe, J.*) EMPEROR v. NGA PO WUN. 103 I.C. 839 = 6 Bur. L.J. 83 = 8 A. I. Cr. R. 568 = 28 Cr. L.J. 759 = A.I.R. 1927 Rang. 254.

**—Separate sentences.**

Separate sentences cannot be passed under S. 457 and S. 380 of the Indian Penal Code for house-breaking followed immediately by theft : 2 W.R. (Cr.) 63; 8 W.R. (Cr.) 31; 6 W.R. (Cr.) 49; 6 W.R. (Cr.) 92 and 5 W.R. (Cr.) 49; *Foll.* (*Ross and Kulkarni Sahay, JJ.*) MAKHRU DUSADH v. EMPEROR. 96 I.C. 528 = 5 Pat. 464 = 27 Cr. L.J. 976 = 7 P.L.T. 794 = 7 A.I. Cr. R. 3 = A.I.R. 1926 Pat. 367.

**—S. 457—Burglary.****—Accused armed with lathis.**

Where a party of men armed with lathis go and commit burglary and actually use the lathis in trying to escape, the provisions of S. 459 are applicable as there was intention to commit burglary with arms even though they did not intend to use weapons unless there was occasion to do so. (*Harrison, J.*) JANU v. EMPEROR. 117 I.C. 802 = 11 L.L.J. 230 = 30 P.L.R. 125 = 30 Cr. L.J. 838.

**—S. 459—Hurt after entry.****—Causing grievous hurt after entry is complete—Nature of offence.**

The offence of house-breaking is complete when entry into the house is effected and any grievous hurt subsequently caused by the persons breaking into a house cannot be said to be grievous hurt caused while they were committing the house-breaking. (*Ashworth, J.*) SAID AHMAD v. EMPEROR. 102 I.C. 440 = 49 All. 864 = 25 A.L.J. 515 = 8 L.R.A. Cr. 108 = 28 Cr. L.J. 554 = 8 A.I. Cr. R. 105 = A.I.R. 1927 All. 536.

**—S. 463—'Claim'.**

The term "claim" is not limited in its application to a claim to property only: 15 All. 210 and 25 Cal. 512, *Foll.* (*Harrison and Dalip Singh, JJ.*) EMPEROR v. CHANAN SINGH. 118 I.C. 385 = 10 Lah. 545 = 30 Cr. L.J. 900 = 30 P.L.R. 724 = A.I.R. 1929 Lah. 152.

**—S. 463—'Defrauding'.****—Meaning.**

The expression "intent to defraud" as it occurs in S. 463, Indian Penal Code, implies conduct coupled with intention to deceive and thereby to injure; in

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**PENAL CODE (1860), S. 463—'Intent to defraud'.** other words "defraud" involves two conceptions, namely, deceit and injury to the person deceived, that is infringement of some legal right possessed by him but not necessarily deprivation of property: 38 Cal. 75, *Foll.* (*Suhrwardy and Panton, JJ.*) AHMED ALI v. EMPEROR. 90 I.C. 534 = 42 C.L.J. 215 = 26 Cr. L.J. 1574 = A.I.R. 1926 Cal. 224.

**—S. 463—Fabrication of false evidence.****—Intent to weaken criminal case against accused—Nature of offence.**

Where the intention of the accused is to discredit the evidence of witnesses that might be produced against him by the complainant in a criminal case, the offence committed by him would be one of attempting to fabricate false evidence and not forgery. (*Martineau, J.*) RADHA KISHEN v. THE CROWN. 86 I.C. 671 = 7 L.L.J. 118 = 26 Cr. L.J. 847 = 26 P.L.R. 95 = A.I.R. 1925 Lah. 327.

**—S. 463—False certificate.**

A false certificate of not very great importance is not a forgery as it is not made an affidavit. (*Dalal, J.*) RAM GULAM SINGH v. EMPEROR. 115 I.C. 135 = 1929 A.L.J. 592 = 10 L.R.A. Cr. 86 = 12 A.I. Cr. R. 14 = 30 Cr. L.J. 408 = 1929 Cr. C. 6 = A.I.R. 1929 All. 336.

**—S. 463—'Forgery'.**

The word "forgery" is used as a general term in S. 463, Indian Penal Code, and that section is referred to in a comprehensive sense in S. 195, of the Cr. P. Code, 12 Bom. 36, *Foll.* (*Raza, J.*) RAM SAMUJH v. EMPEROR. 96 I.C. 821 = 1 Luck. 523 = 7 A.I. Cr. R. 45 = 3 O.W.N. 614 = 27 Cr. L.J. 969 = A.I.R. 1926 Oudh 485.

**—S. 463—Forgery, what is.****—Entry of excess payment in muster-roll.**

An entry of excess payment in a muster-roll would not make the muster-roll a forged document. (*Dalal, J.*) RAM GHULAM v. EMPEROR. 115 I.C. 135 = 1929 A.L.J. 592 = 10 L.R.A. Cr. 86 = 12 A.I. Cr. R. 14 = 30 Cr. L.J. 408 = 1929 Cr. C. 6 = A.I.R. 1929 All. 396.

**—Ante-dating document.**

Merely antedating a document is not forgery unless there is dishonesty or fraud on the part of the alleged forger. (*Jwala Prasad and Macpherson, JJ.*) SUDAR-SAN BEHARA v. KING-EMPEROR. 98 I.C. 111 = 8 P.L.T. 104 = 27 Cr. L.J. 1263 = A.I.R. 1927 Pat. 87.

**—Creation of false document for supporting even true or genuine title.**

In order to constitute forgery the document need not be intended to support a false claim or a false title. If, in order to support a true claim or a genuine title, a false document is created, it is a forgery. Whether a document is a false document or not, does not depend upon the adjudication of the Court on the claim or title which is intended to be propped up by the false document : (1915) M.W.N. 278, *Dist.* (*Devadoss and Waller, JJ.*) SIVANANDA MUDALIAR, *In re*. 96 I.C. 850 = 7 A.I. Cr. R. 58 = 27 Cr. L.J. 994 = A.I.R. 1926 Mad. 1072.

**—S. 463—'Intent to defraud'.****—Proof of possibility of actual deceit and injury.**

In order to constitute in point of law an intent to defraud, there must be a possibility of some person being defrauded by the forgery, or there must be a possibility of some person being not only deceived but injured by the forgery. 11 Bom. H. C. R. 3, *Foll.* (*Ross and Scroope, JJ.*) APARTI CHARAN RAY v. EMPEROR. A.I.R. 1930 Pat. 271.



**PENAL CODE (1860), S. 463—'Making of part of document'.**

—**S. 463—'Making of part of document'.**

—*Proof of falsity.*

The "making of a part of a document" must be the making of a part of a false document and in the making of a part of a document not only the intention or purpose must be proved but the fact that the document was false must also be proved. (*Dalal, J.*) **RAM GULAM v. EMPEROR.**

115 I.C. 135=1929 A.L.J. 592=  
10 L.R.A. Cr. 86=12 A.I.Cr.R. 14=  
30 Cr. L.J. 408=1929 Cr.C. 6=  
A.I.R. 1929 All. 396.

—**S. 463—No fraudulent act.**

—*Plaint forged in order to save case being barred by limitation.*

The mere fact that the person forged signature of another person, in a plaint, to enable him to file the plaint in time to save case being barred by limitation will not make the act of the person fraudulent: 17 Cal. 508, 22 All. 55: 19 Cr.L.J. 236 and 11 Bom. H.C.R., 3, Ref. (*Ross and Scroope, JJ.*) **APARTI CHARAN RAY v. EMPEROR.** A.I.R. 1930 Pat. 271.

—**S. 463—Scope.**

S. 463, I.P.C. is used in S. 195 (1) (c) in a comprehensive sense so as to embrace all species of forgery and thus includes a case falling under S. 467. (*Martineau, J.*) **KHAIRATI RAM v. MALAWA RAM.**

85 I.C. 377=5 Lah. 550=  
26 Cr.L.J. 537=A.I.R. 1925 Lah. 266.

—**S. 463—Using false document.**

If a man intends to gain an unfair advantage by deceitful means and uses a false document for that purpose, his conduct is fraudulent, (*Case law considered.*) (*Devadoss and Waller, JJ.*) **SIVANANDA MUDALI, In re.** 96 I.C. 850=7 A.I.Cr.R. 58=

27 Cr.L.J. 994=A.I.R. 1926 Mad. 1072.

—**S. 464—Account books.**

—*Account books not kept in ordinary course of business—If necessarily forged.*

It is one thing to hold that because an account book does not appear to have been kept in the regular course of business and does not contain entries that it ought to have contained, it cannot be acted upon in order to convict a person whose name appears therein as having received money, and it is quite a different thing to hold as a positive fact that that account book is forged; and in absence of any other evidence no prosecution should be allowed to be launched on the basis that it was forged: A. I. R. 1926 Pat. 81, Dist. (*Ross, J.*) **RAMESHWAR MARWARI v. KING-EMPEROR.** 98 I.C. 56=

27 Cr. L.J. 1240=A.I.R. 1927 Pat. 47.

—**S. 464—Antedating.**

Mere antedating of the document would not necessarily make it a false document unless it operates or could operate to prejudice anyone. (*Ross and Kulwant Sahay, JJ.*) **EMPEROR v. GOVIND SINGH.**

98 I.C. 252=5 Pat. 573=8 P.L.T. 133=  
27 Cr.L.J. 1308=A.I.R. 1926 Pat. 535.

—**S. 464—False documents, what are.**

—*Kabuliats.*

Kabuliats of a past period prepared subsequently by usufructuary mortgagee to defraud mortgagor as to the amount paid by mortgagor's tenant are forged documents. (*Baker, J. C.*) **ISMAIL PANJU v. KING-EMPEROR.** 88 I.C. 283=26 Cr.L.J. 1115=

A.I.R. 1925 Nag. 337.

—*Kabin-nama.*

Where a Muhammadan with the intention of making a claim to a woman's property, alleged

**PENAL CODE (1860), S. 465—Charge and conviction.**

marriage with her and executed a false *kabin-nama* in her favour to support his claim.

*Held*: that the document was not a false document within S. 464. (*Sanderson, C. J. and Panton, J.*) **GUNJAR MOHAMMED v. SHURUZ ALI.**

69 I.C. 451=A.I.R. 1924 Cal. 536.

—**S. 464—Interpretation.**

—*'Makes'.*

The word "makes" means, creates or brings into existence: 38 All. 430, Rel. on.

A writing may purport to be a will although it turns out to be technically defective (41 Mad. 589, Rel. on.), and therefore such a will, though incomplete and ineffective, cannot be said to have been not "made" within the meaning of S. 464. (*Addison and Coldstream, JJ.*) **CHATRU MALIK v. EMPEROR.**

111 I.C. 435=10 Lah. 265=  
11 A.I.Cr.R. 171=31 P.L.R. 41=29 Cr.L.J. 851=  
A.I.R. 1928 Lah. 681.

—**S. 464—Necessary elements.**

The elements which have to be proved in a case of forgery are (i) that the document is not executed on a date on which it is shown to have been written and (ii) that the parties who executed it do so with fraudulent intent. (*Bauley, J.*) **RANGASWAMY CHETTIAR v. MAUNG PO KA.** 109 I.C. 679=6 Rang. 49=

29 Cr.L.J. 599=A.I.R. 1928 Rang. 117.

—*Absence of intention to cause it to be believed that the document was signed by another person—No forgery.*

*Per Mukerji, J.*—If a person gives a note or other security as his own note or security, and the credit thereupon be personal to himself without any relation to another, his signing such a fictitious name may indeed be a cheat but will not amount to forgery, for in that case it is really the instrument of the party whose act it purports to be and the creditor has no other security in view. But that if a note be given in the name of another person either really existing or represented so to be and in that light it obtains a superior credit or induces a trust which will not be given to the party himself, it is then a false instrument and punishable as forgery. We have to judge of the intention at the time when the document was made and it is upon that intention that the criminality of the act has to be judged.

Where in making out the cheque the accused intended to pass it off as a genuine cheque drawn by himself in his own favour,

*Held*: that there was no forgery. *Reg v. Martin*, (1879) 5 Q. B. D. 34; *Dunn's Case* 1 Leach 571, 2 East P. C. 961, Foll. (*Walmsley and Mukerji, JJ.*) **T. C. S. MARTINDALE v. EMPEROR.** 84 I.C. 1041=

40 C.L.J. 256=52 Cal. 347=29 C.W.N. 447=

26 Cr.L.J. 401=A.I.R. 1925 Cal. 14.

—**S. 465—Admission and confession.**

—*Admission in civil suit about genuineness of document—If confession of forgery.*

Admission is usually applied to a civil transaction, and to those matters in criminal cases which do not involve a criminal intent, while the term confession is usually used in criminal Court as denoting an acknowledgment of guilt. Admission in a civil suit that a document is genuine cannot in the forgery case be regarded as confession at all: 37 Cal. 467, Ref. (*Rankin, C.J. and Buckland, J.*) **AMBAR ALI v. EMPEROR.** 1929 Cr. C. 194=A.I.R. 1929 Cal. 539.

—**S. 465—Charge and conviction.**

—*Offence under S. 171 (f)—Conviction under*

*Sec. 465—Legality:*

The offence of false preparation of signature sheet



**PENAL CODE (1860), S. 465—Non-resemblance of writing.**

at an election being specifically described and designated by the legislature, it is not open to any Court to say that, although the offence may be specifically one under S. 171 (f) of the Penal Code, it falls equally under S. 465 of the same Code and therefore, it is open to the Court to try the offender under either of the two sections. (*Mukerji, J.*) **RAM NATH v. EMPEROR.** 84 I.C. 714=22 A.L.J. 1106=

6 L.R.A. Cr. 25=26 Cr. L.J. 362=47 All. 268= A.I.R. 1925 All. 230.

**—S. 465—Non-resemblance of writing.**

Conviction for forgery cannot be based on non-resemblance of handwriting. (*Newbould and B. B. Ghose, JJ.*) **EMPEROR v. SAGARMAL AGARWALLA.** 82 I.C. 145=28 C.W.N. 947=

40 C.L.J. 135=25 Cr. L.J. 1217= A.I.R. 1924 Cal. 960.

**—S. 465—Object of screening oneself.**

—Main object to screen oneself from punishment—Incidental probability of gain—If offence.

Where an accused person manipulates entries in certain registers with the main object of screening himself from punishment for a past offence, he will yet be liable if he stands to gain by his act, as for example, if as a result of such entries he will be continued in service while as a fact he is not fit to be continued. (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*) **FRANK CROSSLEY WOODWARD v. CROWN.** 92 I.C. 433=18 S.L.R. 199=27 Cr. L.J. 257=

A.I.R. 1925 Sind 233.

**—S. 465—Offence under.**

—Accused asked to produce documents in support of complaint of trespass—Forged documents knowingly produced—Offence.

Where the accused was told to produce copies of the revenue records in support of his complaint of trespass and he knowingly produced forged copies as genuine,

*Held*: that the case was different from one where a person has a forged document in his possession which he does not intend to use as genuine, but which a Court forces him to produce, and that the accused was guilty. (*Scott-Smith, J.*) **ISHAR DAS v. THE CROWN.** 88 I.C. 595=6 Lah. 50=

26 Cr. L.J. 1171=26 P.L.R. 156= A.I.R. 1926 Lah. 333.

**—Forged certificate.**

A false statement in an application for a post and a forged certificate amount to offences under S. 465. (*MacColl, J.C.*) **NGA BA THEIN v. EMPEROR.** 76 I.C. 225=25 Cr. L.J. 122=4 U.B.R. 174=

A.I.R. 1925 Rang. 9.

**—S. 465—Sentence.****—Deterrent sentence.**

The offences under Ss. 196 and 465 are indeed serious and difficult to detect and consequently call for deterrent punishment. (*Fawcett and Madgavkar, JJ.*) **EMPEROR v. JORABHAI.** 97 I.C. 803=

50 Bom. 783=28 Bom. L.R. 1051=27 Cr. L.J. 1173=

A.I.R. 1926 Bom. 555.

**—S. 465—Separate offences.****—Separate conviction—Legality.**

If a man commits two offences he can certainly be convicted of them both, more especially when they are separate transactions and the commission of one does not necessarily involve the commission of the other. (*Hallifax, A.J.C.*) **GAJANAN SAKHARAM v. EMPEROR.** 77 I.C. 825=25 Cr. L.J. 473=

A.I.R. 1924 Nag. 162.

**PENAL CODE (1860), S. 467—Charge and conviction.****—S. 466—Charge and conviction.**

The Court should not convict both under Ss. 466 and 467 but should choose whichever of the two sections appears to it most suitable. After convicting under one of these two sections it will be quite unnecessary to add a charge under S. 468. (*Daniels, J.C.*) **GIRDHARI LAL v. EMPEROR.** 86 I.C. 993=12 O.L.J. 194=2 O.W.N. 174=

26 Cr. L.J. 929=29 O.C. 1= A.I.R. 1925 Oudh 413.

**—S. 466—Effect of signing.**

—Knowledge of contents—Responsibility—Signature by legal practitioner.

A man who signs his name to a document makes himself thereby in every way as responsible for it as if he was the original drafter of it. If it turns out that the document is one which no man acting honestly could in the circumstances have drafted, then he will be bound to answer for every word, line, sentence and paragraph, and it will not be the least defence that some body else wrote it out and he only signed it. Signature implies association and carries responsibility.

If a legal practitioner puts his signature to a document he will be deemed to have read it and to carry it in his recollection to the extent that an ordinarily competent, careful and reasonable man would carry it and he will be bound by all the implications arising from it just as much as if he had written every word of it with his own hand. Practitioners must realize that if they make, or associate themselves with statements which they know are dishonest and untruthful for the purpose of misleading the Court they must on proof of misconduct bear personal responsibility and that it will be no defence for them to say that it was done in the interests of the client or at his instigation or at the instigation of a colleague at the bar, or that they were so negligent in the matter that they did not read the document or consider it at all. (*Mears, C.J. Lindsay and Dalal, JJ.*) **AHMAD ASHRAB, VAKIL, In the matter of.** 98 I.C. 492=48 All. 542=

27 Cr. L.J. 1373= A.I.R. 1927 All. 45 (F.B.).

**—S. 467—Assistance in forgery.****—Nature of offence.**

A person who did not make, sign or execute a document, but was instrumental in getting the false document dishonestly or fraudulently made, should be convicted under S. 467 read with S. 109 and not S. 467 alone: 17 C. W. N. 354, Ref. (*Addison, J.*) **DILEDAD v. EMPEROR.** 113 I.C. 68=

30 Cr. L.J. 52=11 A.I.Cr.R. 428= A.I.R. 1929 Lah. 210.

**—S. 467—Basis of conviction.****—Comparison of handwriting—Opinion of Judge.**

A conviction for forgery should not safely be based entirely upon a comparison of the handwriting. But the Court is competent to see for itself whether certain handwritings placed before it are similar or not. (*Jwala Prasad and Adami, JJ.*) **UDHAB SANTARA v. EMPEROR.** 65 I.C. 426=23 Cr. L.J. 74 (Pat.)

**—S. 467—Charge and conviction.**

—Accused once convicted under S. 467—Subsequent conviction under S. 471 in respect of the same documents—If proper.

An accused cannot be convicted of the independent offence under S. 471 read with 467 after his previous conviction under S. 467/109 in respect of the same documents. The language of S. 471, I.P.C., most obviously suggests that this provision is expressly directed against some person other than the forger himself. The reason for the presence of S. 471 on

**PENAL CODE (1860), S. 467—Charge and conviction.**

the statute book in the somewhat unusual language which is employed therein, is in order to provide a useful alternative charge in cases where there is uncertainty as to whether the person on trial is himself the forger of the document, or has merely used it as genuine, knowing it to be nothing of the sort: *Opinion of Baker, J.C.*, in Cr. App. No. 52-B of 1924 and 23 All. 84, Foll. (*Findlay, Offg. J.C.*) ISMAIL PANJU v. EMPEROR. 89 I.C. 523 =

21 N.L.R. 152 = 26 Cr. L.J. 1387 = A.I.R. 1926 Nag. 137.

—A forger using as genuine a forged document—Conviction under Ss. 467 and 471—If proper.

A person, who, being himself the forger thereof, has used as genuine a forged document, cannot be punished under S. 471, for the use of the forged document as well as for the forgery, under S. 467, but can be punished only under S. 467. (*Baker, J.C.*) DIGAMBAR v. EMPEROR. 88 I.C. 1051 =

26 Cr. L.J. 1275 = A.I.R. 1925 Nag. 440.

—S. 467—Essentials for conviction.

In order to convict persons charged under Ss. 467-109, it must be established that the act was done dishonestly or fraudulently as required by S. 464. (*Addison, J.*) KHUDA BAKSH v. EMPEROR. 112 I.C. 359 = 10 L.L.J. 369 =

29 Cr. L.J. 1031 = 11 A.I. Gr.R. 391.

—S. 467—Liability of attester.

—Attestation with knowledge of forgery—Nature of offence.

—If a person falsely puts his name down as an attesting witness to the signature of somebody who he knows has never signed at all, he is guilty of forgery just as well as the scribe. The persons attesting like the above must be put on their trial on a charge under S. 467 read with S. 120-B. (*Rankin, C.J. and Buckland, J.*) AMBAR ALI v. EMPEROR. 1929 Cr.C. 194 = A.I.R. 1929 Cal. 539.

—S. 467—Liability of writer.

—Writer not present at execution—No forgery. The writer of a forged receipt is not guilty under S. 467 where there is no evidence that he was present at the execution of the receipt or that he helped anyone to make use of it. (*Greaves and Dwal, J.J.*) IMDAD MIA v. EMPEROR. 82 I.C. 216 =

25 Cr. L.J. 1253 = A.I.R. 1925 Cal. 192.

—S. 467—Offence under.

—Conviction under S. 167 also—If proper.

The offence under S. 167, is included in the offence under Ss. 467 and 471, and, therefore, conviction, both under S. 167, and Ss. 467 and 471, is not maintainable. (*Stuart, C.J.*) GULZABI LAL v. EMPEROR. 99 I.C. 122 = 3 O.W.N. 760 = 7 A.I. Cr.R. 51 =

13 O.L.J. 817 = 28 Cr.L.J. 90 = A.I.R. 1926 Oudh 615.

—Forging a receipt for misappropriating money.

A Bench clerk received a sum of money paid in as fine and misappropriated it and to cover up the misappropriation forged a false receipt.

Held: that the offence under Ss. 467 and 471 was committed especially since the false receipt was made for the purpose of enabling him to misappropriate the money, 5 All. 221, 8 All. 653, 36 Cal. 955. Doubtful and Dist, 11 Mad. 411, Foll. (*Heald, J.*) NGA BA SEIN v. EMPEROR. 83 I.C. 338 =

3 Bur. L.J. 113 = 25 Cr. L.J. 1378 = A.I.R. 1924 Rang. 331.

—S. 468—Completion of offence.

—Forgery with the intent specified.

The offence under S. 468 is complete as soon as

**PENAL CODE (1860), S. 471—Evidence and proof.** there is a forgery with the particular intent mentioned in the section. When the intended cheating or attempt at it takes place another distinct offence is committed. (*Kotwal, A.J.C.*) SAMUEL LOHANA v. KING-EMPEROR. 77 I.C. 827 = 25 Cr. L.J. 475 =

A.I.R. 1924 Nag. 120.

—S. 468—Evidence and proof.

—Document forged—Prosecution not explaining how it came with the accused—Use of the document by accused not proved—Accused denying the charge—Propriety of conviction.

Where an admittedly forged document was alleged to be found with the accused but it was not explained by the prosecution how it came to be with him nor that he used the same and the accused specifically alleged that the case was false,

Held: that his conviction either under S. 468 or under S. 471 was not maintainable. (*Findlay, Offg. J.C.*) AKBAR HUSSAIN v. KING-EMPEROR. 89 I.C. 388 = 8 N.L.J. 87 = 26 Cr. L.J. 1358 =

A.I.R. 1925 Nag. 294.

—S. 468—Offence under.

—Letter written by accused knowing that it will be used for defrauding some person—Legality of conviction.

Where the accused wrote the letter knowing that it will be used to defraud a certain person:

Held: that the letter was a forgery and a conviction under S. 468 was right. (*Zafar Ali, J.*) JOGAN NATH v. EMPEROR. 101 I.C. 433 = 9 L.L.J. 103 =

8 A.I. Cr. R. 74 = 28 Cr. L.J. 461 = A.I.R. 1927 Lah. 724.

—S. 471—Acquisition or deprivation of property.

Neither the acquisition nor the deprivation of property is an essential ingredient of the intent in an offence under S. 471. (*Page, J.*) EMPEROR v. MOHIT KUMAR MUKERJEE. 91 I.C. 993 = 52 Cal. 881 =

27 Cr. L.J. 177 = A.I.R. 1926 Cal. 89.

—S. 471—Conviction.

—Accused once convicted under S. 467—His subsequent conviction under S. 471 in respect of the same documents—If proper.

An accused cannot be convicted of the independent offence under S. 471 read with S. 467 after his previous conviction under S. 467 and 109 in respect of the same documents. The language of S. 471, I.P.C., most obviously suggests that this provision is expressly directed against some person other than the forger himself. The reason for the presence of S. 471 on the statute book in the somewhat unusual language which is employed therein, is in order to provide a useful alternative charge in cases where there is uncertainty as to whether the person on trial is himself the forger of the document, or has merely used it as genuine, knowing it to be nothing of the sort. *Opinion of Baker, J.C.*, in Cr. App. No. 52-B of 1924 and 23 All. 84, Foll. (*Findlay, O.J.C.*) ISMAIL PANJU v. EMPEROR. 89 I.C. 523 =

21 N.L.R. 152 = 26 Cr. L.J. 1387 = A.I.R. 1926 Nag. 137.

—S. 471—Evidence and proof.

—Forgery committed in record room—Copies of false entries used in contesting a suit—Fraudulent or dishonest intention of accused and his knowledge as to the forged nature of the document—Proof.

When forgeries are committed by a person inside the record room, and copies producing the false entries are put up in a suit, the use of such certified copies is a use of forged documents. The mere circumstance that the documents had been forged would not be sufficient to justify a conviction. It is necessary to prove in order to obtain such a conviction

**PENAL CODE (1860), S. 471—Filing by witness.** tion that the use has been fraudulent or dishonest, and in addition that the person putting in the copies knew, or had reason to believe, that the originals were forged. (*Stuart, C.J.*) **MATHURA PRASAD v. EMPEROR.**

93 I.C. 66=1 Luck 306=  
13 O.L.J. 391=27 Cr. L.J. 402=3 O.W.N. 171=  
A.I.R. 1923 Oudh 255.

—S. 471—Filing by witness.

—If amounts to using document.

Where the accused, who was a witness in the suit, from some interest in, or desire to assist, the defence filed certain document for the purposes of the suit in advance of a trial.

*Held*: that he "used" the document within the meaning of S. 471. The wider the definition of the word "use" in S. 471 the better, as the use has to be fraudulent: 35 Cal. 820, Ref.; A. I. R. 1924 Cal. 718, Rel. on. (*Rankin, C.J. and Buckland, J.*)

**JABBAR ALI v. EMPEROR.** 116 I.C. 632=  
49 C. L. J. 193=30 Cr. L.J. 656=  
13 A. I. Cr. R. 73=A.I.R. 1929 Cal. 203.

—S. 471—Forging receipt.

—Misappropriation of money—Offence.

A Bench clerk received a sum a money paid in as fine and misappropriated it and to cover up the misappropriation forged a false receipt.

*Held*: that the offence under Ss. 467 and 471 was committed especially since the false receipt was made for the purpose of enabling him to misappropriate the money. 5 All. 221, 8 All. 653, 36 Cal. 955. Doubt- ed and dist. 11 Mad. 411, Foll. (*Heald, J.*) **NGA BA SEIN v. KING-EMPEROR.** 83 I.C. 338=  
3 Bur. L. J. 113=25 Cr. L.J. 1378=  
A. I. R. 1924 Rang. 331.

—S. 471—'Fraudulently'.

—Meaning.

The term "fraudulently" in S. 471 does not neces- sarily connote deceit and injury to the person deceiv- ed. It may, but it need not, do so. (*Page, J.*)

**EMPEROR v. MOHIB KUMAR MUKERJEE.**  
91 I.C. 993=52 Cal. 881=27 Cr. L.J. 177=  
A.I.R. 1926 Cal. 89.

—S. 471—Fraudulent use.

A man can use a document fraudulently even though it is used for the purpose of supporting a good title. (*Newbould and B. B. Ghose, J.J.*) **KING- EMPEROR v. BANSI SHEKH.** 83 I. C. 504=  
51 Cal. 469=26 Cr. L. J. 24=  
A. I. R. 1924 Cal. 718.

—S. 471—Ingredients of offence.

—Using forged document—Intention to deceive.

An offence is committed under S. 471 whenever a document is used as genuine with the intention that some person thereby should be deceived, and by means of such deception that either an advantage should accrue to the person so using the document, or injury should befall some other person or persons. (Case law discussed.) (*Page, J.*) **EMPEROR v. MOHIB KUMAR MUKERJEE.** 91 I.C. 993=  
52 Cal. 881=27 Cr. L.J. 177=A.I.R. 1926 Cal. 89.

—S. 471—Interpretation.

—'Uses'

The words "produced or given in evidence" in S. 195 (c), Cr. P. Code, do not limit the pro- cedure under that section to a limited class of user within the wider class contemplated by S. 471. (*Courtney Terrell, C.J.*) **BAJU GHA v. EMPEROR.**

113 I.C. 712=9 P.L.T. 800=30 Cr. L.J. 236=  
12 A.I. Cr. R. 236=A.I.R. 1929 Pat. 60.

—S. 471—Jurisdiction.

—Trial under S. 196—Facts disclosing offence under S. 471—Procedure.

**PENAL CODE (1860), S. 471—Participation in offence.**

Where petitioner was tried for an offence under S. 196 and convicted but from the facts it appeared that an offence under S. 471 was committed, which is exclusively triable by Sessions Court, the conviction was set aside and trial by Court of Sessions was ordered (*C. C. Ghose and Duval, J.J.*) **HAR MOHAN DAS v. EMPEROR.** 96 I. C. 119=44 C.L.J. 113=  
30 C.W.N. 840=27 Cr. L.J. 871.

—S. 471—Offence under.

—Alleged true copy of original certificate at- tached to a competitive examination application—Original certificate called for and produced—Date of birth in original found altered—Forgery.

In order to qualify for appearance at a certain com- petitive examination C attached a copy of a certificate certified as a true copy of original along with his ap- plication. On being asked to produce the original C produced it. The date of birth in the original certi- ficate was changed from 5th January 1901 to 15th January 1904, so as not to debar him from appearing in the above competitive examination.

*Held*: that the original document was a forged one inasmuch as the original date in it was altered and that C knew that it was a false document. That it was made with intent to cause damage and injury to other candidates for the examination and to support C's claim to appear: 28 Mad. 90, Dist. (*Harrison and Dalip Singh, J.J.*) **EMPEROR v. CHANAN SINGH.**

118 I.C. 385=10 Lah. 545=30 Cr. L.J. 900=  
30 P.L.R. 724=A.I.R. 1929 Lah. 152.

—Party setting up two titles and supporting one by false document.

If a party to a suit sets up two different titles and supports one of them with a false document he has committed an offence under S. 471 even if it be found that the other title is good. (*Devadoss and Waller, J.J.*) **SIVANANDA MUDALI, In re.**

96 I.C. 850=7 A.I. Cr. R. 58=27 Cr. L.J. 994=  
A.I.R. 1926 Mad. 1072.

—Using certified copies of forged originals knowing the originals to be forged.

The use of certified copies of forged originals by a person who knows that the originals are forged amounts to making use of forged documents within the meaning of S. 471. 28 All. 402 Foll. (*Daniels, J.C.*) **GIRDHARI LAL, v. KING-EMPEROR.**

86 I.C. 993=12 O.L.J. 194=2 O.W.N. 474=  
26 Cr. L.J. 929=29 O.C. 1=A.I.R. 1925 Oudh 413.

—Altering prescription and obtaining a larger quantity of morphia.

Accused obtained a prescription from a medical man for one tube of morphia and altering the words "one tube" to "four tubes" presented the prescription to a chemist and obtained four tubes of morphia from him: *Held*, that the accused was guilty of an offence under S. 471, I.P.C. (*Shadi Lal, C. J. and Moti Sagar, J.*) **C. J. ROBINSON v. EMPEROR.**

63 I.C. 617=22 Cr. L.J. 681 (Lah.)

—Giving forged document to Police—Investigat- ing officer.

A person giving a forged document to the investi- gating officer during the police investigation and thus causing that officer to do something which otherwise he would not have done is guilty of having used forged document within S. 471. (*Mullick and Buck- nill, J.J.*) **SAGAN LAL v. EMPEROR.**

60 I.C. 674=22 Cr. L.J. 274=3 U.P.L.R. (Pat.) 42.

—S. 471—Participation in offence.

—Person not physically presenting but actively participating in process of presentation—If guilty.

If a person actively participates the cess process of

**PENAL CODE (1860), S. 471—Production by Court's order.**

presentation of a forged document for registration, he can be convicted under S. 471, although he may not have physically presented it for registration. (*Waller and Jackson, JJ.*)

SRIRAMULU NAIDU v. EMPEROR.  
119 I.C. 63=52 Mad. 532=29 M.L.W. 559=  
1929 M.W.N. 279=2 M. Cr. C. 87=  
30 Cr. L.J. 983=A.I.R. 1929 Mad. 450=  
56 M.L.J. 554.

**—S. 471—Production by Court's order.****—Knowledge of forgery—Offence.**

Although a person has been served with summons to produce this document, if he fails to disclose that he believes that the document has been forged and fraudulently or dishonestly puts forward the document as being a genuine document, he is not acting involuntarily, but is deliberately using the document for a criminal purpose. (*Page, J.*) EMPEROR v. MOHIL KUMAR MUKERJEE.

91 I.C. 993=  
52 Cal. 881=27 Cr. L.J. 177=A.I.R. 1926 Cal. 89.

**—Production of document in Court not involuntary but brought about by conspiracy on accused's part—Offence.**

Although a person who produces documents in obedience to the order of the Court may not be held guilty of using forged documents even if they are found to be forged, the case would be different where the production of the documents in Court is not voluntary, but is in pursuance of a conspiracy between the accused, one of them being made the custodian of the documents in order to get over some technical objection. 36 Mad. 387 and 36 Mad. 392 Ref. (*Bakar, J.C.*) MADHAO BHAGWANT DESHMUKH v. KING-EMPEROR. 88 I.C. 181=26 Cr. L.J. 1093=A.I.R. 1925 Nag. 345.

**—S. 471—Prosecution under another law.**

**—Order for prosecution under Ss. 82, Registration Act, and 471-I.P.C.—Former found illegal under S. 74—Order under S. 471, I.P.C.—If affected.**

Where a person is ordered to be prosecuted under S. 82, Registration Act and S. 471, I.P.C., and the prosecution under S. 82 is illegal having regard to the provisions of S. 74, Registration Act, the illegality or irregularity in no way affects the validity of the order of prosecution under S. 471, I.P.C. and if the prosecution under S. 82 is set aside the part of the order under S. 471 remains. For Penal Code has no relation to Registration Act and is governed by principles entirely different from those governing prosecution under S. 82. (*Wort, J.*) HIRDAY NARAIN SINGH v. EMPEROR.

119 I.C. 888=10 P.L.T. 889=  
30 Cr. L.J. 1101=1929 Cr.C. 252=  
A.I.R. 1929 Pat. 500.

**—S. 471—Sentence.**

S was convicted under S. 471 for having used a forged document and P for having abetted the same; S was sentenced to 4 years and P to 2½ years rigorous imprisonment.

**Held:** that the sentence was not severe. (*Rankin, C. J. and Buckland, JJ.*) JABBAR ALI v. EMPEROR.

116 I.C. 632=49 C.L.J. 193=30 Cr. L.J. 656=  
13 A.I. Cr. R. 73=A.I.R. 1929 Cal. 203.

**—S. 471—Separate Offences.****—Separate conviction.**

If a man commits two offences he can certainly be convicted of them both, more especially when they are separate transactions and the commission of one does not necessarily involve the commission of the other. (*Halifax, A.J.C.*) GAJANAN SAKHARAM v. EMPEROR.

77 I.C. 825=23 Cr. L.J. 473=  
A.I.R. 1924 Nag. 162.

**PENAL CODE (1860), S. 471—Using as genuine.****—S. 471—User for securing acquittal.****—Proof of wrongful gain or loss—If necessary.**

Section 471 does not necessarily contemplate user for producing material gain or material loss to another as explained in S. 24 but it does apply to user for the purpose of securing an acquittal. Neither the acquisition nor the deprivation of property is an essential ingredient of the intent in an offence under S. 471. The obtaining of an acquittal is very distinctly the obtaining of an advantage and brings the case within the definition of "dishonestly" in S. 24. (*Courtney-Terrel, C. J.*) BAJU JHA v. EMPEROR.

113 I.C. 712=9 P.L.T. 800=30 Cr. L.J. 236=  
12 A.I. Cr. R. 236=A.I.R. 1929 Pat. 60.

**—S. 471—Using as genuine.**

A person dishonestly using as genuine a forged document can be punished under S. 471 with the punishment provided by S. 467. (*Stuart, C. J.*) UMRAO KHAN v. EMPEROR.

5 O.W.N. 138=  
A.I.R. 1927 Oudh 630.

**—Meaning.**

Whenever a person fraudulently or dishonestly presents a forged document to another person as being what it purports to be, or causes the same to be so presented, knowing or having reason to believe that the said document is a forged document, the document is "used as genuine" within S. 471. It matters not whether the document is presented by the accused himself, or by his agent expressly authorised in that behalf, or whether it is produced by the accused of his own motion or pursuant to the order of the Court, if in the event he uses it as genuine. (*Page, J.*) EMPEROR v. MOHIT KUMAR MUKERJEE.

91 I.C. 993=52 Cal. 881=  
27 Cr. L.J. 177=A.I.R. 1926 Cal. 89.

**—Question of fact.**

Whether there has been an user or not must depend upon the circumstances of each case. (*Page, J.*) EMPEROR v. MOHIB KUMAR MUKERJEE.

91 I.C. 993=52 Cal. 881=27 Cr. L.J. 177=  
A.I.R. 1926 Cal. 89.

**—Non-reliance—Effect.**

That accused did not rely on the document as a valuable security is no defence to a charge under S. 471. (*Newbould and B. B. Ghose, JJ.*) EMPEROR v. SAGARMAL AGARWALLA.

82 I.C. 145=  
28 C.W.N. 947=40 C.L.J. 135=25 Cr. L.J. 1217=  
A.I.R. 1924 Cal. 960.

**—Filing document to support claim.**

To constitute use of a document it is not necessary that the Court should accept the document produced before it or filed in Court; if a person puts forward a document as supporting his claim in any matter, whether that document is acted upon by the Court or used in evidence is immaterial for the purpose of constituting use of the document by the party within the meaning of S. 471, Indian Penal Code. 35 Cal. 820 Expl. 39 Cal. 463; 17 C.W.N. 94, Foll. (*Newbould and B. B. Ghose, JJ.*) EMPEROR v. BANSI SHEIKH.

83 I.C. 504=51 Cal. 469=26 Cr. L.J. 24=  
A.I.R. 1924 Cal. 718.

**—Presenting document before Sub-Registrar**

Presentation of a forged document before the Sub-Registrar is sufficient evidence of user. (*Mullick and Bucknill, JJ.*) CHETA MAHTO v. KING-EMPEROR.

74 I.C. 536=89 I.C. 1060=2 Pat. 459=  
4 P.L.T. 727=24 Cr. L.J. 792=26 Cr. L.J. 1432=  
A.I.R. 1924 Pat. 123.

**PENAL CODE (1860), S. 474—Interpretation.****—S. 474—Interpretation.****—'Intention to use.'**

The 'intention to use' contemplated in S. 474, Penal Code, should be fructified into an actual use to attract the provisions of S. 195, Cr. P. C. *Jackson, J.) VENKATA REDDY v. GADI LINGA REDDY.* 99 I.C. 1025=28 Cr. L.J. 225= A.I.R. 1927 Mad. 1060.

**—S. 477—Fraudulent secretion.****—Will.**

The fraudulent secretion of any document purporting to be a Will constitutes an offence within the meaning of the section, quite apart from its validity as defined in S. 3 of the Probate and Administration Act. *Ivory v. Turner*, (1879) 10 Ch. D. 372; 38 Bom. 427 and 34 C. L. J. 457, Dist. (*Otter, J.*) *MALI MUTHU SERVAY v. EMPEROR.* 97 I.C. 1054=4 Rang. 251=27 Cr. L.J. 1230= A.I.R. 1926 Rang. 202.

**—S. 477—Grant of letters.****—Effect.**

The grant of Letters of Administration to the accused is no bar to further proceedings under S. 477. (*Otter, J.*) *MALI MUTHU SERVAY v. EMPEROR.* 97 I.C. 1054=4 Rang. 251=27 Cr. L.J. 1230= A.I.R. 1926 Rang. 202.

**—S. 477-A—By managing partner.****—Falsification of accounts.**

Where a partner of a firm is appointed to manage its business and write its accounts and he falsifies its accounts he is liable under S. 477-A. 6 Bom. L. R. 553, Foll. (*Kincaid, J. C. and Aston, A. J. C.*) *MAHOMED v. MAHOMED IDRIS.* 88 I.C. 189=18 S.L.R. 274=26 Cr. L.J. 1101= A.I.R. 1925 Sind 328.

**—S. 477-A—Evidence and proof.**

*—Accused obtaining by falsifying accounts securities worth amount justly going to be due to himself in near future but whose realisation is doubtful—Offence.*

If together with the intention of deceiving there be an attempt to obtain an undue advantage, there would be in law an intent to defraud.

Where an accountant in a Bank noticing that the Bank might fail any day and that it might become difficult for him to recover the money deposited by him as security which was going to be justly payable back to him shortly, obtained securities worth his deposit by falsification of accounts and without the higher authorities of the bank being aware of the fact and where in an enquiry in respect of a charge under 1. P. C., S. 477-A, the accused was discharged.

*Held*: that the order of discharge was wrong and that there was enough material on the record to direct further enquiry. 21 All. 113 Foll. (*Mukerji, J.*) *NARAIN DUTT v. RUDRA DUTT.* 89 I.C. 520=47 All. 948=23 A.L.J. 657=26 Cr. L.J. 1384=6 L.R.A. Cr. 145=A.I.R. 1925 All. 654.

*—Prosecution for offence under—Any number of false entries whether can be proved—Difference in case where prosecution is for false entries only.*

When a person is charged with falsification of accounts any number of false entries or omission of entries may be proved in order to prove falsification. Such a course is not contrary to S. 234 Cr. P. C. *Seemle* if the accused is charged with making false entries only it may reasonably be said that the making of each false entry is a distinct offence. (*Suhrawardy and Costello, J.J.*) *PRAFULLA CHANDRA v. EMPEROR.* 34 C.W.N. 925,

**PENAL CODE (1860), S. 480—Ingredients.****—S. 477-A—Interpretation.****—'Falsify.'**

It is not necessary for the prosecution to prove that any person or persons were actually deceived by the false document. It is quite sufficient if in the opinion of the Court the document had that tendency. The expression "falsify" applies to the preparation of an entirely new document containing false information. To falsify means "to render false" and a new document containing false information can be correctly described as a false document and the act of preparing such a document is falsification of the document. (*Jailal, J.*) *RAM CHAND GURVALA v. EMPEROR.* 98 I.C. 599=27 Cr. L.J. 1383= A.I.R. 1926 Lah. 385.

**—S. 478—Evidence and proof.**

*—Goods manufactured by complainant alone and reputed to be his.*

Under S. 478 complainant has to prove that the goods which are the subject of the mark are manufactured and sold by himself and that goods are known in the market as being of his manufacture alone.

Where the article bearing the mark was proved to have been manufactured and sold by both the complainant and the accused on a large scale and there was no sufficient evidence to support the view that the article was reputed to be the complainants' exclusive manufacture: (*Greaves and Chotzner, J.J.*) *GOBINDA CHANDRA v. ABDUL RASHID.* A.I.R. 1928 Cal. 235.

**—S. 480—Claim to mark.**

*—If justification for infringement—Test of infringement—Resemblance in mark—Same name.*

A trader even with some claim to the mark or name cannot adopt a trade-mark which causes his goods to bear the same name in the market as those of a rival trader. If a purchaser looking at the article offered to him would naturally be led, from the mark impressed on it, to suppose it to be the production of the rival manufacturer, and would purchase it in that belief, the Court considers the use of such a mark to be fraudulent. The actual physical resemblance of the two marks is not to be the sole question for consideration. If the goods of a manufacturer have from the mark or device he has used become known in the market by a particular name, the adoption by a rival trader of any mark which will cause his goods to bear the same name in the market may be as much a violation of the rights of that rival as the actual copy of his device: *Seix v. Provezende*, (1866) 1 Ch. 192, Foll. Case Law discussed. (*Otter, J.*) *P. A. PAKIR MOHAMED v. EMPEROR.* 1929 Cr. C. 498= A.I.R. 1929 Rang. 322.

**—S. 480—Ingredients.**

*—Marking goods in a manner calculated to mislead people—Intention to defraud—If necessary.*

In order to establish a case under S. 480 the prosecution must prove that the accused marked goods, that he did so in a manner reasonably calculated to cause it to be believed that the goods so marked were the manufacture or merchandise of some other person and that such goods are not the manufacture or merchandise of such person. It is unnecessary for the prosecution to prove that an accused in such a case had acted with intent to defraud; should the latter, however, prove that he acted without intent to defraud, he is entitled to be acquitted. (*Otter, J.*) *P. A. PAKIR MOHAMED v. EMPEROR.* 1929 Cr. C. 498=A.I.R. 1929 Rang. 322.



**PENAL CODE (1860), S. 480—What is offence under.**

—S. 480—What is offence under.

—Accused keeping goods of complainant's mark for sale—Accused acting in good faith—Mark not counterfeit—No offence.

Where accused put for sale goods bearing trade mark of complainant but it was found that the manufacturers sent those goods to wrong person from whom the accused got them and no intention to defraud was found:

*Held:* that no offence was committed under Ss. 480 and 482, nor under S. 486 as the mark was not counterfeit under S. 28, Penal Code. (*Chari, J.*) **SYON SHEEMAN & Co. v. R. SOLOMAN.** 95 I.C. 275 = 4 Rang. 16 = 27 Cr. L.J. 755 = A.I.R. 1926 Rang 134.

—S. 482—Burden of proof.

—Absence of intention to defraud—Duty of accused.

On the wording of S. 482 an intent to defraud is an ingredient of the offence, but, when it has been proved that a trade-mark is a false trade-mark, then, it is to be presumed that the accused person had that intent unless and until he rebuts the presumption when the accused person is entitled to an acquittal. The burden of proving the absence of such intent is upon the accused, but the question whether that burden has been discharged must be answered on a consideration of the whole of the evidence in the case: A. I. R. 1929 Rang. 322, Diss. from. (*Carr, J.*) **A. M. MALUMIAR & Co. v. FINLAY FLEMING & Co.** 118 I.C. 113 = 7 Rang. 169 = 30 Cr. L.J. 882 = 1929 Cr. C. 617 = A.I.R. 1929 Rang. 343.

—Absence of intention to defraud—Duty of accused.

Even though no cases of purchasers having been deceived by the use of false trade-mark are proved, this fact standing alone is insufficient to justify the contention that the accused acted without intent to defraud. The state of mind or the persons responsible for the introduction of the trade-mark is a most relevant fact which can be established by evidence. In the absence of such evidence, the accused cannot be held to have discharged the onus of proving want of intention which was upon him. (*Otter, J.*) **P. A. PAKIR MAHOMAD v. EMPEROR.** 1929 Cr. C. 498 = A.I.R. 1929 Rang. 322.

—S. 482—Civil and Criminal remedies.

—Bona fide dispute—Discretion of Criminal Court.

Although the Criminal Court has a discretion in view of the peculiar circumstances of a particular case, e.g., if there exists a *bona fide* dispute as to the right to use a trade-mark, or where there has been undue delay in commencing criminal proceedings, to stay its own hands and direct the complainant to establish his rights in a Civil Court, it is nowhere laid down by the legislature that an aggrieved person should seek his remedy in a Civil Court and not in a Criminal Court (*Raza, J.*) **MOHAMMAD RAZA v. EMPEROR.**

1930 Cr. C. 765 = 7 O.W.N. 598

A.I.R. 1930 Oudh 360.

—Discretion of Criminal Court.

It is nowhere laid down by the legislature that under no circumstances could a dispute relating to the infringement of a trade-mark be entertained by a Criminal Court and that it should always be adjudicated upon by a Civil Court. The only thing which can be said is that the Criminal Court may in view of the peculiar circumstances of a particular case, stay its own hands and direct the complainant to establish his right in Civil Court; 32 Cal. 431; Ref. to. (*Shadi*

**PENAL CODE (1860), S. 482—Title to trade mark.** *Lal C. J. and Agha Haidar, J.* **BANARSI DAS v. EMPEROR.** 108 I.C. 607 = 9 Lah. 491 = 29 Cr. L.J. 425 = 23 P.L.R. 610 = 9 A.I.Cr.R. 406 = A.I.R. 1928 Lah. 186.

—S. 482—Corporate body.

—Prosecution.

A body corporate such as a firm may be prosecuted for an offence under Ss. 490 and 482: 7 L. B. R. 306, Ref. (*Otter, J.*) **P. A. PAKIR MAHOMED v. EMPEROR.** 1929 Cr. C. 498 = A.I.R. 1929 Rang. 322.

—S. 482—Right to prosecute.

—Prosecutor not manufacturer.

A person, not necessarily a manufacturer, who uses a mark for the purpose of his trade, may acquire rights to and in respect of that mark. Where in the course of a user extending over a large number of years, goods are sold by a firm bearing a certain mark which had been known to purchasers by that mark, a prosecution would also lie at the instance of the firm: 37 Cal. 204, Rel. on. (*Otter, J.*) **P. A. PAKIR MAHOMED v. EMPEROR.** 1929 Cr. C. 498 = A.I.R. 1929 Rang. 322.

—S. 482—Test for determining infringement.

—Likelihood of deception—Similarity of marks.

The proper test in case of an infringement of a trade-mark is whether the "get-up" of the defendant's goods is likely to deceive a purchaser, who is acquainted with the plaintiff's "get-up" but trusts to his memory. It is to be assumed that the purchaser will look fairly at the goods without distinguishing features being concealed and the Court must also have regard to the class of purchaser by whom the goods would normally be bought: 8 L. B. R. 561, Rel. on.

In a prosecution under S. 482, looking at the two marks together, it could be most emphatically said not only that no person seeing the two side by side would confuse the one with the other, but also that no person, who had seen one of the marks and retained the slightest recollection of what it looked like, could by any possibility mistake the other for it, nor was it suggested that there was anything in the appearance of the two marks to lead to confusion. There was no evidence to show that any person had in fact been deceived and had been led to purchase the goods of the accused believing them to be the merchandise of the complainant. Any prominent and substantial part of the complainant's trade-mark did not appear as a prominent and substantial part of the accused's trade-mark. The evidence though perhaps sufficient to show that some people may call the accused's trade-mark by the same name as that of the complainant, was not sufficient to show that every one would do so nor that the mark of accused must inevitably lead to the attribution to their goods the same name as that of the complainant's.

*Held:* that the complainants had not made out a good case for protection and the accused must be acquitted: (*English Cases, Referred.*) (*Carr, J.*) **A. M. MALUMIAR & Co v. FINLAY FLEMING & Co.** 118 I.C. 113 = 7 Rang. 169 = 30 Cr. L.J. 882 = 1929 Cr. C. 617 = A.I.R. 1929 Rang. 343.

—S. 482—Title to trade mark.

—Use of distinctive mark for over 10 years—Acquisition of property in mark.

Where a trade-mark in question is a distinctive mark which the firm has been using for over ten years, the firm using it acquires property in that mark as indicating that all goods which bear it have been manufactured by the firm and any flagrant imitation of the same with deliberate and dishonest intention will bring the act within the purview of S. 482. Registration of the mark is not necessary to complete



**PENAL CODE (1860), S. 482—Title to trade mark.**  
the title to trade-mark in India : A.I.R. 1928 Lah. 186,  
Ref. (Raza, J.) MOHAMMAD RAZA v. EMPEROR.

7 O.W.N. 598=1930 Cr.C. 765=  
A.I.R. 1930 Oudh 360.

—Use of mark for 6 years—Proof of actual  
deception—If necessary.

A mark used for six years can become trade-mark  
within S. 482. Where the mark used by the accused  
is likely to deceive the public, evidence of actual  
deception is not necessary for conviction. (*Greaves  
and Panton, JJ.*) LA KHAN CHANDRA BASAK v.  
EMPEROR. 81 I.C. 922=25 Cr.L.J. 1098=  
A.I.R. 1925 Cal. 143.

—S. 485—Offence under.

—Trade-mark consisting of impression mould-  
ed on glass and label—Person found only with  
mould with intention of counterfeiting trade-  
mark.

Where a trade-mark consists of an impression  
moulded in the glass of which the bottles are made  
together with label and the person is found in possession  
of the mould in question with the intention of  
counterfeiting that trade-mark, although the appa-  
ratus for counterfeiting the label which would  
complete the trade-mark has not been found, the  
person can be convicted under S. 485. (*Jack, J.*)  
ABDUL SOVAN v. RAMANI MOHAN CHATTERJEE.  
A.I.R. 1930 Cal. 664.

—S. 486—Offence under.

—Proper test.

In a case under S. 486 the proper test is not  
whether a purchaser if literate would be deceived if  
he had the two articles side by side, but the matter  
should be considered from the point of view of the  
ordinary unwary purchaser. (*Pearson and Patterson,  
JJ.*) ASWINI KUMAR PAL v. EMPEROR.  
A.I.R. 1930 Cal. 728.

—S. 486—Validity of conviction.

—Using another firm's soda water bottles in-  
nocently—No offence.

The complainant and the accused were soda-water  
manufacturers, and each had special bottles of his  
own firm. It was a common practice of the place  
that water-manufacturing firms used bottles in-  
discriminately, i.e., bottles of one firm were sent by  
customers to another firm for being filled with  
mineral water. Accordingly the accused's firm used  
bottles of the complainant's firm.

*Held*: that as there was no intention to do any-  
thing harmful within the meaning of S. 486, convic-  
tion under that section could not be valid.  
(*C. C. Ghose and Gregory, JJ.*) OLPADVOLLA v.  
JAMES WRIGHT. 117 I.C. 691=30 Cr.L.J. 832=  
32 C.W.N. 1115=A.I.R. 1928 Cal. 873.

—S. 489-A—Essentials.

—Ability and materials.

In the case of the counterfeiting of a currency-note  
both ability and materials of a particular kind are  
required. If those materials and ability are not  
present it cannot be said that an act performed with-  
out the ability to counterfeit and without materials  
which may help to a useful counterfeiting would be  
an attempt. (*Dalal, J.*) JWALA v. EMPEROR.  
116 I.C. 797=51 All. 470=30 Cr.L.J. 690=  
11 A.I.Cr.R. 215=1929 A.L.J. 127=  
10 L.R.A.Cr. 29=A.I.R. 1928 All. 754.

—S. 489-B—Evidence and proof.

—Accused in possession of forged currency  
note—Genuine note of same number in accused's  
house—Paper containing green honey-comb pattern  
resembling one in forged note also found in his  
house—Accused's father and brother living in same  
Cr. D—138

**PENAL CODE (1860), S. 489-D—Dishonest inten-  
tion.**

house—Accused disposing forged note to shop keep-  
er—Inference as to knowledge of forgery.

One G was prosecuted under S. 489-B for using as  
genuine a counterfeit note knowing it to be counter-  
feit. A counterfeit note was in possession of the ac-  
cused. A genuine note bearing the same number was  
found in the house of the accused; one other forged  
note also bearing the same number was traced to the  
same village. A piece of paper containing a honey-  
comb pattern in green ink resembling the pattern on  
the forged note was also found in his house.

*Held*: that although there was no evidence that  
the accused made this pattern, but as it was found in  
the house in which he lived with his father and bro-  
thers it was a very fair inference that this pattern  
must have been made by some body in that house and  
that the forged note was copied from the original note,  
which was also in the same house, and as the accused  
was disposing of the copy of the genuine note to a  
shop-keeper no other inference was possible but that  
it was done with the knowledge that the note was for-  
ged. (*Madhavkar and Baker, JJ.*) EMPEROR.  
GOPAL RAGHUNATH. 116 I.C. 243=53 Bom. 344=  
31 Bom. L.R. 148=30 Cr. L.J. 588=  
A.I.R. 1929 Bom. 128.

—S. 489-B—Interpretation.

—As genuine.

The words "as genuine" govern only the verb  
"uses" and not any other verb. (*Shadi Lal, C. J. and  
Zafar Ali, J.*) BIKHA RAM v. EMPEROR.  
94 I.C. 414=7 Lah. 80=27 Cr. L.J. 638=  
27 P.L.R. 514=A.I.R. 1926 Lah. 72.

—S. 489-B—Object.

The object of the legislature in enacting the section  
is to stop the circulation of forged notes by punishing  
all persons who, knowing or having reason to believe  
them to be forged, do any act which would lead to  
their circulation. (*Shadi Lal, C. J. and Zafar Ali, J.*)  
BIKHA RAM v. EMPEROR. 94 I.C. 414=7 Lah. 80=  
27 Cr.L.J. 638=27 P.L.R. 514=  
A.I.R. 1926 Lah. 72.

—S. 489-B—Selling forged notes.

A person who knowingly sells a forged note to another  
is guilty under S. 489-B, whether the purchaser knows  
it to be forged or not. (*Shadi Lal, C. J. and Zafar  
Ali, J.*) BIKHA RAM v. EMPEROR. 94 I.C. 414=  
7 Lah. 80=27 Cr. L.J. 638=27 P.L.R. 514=  
A.I.R. 1926 Lah. 72.

—S. 489-D—Ability to counterfeit.

—Proof of, if necessary.

In considering an offence under S. 489-D it is not  
necessary to prove that the accused had the ability to  
produce counterfeit currency notes with materials in  
his possession. (*Dalal, J.*) JWALA v. EMPEROR.  
116 I.C. 797=51 All. 470=30 Cr. L.J. 690=  
11 A.I. Cr.R. 215=1929 A.L.J. 127=  
10 L.R.A.Cr. 29=A.I.R. 1928 All. 754.

—S. 489-D—Dishonest intention.

—Possession of articles, sufficient to counter-  
feit—Presumption of intention.

Where the accused was in possession of certain  
materials sufficient in the opinion of an expert to  
counterfeit a currency note but had given no explana-  
tion as to why he was in possession,

*Held*: that this by itself would raise a presumption  
of his dishonest intention : 21 M.L.J. 766 (F.B.) Expl.  
and Dist. (*Dalal, J.*) AYYUB v. EMPEROR.  
112 I.C. 911=26 A.L.J. 1391=9 L.R. A.Cr. 138=  
10 A.I. Cr.R. 443=30 Cr. L.J. 47=  
A.I.R. 1928 All. 759.

**PENAL CODE (1860), S. 494—Acquittal.****—S. 494—Acquittal.****—Refusal to commit to sessions.**

Under the Code of Criminal Procedure, as amended, a magistrate of the First Class has jurisdiction to try an offence under Section 494, Penal Code, and dispose of the same without committing the case to the Court of Session. An order of discharge passed by such Magistrate in such a case, after the accused has been called upon to enter on his defence, is tantamount to an acquittal, and not discharge. (*Dalal, J.C.*) **DAL CHAND v. RAM LAL.**

75 I.C. 727=25 Cr. L.J. 39=A.I.R. 1925 Oudh 60.

**—S. 494—Custom.****—Remarriage during life time of first husband—No strict proof of custom—Offence.**

*Sagai* in the form of remarriage of widows is the normal condition in all except the five or six highest castes of Hindus in Bihar. But a custom of *sagai*, while the first husband is still alive is even assuming the custom to be valid defence under S. 494, something which would require strict proof in respect of the particular caste in the particular area, and in respect of the conditions in which the custom operates. 19 Cal. 627, Dist. (*Macpherson, J.*) **FAGU TANTI v. CHOTELAL TANTI.**

96 I.C. 115=

7 P.L.T. 443=27 Cr.L.J. 867=

A.I.R. 1926 Pat. 346.

**—S. 494—Fresh complaint.****—Complainant failing to prove his alleged marriage with accused—Complaint dismissed—Fresh complaint—If maintainable.**

Where one complaint under S. 494 was dismissed on the ground that the complainant failed to prove his alleged marriage with the accused, another complaint by him cannot be entertained. (*Zafar Ali, J.*) **BUDH SINGH v. MT. SOMAN.**

11 L.L.J. 197=

1929 Cr.G. 87=A.I.R. 1929 Lah. 544.

**—S. 494—Sentence.**

Where the prosecution of the accused was initiated only out of vindictive motives, a light sentence only was inflicted. (*Findlay, O.J.C.*) **MT. RITHA v. EMPEROR.**

91 I.C. 250=8 N.L.J. 178=

27 Cr. L.J. 74=A.I.R. 1926 Nag. 127.

**—S. 494—Validity of first marriage.****—First marriage valid—Subsequent marriage with same woman—If offence.**

In the charge of bigamy, where in the first marriage the giving away of the bride was with the consent of the legal guardian who was in jail.

*Held*: that the first marriage was valid and hence the subsequent marriage with the same woman constituted bigamy. (*Cuming and Gregory, JJ.*) **BENODINI HAWAL DAR v. EMPEROR.**

100 I.C. 711=28 Cr. L.J. 327=

7 A.I. Cr. R. 515=A.I.R. 1927 Cal. 480.

**—Performance of rites by Sikh.**

A Hindu professing the Sikh religion may have his marriage performed according to the Anand rites and such marriage would be valid for all intents and purposes including the purpose of an offence under S. 494. (*Moti Sagar, J.*) **WALU RAM v. EMPEROR.**

82 I.C. 277=25 Cr. L.J. 1269=A.I.R. 1925 Lah. 168.

**—S. 494—Void and invalid marriages.****—No distinction—Offence.**

The word "void" which occurs in S. 494 is not used in the technical sense in which it is used in the Mahomedan law. Penal Code makes no distinction between a void and an invalid marriage and the term "void" used therein covers marriages of both classes.

A Mahomedan was prosecuted for bigamy. The accused knew of the former marriage of the woman

**PENAL CODE (1860), S. 497—Proof of marriage.** married by him. It was argued that the marriage with the accused being only invalid and not void under Mahomedan law, the accused could not be said to have committed bigamy.

*Held*: that the accused was guilty. (*Zafar Ali, J.*) **MT. ALLAH DI v. EMPEROR.**

110 I.C. 333=

29 P.L.R. 533=10 A.I. Cr. R. 500=

29 Cr.L.J. 701=A.I.R. 1928 Lah. 844.

**—S. 497—Applicability.****—Europeans.**

The provisions of S. 497 of the Penal Code are not restricted in their application and applies to all classes of persons, including Europeans. Evidence that the accused took up his abode in the house of another man's wife, that both slept on the same bed for 15 days, and that there was considerable attachment between them, is amply sufficient to prove adultery. (*Tudball, J.*) **HUNTER v. EMPEROR.**

61 I.C. 238=22 Cr. L.J. 382=2 U. P.L.R. (All.) 419.

**—S. 497—Evidence.**

*Letter written by complainant's wife to accused, but not proved to have been received by accused—Sufficiency.*

Where, in the case of a charge for adultery, the only evidence was a letter written by the complainant's wife to the accused, which was not proved to have been received nor read by the accused.

*Held*: that conviction on such evidence must be set aside. (*Newbould and Mukerji, JJ.*) **R. DORICE v. STANS ISLAN.**

A.I.R. 1928 Cal. 248.

**—S. 497—Nature of offence.****—Continued intercourse.**

Every act of sexual intercourse amounts to an offence of adultery, and if a person has several sexual intercourses with a woman, it cannot be said that the offence is a continuing offence. (*Pathkar and Baker, J.*) **SHANKAR TULSHIRAM, In re.**

113 I.C. 70=30 Cr.L.J. 54=33 Bom. 69=

11 A.I.Cr.R. 510=30 Bom. L.R. 1433=

A.I.R. 1928 Bom. 530.

**—S. 497—Presumption of marriage.****—Man and woman living together as husband and wife—Factum valet.**

Where a man and a woman lived together as man and wife, there is a presumption that they were legally married, and even though they belong to castes or classes which ought not to intermarry, nevertheless, *factum valet quod fieri non debuit* applies. (*Held, J.*) **ANANDAW v. KING-EMPEROR.**

104 I.C. 708=6 Bur.L.J. 122=28 Cr.L.J. 868=

A.I.R. 1927 Rang. 261

**—S. 497—Proof of adultery.****—Circumstantial evidence.**

*Kulwant Sahay, J.*—It is a fundamental rule that it is not necessary to prove the direct fact of adultery; because if it were otherwise, there is not one case in a hundred in which that proof would be attainable: it is very rarely indeed that the parties are surprised in the direct fact of adultery. In every case almost the fact is inferred from circumstances that lead to it by fair inference as a necessary conclusion. The only general rule that can be laid down upon the subject is that the circumstances must be such as would lead the guarded discretion of a reasonable and just mind to that conclusion: *Loveden v. Loveden*, (1810) 161 E. R. 648, Ref. (*Kulwant Sahay and Macpherson, JJ.*) **SITA DEVI v. GOPAL SARAN.**

111 I.C. 762=9 P.L.T. 397=A.I.R. 1928 Pat. 375.

**—S. 497—Proof of marriage.****—Duty of prosecutor—Admission of accused—Effect.**

In a prosecution under S. 497 the question of

**PENAL CODE (1860), S. 497—Prosecution by Crown.**

marriage must be proved strictly and any inference, tacit or otherwise, *e. g.*, a tacit admission on the part of the accused that the woman was the wife of the complainant, will not avail the prosecution if they fail to prove strictly the marriage between the complainant and the woman whose chastity has been violated. In case of this kind it is necessary for the complainant or some other person in his behalf to give strict proof of the marriage. In countries where a system of registration prevails, it is sufficient for the petitioner or the prosecutor, as the case might be, to give evidence of his marriage with the woman who is concerned and produce a certified copy of the register. But in a country like India where no registration prevails, it is necessary to set out the facts and circumstances surrounding the alleged ceremony of the marriage in order to enable the Court to determine the question whether the marriage in fact took place and whether the relationship of husband and wife in fact existed at the time of the prosecution. (*Wort, J.*) **GANGA PATRA v. EMPEROR.** 112 I.C. 469 = 29 Cr.L.J. 1045 = 11 A.I.Cr.R. 364 = A.I.R. 1928 Pat. 481.

**—S. 497—Prosecution by Crown.****—If permissible.**

Section 61, Divorce Act, is not intended to be anything more and does nothing more than preclude a civil suit for damages of the nature of the English common law action, for criminal conversation which lay at the suit of a husband to recover damages against an adulterer. There is no authority statutory or otherwise, warranting the view that S. 61 forbids the Crown to prosecute and punish an alleged adulterer under S. 497, I. P. C., when moved to do so by an injured husband. (*Coldstream, J.*) **F. BWYE OF SIMLA v. KIRK.** 108 I.C. 381 = 10 L.L.J. 250 = 29 Cr.L.J. 332 = A.I.R. 1928 Lah. 50.

**—S. 497—What must be proved.****—Existence of marriage.**

In a prosecution under S. 497 or S. 498 it must be proved to the satisfaction of the Court that there is in existence a legal marriage before conviction can take place. (*Stuart, C. J.*) **RAGHUPAT SINGH v. KING-EMPEROR.** 100 I.C. 535 = 4 O.W.N. 472 = 28 Cr.L.J. 311 = 7 A.I.Cr.R. 436 = A.I.R. 1927 Oudh 140.

**—Existence of marriage.**

In all prosecutions for adultery under S. 497, Penal Code, the marriage must be strictly proved. (*Maung Gyi, J.*) **GOPAL v. EMPEROR.** 95 I.C. 603 = 27 Cr.L.J. 681 = 4 Bur.L.J. 107 = A.I.R. 1925 Rang. 328.

**—S. 498—Abduction and detention.****—Acquittal for abduction—If bar to trial for detention.**

Where a woman has been abducted and detained, an acquittal on a charge of abduction is no bar to the trial of a charge of detention. (*Broadway, J.*) **MAHBUB ALI KHAN v. EMPEROR.** 74 I.C. 444 = 24 Cr.L.J. 780 = A.I.R. 1924 Lah. 330.

**—S. 498—Charge.****—Accused not charged with knowledge of marriage—Effect.**

Where in a prosecution under S. 498, Indian Penal Code, the accused were not charged with knowledge or reason to believe that the abducted woman was a married woman and the accused knew what they were charged with and what it was necessary for the prosecution to prove.

*Held*, that this fact by itself would not affect the

**PENAL CODE (1860), S. 498—“Detained”.**

case. (*Dalip Singh, J.*) **ALLAH DIN v. EMPEROR.** 101 I.C. 451 = 28 Cr.L.J. 419 = A.I.R. 1927 Lah. 432. —S. 498—Complaint by husband—Validity of marriage—Proof.

Where the husband of a woman absolutely abandons her, and she marries another man by a marriage which is recognised as valid among the people to which the parties belong, the second husband of the woman has full authority to institute complaints for enticing the woman away. (*Boys, J.*) **ASLOP v. EMPEROR.** 1930 Cr.C. 1137 = A.I.R. 1930 All. 834.

**—S. 498—Compounding.****—Husband not party—Legality.**

Under S. 345 the only person who is authorised to compound an offence under S. 498 is the injured husband and hence an order of acquittal based on compromise entered into by any other person is erroneous. (*Broadway, J.*) **MAHBUB ALI KHAN v. EMPEROR.** 74 I.C. 444 = 24 Cr.L.J. 780 = A.I.R. 1924 Lah. 330.

**—S. 498—Connivance of husband.****—Proof of mere negligence—If sufficient.**

In order to establish connivance mere negligence or inactivity will not suffice. To constitute connivance the facts established must lead to a direct and necessary inference that adultery would be committed with the person charged, and that the husband acquiesced in by wilfully abstaining from taking any steps to prevent that adulterous intercourse which, from what passes before his eye or within his knowledge, he cannot but believe or reasonably think is likely to occur. They may not prove privy to the actual commission of the adultery. **GIBBS v. GIBBS** (11 H. L. 1), Rel. on. (*Kanhaiya Lal, J.*) **MUNIR v. KING-EMPEROR.** 91 I.C. 533 = 24 A.L.J. 155 = 6 L.R.A.Cr. 209 = 27 Cr.L.J. 101 = A.I.R. 1926 All. 189.

**—S. 498—Conviction.****—Marriage not proved but presumed from cohabitation—Legality.**

In dealing with offences under S. 498, marriage must be strictly proved. There may arise a presumption that by co-habitation for a period of 13 years marriage took place, but persons cannot be convicted on a presumption of that kind. (*Johnstone, J.*) **VIR SINGH v. EMPEROR.** 119 I.C. 332 = 30 P.L.R. 643 = 30 Cr.L.J. 1051 = A.I.R. 1930 Lah. 230.

**—S. 498—Death of husband pending case.****—Abatement of prosecution.**

S. 89 of the Probate and Administration Act has no application to a criminal prosecution. (44 M. 417 Foll.) And therefore criminal prosecution under S. 498, I.P.C., cannot abate merely on account of the death of the injured party, *i.e.*, the husband. 25 P. R. Cr. 1919, Ref. (*Broadway and Martineau, JJ.*) **EMPEROR v. MANJ DIN.** 71 I.C. 77 = 4 Lah. 7 = 24 Cr.L.J. 29 = A.I.R. 1924 Lah. 72.

**—S. 498—“Detained”.****—Meaning.**

“To detain” means to keep back from somebody or to restrain. Where a woman had left her husband, and is living with another to the knowledge of her husband for a period of six years, and the husband takes no steps to get her back, it cannot be said that she is “detained” by the other within S. 498. (*Pullan, J.*) **ABDUL WAHID v. EMPEROR.** 103 I.C. 533 = 1 L.C. 235 = 28 Cr.L.J. 703 = 8 A.I.Cr.R. 415 = A.I.R. 1927 Oudh 318.

**PENAL CODE (1860). S. 498—Essentials.****—S. 498—Essentials.**

*—Knowledge of accused that the enticed person is a married woman.*

To sustain a conviction under S. 498, I.P.C., there must be evidence that the accused knew that the woman was the wife of another man; mere presumption that he must have known this is not sufficient. (*Beachcroft and Ghose, JJ.*) **BATIRAM KEOT v. BHANDRAL KEOT.** 61 I.C. 652=22 Cr. L.J. 412=14 M.L.W. 189=44 M. 913.

**—S. 498—Knowledge of marriage.**

*—Circumstances justifying presumption.*

A person charged under S. 498 who lives in a neighbouring village and belongs to the same brotherhood as that of the girl who is alleged to have been enticed by him must be presumed to have the necessary knowledge that she is the lawful wife of her husband. (*Tek Chand, J.*) **FAZAL DAD v. EMPEROR.** 110 I.C. 794=11 A.I. Cr. R. 35=29 Cr. L.J. 762=

A.I.R. 1928 Lah. 898.

**—S. 498—Proof of marriage.**

*—Evidence that husband put vermilion on woman's forehead and feast—If sufficient.*

A complaint under S. 498 was made by a low caste Hindu. He alleged that he had married the woman enticed away in *nika* form. The only evidence of marriage that was adduced was that the complainant put vermilion on the forehead of the woman and that there was a feast of the caste people.

*Held*, that the evidence of marriage was legally insufficient for a conviction under S. 498. (*Suhrwardy and Graham, JJ.*) **PRAHLAD BARMAN v. EMPEROR.** 1930 Cr. C. 659=A.I.R. 1930 Cal. 447.

*—In proving an offence in which marriage is an essential ingredient, it is necessary that the fact of the marriage must be strictly proved.* (*Chari, J.*) **M. RAMANATHAN v. EMPEROR.** 100 I.C. 236=

5 Bur. L.J. 190=28 Cr. L.J. 268.

*—Admission of accused—If sufficient.*

In a case of abduction under S. 498 the marriage ought to be proved like any other essential fact in the case. The mere admission of the accused that the woman abducted is the lawful wife of the complainant, though corroborated by the evidence of the woman is not enough to prove the marriage. 5 Cal. 566; 3 O.C. 342 and 5 All. 233, Foll. (*Simpson, A.J.C.*) **PHIKKU v. KING-EMPEROR.**

89 I.C. 464=2 O.W.N. 586=26 Cr. L.J. 1376=

**—S. 498—Sentence.** A.I.R. 1925 Oudh 701.

When the woman is an active abettor in her own abduction, the sentence should be a light one. (*Broadway, J.*) **CHANGI v. EMPEROR.**

99 I.C. 84=27 P.L.R. 642=28 Cr. L.J. 52=

A.I.R. 1927 Lah. 91.

*—Wife neglected by husband, both not being on good terms—Heavy sentence—If necessary.*

Where in a case under S. 498 the husband and wife were not on good terms and the wife had a sheer contempt for her husband who did not care much about her and took no action on the commission of the offence till the lapse of many months, it is not necessary to inflict a heavy punishment on the accused. (*Abdul Raof, J.*) **GAHRA v. EMPEROR.**

91 I.C. 1008=26 P.L.R. 429=

27 Cr. L.J. 192=A.I.R. 1926 Lah. 176.

**—S. 498—Voidable marriage.**

*—Marriage voidable being performed during the girl's minority—Non-consummation of marriage after she had attained puberty—Inference as to when to avoid marriage.*

A marriage whose marriage is voidable having been performed during her minority cannot be considered

**PENAL CODE (1860), Ss. 499 & 450—Civil and Criminal proceedings.**

to have exercised the option and ceased to be the wife of her husband unless option has been exercised before the enticement and the mere fact that the marriage was not consummated after she had attained puberty and she had actually left her husband is not sufficient to infer that she exercised the option. (*Tek Chand, J.*) **FAZAL DAD v. EMPEROR.**

110 I.C. 794=11 A.I. Cr. R. 35=

29 Cr. L.J. 762=A.I.R. 1928 Lah. 898.

**—S. 498—Willingness of woman.**

*—Detention—No offence.*

There can be no detention where a woman is living with a man of her own free will and refuses to go back with her husband and the person with whom she thus lives is not guilty of an offence under S. 498, I. P. C., as the chief element which constitutes the offence under the section is wanting. 18 A. L. J. 311, Foll. (*Walsh, J.*) **OCHACHAL AHIR v. EMPEROR.**

107 I.C. 689=26 A.L.J. 403=

9 A.I. Cr. R. 106=9 L.R.A. Cr. 15=

29 Cr. L.J. 273=A.I.R. 1928 All. 194.

*—No offence.*

Where a girl of 16 years travelled with the accused from place to place and there was no evidence that she was unwilling to stay with them and she stayed with them for nearly six months,

*Held*, that there was no abduction. (*Zafar Ali, J.*) **KARTAR SINGH v. THE CROWN.** 90 I.C. 156=

7 L.L.J. 217=26 P.L.R. 517=

26 Cr. L.J. 1500=A.I.R. 1925 Lah. 406.

**—Ss. 499 & 500.**

**Civil and Criminal Proceedings.**

**Defence.**

**English Law.**

**Enquiry before publication.**

**Essentials for conviction.**

**Evidence and proof.**

**Fair comment.**

**Good faith.**

**Imputation as to caste.**

**Imputation of ingratitude.**

**Imputation of insolvency.**

**Insult or abuse.**

**No personal remarks.**

**Procedure.**

**Publication.**

**Public good.**

**Sentence.**

**Statement in suit or proceedings.**

**Statement to a person in authority.**

**Statement to public servant.**

**Written defamation—Proof.**

**Miscellaneous.**

**—Ss. 499 & 500—Civil and Criminal proceedings.**

The difference between a criminal case and a civil suit founded upon libel is a difference not merely of form but is one of substance. (*Sen, J.*) **MOHAMMAD SAMIULLA KHAN v. BISHU NATH.** 115 I.C. 119=

26 A.L.J. 760=A.I.R. 1928 All. 316.

*—Distinction between civil and criminal liability.*

There is a distinction between criminal and civil liability for defamation. Civil liability is to be determined by the principles of English Law, but criminal liability is governed by the provisions of the Penal Code and by those provisions alone. 36 Mad. 216 (F.B.); 22 All. 234; 29 All. 685 and, 48 Cal. 388 (S.B.), Rel. on. (*Daniels, J.*) **MT. CHAMPA DEVI v. PIRBHU LAL.** 92 I.C. 429=24 A.L.J. 329=

27 Cr. L.J. 253=7 L.R.A. Cr. 64=

A.I.R. 1926 All. 267.

**PENAL CODE (1860), Ss. 499 & 500—Defence.****—Ss. 499 & 500—Defence.****—Rumour.**

Publication of a defamatory "rumour" is as actionable as if the statement were published without qualification and it is no defence to a civil suit or criminal prosecution that the person who published the libel or slander did not originate it, but heard it or received it from another, nor is it a defence that it was a current rumour and the person publishing it *bona fide* believed it to be true, and therefore, the editor of a newspaper is as much responsible for a defamatory letter published in his columns as if he had originally penned it. *McPherson v. Daniels*, 10 B. & C. 263; *Watkins v. Hall*, (1868) 3 Q. B. 396; and *DeCrespigny v. Wellesley*, 5 Bing. 392, *Rel. on.* (*Mears, C. J. and King, J.*) **MOHAMMAD NAZIR v. EMPEROR.** 117 I.C. 355=30 Cr. L.J. 766=26 A.L.J. 509=9 L.R.A. Cr. 104=10 A.I.Cr.R. 145=A.I.R. 1928 All. 321.

**—Justification.**

The defendant in proceedings for defamation, whether in a civil suit or under S. 500, Penal Code, must for defence depend upon the facts of each particular case which the defendant is certain can be proved by him or his witnesses. If there is no substantial defence, an immediate apology in the widest and most unreserved terms may fairly be presumed to decrease the damages and lessen the punishment under S. 500, Penal Code. The facts may be so strong that occasionally it may happen that counsel can advise the client to "justify." That most dangerous plea should never be put forward unless there is a practical certainty of success, and, if no justification can be pleaded, no act shall be done and no question shall be put tending towards justification. (*Mears, C. J. and King, J.*) **MOHAMMAD NAZIR v. EMPEROR.** 117 I.C. 355=30 Cr. L.J. 766=26 A.L.J. 509=9 L.R.A. Cr. 104=10 A.I.Cr.R. 145=A.I.R. 1928 All. 321.

**—Protection under S. 132, Evidence Act.**

Ordinarily, it is for the witness to claim protection under S. 132 at the time of giving his self-criminating answer, and to prove it as a defence to a prosecution for defamation. (*Kinkhede, A.J.C.*) **SURAJMAL v. RAMANATH.** 105 I.C. 820=28 Cr. L. J. 996=9 A.I. Cr. R. 204=A.I.R. 1928 Nag. 58.

**—Exceptional case.**

Although it is for the prosecution to make out a case for conviction, the accused person has under S. 105, Evidence Act, to prove the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or in cases of defamation under the special exceptions of S. 499, I. P. C. A. I. R. 1924 All. 299, *Diss. from.* (*Kinkhede, A.J.C.*) **SURAJMAL v. RAMANATH.** 105 I.C. 820=28 Cr. L.J. 996=9 A.I. Cr. R. 204=A.I.R. 1928 Nag. 58.

**—Denial of statement.**

Even where the accused deny having made the statements alleged to be defamatory, they are entitled to call evidence to prove that the allegations if made by them would bring them within one of the exceptions of the section. (*Das, J.*) **ABDUL AZIZ v. FAZAL RAHAM.** 113 I.C. 816=12 A.I. Cr. R. 144=30 Cr. L.J. 239=A.I.R. 1928 Rang. 167.

**—No publication.**

A plea that though there was publication of the statement, there was no publication to person mentioned in the charge is a highly technical plea and the defect in the charge is curable under S. 537, Cr. P. Code. (*Kinoid, J.C.*) **TIKAM DAS MULCHAND v. EMPEROR.** 96 I.C. 499=

**PENAL CODE (1860), Ss. 499 & 500—Essentials for conviction.**

7 A. I. Cr. R. 21=27 Cr. L. J. 947=A. I. R. 1927 Sind 58.  
—Ss. 499 & 500—English Law.

**—Doctrine of absolute privilege—Applicability.**

The English common law doctrine of absolute privilege does not obtain in the *moffussil* in India. S. 499 is exhaustive and if a defamatory statement does not fall within the specified exceptions it is not privileged. 40 Bom. 162; 40 Cal. 433 and A. I. R. 1921 Cal. 1 (S. B.), *Foll.* (*Kinkhede, A.J.C.*) **SURAJMAL v. RAMANATH.** 105 I.C. 820=28 Cr. L. J. 996=9 A. I. Cr. R. 204=A. I. R. 1928 Nag. 58.

**—Privilege of advocate.**

Under the English Law, advocates have absolute and unqualified privilege in respect of questions asked in cross-examination. Advocates in India have not such unqualified and absolute privilege. (*C. C. Ghosh and Cammiade, JJ.*) **M. BANERJEE v. EMPEROR.** 114 I.C. 717=55 Cal. 85=28 Cr. L.J. 877=46 C. L. J. 227=A. I. R. 1927 Cal. 823.

**—Privilege of advocate.**

Under the Common Law of England an advocate can claim an absolute privilege for words uttered in the course of his duty as an advocate. But an advocate in India is not entitled to an absolute privilege, and in cases of prosecution for defamation his liability must be determined on reference to the provisions of S. 499. (*Ross and Kulwant Sahay, JJ.*) **NIRSU NARAYAN v. EMPEROR.** 97 I. C. 354=6 Pat. 224=7 P. L. T. 608=1926 P. H. C. C. 314=27 Cr. L.J. 1090=A.I.R. 1926 Pat. 499.

**—Ss. 499 & 500—Enquiry before publication.****—Duties of editors.**

An editor should be most watchful not to publish defamatory attacks upon individuals unless he first takes reasonable pains to ascertain that there are strong and cogent grounds for believing the information, which is sent to him, to be true. (*Mears, C. J. and King, J.*) **MOHAMMAD NAZIR v. EMPEROR.** 117 I.C. 355=30 Cr. L.J. 766=26 A.L.J. 509=9 L.R.A. Cr. 104=10 A.I. Cr. R. 145=A.I.R. 1928 All. 321.

**—Ss. 499 & 500—Essentials for conviction.****—Proof of language defamatory of the individual.**

*Per B. B. Ghose, J.*—The words complained of as constituting the offence must be set out in the charge and proved before the accused can be convicted. When there is a denial the evidence in support of the prosecution must be scrutinized. When spoken words are alleged to have constituted the offence, a very slight alteration of a word may give quite a different meaning to them.

*Per Buckland, J.*—The cardinal rule is that the offence consists in using language which others, knowing the circumstances, would reasonably think to be defamatory of the person complaining of and injured by it. (*Buckland, J.*) *on difference between* (*Newbould and B. B. Ghose, JJ.*) **PRATAP CHANDRA GUHA ROY v. EMPEROR.** 90 I.C. 387=29 C.W.N. 904=42 C.L.J. 178=26 Cr. L.J. 1539=A.I.R. 1925 Cal. 1121.

**—Intention to cause harm to reputation.**

A person commits defamation within the meaning of S. 499 who publishes any imputation concerning any person intending to harm the reputation of that person whether harm is actually caused or not. A person who publishes defamatory matter against another in a case not covered by any of the excep-



**PENAL CODE (1860), Ss. 499 & 500—Essentials for conviction.**

tions cannot escape punishment on the ground that the reputation of the person attacked was so good or that of the persons attacking so bad, that serious injury to the reputation was not in fact caused. (*Daniels, J.*) *RAM NARAIN v. EMPEROR.*

83 I.C. 503=22 A.L.J. 639=  
5 L.R.A. Cr. 119=26 Cr. L.J. 23=  
A.I.R. 1924 All. 566.

—*Finding as to accused's belief about truth or falsity of a statement.*

In a case under S. 499 it is necessary to find whether the accused had reason to believe that the defamatory statement made by him was true, though there may be a finding that it was actually untrue. (*Hallifax, A. J. C.*) *BAGA MAHAR v. KING-EMPEROR.*

76 I.C. 393=25 Cr. L.J. 169=  
A.I.R. 1924 Nag. 172.

—*Intention to harm reputation—Actual harm, if necessary.*

For an offence under S. 499, I. P. C., there must be an imputation with reference to a person intending to harm the reputation against whom the imputation is made. It is not an essential part of the offence that harm should be caused to the reputation of the person against whom the imputation is made. (*Shah and Crump, J.J.*) *ALEX PIMENTO v. EMPEROR.*

59 I.C. 202=22 Cr. L.J. 58=22 Bom. L.R. 1224.

—**Ss. 499 & 500—Evidence and proof.**

—*Woman alleged to have illicit pregnancy—Refusal to submit to medical examination—Value of.*

It is well settled that in a defamation case based on an allegation that a woman has had illicit pregnancy she cannot be compelled to submit to a medical examination against her consent and her refusal to do so is not evidence against her: *Agnew v. Jobson*, 13 Cox. Cr. C. 625; and *Latter v. Braddell*, 50 L.J.Q.B. 448, Rel. on. (*Tek Chand, J.*) *NATHU MAL v. ABDUL HAQ.*

123 I.C. 841=31 Cr. L.J. 584=  
A.I.R. 1930 Lah. 159.

—*Impressions of witnesses—Value of.*

Per *Mukerji, J.*—Where the question arises as to whether the words used were intended to harm or had the effect of harming the reputation, the Court must be put in possession not only of the words used but also of the context in which they were used, in order to find the intention and the effect of the words. If the Court would accept instead of the words and the context, the "impression left on the minds of the witnesses" it will be yielding its duty to witnesses with the result that the accused person will have no benefit of the opinion of the Court itself. *Rainy v. Bravo*, (1872) 4 P. C. 287, Rel. on. (*Mukerji and King, J.J.*) *BHOLA NATH v. EMPEROR.*

113 I.C. 213=51 All. 313=26 A.L.J. 1334=  
10 L.R.A. Cr. 1=11 A.I. Cr. R. 49=30 Cr. L.J. 101=  
A.I.R. 1929 All. 1.

—*Absence of printer in good faith at the time of printing seditious article—Value of.*

A declaration made by a person that he is the printer of a newspaper shall be sufficient evidence (unless the contrary is proved) as against that person that he was the printer of every portion of every issue of the newspaper named in the declaration. In order to escape liability the printer must prove that he was not the printer of any issue of the newspaper which may form the subject-matter of legal proceedings. Absence from the place of printing in good faith, and without knowledge of the seditious articles, would be sufficient evidence to the contrary, but not absence in bad faith. When the declared printer of a

**PENAL CODE (1860), Ss. 499 & 500—Fair comment.**

newspaper pleads absence in good faith, he should prove who was in fact the printer of the newspaper in his absence. 35 Cal. 945, Foll. (*Mears, C. J. and King, J.*) *EMPEROR v. MUHAMMAD SIRAJ.*

113 I.C. 742=30 Cr. L.J. 201=50 All. 806=  
26 A.L.J. 746=9 A.I. Cr. R. 533=9 L.R.A. Cr. 81=  
A.I.R. 1928 All. 400.

—*Defamation of complainant.*

The first step that a complainant must take when commencing a prosecution or a civil suit for defamatory publication is to satisfy the Court that he is the person aimed at by the article. (*Mears, C. J. and King, J.*) *MOHAMMAD NAZIR v. EMPEROR.*

117 I.C. 355=30 Cr. L.J. 766=26 A.L.J. 509=  
9 L.R.A. Cr. 104=10 A.I. Cr. R. 145=  
A.I.R. 1928 All. 321.

—*Malice.*

The question whether upon the facts found or proved, malice has been established is a question of law. (*Ross and Kulwant Sahay, J.J.*) *NIRSU NARAYAN v. EMPEROR.*

97 I.C. 354=6 Pat. 224=  
7 P.L.T. 608=1926 P.H.C.C. 314=27 Cr. L.J. 1090=  
A.I.R. 1926 Pat. 499.

—*Circumstances of hearers.*

Per *B. B. Ghose, J.*—All circumstances which were apparent to the by-standers at the time the words were uttered should be put in evidence, so as to place the jury as much as possible in the position of such by-standers, and then it is for the jury to say what meaning such words would fairly have conveyed to their minds. We should not construe the words as we would a document of title according to rules of construction of deeds, specially when the words spoken have not been proved with certainty, and we have to decide not merely whether the words are defamatory but also whether the words refer to the complainant. (*Buckland, J.*) *on difference between (Newbould and B. B. Ghose, J.J.) PRATAP CHANDRA GUHA ROY v. EMPEROR.*

90 I.C. 387=  
29 C.W.N. 904=42 C.L.J. 178=26 Cr. L.J. 1539=  
A.I.R. 1925 Cal. 1121.

—*Plea of truth—Notes by accused of persons complaining against complainant.*

Per *B. B. Ghose, J.*—At the trial the accused is entitled to prove the notes of statements of complaints against the complainant taken down by him when he went to the locality as evidence of his good faith, and these are relevant on the question although the persons who made the statements are not examined. (*Buckland, J.*) *on difference between (Newbould and B. B. Ghose, J.J.) PRATAP CHANDRA GUHA ROY v. EMPEROR.*

90 I.C. 387=  
29 C.W.N. 904=42 C.L.J. 178=26 Cr. L.J. 1539=  
A.I.R. 1925 Cal. 1121.

—**Ss. 499 & 500—Fair comment.**

—*Wilful misrepresentation or misstatement without due enquiry—No fair comment.*

There is a distinction between "fair comment" based on well known or admitted facts and the assertion of unsubstantiated facts for comment. Where comment is made on allegations of fact which do not exist, the very foundation of the plea disappears. A wilful misrepresentation of fact or any misstatement which an editor could have discovered to be a misstatement if he had made proper enquiries cannot support the plea of "fair comment" as an editor must make due enquiries as to its truth before disseminating the statement of those facts. (*English case-law considered.*) (*Peroival, J. C. and Rupchand, A. J. C.*) *MIR ALLAHBUX KHAN v. EMPEROR.*



**PENAL CODE (1860), Ss. 499 & 500—Fair comment.**

116 I.C. 99=23 S.L.R. 216=30 Cr. L.J. 548=  
12 A.I. Cr. R. 365=A.I.R. 1929 Sind 90.

—Comment based on misstatement of facts—  
No fair comment.

Allegations on the ground of fair comment cannot be justified the moment it is shown that the criticism is based upon a misstatement of facts. (*Walsh, A. C. J. and Pullan, J.*) BHAGWAN DAS v. EMPEROR.

98 I.C. 481=7 L.R.A. Cr. 201=27 Cr.L.J. 1361=  
7 A.I. Cr. R. 3=A.I.R. 1927 All. 116.

—Imputing motive to conduct—No fair comment.

Every one has a perfect right to criticise a man's public conduct, to denounce its impolicy and even to denounce its folly or its absurdity or the mischievous consequences which will result from it. But a line must be drawn between hostile criticism on a man's public conduct and the motives by which that conduct may be supposed to be influenced. (*Kennedy, J. C. and Madgavkar, A. J. C.*) HIRANAND v. EMPEROR. 76 I.C. 230=25 Cr.L.J. 134=17 S.L.R. 245=A.I.R. 1924 Sind 129.

**—Ss. 499 & 500—Good faith.**

—Meaning—Ignorant and timid man preferring complaint to Magistrate—Object being to protect himself, not to injure others—Offence under S. 500, I.P.C., if constituted.

Good faith in the ninth exception to S. 499, I.P.C., requires not logical infallibility but due care and attention. In determining whether due care was taken by the accused allowances have got to be made, his capacity to reason, the circumstances under which he was placed and the occasion which necessitated his making the imputations. Where a comparatively ignorant and timid man apprehending harassment by the complainant presented a petition to a Magistrate and he was prosecuted for allegations contained therein, held, that the accused apparently acted more to protect himself than to injure others and that considering the circumstances under which he acted, the conviction under S. 500 was not sustainable. (*Mukerji, J.*) YADALI v. EMPEROR. 51 C.L.J. 472=34 C.W.N. 1070=A.I.R. 1929 Cal. 779.

—Finding by Appellate Court—Interference in revision—Bona fide statement—Prosecution in respect of—Whether opposed to public policy.

Where the Appellate Court found that the plea of good faith was made out so as to render Exceptions 8 and 9 of S. 499, I.P.C., applicable, held, that the High Court will not interfere with that finding in revision. Held also that it is against public policy to prosecute complainants for statements contained in petitions presented in good faith for their protection. (*Curgenven, J.*) SYED JAFFAR SAHIB v. EMPEROR. 1929 M.W.N. 598.

**—Exceptional case.**

Exception 10, S. 499, deals with cases, for instance, where one man warns another against employing a third person in his service saying that he is a dishonest person and does not refer to the case where one man says of another that he married a woman who had been married before. (*Cuming, J.*) HIRAPADO BAIIDYA v. EMPEROR. A.I.R. 1930 Cal. 645.

—A European lady living with S as wife and subsequently marrying him—She making attempts to murder her husband—Her father-in-law making statements that she was insane and likely to cause danger to her husband and that she was 'man-mad'—Applicability of exception.

Wife of certain Mr. Thomson, became an intimate friend of certain military officer S, Rajput by caste, while he was at Allahabad, and afterwards in the

**PENAL CODE (1860), Ss. 499 & 500—Good faith.**

lifetime of her husband the two met secretly. On the death of Mr. Thomson the two met openly and began to live as husband and wife. One illegitimate child also was born. When the Officer was posted at Quetta she too followed him there. Thereafter S was sent to Moradabad for his training, having been transferred to the Political Department. Then the two were married secretly. The head of the training institution having come to know that S was living with a European lady who was reputed not to be his wife pressed for disclosure of their relationship and the fact of marriage was at last disclosed. Thereupon S was reverted to regular military department. In the meantime the couple was not living a happy life and it was found that the wife had made several attempts either for suicide or for murder of her husband. The couple then went to Delhi where the father of S was living, and then again returned to Moradabad. The father of S then went to Moradabad and interviewed the head of the training institution and also the District Magistrate. During the interview he defamed wife of S firstly by saying that she was of unsound mind and, therefore, likely to murder her husband, and secondly that she was of loose moral character and the word used was a "man-mad". She then complained for defamation. Held, that the first statement though defamatory was covered by Excep. 9 to S. 499 inasmuch as the statement was made in good faith and for the prosecution of his son's interest. While the second statement was not meant to serve any useful purpose and there was no justification for charging the complainant with sexual immorality. It did not, therefore, come within the operation of Excep. 9. (*Mukerji and King, JJ.*) BHOLA NATH v. EMPEROR.

113 I.C. 213=51 All. 313=26 A.L.J. 1334=  
10 L.R.A. Cr. 1=11 A.I. Cr. R. 49=  
30 Cr. L.J. 101=A.I.R. 1929 All. 1.

—Mere belief in good faith—If sufficient.

Exception 9, S. 499, only means that a man who makes an imputation in good faith and makes that imputation for the protection of the interest of himself or of any other person is outside the operation of S. 499, I.P.C. There is no justification for reading the exception as meaning that if the person making the imputation believes in good faith that he has been acting for the protection of the interest of himself or any other person, he is not liable. 3 All. 815, Appr. (*Mukerji and King, JJ.*) BHOLA NATH v. EMPEROR.

113 I.C. 213=51 All. 313=  
26 A.L.J. 1334=10 L.R.A. Cr. 1=11 A.I. Cr. R. 49=  
30 Cr. L.J. 101=A.I.R. 1929 All. 1.

**—Privilege.**

A finding of privilege is not a finding of good faith. (*Daniels, J.*) MT. CHAMPA DEVI v. PIRBHU LAL.

92 I.C. 429=24 A.L.J. 329=27 Cr. L.J. 253=  
7 L.R.A. Cr. 64=A.I.R. 1926 All. 287.

**—Interest in making allegations—Exception.**

Where a lawyer's notice was sent on behalf of the widow of a deceased Hindu in which the accused was charged with criminal breach of trust and theft of the properties of the deceased and he was threatened with civil and criminal proceedings and the accused sent in his reply through a Vakil alleging that the widow was living an adulterous life and that she was discarded owing to her such conduct by her husband and that her daughter was not the daughter of the husband and that she had never lived with the deceased for about twenty-five years and the accused, who was the deceased's nephew, claimed under a Will by the deceased, held, that Exception 9 applied to the case. The accused being directly interest.

**PENAL CODE (1860), Ss. 499 & 500—Good faith.**  
ed in making these allegations the terms employed were not too violent for the occasion or disproportionate to the facts. (*Odgers, J.*) **SANKAMMA v. GOVINDA CHETTY.**  
85 I.C. 44=20 M.L.W. 779=

26 Cr.L.J. 328=A.I.R. 1925 Mad. 246.

—*Complaint bona fide to a proper officer—No offence.*

"Communications addressed in good faith to persons in a public position for the purpose of giving them information to be used for the redress of grievances, the punishment of crime or the security of public morals are privileged provided the subject-matter is within the competence of the person addressed". Where the communication was not addressed in good faith and was unfounded, malice in law must be presumed and the privilege disappears. (*Kanhaiya Lal, J.*) **BINDESWARI PRASAD v. HANUMAN PRASAD.**  
79 I.C. 640=22 A.L.J. 68=

5 L.R.A.Civ. 95=A.I.R. 1924 All. 443.

—Ss. 499 & 500—Imputation as to caste.

—*Consequent ex-communication—Defamation.*

An imputation which leads to the ex-communication of a person from his caste is defamatory to him if he had not been guilty of committing the act. (*Cuming, J.*) **HARIPADO BAIDYA v. EMPEROR.**

A.I.R. 1930 Cal. 643.

—*Outcaste.*

Imputation to a Hindu that he is an outcaste is defamatory and is not covered by S. 95. (*Dalal, J.*) **MOHAN LAL v. RAM CHARAN.**

108 I.C. 690=

26 A.L.J. 361=9 A.I.Cr.R. 298=

9 L.R.A.Cr. 44=29 Cr.L.J. 451=

A.I.R. 1928 All. 213.

—*Outcaste—Defamation—Scope of Expl. (4).*

A person making a statement without cause that a Mahomedan was ex-communicated or outcasted is guilty of the offence of defamation under S. 499.

Caste in S. 499, Expl. (4), is not confined entirely to Hindus and refers to any class who keep themselves socially distinct or inherit exclusive privileges. (*Jackson, J.*) **YUSUF BEG SAHIB v. MALIQ MAHOMED SYED SAHIB.**

99 I.C. 943=25 M.L.W. 357=

28 Cr.L.J. 207=A.I.R. 1927 Mad. 397.

—*Calling a person a sweeper by reason of his having associated with sweepers—Defamation.*

Where an imputation made clearly suggested that a person was not fit to be associated with, as he had become a sweeper by reason of his having joined a procession or shaken hands with the sweepers,

*Held*, that the imputation is defamatory and is not privileged. It would be privileged if it had been a decision arrived at by a panchayat of the caste. (*Kanhaiya Lal, J.*) **KHAMANI v. EMPEROR.**

92 I.C. 584=24 A.L.J. 171=6 L.R.A.Cr. 207=

27 Cr.L.J. 286=A.I.R. 1926 All. 306.

—*Informing caste people of ex-communication—No offence.*

Where a person was outcasted and the accused informed some persons of his caste not to take water from the hands of that person and that if they did so they will be ex-communicated, *held*, that no offence was committed. (*Stuart, J.*) **UMED SINGH v. EMPEROR.**

77 I.C. 824=22 A.L.J. 79=

5 L.R.A.Cr. 55=25 Cr.L.J. 472=

A.I.R. 1924 All. 694.

—*Ex-communication by Sabha of community after notice to complainant—No malice—No defamation.*

Where the facts were that the accused as the head of the Sabha, to which complainant was then subordinate, received notice of the charge against him and that he after the notice given made no attempt to

**PENAL CODE (1860), Ss. 499 & 500—Insult or abuse.**

meet and they then, according to the usual procedure when an accused party fails to appear to answer to a charge, passed an order of ex-communication and in accordance with the usual procedure imparted that fact to the heads of the community in other places in the usual form containing a brief and accurate statement of what had occurred, and there was no suggestion of any publication to any persons who had not a right by virtue of their caste position to know of the fact,

*Held*, that there was no malice however defective that procedure might appear to more judicial minds; that the accused were acting in good faith and in the interests of their community and that the accused were fully protected by the ninth exception to S. 499. (*Wallace, J.*) **AYYASWAMI IYER v. THIRUMALAI IYER.**

83 I.C. 999=19 M.L.W. 639=

1924 M.W.N. 541=26 Cr.L.J. 215=

A.I.R. 1924 Mad. 670=47 M.L.J. 8.

—Ss. 499 & 500—Imputation of ingratitude.

It is a question of opinion in each case whether a charge of ingratitude is defamation. (*Odgers and Hughes, JJ.*) **K. BURKE v. T. C. W. SKIPP.**

81 I.C. 129=18 M.L.W. 718=33 M.L.T. 168=

1923 M.W.N. 913=25 Cr.L.J. 641=

A.I.R. 1924 Mad. 340=45 M.L.J. 754.

—Ss. 499 & 500—Imputation of insolvency.

Calling a person discharged bankrupt and gambler convict, in an affidavit, amounts to defamation. (*Kincaid, J.C.*) **TIKAMDAS MULCHAND v. EMPEROR.**

96 I.C. 499=27 Cr.L.J. 947=

7 A.I. Cr. R. 21=A.I.R. 1927 Sind 58.

—*Trader.*

An imputation of insolvency against a person in the way of his trade is *per se* defamatory. *Robinson v. Merchant*, (1845) 7 Q. B. 918, Rel. on. (*Rupchand Bilaram and Tyabji, A.J.Cs.*) **BHIKCHAND v. EMPEROR.**

98 I.C. 124=21 S.L.R. 130=

27 Cr.L.J. 1276=A.I.R. 1927 Sind 54.

—*Proof of actual harm—If necessary.*

Publishing an imputation intending to harm, and knowing and having reason to believe that such imputation would harm the complainant's reputation is enough. It is not necessary under S. 499 to prove that actual harm ensued. *Davar, J.*, in 17 Bom. L. R. 82, Dissented from 28 Cal. 63 and 22 Bom. L. R. 1224, Foll.

Where accused, in a petition to the Commissioner, called the complainant a discharged insolvent and a convicted gambler,

*Held*, that he was guilty under S. 499. (*Kincaid, J.C.*) **BHIKCHAND v. EMPEROR.**

96 I.C. 116=27 Cr. L. J. 868=A.I.R. 1926 Sind 258.

—Ss. 499 & 500—Insult or abuse.

—*Petty offence—Interference by Criminal Court.*

Complainant's counsel S cited an authority but he could not find his book at the time of argument. Complainant asked him to search for the book in the accused's books thinking that it might be mixed up with them. Accused who heard the suggestion resented it and said to S that he was not in the habit of stealing like him. S filed a complaint under S. 500.

*Held*, that the accused's reply was not defamation because he did not mean to call him a habitual thief. It is at the most akin to abuse. The matter was too petty to be brought into the Criminal Court. (*Jai Lal, J.*) **JAS RAJ JOGGA v. EMPEROR.**

115 I.C. 72=30 Cr. L.J. 379=A.I.R. 1929 Lah. 234.

**PENAL CODE (1860), Ss. 499 & 500—Insult or abuse.**

—No doubt a mere abuse is not ordinarily a defamation, but the fact that the words used by the writer are of abuse does not of itself take the article out of the definition of defamation, if taken as a whole it is calculated to harm the reputation of the complainant. (*Shadi Lal, C.J.*) *INAYAT SHAH v. EMPEROR.*

112 I.C. 772=30 Cr.L.J. 4 (Lah.).

—*Inviting a person to dinner and asking him to leave place when he attends without any imputation—No offence.*

Criminal law is not meant to punish every insult, however grievous, offered by one person to another in the course of social relations, and, therefore, where a person invites another for a dinner and asks him, when he attended, to leave the place without any sort of imputation, his conduct may be reprehensible from a social point of view, but there is no element of criminality in it. (*Walsh, J.*) *FAQIR JULAHA v. KING-EMPEROR.*

98 I.C. 606=24 A.L.J. 893=7 L.R.A. Cr. 164=27 Cr.L.J. 1390=

A.I.R. 1926 All. 711.

—*Calling a person a beast and a pig.*

Per B. B. Ghose, J.—General words of abuse may not be defamatory, but to speak of a person that he is a beast and a pig in his conduct is defamatory. (*Buckland, J.*) *on difference between (Newbould and B. B. Ghose, JJ.) PRATAP CHANDRA GUHA ROY v. EMPEROR.*

90 I.C. 387=29 C.W.N. 904=42 C.L.J. 178=26 Cr.L.J. 1539=

A.I.R. 1925 Cal. 1121.

**—Ss. 499 & 500—No personal remarks.**

—*Defamation of newspaper.*

A newspaper is not a person, and therefore it is not a criminal offence to defame a newspaper. Defamation of a newspaper may in certain cases involve defamation of those responsible for its publication. (*Heald, J.*) *MAUNG SEIN v. KING-EMPEROR.*

99 I.C. 347=28 Cr.L.J. 133=4 Rang. 462=

A.I.R. 1921 Rang. 43.

—*Reputation, damage to—Corporation—Unlawful preference—Loss—Damage to property rather than to reputation.*

A corporation cannot well suffer damage in mind or body. An incorporated company may have a reputation for the good conduct of the business or undertaking of the company and the company's reputation may be quite distinct from that of any of its officers however highly placed. Allotment of excess wagons to one colliery by malpractices of clerks of a railway company causes damage of its reputation but the damage is too remote. The damage is indirect and ulterior rather than the direct natural or probable consequence of the action which the company was deceived into taking. The direct consequence of one colliery getting more than its fair share of wagons is that of getting less than their fair share. If a suit might have been brought against the company for damages for undue preference, such a possibility under S. 415 would come under the head of damage or likelihood of damage to property and not of damage to reputation. (*Richardson and Suhrawardy, JJ.*) *SUPDT. AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. MANMATHA BHUSAN CHATTERJI.*

84 I.C. 554=51 Cal. 250=

28 C.W.N. 160=26 Cr. L.J. 330=

A.I.R. 1924 Cal. 495.

—*Violent expressions in reply to attack—No offence.*

Where in reply to a book written by the complainant the accused wrote a book in reply, matters dealt

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**PENAL CODE (1860), Ss. 499 & 500—Procedure.** with being highly controversial religious matters, and in expressing his opinion the accused used very violent expressions but did not assail the personal character or the respectability of the complainant.

*Held*, there was no defamation. (*Madhavan Nair, J.*) *KUMARAGURUDASA SWAMIGAL v. KRISHNASWAMI MUDALIAR.*

85 I.C. 144=

1924 M.W.N. 768=26 Cr.L.J. 464=

A.I.R. 1924 Mad. 898=47 M.L.J. 664.

**—Ss. 499 & 500—Procedure.**

—*Allegations of defendant or accused—Opportunity to plaintiff or complainant to meet them.*

It is the practice of the Allahabad High Court in appeal to give little or no weight to the allegations or charges of a defendant or accused if they ought to have been put to the plaintiff or complainant or his witnesses and have not been so put. A plaintiff or complainant has an absolute right to know exactly the allegations or charges upon which the opposite side are going to rely and they must be put to him or to his appropriate witnesses clearly, specifically and with the utmost plainness, so that he may have an opportunity of admitting them wholly or in part, or denying them wholly or in part, and of calling witnesses to rebut such allegations or charges as he denies. (*Mears, C. J. and Kendall, J.*) *EMPEROR v. JHABBAR MAL.*

115 I.C. 872=26 A.L.J. 196=

9 L.R.A. Cr. 90=10 A. I. Cr. R. 101=

30 Cr. L. J. 530=A.I.R. 1928 All. 222.

—*Opportunity to accused to explain.*

The greatest care ought to be taken to enquire into the circumstances and an opportunity should be given to the party accused of such offence to offer explanations before summons is issued.

Where the Magistrate made no enquiry into the matter before issuing summons and called upon the accused who was a respectable pleader to prove good faith although there was no allegation of malice or any private motive against him and although the statement made for a relevant purpose was under instructions from his client and when the responsibility was fully accepted by the client, the proceedings were quashed. A. I. R. 1927 Cal. 823, Foll. (*C. C. Ghosh and Gregory, JJ.*) *NAZIR AHMAD v. JAGESHCHANDRA BANERJI.*

111 I.C. 569=

29 Cr. L.J. 889=11 A.I.Cr.R. 156 (Cal.)

—*Complaint under Ss. 193 and 211, I. P. C.*  
—*Power of Magistrate to frame charge under Sec. 500, I.P.C.*

Where the complaint purported to be under Ss. 193 and 211, Indian Penal Code, but the Magistrate, after hearing the evidence, framed the charge of defamation under S. 500, Indian Penal Code, and convicted the accused under that section,

*Held*, it is quite sufficient that the complainant shall state the true facts in his own language, and it is for the Magistrate to apply the law to those facts. If, in the opinion of the Magistrate, the offence disclosed fell under S. 500, Penal Code, the Magistrate was at liberty to proceed and frame a charge under that section, provided the complainant satisfied the conditions of S. 198 of the Cr. P. Code whatever may have been the section of the Penal Code recited in the complaint, 10 All. 39; 27 Mad. 61; 29 Cal. 415, Dist. 23 P. R. (Cr.) 1895, Foll. (*Le Rossignol and Forde, JJ.*) *MT. NAURATI v. EMPEROR.*

95 I.C. 305=6 Lah. 375=26 P.L.R. 552=

27 Cr. L.J. 763=A.I.R. 1928 Lah. 631.

—*Prosecution for statement in plaint—Sanction.*

The ordinary remedy of the person who has had a false suit brought against him is to apply to the Court

**PENAL CODE (1860), Ss. 499 & 500—Publication.** to prosecute the plaintiff under S. 209, Indian Penal Code. As a general rule it is undesirable that people should be hampered in their access to the Courts and in getting justice by the fear that if they are unsuccessful they may be prosecuted for defamation and therefore all Courts should be careful when a complaint of defamation is filed in respect of proceedings in a Civil Court to see whether the provisions of S. 209 and of the Criminal Procedure Code generally have not been evaded. (*Kennedy J.C. and Aston. A.J.C.*) **GANGOOMAL WALAD KALOOMAL v. EMPEROR.** 86 I.C. 1005=18 S.L.R. 83=26 Cr. L.J. 941= A.I.R. 1925 Sind 263.

**—Ss. 499 & 500—Publication.**

**—Sufficiency of proof—Delivery of newspaper within the postal area over which Court has jurisdiction.**

To prove publication of a libel through newspapers it is sufficient to prove that the paper was delivered within the postal area over which the Court had jurisdiction and it need not be proved that the article was read by some particular person. The analogies of letters sent through the post to private persons and no proof tendered at the trial that the addressees had read the contents are not good analogies as newspapers are governed by a different rule. Newspaper is a commodity meant for reading and it should be assumed that it was so read. 15 Bom. 286, Foll. (*Mears, C.J. and Kendall, J.*) **EMPEROR v. JHABBAR MAL.**

115 I.C. 872=30 Cr. L.J. 530=26 A.L.J. 196= 9 L.R.A. Cr. 90=10 A.I. Cr. R. 101= A.I.R. 1928 All 222.

**—Proof of act which had the quality of communicating to third persons.**

No doubt, one of the elements of the offence of defamation is that the imputation complained of should be made or published by the accused and the onus of proving it is on the prosecution. In the case of a defamatory libel that element is however sufficiently proved when there is evidence that the accused intentionally did any act which had the quality of communicating to a third person or persons generally the alleged libel. And it is not necessary for the prosecution either to allege or to prove that the act of the accused was directed at communicating the libel to any specified person or persons or that the libel, as a matter of fact, was brought to the notice of such person or persons. Swearing an affidavit containing libel and using it in Court is sufficient publication. (*Rupchand Bilaram and Tyabji, A.J.Cs.*) **BHIKA-CHAND v. EMPEROR.** 98 I.C. 124=21 S.L.R. 130= 27 Cr. L.J. 1276=A.I.R. 1927 Sind 54.

**—Posting of letter—Place of publication—Moral maxim as to ingratitude on letter to complainant—No defamation.**

A letter is deemed to be published both where it is posted and where it is received. It is a question of opinion in each case whether a charge of ingratitude is defamation.

Where on an envelope sent by the accused to the complainant there is a strongly worded moral maxim against ingratitude but there is nothing in the writing to connect it with the complainant or to show that any person understood it in a defamatory light, it is not defamation.

Where A sends to the complainant a letter stating that he (A) had received it from the accused but A's covering letter is not produced and A was not examined and there was no other evidence that the accused had sent the letter except the complainant's alleged belief, held that there was no evidence sufficient to

**PENAL CODE (1860), Ss. 499 & 500—Sentence.** support complainant's case. (*Odgers and Hughes, J.J.*) **K. BURKE v. T. C. W. SKIPP.** 81 I.C. 129= 18 M.L.W. 718=33 M.L.T. 168= 1923 M.W.N. 913=26 Cr. L.J. 641= A.I.R. 1924 Mad. 340=45 M.L.J. 754.

**—Ss. 499 & 500—Public good.**

**—Statement that person was outcasted.**

If a person really is out-casted a statement to the members of the brotherhood that he was out-casted is for public good. So long as caste prevails, any attempt to minimise, ignore or brush on one side existing regulations, existing sanctions or respect for existing decisions must be regarded from the Indian point of view as contrary to the public good. (*Walsh, J.*) **UMED SINGH v. EMPEROR.**

77 I.C. 183=46 All. 64=21 A.L.J. 765= 4 L.R.A. Cr. 221=25 Cr. L.J. 327= A.I.R. 1924 All. 299.

**—Absence of good faith—Effect.**

Where on flimsy materials the accused charged a doctor with conspiracy in drugging a certain person so as to render him unconscious and to cause him to be taken to cremation and where the accused had not made any enquiries before the publication of the charge or had not at his disposal or within his knowledge any of the materials which he produced at the trial, held, that he was not protected by the 9th exception as he had not made it in good faith, and as good faith was not established it was not strictly necessary to consider if the public good was involved. Certain evidence produced at the trial cannot be used to establish due care and attention unless the evidence was in the possession of the accused when he made the statement. (*Greaves and Panton, J.J.*) **SUPDT. AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. PURNA CHANDRA GHOSH.** 83 I.C. 631= 28 G.W.N. 579=26 Cr. L.J. 71= A.I.R. 1924 Cal. 611.

**—Ss. 499 & 500—Sentence.**

**—Publishing defamatory matter under guise of rumours—Accused not expressing regret but further aggravating the offence—Severe sentence.**

At a time when Hindu-Mahomedan differences were very acute a Mahomedan editor published an article under the guise of rumour containing defamatory matter against the complainant who was of perfectly good character, perfectly good reputation, respected in the town in which he lived, a man of position and a man very closely identified with the activities of the Hindu religion. In the article he was charged with having poisoned his own son and of having done that because the son had wished to become a convert to Islam. On being asked by several persons as to what the publication in the newspaper meant, the complainant wrote a letter to the accused in which he set out forcibly, but quite properly, his feelings of the false and malicious and defamatory attack which had been made upon him and the members of his family. He set out certain conditions upon which he would refrain from seeking his remedy against the accused in the civil and criminal Courts. Thereupon the accused instead of expressing at once by a personal letter and in his paper the utmost regret for its publication wrote a letter aggravating the magnitude of the offence.

**Held:** that the sentence of six months' simple imprisonment was not in any degree adequate for the offence committed and that a more severe sentence should have been passed. (*Mears, C.J. and King, J.*) **MAHAMMAD NAZIR v. EMPEROR.** 117 I.C. 355= 30 Cr. L.J. 766=26 A.L.J. 509=9 L.R.A. Cr. 104= 10 A.I. Cr. R. 145=A.I.R. 1928 All. 321.

**PENAL CODE (1860) Ss. 499 & 500—Sentence.**

—Article calculated to stir up communal feelings—Editor a tool in hands of proprietor bearing ill-will towards complainant—Light sentence.

An editor of a newspaper who at a time of intense communal tension first publishes a false and fabricated account of an innocent social function in terms calculated to stir up communal feelings and then maliciously and incorrectly gives out that the false information on which the publication was based, had been supplied by a person who had in fact never done so, cannot be lightly dealt with. But where the editor is a mere tool in the hands of a proprietor who bears ill-will towards the complainant, and the proprietor admits that he wrote the article, lenient view should be taken in awarding punishment, though the mere circumstance that such an editor is not the writer of the article or is a dummy editor is no ground by itself for reduction of the sentence. (*Tek Chand, J.*) **AZIZ AHMAD v. EMPEROR.** 110 I.C. 236 = 10 A.I. Cr.R. 437 = 29 Cr. L.J. 684 = A.I.R. 1928 Lah. 865.

**—Ss. 499 & 500—Statements in suit or proceeding—By Counsel.**

—Presumption of instruction and good faith.

It is the duty of a Court, when complaint is made against an advocate for having used defamatory words, to ordinarily presume that the remark or question was made on instructions and in entire good faith. A.I.R. 1927 Cal. 823, Foll. (*C. C. Ghose and Gregory, JJ.*) **NAZIR AHMAD v. JOGESHCANDRA BANERJI.** 111 I.C. 569 = 29 Cr. L.J. 889 = 11 A.I. Cr.R. 156 (Cal.).

—Imputation on character of witness—Presumption of instruction.

It is not defamatory to make an imputation on the character and position in life of a witness, provided that the imputation is made in good faith and for the protection of the client who has engaged the advocate. The presumption therefore is that a question asked in cross-examination making an imputation as regards a witness affords no ground ordinarily for a criminal prosecution and that it is the duty of a Court when a complaint is made against an advocate for having used defamatory words that it should ordinarily be presumed that the remark in question objected to was made on instructions and in entire good faith. No doubt there may be circumstances which may show that the question or remark objected to was made wantonly or from malice or from private motive, but the greatest care ought to be taken to enquire into the circumstances and an opportunity should be given to the party accused of such offence to offer explanations before summons is issued. (*C. C. Ghose and Commiade, JJ.*) **M. BANNERJEE v. EMPEROR.** 104 I.C. 717 = 55 Cal. 85 = 28 Cr. L.J. 877 = A.I.R. 1927 Cal. 823.

—Questions to witness without good faith.

A pleader must use a certain amount of common-sense and caution in asking a defamatory question. There may be cases where, under proper instructions, he is entitled to ask questions which are defamatory to the person, so as to impeach his credit.

But where the questions were asked with utter recklessness, and without regard to seeing whether there was any truth in them, and with absolute disregard of whether he was entitled to ask them or not and they were asked not for the good of the case but with no other view than publicly to injure the reputation of the witness.

*Held:* that the questions were asked in absolutely bad faith. (*Duval and Roy, JJ.*) **FAKIR PRASAD**

**PENAL CODE (1860), Ss. 499 & 500—Statements in suit or proceeding—By Counsel.**

**GHOSE v. KRIPASINDHU PAL.** 101 I.C. 600 = 54 Cal. 137 = 28 Cr. L.J. 472 = A.I.R. 1927 Cal. 303.

—Privilege—Presumption of good faith.

Utterances calculated to be defamatory by a lawyer in the course of his professional duties and required by his duty to his client are absolutely privileged: 10 Mad. 28 (F. B.) Foll.

When a lawyer acting in the course of professional duties makes a *prima facie* defamatory statement, good faith is to be presumed and bad faith is not to be assumed unless there is independent allegation or proof of private malice: 19 Bom. 340; 41 Cal. 514; and A.I.R. 1925 Rang. 345, Rel. on.

Even the presence of malice will not override the presumption of good faith where the statement made was obviously necessary in the interests of the client and when the lawyer could not omit to make it without gravely imperilling the interests of his client and would in fact not be discharging his duty to his client unless he made it.

Where the pleader defending an accused against a charge of making a defamatory statement against the complainant that the latter had infected his wife with venereal disease, made an oral statement in arguments that the defamatory statement was in substance true and had been set out as a fact in a reported judgment of the High Court and put the same statement in the written notes of arguments and thereupon a complaint of defamation was preferred against the pleader.

*Held:* that as the publication complained of was imperatively necessary for the conduct of the cases in which the pleader was appearing professionally, the statements were made in good faith and could not be made the subject of a charge of defamation. (*Wallace, J.*) **ANWARUDDIN v. FATHIM BAI ABIDIN.**

100 I.C. 537 = 50 Mad. 667 = 25 M.L.W. 295 = 38 M.L.T. 130 = 1927 M.W.N. 164 =

28 Cr. L.J. 313 = A.I.R. 1927 Mad. 379 = 52 M.L.J. 269.

—Privilege—Duty of prosecution to prove malice.

The liability of a pleader charged with defamation in respect of words spoken or written in the performance of his professional duty depends on S. 499 and the Court would presume good faith unless there is cogent proof to the contrary. The privilege is not absolute but qualified, and the burden is cast upon the prosecution to prove absence of good faith.

Where express malice is absent the Court, having due regard to public policy, would be extremely cautious before it deprives the Advocate of the protection of Exception 9. The Court ought to presume his good faith and not hold him criminally liable unless there is satisfactory evidence of actual malice and unless there is cogent proof that unfair advantage was taken of his position as pleader for an indirect purpose. 19 Bom. 340, Foll. (*Ross and Kulwant Sahay, JJ.*) **NIRSU NARAYAN SINHA v. EMPEROR.** 97 I.C. 354 =

6 Pat. 224 = 7 P.L.T. 608 = 1926 P.H.C.C. 314 = 27 Cr. L.J. 1090 = A.I.R. 1926 Pat. 499.

—Qualified privilege—Presumption of good faith—Proof of malicious or improper motive.

Section 499 of the Penal Code is meant to be universal in its application. The English Law of absolute privilege does not apply in India to statements of advocates in judicial proceedings. But a counsel's position is one of the utmost difficulty. He is not to speak of that which he knows; he is not called upon to consider whether the acts with which he is dealing are true or false. What he has to do is



**PENAL CODE (1860), Ss. 499 & 500—Statements in suit or proceeding—By party.**

to argue as best as he can without degrading himself in order to maintain the proposition which shall carry with it either the protection or the remedy which he desires for his client. If amidst the difficulties of his position he were to be called upon during the heat of his argument to consider whether what he says is relevant or irrelevant, he would have his mind so embarrassed that he could not do the duty which he is called upon to perform; [*Munster v. Lamb*, L.R. 11 Q.B.D. 588, Foll.] Therefore when a pleader is charged with defamation in respect of words spoken or written while performing his duty as a pleader, the Court ought to presume good faith and not hold him criminally liable unless there is satisfactory evidence of actual malice and unless there is cogent proof that unfair advantage was taken of his position as pleader for an indirect purpose. To rebut the presumption in the pleader's favour it is not sufficient merely to allege that the client knew the imputation to be untrue for the duty of the pleader is to present his client's case. So far, at any rate, as the purposes of a prosecution for defamation are concerned, it would be wholly unreasonable to say that it is the duty of the pleader to enquire whether his client's case is true or false. To rebut the presumption of good faith in such a case there must be convincing evidence that the pleader was actuated by a malicious or an improper motive personal to himself and not by a desire to protect or further the interests of his client in the cause; [11 Beng. L.R. 321 (P.C.), Dist.; 9 Bom. L.R. 1287 and 36 Cal. 375, Foll.] It is the duty, therefore, of a Court when a complaint is made against an advocate or legal practitioner for defamation that it should presume that the remark was made on instructions and in good faith; and unless circumstances clearly show that it was made wantonly, or from malicious or private motives, the complaint should not be entertained. Even if the circumstances suggest recklessness or malice, further enquiry should be made and an opportunity, if possible, should be given to a legal practitioner to offer an explanation before summons is issued. (*Rutledge, C.J. and Brown, J.*) *T. F. R. McDONNELL v. EMPEROR*. 92 I.C. 731= 27 Cr. L.J. 321=4 Bur. L.J. 147=3 Rang. 524= A.I.R. 1925 Rang. 345.

**—Ss. 499 & 500—Statements in suit or proceeding—By party.**

**—Defamation in answer to question—No offence.**

In a prosecution under S. 499, where the accused's answer, alleged to be defamatory, was relevant to the matter in issue and arose out of a question put by the Court in a previous criminal proceeding against him,

*Held*: that the provisions of S. 342 (2) applied and that the accused was not at any rate punishable for making such statement: 36 Mad. 216; A.I.R. 1921 Cal. 1 (S.B.), Ref.; A.I.R. 1926 All. 287, Dist.; A.I.R. 1926 Bom. 141 (F.B.), Expl. and Diss. from. (*Dalal, J.*) *MURLI PATHAK v. EMPEROR*.

8 L.R.A. Cr. 128=8 A.I. Cr. R. 211= 25 A.L.J. 855=A.I.R. 1927 All. 707.

**—No absolute privilege.**

A defamatory statement on oath or otherwise, by a party to a judicial proceeding falls within S. 499 of the Penal Code, and is not absolutely privileged. The Court cannot engraft on the provisions of the Code exceptions derived from the Common Law of England or based on public policy: 48 Cal. 388 (S.B.) Foll. 17 Bom. 127 and 17 Bom. 573, Overruled. (*Macleod, C.J., Crump and Coyajee, JJ.*) *BAI SHANTA v.*

**PENAL CODE (1860), Ss. 499 & 500—Statement in suit or proceeding—By witness.**

*UMRAO AMIR*. 93 I.C. 131=50 Bom. 162= 28 Bom. L.R. 1=27 Cr. L.J. 423= A.I.R. 1926 Bom. 141 (F.B.)

**—No absolute privilege.**

Relevant statements made by an accused person under S. 342 Criminal P.C., or contained in a written statement filed by him with the Court's permission are not absolutely protected from being the subject of a prosecution for defamation under S. 500, I.P.C. on grounds of public policy or exceptions derived from the Common Law of England: 48 Cal. 388 (S.B.), Foll. (*Macleod, C.J., Crump and Coyajee, JJ.*) *BAI SHANTA v. UMRAO AMIR*. 93 I.C. 131= 50 Bom. 162=28 Bom. L.R. 1=27 Cr. L.J. 423= A.I.R. 1926 Bom. 141 (F.B.)

**—Plea of good faith.**

Where *N* was charged with having beaten *P B* before a panchayat and he made a statement that he had kept the complainant *P B* for 10 or 11 years, in a case by *P B* under S. 500,

*Held*: that the statement of the accused before the panchayat was made in good faith in order to explain his beating and therefore was covered by Excepts. 8 & 9 to S. 499. (*Prideaux, A.J.C.*) *NANHEY v. MT. PUYARI BAHU*. 96 I.C. 324=27 Cr. L.J. 938= A.I.R. 1926 Nag. 504.

**—Party stating that his witness was won over hence not examined—No defamation.**

The law of absolute privilege is not applicable in India. But where a party to a civil suit stated in his evidence that a particular witness though cited by him was not examined, as he suspected that the witness was won over by the opposite party,

*Held*: that what he said was said *bona fide* in the protection of his own interests, and that he would therefore be protected by the provisions of the ninth exception to S. 499. (*Brown, J.*) *SAYED ALLY v. EMPEROR*. 94 I.C. 600=27 Cr. L.J. 648= 4 Bur. L.J. 181=A.I.R. 1923 Rang. 360.

**—Ss. 499 & 500—Statement in suit or proceeding—By witness.**

**—Imputation of miscarriage—Defamation.**

To give out that a woman had miscarriage without any knowledge whether she was married or not would amount to defamation because the person who makes the statement would have reasonable belief that such imputation would harm the reputation of the woman in case she was not married and if such statement is made in a witness-box and especially so in examination-in-chief when the character of the woman is not a fact in issue, the witness is not protected by S. 132, Evidence Act, unless the Judge himself asked the question: 32 Cal. 756: 18 A. L. J. 112, Ref. (*Dalal, J.*) *KASHI RAM v. EMPEROR*, A.I.R. 1930 All. 493.

**—No absolute privilege.**

A witness has not absolute privilege as regards the statements made by him but has only a qualified privilege under Excep. 9 or Excep. 1 to S. 499: A.I.R. 1923 Mad. 523, Rel. on.; 11 Mad. 477, not Foll. (*Devadoss and Waller, JJ.*) *PEDDABHA REDDI v. VARADU REDDI*. 116 I.C. 337=52 Mad. 432= 29 M.L.W. 210=2 M. Cr. C. 8=1929 M.W.N. 84= 30 Cr. L.J. 613=13 A.I.Cr.R. 21= A.I.R. 1929 Mad. 236=56 M.L.J. 570.

**—Irrelevant and malicious statement—Offence.**

A witness, who being actuated by malicious motives makes a voluntary and irrelevant statement, not elicited by any question put to him while under examination, to injure the reputation of another, com-



**PENAL CODE (1860), Ss. 499 & 500—Statements in suit or proceeding—Petitions and pleadings.**  
 mits an offence punishable under S. 500, I. P. C., and he cannot claim the privilege allowed to a witness by S. 132, Evidence Act : 21 Cal. 392; 32 Cal. 756; 40 Cal. 433, Rel. on, (*Kinkhede, A. J. C.*) *SURAJMAL v. RAMNATH*. 105 I.C. 820=28 Cr. L.J. 996=9 A.I. Cr. R. 204=A.I.R. 1928 Nag. 58.

—No objection to question—Defamatory statement if protected.

Relevant statements made by a witness on oath or solemn affirmation in a judicial proceeding are not protected by the proviso to S. 132 of the Evidence Act in cases where the witness has not objected to answering the question put to him. (*Macloed, C. J.*) *CRUMP and COYAJEE, JJ.* *BAI SHANTA v. UMRJA AMIR*. 93 I.C. 151=50 Bom. 162=28 Bom. L.R. 1=27 Cr. L.J. 423=A.I.R. 1926 Bom. 141 (F.B.)

—Ss. 499 & 500—Statements in suit or proceeding—Petitions and pleadings.

—Petition to Court with defamatory allegations—Considerations—Intelligence of accused—His capacity to reason—His circumstances at the time.

In matter of a case under S. 500 when it is said to rest upon allegation made in petition to a Court, in determining whether due care was taken by the accused allowances should be made for the intelligence of the accused, his capacity to reason, the circumstances under which he was placed, and the occasion which necessitated his making the imputation. When the facts seem to show that the accused being a comparatively ignorant and timid man apprehending harassment by the complainant did what a man of superior intelligence and knowledge could not have done, namely presented a petition, there can be little doubt that he acted with a desire to protect himself by an appeal to the Magistrate rather than to injure others and he should not be convicted : 31 Bom. 293; 12 Bom. 377 and A.I.R. 1923 Cal. 470, Ref. (*Mukerji, J.*) *YADALI v. EMPEROR*. 1929 Cr.C. 523=A.I.R. 1929 Cal. 779.

—Plaint with defamatory statements—No absolute privilege.

The rules of the English Common Law apply to questions of civil liability for defamation in India, but criminal liability is determined exclusively by the Penal Code. A defamatory statement whether on oath or otherwise, *e. g.*, one contained in a plaint, falls within S. 499 and is not absolutely privileged : 48 Cal. 388 and 40 Cal. 433, Fol. (*Macpherson, J.*) *KARU SINGH v. EMPEROR*. 98 I.C. 392=7 P. L. T. 587=27 Cr. L. J. 1320=A. I. R. 1926 Pat. 425.

—Ss. 499 & 500—Statements in suit or proceedings—Scope of privilege.

—No absolute privilege—Exceptions if exhaustive—Effect of good faith.

The privilege defined by the exceptions to S. 499 must be regarded as exhaustive as to the cases which they purport to cover and recourse cannot be had to the English Common Law to add new grounds of exception to those contained in the statute. A complainant making libellous statements in his complaint is not absolutely protected so far as criminal proceedings are concerned. Under the 8th exception and the illustration to S. 499 the statements are privileged only when they are made in good faith : 36 Mad. 216 and 37 Mad. 110 Overruled; 44 Mad. 913 Dist. (*Coutts-Trotter, C. J.*) *Phillips, Krishnan, Beasley and Madhavan Nair, JJ.* *TIRUVENGIDA MUDALI*

**PENAL CODE 1860), Ss. 499 & 500—Miscellaneous.**  
*v. TRIPURASUNDARI*. 96 I.C. 978=49 Mad. 728=1926 M.W.N. 606=27 Cr. L. J. 1026=25 M. L. W. 207=A. I. R. 1926 Mad. 906=51 M.L.J. 112. (F.B.)

—Ss. 499 & 500—Statement to a person in authority.

—Report to police that a lost article was in accused's house—No defamation.

A buffalo of one S. was lost. He reported the matter to the police and said he had been informed that the buffalo was in the house of one H. The police went to the village and searched H's house, but did not find the animal there. H prosecuted S for defamation in respect of the report made at the thana and S was convicted.

*Held* : that the conviction should be set aside as S cannot be said to have made an imputation concerning H, even if the report that he made was *prima facie* defamation. The case is covered by the 8th Exception to S. 499, Indian Penal Code. (*Martineau, J.*) *SARUP SINGH v. EMPEROR*. 96 I.C. 480=27 Cr. L.J. 816 (Lah.)

—Ss. 499 & 500—Statement to public servant.

—Imputation—Accusation—Suspicion.

An imputation ordinarily implies an accusation or something more than an expression of a suspicion. An expression of a suspicion may have the same effect on the mind of the person to whom the suspicion is communicated as an accusation would have so where a person makes a report to police that a theft was committed and that he suspects a certain person which results in the search of that person's house, the person must be deemed to have made an imputation within the S. 499. (*Martineau, J.*) *THAMBU v. CROWN*. 96 I.C. 211=8 L.L.J. 97=27 Cr. L.J. 899=27 P.L.R. 171=A.I.R. 1926 Lah. 278.

—Ss. 499 & 500—Written defamation.

—Proof—Original must be produced.

In case of written defamation the Court should insist on the production of the original and should not easily admit certified copies. (*Odgers and Hughes, JJ.*) *K. BURKE v. T. C. W. SKIPP*. 81 I.C. 129=18 M.L.W. 718=33 M.L.T. 168=1923 M.W.N. 913=25 Cr. L.J. 641=A.I.R. 1924 Mad. 340=43 M.L.J. 754.

—Ss. 499 & 500—Miscellaneous

When a complaint makes out a clear case of defamation. Expl. 4, S. 499, does not apply : 9 All. 420, Foll. (*Dalal, J.*) *MOHAN LAL v. RAM CHARAN*. 108 I.C. 690=26 A.L.J. 361=9 A.I. Cr. R. 298=9 L.R.A. Cr. 44=29 Cr. L.J. 451=A.I.R. 1928 All. 218.

—Applicability—Caste meeting—Untrue allegation as to wife of member having been married before—Offence.

Exception 10 to S. 499, I.P.C., deals with cases for instance where one man warns another against employing a third person in his service saying that he is a dishonest person. Where at a caste meeting the accused was proved to have stated that the complainant's wife had been married before and a prosecution for the offence of defamation was launched against him, *held*, that exception 10 to S. 499 was inapplicable. (*Cuming, J.*) *HARI PADA BAIDYA v. EMPEROR*. 34 C.W.N. 580=A.I.R. 1930 Cal. 645.

—Imputation of dishonesty—Defamation.

Where a notice published in a newspaper containing an imputation that the complainant was dishonest in the management of the affairs of a Company and was trying to conceal that dishonesty by methods that were themselves dishonest, the imputation

**PENAL CODE (1860), Ss. 499 & 506—Miscellaneous.**  
 tion is defamatory. (*Hallifax, A.J.C.*) *M. G. CHITNAVIS v. N. B. KHARE.* 97 I.C. 431=27 Cr.L.J. 1119=  
 A.I.R. 1927 Nag. 17.

—Statement made at the instance of a challenge by complainant—No privilege.

A defamatory statement made by accused in the presence of a number of persons though after he had been challenged by the complainant is not privileged. (*Sulaiman, J.*) *BENI RAM v. KING-EMPEROR*

92 I.C. 694=7 L.R.A. Cr. 22=27 Cr. L.J. 310=  
 A.I.R. 1926 All. 237.

—Statement that public servant worked for money for candidate at election.

Statement that Government servant worked for money in favour of a candidate at an election is not charging him with bribery as such work is not in discharge of his official duty. It is on the contrary prohibited. (*Ross and Kulwant Sahay, J.J.*) *NIRSU NARAYAN v. EMPEROR.* 97 I.C. 334=3 Pat. 224=  
 7 P.L.T. 608=1926 P.H.C. 314=  
 27 Cr.L.J. 1090=A.I.R. 1926 Pat. 439.

—Defamation of police force as a whole—Right of individual to complain.

Per *B. B. Ghose, J.* contra *Newbould, J.*—The words "the British Government themselves, and the superior officers, including from the District Magistrate down to the daroga and chowkidars were all beasts, etc." are too wide to admit of the construction that any particular police officer was defamed.

Per *Buckland, J.*—Excep. 2 to S. 499, I.P.C., is intended to include a company or an association or collection of persons as such within the word "person" as used in the definition, so that the latter should not be limited to individuals. It is doubtful if the police force at a particular place is an association or collection of persons as is contemplated in Excep. 2 S. 499. The police force as such cannot complain of any imputation as regards its personal reputation. The true rule appears to be that if a person complains that he has been defamed as a member of a class he must satisfy the Court that the imputation is against him personally and he is the person aimed at, before he can maintain a prosecution for defamation. (*Buckland, J.* on difference between *Newbould* and *B. B. Ghose, J.J.*) *PRATAP CHANDRA GUHA ROY v. EMPEROR.* 90 I.C. 387=29 C.W.N. 904=  
 42 C.L.J. 178=26 Cr.L.J. 1539=  
 A.I.R. 1925 Cal. 1121.

—Assenting to report of defamatory statement—Offence.

The pleader advised the accused to compromise the civil suit between the accused and another *P.* Thereupon the accused replied: "There are other reasons for the dispute. I shall disclose them in private." Then a third party who was listening to the conversation, said "There is nothing else. It appears that there is intimacy between *P.*'s wife and the accused and hence the accused says that *P.* has been trying to trouble the accused." And the pleader warned the accused that he should not give vent to such language since it was defamatory and he would be legally liable.

*Held*, that under the circumstances, defamation had been committed by the accused. (*Venkatashubba Rao, J.*) *B. APPANNA v. P. AKKANNA.*

85 I.C. 361=26 Cr.L.J. 521=20 M.L.W. 921=  
 A.I.R. 1925 Mad. 320=47 M.L.J. 746.

—S. 502—Defamatory publication.

—Proof of malice—If necessary.

Malicious publication in the sense of active ill-will against the person defamed is not a necessary consti-

**PENAL CODE (1860), S. 504—Essentials.**

tuent of the offence of defamation. (*Mears, C. J. and King, J.*) *MOHAMMAD NAZIR v. EMPEROR.*

117 I.C. 355=30 Cr. L.J. 766=26 A.L.J. 509=  
 9 L.R.A. Cr. 104=10 A.J. Cr. R. 145=  
 A.I.R. 1928 All. 321.

—S. 503—Offence under.

—Municipal Commissioner threatening a butcher that if he purchased a cow, he would have him sent to jail and make his living in the town impossible—Offence.

Where a Municipal Commissioner threatened a butcher that if he bought a cow, he would have him sent to jail and that he would make it impossible for him to continue to live in the town.

*Held*: that the use of the words did constitute criminal intimidation as defined in S. 503. (*Lindsay, J.*) *NAND KISHORE v. EMPEROR.* 102 I.C. 557=  
 8 A.I. Cr. R. 148=8 L.R.A. Cr. 119=  
 28 Cr. L.J. 589=A.I.R. 1927 All. 783.

—S. 504—Abuses in mosque.

—Accused entering for prayer—No offence.

The petitioner had gone to mosque for midday prayer as usual; when the service was over he was asked by some others why he had on former occasions abused the mouli and the congregation. On his attempting a denial, witness was sent for and an altercation followed, the petitioner then began to abuse all and sundry employing obscene epithets and uttering threats.

*Held*: that the intention of wounding the feelings of the mouli and congregation was quite clear but the alleged "trespass" was not and that the conviction under S. 297 was wrong.

*Held*: further that the mere fact that the petitioner was a trustee does not take this case out of the purview of S. 297, and in the circumstances an offence under S. 504 was committed and that being a cognate offence conviction was altered under that section. (*May Oung, J.*) *MUSTAN v. KING-EMPEROR.*

81 I.C. 41=1 Rang. 690=25 Cr. L.J. 553=  
 A.I.R. 1924 Rang. 106.

—S. 504—Any other offence.

—Provocation to cause other offence than breach of peace—Applicability.

A person is within the ambit of S. 504 not only if the provocation offered by him is of such a character as to cause the person provoked to commit a breach of peace but even if it is of such a nature as to cause him to commit any other offence: A.I.R. 1927 Lah. 129, Foll.; *The Queen v. Adams*, (1898) 22 Q. B. D. 66 Rel. on; 4 Bom. L. R. 78 Ref. (*Patkar and Wild, J.J.*) *SILVESTER VAZ v. LOUIS DIAS.*

32 Bom.L.R. 103=1930 Cr. C. 195=  
 A.I.R. 1930 Bom. 120.

—Provocation likely to cause the person provoked "to commit any other offence" than breach of the peace—Applicability.

A person also comes within the ambit of S. 504, I.P.C., if the provocation offered by him is of such a character as to cause the person provoked "to commit any other offence," and hence a complaint made under that section should not be dismissed *in limine* on the ground that the provocation offered was not likely to cause the breach of public peace. (*Shadi Lal, J.*) *GUL MAHOMED v. FIRAKBAR ALI.*

99 I.C. 604=28 Cr.L.J. 172=7 A.I.Cr.R. 324=  
 A.I.R. 1927 Lah. 129.

—S. 504—Essentials.

—Intention to cause breach.

Mere abuse unaccompanied by an intention to cause a breach of the peace or knowledge that a breach of

**PENAL CODE (1860), S. 504—Essentials.**

the peace is likely does not come within S. 504. On the other hand an insult which under ordinary circumstances would be likely to provoke the person insulted to cause a breach of the peace is within the provisions of the section although the person insulted may have been reduced to a state of abject terror so as to render improbable that he would commit a breach of the peace : 39 Mad. 561 and 10 Mad. 353, Rel. on. (*Patkar and Wild, JJ.*) SILVESTER VAZ v. LOUIS DIAS.

32 Bom.L.R. 103=1930 Cr.C. 195=

A.I.R. 1930 Bom. 120.

—*Intention to provoke breach of public peace or knowledge of its probability.*

An insult is no less intentional because it is incidental to another insult or even to another statement or proceeding which is not insulting. But to insult another intentionally is not an offence punishable under Sec. 504 unless the intention is to provoke the person insulted into breaking the public peace, by assaulting him or getting him assaulted or reviling him in loud and angry tones or in any other way or unless there is knowledge that such a disturbance is a probable result of such an insult. (*Hallifax, A. J. C.*) R. M. SIFFLES v. M. R. DIXIT. 81 I.C. 903=

7 N.L.J. 124=25 Cr.L.J. 1079=

A.I.R. 1924 Nag. 121.

**—S. 504—Facts to be considered.**

—*Effect of abuse in ordinary circumstances—Temperament of individual—If material.*

In dealing with S. 504 the Court has not to judge the temperament or the idiosyncrasies of the individual concerned. It should try to find out what in the ordinary circumstances would have been the effect of the abusive language used. Where there is no doubt that the abusive language used might ordinarily have resulted in broken limbs or at least in an affray and consequent breach of the peace an offence under S. 504 is committed ; 10 Mad. 353 and 1 U.B. R. 290, Rel. on. (*Agha Haidar, J.*) GURANDITTA v. EMPEROR. A.I.R. 1930 Lah. 344.

**—S. 504—Insulting letters.**

There is nothing in S. 504 which confines the insult to spoken words and would not cover words written in a letter. (*Patkar and Wild, JJ.*) SILVESTER VAZ v. LOUIS DIAS. 32 Bom.L.R. 103=1930 Cr.C. 195=

A.I.R. 1930 Bom. 120.

**—S. 504—Pulling by beard.**

—*Pulling a Mahomedan's beard in public—Offence.*

Whatever the previous provocation may be, a man who pulls the beard of a Mahomedan in the public street, intentionally insults him and thereby causes him provocation, knowing that such provocation is likely to cause the victim to break the public peace. (*Walsh, J.*) BHAGWAN DAS v. SADDIQ AHMAD.

86 I.O. 79=23 A.L.J. 73=26 Cr. L.J. 703=

6 L.R.A. Cr. 101=A.I.R. 1925 All. 318.

**—S. 504—To police officer.**

—*Accused without justification using the expression Pahle munh se bakko towards police come to serve notice on him—Offence.*

Where an accused person without any justification used the offensive expression *pahle munh se bakko* towards a police official come to serve a notice upon him, as instructed by the district authorities :

*Held* : that the use of the expression was intentionally insulting and likely to provoke a breach of the peace and hence he was guilty under S. 504. (*Tekchand, J.*) SHANKAR LAL v. EMPEROR.

104 I.C. 437=28 Cr. L. J. 821=

A.I.R. 1927 Lah. 702.

**PENAL CODE (1860), S. 511—"Attempt" defined.****—S. 509—Essentials for conviction.**

—*Outraging modesty of particular woman.*

In order to constitute an offence under S. 509, there must be some individual woman or women whose modesty has been outraged and though it is not necessary that individual woman should herself make a complaint, there must be an allegation that the action complained of, has insulted the modesty of some particular woman or women and not merely of any class or order or section of women, however, small. (*Kennedy, J. C. and Raymond, A. J. C.*) KHAIR MAHOMED v. EMPEROR. 86 I.C. 968=

19 S.L.R. 87=26 Cr. L.J. 904=

A.I.R. 1925 Sind 271.

**—S. 509—Indecent letter.**

—*Indecent letter sent to a woman by post though closed in an envelope—Offence.*

Where the accused sent by post to an English nurse, an unmarried woman having no previous acquaintance with the accused, a letter containing indecent overtures.

*Held* : that the accused intended to insult the modesty of the complainant and the mere fact that the letter was in a closed envelope before it reached the complainant is immaterial. (*Fawcett and Madgavkar, JJ.*) EMPEROR v. TARAKADAS GUPTA.

93 I.C. 247=50 Bom. 246=28 Bom.L.R. 99=

27 Cr. L.J. 455=A.I.R. 1926 Bom. 159.

**—S. 511—Assistance in preparation.**

—*No abetment or attempt.*

Assistance in the preparation of an offence which ultimately was not committed cannot amount to an abetment either under Section 109 or under Section 511 of the Penal Code. (*Wazir Hasan and Pullan, A.J.Cs.*) SURAT BAHADUR v. KING-EMPEROR.

81 I.C. 986=25 Cr.L.J. 1162=41 O.L.J. 640=

A.I.R. 1925 Oudh 158.

**—S. 511—Attempt at extortion.**

—*Offence.*

Section 385 does not expressly provide for the punishment of an attempt at extortion; and the limitation in S. 511 evidently relates to such offences as an attempt to commit suicide or an attempt to obtain illegal gratification which are expressly punishable by other sections of the Code. Therefore, a charge under S. 384 read with S. 511 is not bad. (*Ross, J.*) HEM CHANDRA v. EMPEROR. 98 I.C. 60=

27 Cr. L.J. 1244=A.I.R. 1927 Pat. 89.

**—S. 511—"Attempt" defined.**

Attempt is an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and possessing, except for failure to consummate, all the elements of the substantive crime; in other words, an attempt consists in the intent to commit a crime, combined with the doing of some act adapted to, but falling short of its actual commission; it may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted.

Where the accused stepped across from his own roof to that of his neighbour at night and caught hold of his daughter, got on to the charpoy with her, undid the string of her pyjama and was seen struggling with her when the neighbour's wife came up in answer to her daughter's cries, and he then ran away:

*Held* : that he had been rightly convicted under S. 376-511: 47 Cal. 190 (S.B.), Foll. : (*Harrison, J.*) KISHAH SING v. EMPEROR. 103 I.C. 199=

8 A.L.J. Cr. R. 432=28 P.L.R. 875=

28 Cr. L.J. 663=A.I.R. 1927 Lah. 580.

# **PENAL CODE (1860) S. 511—Attempt—Essentials.**

## **—S. 511—Attempt—Essentials.**

### **—Completion of offence—if necessary.**

An attempt to commit an offence is punishable under S. 511 though the final act short of actual commission of that offence has not been accomplished. (*Addison and Coldstream, J.J.*) **EMPEROR v. SHIBAHARAN.** 110 I.C. 812=10 Lah. 233=10 A.I. Cr. R. 567=29 Cr. L.J. 780=30 P.L.R. 405=A.I.R. 1928 Lah. 551.

—Under the Penal Code all that is necessary to constitute an attempt to commit an offence is some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted: 34 Bom. 378; 14 P. R. 1914 Cr., Rel. on. (*Tek Chand, J.*) **RAHAMAT ALI v. EMPEROR.** 103 I.C. 408=28 Cr. L.J. 680=A.I.R. 1927 Lah. 634.

## **—S. 511—Attempt of theft.**

—Accused caught in the vicinity of cattle on another's land—Guilt is proved.

Where accused was caught at night time in the vicinity of some cattle which had been tethered on the complainant's square and near which complainant and his brother were sleeping. *Held*: he cannot properly be held guilty of an attempt to commit theft but no doubt that he committed the offence of criminal trespass. (*Brasher, J.*) **NAURANGA v. EMPEROR.** 71 I.C. 792=24 Cr. L. J. 248=A.I.R. 1924 Lah. 223.

## **—S. 511—Attempt to cheat.**

—A asking Currency Office for payment for two halves of two currency notes—Currency Office making payment already to L—Non-execution of an indemnity bond by A—A prosecuted under Ss. 511 and 420—Offence.

An attempt to commit an offence is punishable under S. 511 though the final act short of actual commission of that offence has not been accomplished.

A informed the Currency Office that he had lost two halves of two currency notes of Rs. 100 during a journey and after getting instructions received in reply to his enquiries, he forwarded to the Currency Office the halves of these two notes still in his possession with the prescribed application forms and affidavits testifying that he was the owner of the notes. The Currency Officer had however already paid the value of these notes to a firm on representation by that firm that the halves of the notes had been stolen from L, one of the partners who was carrying them from Delhi to Ahmedabad. A was prosecuted under S. 511 read with S. 420, Penal Code. The trying Magistrate, without recording any clear finding as to the dishonest intention of the accused in endeavouring to recover the value of the currency notes, acquitted him on the ground that it was the practice of the Currency Offices not to make payment in such cases until the claimant had executed an indemnity bond, and as no such indemnity bond had been executed by A, his conduct had not amounted to an attempt to cheat but had remained within the stage of preparation for the offence.

*Held*: that acquittal was bad as the execution of the bond of indemnity was not a portion of the application and was an act which would ordinarily take place before the act of cheating is completed. The applicant would be willing to take the money without an indemnity bond and by his making a false attempt in asking for the money the offence would be just as complete whether an indemnity bond was or was not insisted upon. 15 All. 173 and 16 Cal. 310. *Foll.*: 16 All. 409.

# **PERMANENT SETTLEMENT—Variation.**

and 14 P.R. 1914 Cr., Ref.: 8 All. 303 and 45 P.R. 1882 Cr., Dist. (*Addison and Coldstream, J.J.*) **EMPEROR v. SHIB CHARAN.** 110 I.C. 812=10 Lah. 253=10 A.I. Cr. R. 567=29 Cr. L.J. 780=30 P.L.R. 405=A.I.R. 1928 Lah. 551.

## **—Essentials.**

In the offence of cheating the actual transaction must have begun and an act to bear upon the mind of the victim must have been done before a preparation can be said to be an attempt. (*Jackson, J.*) **E. RAMAN CHETTIAR v. EMPEROR.** 99 I.C. 127=28 Cr. L.J. 95=A.I.R. 1927 Mad. 77=51 M.L.J. 635.

—Sending false claim papers as to quantity of paddy burnt.

The appellant had insured his stock of paddy which was burnt by fire; he made a claim on the basis that 75,040 baskets of paddy were stored. It was found that the mill godowns could not accommodate more than 15,000 baskets.

*Held*, that the claim was not a mere exaggeration but was a false statement as to the quantity stored; that the 1st appellant having sent the notice of the fire and also the claim papers, must be regarded as having gone beyond the mere stage of preparation to the stage of attempt. (*May Ung, J.*) **MG. PO HMYIN v. KING-EMPEROR.** 82 I.C. 39=2 Rang. 53=3 Bur. L.J. 1=25 Cr. L.J. 1175=A.I.R. 1924 Rang. 241.

—S. 511—Offences regarding election.

—Fraudulently obtaining signature slip—No offence.

The accused went to the officer who had the custody of signature slips. He did not give out his name but produced a certain piece of paper which bore a certain number. The officer looked at that number, then looked at the electoral roll and discovered that against that number the name of one L appeared. On being asked by that officer if he was L, the applicant said he was. A patwari of the village was there and he said that the applicant was not L but was one M. There was a dispute and ultimately the applicant admitted that he was M and not L.

*Held*, that the obtaining of the "signature slip" was an act which by itself would not have amounted to an application for a voting paper. (*Mukerji, J.*) **MALKHAN SINGH v. EMPEROR.** 84 I.C. 711=22 A.L.J. 1102=26 Cr. L.J. 359=6 L.R. A.Gr. 20=A.I.R. 1925 All. 226.

## **PEON.**

See PENAL CODE, S. 186.

## **PERJURY.**

See PENAL CODE, S. 193.

# **PERMANENT SETTLEMENT.**

—Settlement of ghats.

## **—Rights.**

Settlement of ghats not only means the right to collect tolls or ferry dues but also includes the right to mooring dues. (*Dawson-Miller, C. J. and Foster, J.*) **MAHARAJADHIRAJ OF DHARBHANGA v. COMMISSIONER OF INCOME-TAX.** 92 I.C. 338=6 P. L. T. 355=2 Pat. L. R. Cr. 242=1923 P. H. C. C. 49=A. I. R. 1925 Pat. 313.

## **—Variation.**

—Right of Government—Effect of Income-tax Act.

Per *Dawson-Miller, C. J.*—Though the legislature has power to vary or modify the bargain entered into between the Government and the proprietors by the Permanent Settlement, yet this can only be done by clear and specific language in a statute and not by

**PERMANENT SETTLEMENT REGULATION**

(1793).—General taxes on estates.

general implication. The applications for settlement made by the proprietors at the time of Permanent Settlement were, as a rule, a counterpart of the actual settlement made and were part of a single transaction completed at the same time, just as a kabuliya is a counterpart of a patta. The Income-tax Act, if and in so far as it charges income derived from property included in the original settlement with the proprietor and assessed to revenue, varies the terms of Reg. I of 1793. The Income-tax Act of 1922 is not explicit enough in its terms to repeal the exemption created by the Permanent Settlement Regulation; for such repeal cannot be effected merely by words of general import or by implication. By the Permanent Settlement it was the revenue or rent payable to Government as the paramount landlord that was fixed in perpetuity. The effect of the imposition of income-tax on the profits arising out of *jalkar*, *hat*, and *ghatlag* is in fact to increase the revenue under another name. The jama permanently fixed at the date of the settlement was calculated on a percentage of the rents and profits at that time derived from the ownership of the land. Income-tax is based upon the same rent and profits as they now exist and it is impossible to escape from the conclusion that a tax under whatever name upon the same sources of income would increase the duty payable under the name of revenue and which by the Permanent Settlement it was agreed should then be fixed for ever. (45 Mad. 518, Foll.) (*Dawson-Miller, C. J. and Mullick, J.*) MAHARAJADHIRAJ OF DHARBHANGA v. COMMISSIONER OF INCOME-TAX. 78 I.C. 783 = 3 Pat. 470 = 2 Pat. L. R. Gr. 25 = 1924 P. H. C. G. 69 = 5 Pat. L.T. 459 = A.I.R. 1924 Pat. 474.

**PERMANENT SETTLEMENT REGULATION**

(BENGAL REG. I of (1793).

—General taxes on estates.

—Liability to income-tax.

*C. C. Ghose, J.—Buckland and Panton, JJ. concurring.* The clear purport of the declaration made in Regulation I of 1793 is that the re-assessment of the estates dealt with therein was for ever barred. In other words, the land assessment then formed was to be considered the permanent and unalterable revenue of the territorial possessions of the East India Company in Bengal so that no discretion might be exercised by the Company's servants in any case of introducing alteration whatsoever. The Regulation of 1793 was so framed as to operate as an ample and complete guarantee that no resettlement of the estates referred to therein should ever take effect. But no guarantee was ever given that the proprietors of those estates should never, at any time, be called upon to aid in the relief of the future necessities of the Government of the land and there was no promise or engagement of any description whatsoever by which the Government of the day surrendered their right to levy a 'general' tax upon incomes of all persons irrespective of the fact whether they are zamindars with whom the Permanent Settlement was concluded or not. A 'general' tax is no doubt a public demand but it is one which is levied upon a wholly different principle and in respect of a wholly different kind of liability; such a 'public demand' is no doubt a demand made upon zamindars with whom the Permanent Settlement was concluded, but it is made upon them in company with other classes of the community and with no exclusive reference to the source from which their incomes are derived.

*Mukherji, J., and Suhrawardy, J., concurring—*  
Cr. D—140

**PETROLEUM ACT (1899), Ss. 5, 11 & 15—Transport licence.**

The public assessment could be augmented in any way, so long as the method adopted did not mean to take away a portion of this income or profits *qua* such income or profits. Although by the Permanent Settlement right to taxation generally was not given up the income or profits derivable from the lands was not to be taxed as such. Whether a portion is taken as revenue and another under the head of income-tax, both are demands of the State, and when in assessing the revenue, a guarantee was given of its fixity and a declaration was made that the balance will not be altered at any time, to impose a further tax on the income or profits does away with that fixity and alters that which was guaranteed to be unalterable. The object of the Settlement in exempting from further burden income which has already paid toll to the State in the shape of land revenue was primarily to protect and improve agriculture, as that then was the chief source of income, and the exemption of agricultural income from the operation of the Income-tax Act perhaps indicates a continuity of policy on the part of the legislature in that respect. The words of the Settlement, however, are clear enough as indicating an intention to leave untouched for all times to come the surplus that the landholder will be able to derive as income or profits from the lands of his estate. (*C. C. Ghose, Buckland, Suhrawardy, Panton and Mukherji, JJ.*) KING-EMPEROR v. RAJA PROBHA CHANDRA. 102 I.C. 845 = 54 Cal. 863 = 45 C.L.J. 323 = 31 C.W.N. 765 = A.I.R. 1927 Cal. 432 (F.B.).

—Art. 6—General taxes on estate.

—Exemption from liability

While the Regulations contain assurances against any claim to an increase of the jama, based on an increase of the zamindari income, they contain no promise that a zamindar shall in respect of the income which he derives from his zamindari be exempt from liability to any future general scheme of property taxation, or that the income of the zamindari shall not be subjected with other incomes to any future general taxation of income, such as income-tax. A. I. R. 1925 Cal. 598, Affirmed. (*Lord Russell of Killowen.*) PROBHA CHANDRA BARUA v. EMPEROR.

A.I.R. 1930 P.C. 209 (P.C.)

**PERPETUAL INJUNCTION.**

See (1) CR. P. CODE, S. 144.

**PERSONAL APPEARANCE.**

See CR. P. CODE, S. 205.

**PERSONAL INTEREST.**

See CR. P. CODE, S. 556.

**PERSONAL KNOWLEDGE OF MAGISTRATE.**

See CR. P. CODE, S. 190.

**PETROLEUM ACT (VII of 1899).**

—Ss. 5, 11 and 15—Transport licence.

—Accused holding transport licence—Keeping petroleum on premises for transport for short time is not punishable—No offence.

The accused held a licence for storage of 500 gallons of petrol and had a store for that quantity at K. He was the agent of the Burmah Oil Company and as their agent also held a transport licence for transport of petrol without limit of quantity. On 28th November 1925 evening he took delivery at K of 1000 gallons. He carried these to his premises, put 500 in store, disposed of another 100 before dark, and kept the remaining 400 in bangles on his premises over night with a view to transporting them in the morning to V and M, for which places he had booked orders. At 10 A. M. on the 29th morning the



**POLICE ACT (1861), S. 29—Cowardice in duty.**

Act and not as a Court of law or as a Magistrate acting in judicial capacity. The second order of 19th January 1929 was merely consequential on the first order and stood or fell therewith. The question of the power of the Magistrate to pass such an order was one to be dealt with by his superiors on the executive side and the High Court had no jurisdiction to reverse the said orders under the provisions of the Criminal P. C. (*Jai Lal and Currie, JJ.*) **ABDUL SHAKUR v. MAHADEV PARSHAD.** 1930 Cr.C. 687 = **A.I.R. 1930 Lah. 539.**

**—S. 29—Cowardice in duty.**

A man doing his best to keep rioters out and who is carried into a building by a rush of the very men whom he is trying to protect, is clearly showing no cowardice up to the time that he enters the building, and if after entering the building the persons inside refuse to let him go out, he is not guilty of cowardice. (*Stuart, C. J. and Raza, J.*) **EMPEROR v. DURGA DAT.** 112 I.C. 99 = 5 O.W.N. 286 = 29 Cr.L.J. 979 = 11 A.I.Cr.R. 218 = **A.I.R. 1928 Oudh 285.**

**—S. 29—Diaries with mukhtar.**

A mukhtar who is allowed to have possession of the diary by the Police Officer is guilty of the abetment of the offence under S. 29, Police Act, as the offence continues so long as the diary is in mukhtar's hand. (*Courtney-Terrell, C. J., and Chatterji, J.*) **BANSLOCHAN LAL v. EMPEROR.** 10 P.L.T. 703 = 9 Pat. 31 = **A.I.R. 1930 Pat. 195.**

**—S. 29—Escape of prisoner.**

While the accused, two constables, were taking an under-trial prisoner by a camel cart at night the prisoner wanted to get down to make water and was permitted to do so. The night was dark. The prisoner got himself free from the rope which was tied to his handcuffs and bolted.

**Held:** that whatever the rule may be against travelling after dark in this case the constables had ordered to travel by camel cart and that they committed no breach of rule thereby. (*Dalal, J. C.*) **EMPEROR v. GANESH PRASAD.** 83 I.C. 663 = 26 Cr.L.J. 103 = **A.I.R. 1928 Oudh 281.**

**—S. 29—Essentials for conviction.**

**—Deliberate violation of duty—Escape of prisoner.**

Before the police officer can be convicted of an offence under S. 29, it must be found that he is guilty not of mere neglect but of deliberate and intentional violation of duty. Where therefore there is not even mere neglect on his part, let alone intentional violation of duty, offence under the section is not made out: 17 W.R. (Cr.) 34, Rel. on.

The mere escape of a prisoner from lawful custody does not make the constable, in whose charge he was guilty of an offence under S. 29 of the Police Act. (*Stuart, C. J.*) **ABDUL HAMID v. EMPEROR.** 103 I.C. 200 = 1 L.C. 47 = 28 Cr.L.J. 664 = **A.I.R. 1921 Oudh 257.**

**—S. 29—Failure to prosecute.**

**—D. S. P. ordering prosecution.**

When the Superintendent of Police asks a Sub-Inspector of Police, to register a case in the Police Diary and send up for trial the person concerned, the Sub-Inspector has no discretion in the matter and a failure to obey the orders of the Superintendent is an offence under S. 29. (*Banerji, J.*) **BALRAM DIKSHIT v. KING-EMPEROR.** 95 I.C. 765 = 7 L.R.A. Cr. 135 = 27 Cr.L.J. 845 = **A.I.R. 1926 All. 562.**

**POLICE ACT (1861), S. 29—Object.**

**—S. 29—Illness.**

**—Treatment by private practitioner.**

There is nothing in the law to require a Police Officer to enter a Civil Hospital and not place himself under the treatment of a private practitioner when he is ill and, therefore, he should not be convicted under S. 29 if he chooses to be treated by a private practitioner. (*Shadi Lal, C. J.*) **MAHOMED NAIM v. EMPEROR.** 97 I.C. 423 = 27 Cr.L.J. 1111 = **A.I.R. 1927 Lah. 15.**

**—Reasonable cause.**

Where a police officer who is really ill and is on leave fails to report himself for duty on the expiration of his leave, his failure to report is not without reasonable cause. (*Shadi Lal, C. J.*) **MAHOMED NAIM v. EMPEROR.** 97 I.C. 423 = 27 Cr. L.J. 1111 = **A.I.R. 1927 Lah. 15.**

**—S. 29—Interpretation.**

**—Violation of duty.**

Section 29 is to be construed quite widely. The words "rules and regulations" refer to such rules and regulations as are properly framed by competent authorities, that is to say, by the Inspector General. So also the words "lawful order" refer to any order which any officer may lawfully give to any individual or specific body of individuals under his command. Offences under S. 29 are not limited to the wilful breaches or neglect of a rule or regulation or a lawful order but include any "violation of duty" 21 Cr. L.J. 465, Rel. on. (*Courtney Terrell, C. J. and Chatterji, J.*) **BANSLOCHAN LAL v. EMPEROR.** 10 P.L.T. 703 = 9 Pat. 31 = **A.I.R. 1930 Pat. 195.**

**—Police Officer.**

The expression "police officer" applies to all the members of the police force in whatever capacity they may be employed, including constables. (*Jai Lal, J.*) **AKBAR ALI v. EMPEROR.** 116 I.C. 611 = 30 Cr.L.J. 635 = 13 A.I. Cr. R. 46 = **A.I.R. 1929 Lah. 325.**

**—S. 29—Keeping diaries.**

The meaning of R. 278 of Police Manual Part I is that the Court officer is to keep the diaries in his own possession and that if the accused or his agent call for the diary in any circumstances other than those mentioned in the earlier part of para. (b) of the rule the Court officer should refuse to comply with the request. (*Courtney Terrell, C. J. and Chatterji, J.*) **BANSLOCHAN LAL v. EMPEROR.** 10 P.L.T. 703 = 9 Pat. 31 = **A.I.R. 1930 Pat. 195.**

**—S. 29—Negligence.**

**—Violation of duty.**

Every negligence does not amount to "violation of duty" within S. 29 much less when it is not wilful. (*Jai Lal, J.*) **MUHAMMAD ALI v. EMPEROR.** 107 I.C. 771 = 29 P.L.R. 30 = 29 Cr. L.J. 285 = **A.I.R. 1928 Lah. 164.**

**—S. 29—Object.**

**—Intentional acts.**

Section 29 really is intended to punish intentional or wilful acts of the police officers as described therein and the expression "withdrawal from duty" imports intentional refusal or cessation to perform one's duty.

A police constable who had gone to another station to escort an offender, delayed his departure from that station for two days. No order was given to him for the date of his return. There was some evidence to show that under similar circumstances police officers had been given two days' halt.

**Held:** that he was not guilty under S. 29: 6 Cal. 625 and 6 All. 495, Rel. on. (*Jai Lal, J.*) **AKBAR ALI v. EMPEROR.** 116 I.C. 611 = 30 Cr. L.J. 635 = 13 A.I. Cr. R. 46 = **A.I.R. 1929 Lah. 325.**



**POLICE ACT (1861), S. 28—Overstaying leave.****—S. 28—Overstaying leave.**

Where it could not be said that the accused failed without reasonable cause to report himself to duty on the expiration of his leave.

*Held* that he could not be convicted under S. 29 for neglect of duty. (*Chatterjee and Cumming, J.J.*)  
JAGADISH CH. BOSE v. KING-EMPEROR. 66 I.C. 67=  
25 C.W.N. 408.

**—S. 28—Rules under.**

The words "document or information" used in R. 803 of Police Manual Pt. 1 are comprehensive enough to include the police diaries, although they have been specifically dealt with under R. 278. (*Courtney-Terrell, C. J. and Chatterji, J.*)  
BANSLOCHAN LAL v. EMPEROR. 10 P.L.T. 703=  
9 Pat. 31=A.I.R. 1930 Pat. 195.

—Rule 261-A of the Police Manual Pt. I is merely an enabling rule except that in the case of a Magistrate who institutes a prosecution he must be the Magistrate of the Dist: 1 W. R. 5 Cr. and 9 W. R. 36 Cr., Dist. (*Courtney-Terrell, C. J. and Chatterji, J.*)  
BANSLOCHAN LAL v. EMPEROR. 10 P.L.T. 703=9 Pat. 31=A.I.R. 1930 Pat. 195.

**—S. 30—Conditions in licence.****—Vague and indefinite terms.**

In a licence issued under S. 30(2), there was a condition that the "speed of the procession shall be under the directions of the Ilaga Magistrate and the local police."

*Held*: that before such a condition can be made the subject of prosecution it must be entered in the licence in clear and unambiguous terms and a licensee cannot be prosecuted for the violation of a condition which is so vague and indefinite that it is difficult to hold that the licensee was bound to obey the orders of the Magistrate and the local police as to the speed of the procession. (*Fforde and Jai Lal, J.J.*)  
EMPEROR v. MET RAM. 114 I.C. 716=  
30 P.L.R. 261=30 Cr. L.J. 371=10 Lah. 852=  
A.I.R. 1929 Lah. 404.

**—S. 30—'Issue.'**

In the Act the word "issue" has not been defined; but it signifies that, if the D. S. P. or Assistant D. S. P. signs the license and delivers it to some one with directions that it shall in due course be delivered to the applicant, the license has been issued within the meaning of S. 30. (*Mullick and Ross, J.J.*)  
SITARAM DAS v. EMPEROR. 93 I.C. 986=  
4 Pat. 795=7 P.L.T. 622=27 Cr. L.J. 522=  
A.I.R. 1926 Pat. 173.

**—S. 30—Operation of notification.**

A notification under S. 30 cannot be held to be operative after the occasion which called for the notification has passed away. (*C. C. Ghose and Gregory, J.J.*)  
KESHAB LAL DUTTA v. EMPEROR. 106 I.C. 718=  
32 C.W.N. 162=29 Cr. L.J. 126=  
A.I.R. 1928 Cal. 272.

**—S. 30—Procession before getting license.**

Once an application is made in time the applicant is free to take out his procession whether the license had by then been issued or not. If the license has been issued, he is bound to obey the conditions whether it has been delivered or not: if, on the other hand, it has not been issued, he is bound only to see that the general law was not broken. (*Mullick and Ross, J.J.*)  
SITARAM DAS v. EMPEROR. 93 I.C. 986=  
4 Pat. 795=7 P.L.T. 622=27 Cr. L.J. 522=  
A.I.R. 1926 Pat. 173.

**—S. 30—Regulating music in streets.****—Scope of.**

The District Superintendent of Police under S. 30 is empowered to regulate the extent to which music

**POLICE ACT (1861), S. 30-A—Prosecution for breach.**

may be used in the streets on the occasion of festivals and ceremonies, but a prohibition of every kind of music is not covered by the word "regulate". 39 All. 131, Rel. on. (*Dalal, J.*)  
SHANKAR SINGH v. EMPEROR. 116 I.C. 814=51 All. 485=  
1929 A.L.J. 180=10 L.R.A. Cr. 42=  
11 A.I.Cr. R. 294=30 Cr.L.J. 696=  
A.I.R. 1929 All. 201.

**—S. 30—Responsibility for conditions.****—Sureties.**

It is the applicant for the license alone to whom the license can be given and who is bound by the conditions of the license under S. 30.

Where the names of certain persons were included in the license as sureties according to the particular form of license used on the occasion;

*Held*: that the provision in the license as to sureties was unauthorised by law. (*Fforde and Jai Lal, J.J.*)  
EMPEROR v. HET RAM. 114 I.C. 716=  
30 P.L.R. 261=30 Cr. L.J. 371=10 Lah. 852=  
A.I.R. 1929 Lah. 404.

**—S. 30—Scope of powers.****—Power to control procession, but not to forbid.**

Section 30 of the Act gives the police power to control processions. In order that this power may be exercised the Act in certain circumstances authorizes the police to require persons to apply for licenses. The object of this is that adequate arrangements for control may be made in time. But the police have no power to forbid the issue of a procession. The power to control does not include the power to forbid. (*Mullick and Ross, J.J.*)  
SITARAM DAS v. EMPEROR. 93 I.C. 986=4 Pat. 795=7 P.L.T. 622=  
27 Cr. L.J. 522=A.I.R. 1926 Pat. 173.

**—S. 30—Sureties.**

There is no provision of law which makes it incumbent on an applicant for a license, to provide sureties or which authorizes the officers concerned to demand such sureties. (*Fforde and Jai Lal, J.J.*)  
EMPEROR v. HET RAM. 114 I.C. 716=30 P.L.R. 261=  
30 Cr. L.J. 371=10 Lah. 852=  
A.I.R. 1929 Lah. 404.

**—S. 30-A—Conditions of license.****—Carrying of lathi.**

Where a person took out a license for a procession to proceed through Patna city, one of the conditions of which was that no member of it was to carry a lathi or a sword:

*Held*: that the object of a license under the Police Act is to ensure the preservation of public order and clearly the licensee must undertake the duty of maintaining order throughout the course of the procession and, therefore, the licensee was responsible for seeing that no member carrying a lathi joined the procession on the way though at the start it had no such member.

The fact that S. 30-A, Police Act, gives the power to the officers mentioned to stop a licensed procession which violates the conditions of the license does not excuse a licensee from strictly complying with the conditions of his license. (*Mullick, Ag. C. J. and Wort, J.*)  
BADRI DAS v. EMPEROR. 106 I.C. 706=  
6 Pat. 763=29 Cr. L.J. 114=9 A.I. Cr.R. 401=  
9 P.L.T. 395=A.I.R. 1928 Pat. 166.

**—S. 30-A—Prosecution for breach.**

Section 30-A merely gives an additional power to the officers concerned to stop the procession and then, if it does not disperse, to deal with its members as members of an unlawful assembly. It is not a condition precedent to the prosecution of the licensee

**POLICE ACT (1861), S. 31—Oral order.**

for violation of the conditions of the licence that action should first be taken under S. 30-A. (*Fforde and Jailal, J.J.*) **EMPEROR v. HET RAM.**

114 I.C. 716 = 30 P.L.R. 261 = 30 Cr. L.J. 371 = 10 Lah. 852 = A.I.R. 1929 Lah. 404.

**—S. 31—Oral order.**

An order issued under S. 31 may be an oral order. (*Ashworth, J.*) **SHAM SUNDER v. EMPEROR.**

91 I.C. 56 = 27 Cr. L.J. 24 = A.I.R. 1926 All. 264.

**—S. 32—Breach of licence.**

—*Licensee cannot plead want of knowledge.*

A licensee assumes responsibility for the entire conduct of the procession and its component members and he cannot repudiate such responsibility by alleging that the violation of the conditions took place without his consent or even his knowledge or in his absence. If any member of the procession is guilty of the breach of the conditions of the licence, the licensee is liable to be prosecuted for it. (*Fforde and Jailal, J.J.*) **EMPEROR v. HET RAM.**

114 I.C. 716 = 30 P.L.R. 261 = 30 Cr. L.J. 371 = 10 Lah. 852 = A.I.R. 1929 Lah. 404.

**—S. 32—Prohibition of organisation.**

—*Joining the procession.*

When a notice has been issued under S. 30 (2) prohibiting the organizing or promotion of a procession without license and a procession is taken out without such license the mere fact of joining in the procession which was promoted or organized by other persons would not amount to a disobedience of the order. (*Kulwant Sahay, J.*) **HARE KRISHNA MAHTAB v. KING-EMPEROR.**

101 I.C. 475 = 8 P.L.T. 245 = 28 Cr. L.J. 443 = 8 A.I. Gr. R. 38 = A.I.R. 1927 Pat. 191.

**—S. 34—Keeping cart by road side.**

Although easing by a man on a public road may constitute an offence inasmuch as it causes annoyance to the residents or passengers, the mere fact that a cart was kept in the party land by the side of the road with a width of 40 feet, cannot raise any presumption by implication that it caused annoyance to the public; (20 Cr. L.J. 452, Rel. on.) (*Adami and Chatterji, J.J.*) **GOBIND RAM v. EMPEROR.**

9 Pat. 97 = A.I.R. 1930 Pat. 246.

**—S. 34—Making water.**

The expression "easing oneself" comprises within its ambit "making water" so as to constitute its an offence within Cl. 7. S. 34. (*C.C. Ghose and Guha J.J.*) **EMPEROR v. CHOUTHMALL.**

51 C.L.J. 342 = A.I.R. 1930 Cal. 444.

—Although making water by the side of road was an offence under S. 34 (7) where the Sessions Judge had acquitted the accused on wrong construction of the section, High Court taking into consideration the evidence of annoyance on record and the hour of occurrence refused to set aside order of acquittal. (*C.C. Ghose and Guha, J.J.*) **EMPEROR v. CHOUTHMALL.**

**—S. 34—Playing cards in street.**

Playing cards is not an offence and does not come within any of the eight clauses of S. 34, and the act of a constable in prohibiting the men from playing cards is not in the discharge of his duty. So any assault by the persons so playing on the constable does not come under S. 332 I.P.O., but is an offence under S. 323, I.P.C. (*Broadway, J.*) **MUL CHAND v. CROWN.**

92 I.C. 889 = 27 P.L.R. 74 = 27 Cr. L.J. 877 = A.I.R. 1926 Lah. 250.

**—S. 34—Receiving tips for—Supplying water.**

The expression "exposes for sale" implies that every person who takes any quantity of it (water) has

**POST OFFICE ACT (1898), S. 3—Charge and conviction.**

to pay for it. A person setting up a chauki (wooden board) with an earthen jar filled with water over it and supplying water to all those who wanted it is not guilty under S. 34 (4) merely because sometimes some of the persons who took water did voluntarily give tips. (*Sulaiman, J.*) **KALAP NATH v. EMPEROR.**

12 I.C. 591 = 24 A.L.J. 292 = 27 Cr. L.J. 303 = 7 L.R.A. Cr. 49 = A.I.R. 1926 All. 288.

**—S. 34—Validity of conviction.**

—S. 279, I.P.C.

The finding of a Magistrate that the accused was not guilty of an offence under S. 34 of the Police Act necessarily and logically means that the accused could not be convicted of an offence under S. 279 of the Penal Code. (*Banerji, J.*) **DHUM SINGH v. EMPEROR.**

88 I.C. 1 = 23 A.L.J. 436 = 6 L.R.A. Cr. 143 = 23 Cr. L.J. 1057 = A.I.R. 1925 All. 448.

**—S. 42—Applicability.**

Section 42 refers to actions for "anything done or intended to be done under the provisions or under the general police powers."

Where a suit has been brought against police officer for damages for something done in the exercise of his powers under Criminal P. C., Police Act, S. 42, does not apply: (30 I.C. 173, Foll.) (*Sen and Niamatullah, J.J.*) **MD. SHARIF v. NASIR ALI.**

A.I.R. 1930 All. 742.

**—S. 42—Application of Limitation Act.**

On the passing of the Limitation Act (9 of 1871) the part of S. 42, Police Act (5 of 1861), which provides a period of three months for suits contemplated by it was repealed with the result that such suits became subject to the general law of limitation contained in the Limitation Act and the special provision of limitation contained in S. 42, Police Act (5 of 1861), ceased to be operative. (*Sen and Niamatullah, J.J.*) **MOHAMED SHARIF v. NASIR ALI.**

A. I. R. 1930 All. 742.

**POLICE DIARY.**

See CRIMINAL P. C., S. 162.

**POLICE INVESTIGATION.**

See CRIMINAL P.C., Ss. 155, 162.

**PORTS ACT (15 of 1908.)****—S. 54—Interpretation.**

—*Disobedience may be unintentional.*

The word "disobey" in S. 54 does not connote intentional disobedience. (*Kennedy, J. C. and Lobo, A. J. C.*) **RAHIMTULLAH v. EMPEROR.**

87 I.C. 914 = 19 S.L.R. 136 = 26 Cr. L.J. 1026 = A.I.R. 1925 Sind 284.

**POST OFFICE ACT (VI of 1898).****—S. 3—Charge and conviction.**

—*Discovery of postal article outside Post Office*  
—*Finder giving it back to Postmaster—In course of transmission.*

M, a servant of K, having discovered a number of letters lying in a khola opposite a post office, handed them over to his master. One of the letters was addressed to P and K took it to the addressee who stated that the letter had never been delivered to him. The matter was reported to the Postmaster F who took possession of the letters saying that he would take necessary action in the matter. No action being taken by F, the matter was reported to the Postmaster-General with the result that F was sent up for trial. The Magistrate framed two alternate charges against him, first under S. 52, Post Office Act and the other under S. 201, Penal Code. The Magistrate found F guilty only under S. 201. It was contended that the charge framed by the Magistrate was defect-

**POST OFFICE ACT (1898), S. 6—Non-tracing addressee.**

ive and prejudiced the accused, the alternate charge was illegal and contravened the provisions of S. 236, Cr. P. Code.

*Held*, that the first charge was not defective, as the postal articles in question were "in course of transmission by post" according to S. 3, Post Office Act, when they were made over to F by K and, therefore, the mere fact that the letters had been posted when F was not the Postmaster of the Post Office was immaterial. The framing of the charge in the alternative under S. 201 did not contravene S. 236, Cr. P. Code. (*Broadway, J.*) **EMPEROR v. FAIZUL HASSAN.** A.I.R. 1930 Lah. 460.

**—S. 6—Non-tracing addressee.**

*Liability of the Post Office.*

Where the article sent was never lost in the course of transmission, but all that happened was that by reason of the label having been torn it was not possible to deliver it to the addressee, *held*, that S. 6 or 34 did not exempt the Post Office from liability. (*Lindsay, J.*) **SECRETARY OF STATE FOR INDIA v. RADHEY LAL.** 79 I.C. 334=46 A.I. 455=5 L.R. A. Civ. 384= A.I.R. 1924 A.I. 692.

**—S. 20—'Indecent.'**

"Indecent" means immodest and offending against the recognized standard of decency and suggestive of or tending to obscenity. (*Addison, J.*) **NATHU RAM VARMA v. SECRETARY OF STATE.** 31 P.L.R. 129= A.I.R. 1930 Lah. 552.

**—S. 52—Breach of trust.**

Where a sub-postmaster of 13 years' service taking possession of the V.P.P. cover addressed to him and also of the railway receipt, obtained delivery of the goods, but in order to put off payment manipulated the register maintained in the Post Office, sentence of one year's rigorous imprisonment and a fine of Rs. 100 was adequate punishment. (*Odgers, J.*) **P. SANKARAN PILLAI v. EMPEROR.** 118 I.C. 496=29 M.L.W. 522= 1929 M.W.N. 275=2 Mad. Cr.C. 90=52 Mad. 534= 30 Cr.L.J. 929=A.I.R. 1929 Mad. 447=56 M.L.J. 551.

**—S. 52—Misappropriation.**

*—Postmaster opening a V. P. article addressed to himself without paying for it and making false entries in the P. O. books.*

A branch postmaster who was also a shop-keeper ordered a consignment of flour in order to meet the requirements of his shop and a value-payable envelope containing the railway receipt for the flour arrived at the branch post office. The postmaster opened it, extracted the railway receipt, went down the station where the goods had by that time arrived, and took delivery. After six days he paid the price of the goods into the post office. In the meantime he made in the books of the post office entries and repeated daily "on account of the absence of the addressee."

*Held*, that, although the offence was a technical one in the sense that no loss was incurred by the post office and the money involved was voluntarily returned, it amounted to criminal misappropriation within the meaning of S. 403, Penal Code, and the postmaster was guilty under S. 52, Post Office Act. 39 P.L.R. 1902, Dist. (*Eforde and Tek Chand, JJ.*) **EMPEROR v. DES RAJ.** 109 I.C. 236=8 Lah. 662= 29 P.L.R. 151=29 Cr.L.J. 308=A.I.R. 1928 Lah. 92.

**—S. 55—Sanction.**

*—Can be obtained after cognizance of the offence.*

Although S. 72 requires sanction before a postal employee can be prosecuted under S. 55 still as long as sanction is obtained, it does not matter whether it is obtained before the Court takes cognizance of the

**PRACTICE—Appellate Court—Interference with finding.**

offence or not. (*Odgers, J.*) **SANKARAN PILLAI v. EMPEROR.**

118 I.C. 496=52 Mad. 534=  
29 M.L.W. 522=1929 M.W.N. 275=  
2 Mad. Cr.C. 90=30 Cr. L.J. 929=  
A.I.R. 1929 Mad. 447=56 M.L.J. 551.

**—S. 64—Want of sanction.**

Where the accused was proved to have sent blank papers in an insured cover addressed to himself and claimed the value of the currency notes which he alleged had been enclosed in the cover and he was prosecuted for offences under S. 64 of the Post Office Act and Ss. 420 and 511, I.P.O. and convicted for the latter offences only, *held*, that it was doubtful if an offence under S. 64 of the Post Office Act had been committed, and that at any rate the prosecution under S. 64 was rendered unsustainable for want of sanction under S. 72. *Held also*, that the conviction for the major offences under the Penal Code was perfectly valid. (*Macpherson and Dhavle, JJ.*) **SUCHIT RAUT v. EMPEROR.** 125 I.C. 770=

9 Pat. 126=11 Pat. L. T. 224=  
31 Cr.L.J. 934.

**POST OFFICE REGULATION.**

*—Delivery of insured parcels.*

The Post Office Regulation under which at the local post office throughout India and Burma parcels insured for Rs. 250 or over are given window delivery only and they are not delivered in the ordinary way to the addressee at his place of address, is designed for the limitation of the post office's liability as insurers and not for the greater safety of the insured parcels. (*Lord Blanesburgh.*) **BHOGLAL BHIKACHAND v. ROYAL INSURANCE CO., LTD.**

108 I.C. 1=6 Rang. 142=26 A.L.J. 377=  
32 C.W.N. 593=47 C.L.J. 550=  
30 Bom. L.R. 818=28 M.L.W. 276=  
A.I.R. 1928 P.C. 54=54 M.L.J. 545 (P.C.)

**PRACTICE.****—Appellate Court—Interference with finding.**

*—Conjectural grounds.*

Per *Simpson, A. J. C.*—It would not be right for an appellate Court to set aside the decision of the Court of trial on conjectural grounds of what might have happened in the face of the sworn testimony of what actually did happen.

*Wazir Hasan, A. J. C.*—Questions of fact may be decided by the trial Court on two different lines altogether. One line may be the drawing of inferences from proved and admitted facts and a finding of fact on the other line may be founded upon credibility of witnesses alone. In the former case the Court of appeal is in as good a situation as the trial Court. The latter case may give rise to two positions: (1), Where the credibility of witnesses is based on their demeanour in the witness box and impression which that demeanour creates on the mind of the Judge who sees and hears the witnesses. In such a case the finding of fact arrived at by the trial Court should not be lightly disregarded. On the other hand considerable weight should be attached to it, but the finding is not binding. The second position arises where the judgment of the trial Court is not founded on the demeanour of the witnesses and the impressions derived therefrom. In such a case the Court of appeal is free to come to its own conclusions as to the credibility of a particular witness. It is an unjust ridicule to characterize probabilities and presumptions of facts as conjectures. If probabilities and natural presumptions were ruled out of order the jurisdiction of Courts would be reduced to a wooden constitution. (*Wazir Hasan, J. C., Simpson and Ashworth, A. J. Cs.*) **SITLA**

**PRACTICE—Discretion.**

BAKSH SINGH v. EMPEROR. 93 I.C. 1025 =  
2 O.W.N. 931 = 27 Cr.L.J. 529 =  
A.I.R. 1926 Oudh 120.

**—Discretion.**

—It is mistake for superior tribunal to lay rules as to exercise of such discretion.

When a tribunal is invested by statute with a discretion without any indication of the grounds upon which the discretion is to be exercised, it is a mistake for a superior tribunal to lay down any rules with a view to indicating the particular grooves in which the discretion should run. (*Courtney-Terrell, C.J., and Macpherson, J.*) RATTAN DHANUK v. EMPEROR.

113 I.C. 329 = 9 P.L.T. 672 = 8 Pat. 235 =  
30 Cr. L.J. 137 = 12 A.I. Cr. R. 41 =  
A.I.R. 1928 Pat. 630.

**—Interference—Refusal to recast charges.**

An Appellate Court should be very slow to interfere with the discretion of a trial Court if not exercised in a perverse or arbitrary manner: 26 All. 238 (P.C.) and 42 Bom. 380 P.C., Rel. on.

Where the trial Court feared that the recasting of the charges would embarrass the Jury and possibly prejudice the accused in his trial,

*Held*: that it cannot be said that such a reason was capricious or involved any disregard of any legal principle and certainly does not call for interference by High Court in appeal. (*Kinkaid, J. C. and Rupchand Bilaram, A. J. C.*) EMPEROR v. STEWART.  
97 I.C. 1041 = 21 S.L.R. 55 = 27 Cr. L.J. 1217 =  
A.I.R. 1927 Sind 28.

**—Duty of Court—Comment.**

Court ought not to comment adversely on witness's conduct relying on matters which are not 'evidence'. (*Fforde, J.*) AMAR NATH v. KING-EMPEROR.

85 I.C. 143 = 5 Lah. 476 = 26 Cr.L.J. 463 =  
A.I.R. 1925 Lah. 187.

**—Evidence—Appreciation.**

Where both the parties have tendered evidence the question of weight is not a question of law. (*Sen, J.*) ALAYAR KHAN v. EMPEROR.

120 I.C. 193 =  
31 Cr.L.J. 1 = 1930 Gr.C. 39 = 1930 A.L.J. 254 =  
A.I.R. 1930 All. 23.

**—Conspiracy case.**

In cases of conspiracies it is difficult for the prosecution to secure outside and independent evidence. The prosecution has to depend upon evidence of people who are engaged in detecting crimes of this sort. In a case like this therefore the evidence of such persons should be scrutinized and received with a great deal of caution. (*Suhrawardy and Panton, JJ.*) NIRMAL CHANDRA DE v. EMPEROR.

100 I.C. 113 = 31 G.W.N. 239 = 28 Cr.L.J. 241 =  
A.I.R. 1927 Cal. 265.

**—Judge.****—Holding Court beyond office hours.**

For practical purposes it is quite improper for a Judge to insist on sitting beyond the prescribed hours unless, of course, the lawyers in the case agree. The lawyers are professional men who have to regulate their interviews in accordance with the regular and prescribed hours of the Court's sittings and it is not reasonable except for really unavoidable necessity or for the agreed convenience of all concerned that a Court should insist on sitting at times neither prescribed nor suitable. A.I.R. 1922 All. 372 and 41 Cal. 299, Ref. (*Bucknill and Kulwant Sahay, JJ.*) EMPEROR v. AKHILSWAR PRASAD. 89 I.C. 961 = 4 Pat. 646 =  
26 Cr. L.J. 1441 = A.I.R. 1925 Pat. 772.

**PRACTICE—Witness—Examination.****—Jurisdiction.**

—Matter agitated and decided in civil Court—Same matter cannot be agitated in criminal Court again.

A criminal Court should not, except for very exceptional and cogent reasons, go behind the finding of a civil Court which has been arrived at on merits.

Where the civil Court grants a decree on the basis of a bond which is alleged to have been executed under duress, and the plea of wrongful confinement, extortion and duress raised by the complainant in the civil suit is decided against him, the complainant shall not be permitted to agitate the same plea in a criminal Court: 33 P.R. 1910 (Cr.), Foll.: 4 P. W. R. 1916 and 8 P. W. R. 1916, Ref. (*Johnstone, J.*) SURAJ BHAN v. EMPEROR.

120 I.C. 186 =  
31 P.L.R. 60 = 1930 Gr. C. 30 = 31 Cr. L.J. 48 =  
A.I.R. 1930 Lah. 62.

**—Law governing.**

—Codified law cannot be modified by rules of practice.

When law has been codified, it cannot be modified gradually from day to day as the changing circumstances of a community, require, by rules of practice made to meet these imperceptibly changing conditions. Any modification, however small, must be made by the legislature, when a suitable opportunity arrives. (*Cuming and Lord Williams, JJ.*) REHATI MOHAN v. EMPEROR.

115 I.C. 258 = 32 C.W.N. 945 =  
56 Cal. 150 = 30 Cr. L.J. 435 = 12 A.I. Cr. R. 285 =  
A.I.R. 1929 Cal. 57.

**—Revision.**

—When a party applies for revision and obtains an order issuing notice to show cause, he should confine himself to the grounds on which the order was based. (*Walsh, J.*) RAJ BUNSI v. EMPEROR.

63 I.C. 420 = 42 All. 646 = 22 Cr.L.J. 228 =  
18 A.L.J. 673 = L.R. 1 A. (Cr.) 182.

**—Stay of Trial.**

—Criminal proceedings—Issues substantially the same as the civil suit.

The executant of a deed denied the execution before the Sub-Registrar. But the Dt. Registrar registered the deed and ordered prosecution under S. 82 (a) of the Registration Act. The executant sued in a Civil Court for a declaration that the deed was a forgery and moved the High Court for stay of the criminal proceedings. *Held*: that as the issue in both the proceedings civil and criminal was the same and as there was no likelihood of the evidence becoming stale or unobtainable, the High Court would be justified in ordering the stay of the criminal proceedings and in such a case the High Court can direct the lower Court to expedite the disposal of the civil suit. (*Jwala Prasad, J.*) PHULSHARA v. EMPEROR.

62 I.C. 185 = 22 Cr. L.J. 489 = 1 Pat. L.T. 697.

**—Witness—Credibility.**

It is not a sound ground for disbelieving a witness that he is of the same caste or community as the person in whose favour he deposes. (*Macpherson, J.*) BARHMDEO RAI v. EMPEROR.

90 I. C. 439 =  
7 P.L.T. 272 = 26 Cr.L.J. 1559 = A.I.R. 1926 Pat. 36.

**—Witness—Examination.**

The name, parentage, age, residence and profession of a witness form part of the deposition on solemn affirmation and not part of the heading 26 All. 108 (P.C.) and 11 Cal. 580, Dist. (*Kulwant Sahay and Allanson, JJ.*) CHOTAN SINGH v. EMPEROR.

111 I.C. 308 = 7 Pat. 361 = 10 P.L.T. 26 =  
29 Cr.L.J. 804 = 11 A.I. Cr. R. 91 =  
A.I.R. 1928 Pat. 420.

**PRACTICE—Miscellaneous.****—Miscellaneous.**

—The practice that a complainant or first informant should not be prosecuted under S. 211, until his complaint or police case has been disposed of, is not based on any statute and is merely a precautionary rule of safety in respect of a special class of criminal case. While a prosecution under S. 211 might in certain circumstances be delayed or even set aside in accordance with this practice, the practice could *per se* be no ground for setting aside a conviction, for there is no illegality in the trial. (*Macpherson and Dhavle, JJ.*) SUCHIT RAUT v. EMPEROR.  
125 I.C. 770=9 Pat. 126=31 Cr.L.J. 934=  
11 Pat. L.T. 224.

**PRECEDENTS.****—Binding effect on Subordinate Courts.**

—A Subordinate Court is bound by the ruling of a superior Court however unsound it may appear to it unless it is expressly contrary to any statutory provision of law which was not brought to the notice of the superior Court, or unless it has been overruled. (*Sulaiman, J.*) BENI RAM v. KING-EMPEROR.  
92 I.C. 694=7 L.R.A. Cr. 22=27 Cr. L.J. 310=  
A.I.R. 1926 All. 237.

**—Conflicting rulings.**

—Where there are decisions of a High Court, it is the duty of Courts subordinate to that High Court to be guided by them rather than by the decisions of other High Courts. (*Pandalai, J.*) THADI SUBBI REDDI v. EMPEROR.  
1930 M.W.N. 689=  
A.I.R. 1930 Mad. 869.

**—Extent of authority.**

—Every judgment must be read as applicable to the particular facts proved or assumed to be proved since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides. (*Quinn v. Leatham*, (1901) A.C. 495, Ref. (*Maung Ba and Doyle, JJ.*) ABDUL RAHMAN v. EMPEROR.  
94 I.C. 717=  
4 Bur. L.J. 213=27 Cr. L.J. 669=  
A.I.R. 1926 Rang. 53.

**—Finding of fact.**

It is not a sound principle to rely upon findings of fact in an individual case as a foundation for general principles. (*Stuart, C. J. and Raza, J.*) KHILOWAN v. EMPEROR.  
112 I.C. 337=  
5 O.W.N. 760=29 Cr. L.J. 1009=  
11 A.I. Cr. R. 27=A.I.R. 1928 Oudh 430.

**—Head-notes.**

—If a head-note to a reported case is, in any way, inconsistent or not wholly reconcilable with the body of the judgment, it is the latter that must undoubtedly be looked upon as authoritative. (*Findlay, J. C.*) TARACHAND MARWADI v. EMPEROR.  
117 I.C. 210=30 Cr. L.J. 724=1929 Gr. C. 456=  
A.I.R. 1929 Nag. 279.

**—Privy council.**

—It is not open to the Courts in India to question any principle enunciated by the Privy Council. (*Fawcett and Mirza, JJ.*) EMPEROR v. ISMAIL KHADIRSAB,  
108 I.C. 501=52 Bom. 385=  
30 Bom. L.R. 330=10 A.I.Cr.R. 118=  
29 Cr.L.J. 403=A.I.R. 1928 Bom. 130.

**—Same High Court.**

—*Mirza, J.*—The decision of a Bench of High Court admitting a case, as to the jurisdiction of High Court, is binding on the Bench subsequently hearing the case on merits. (*Mirza and Pathar, JJ.*) LAXMI-

**PRESIDENCY TOWNS INSOLVENCY ACT, (1909).****S. 103—Offence under general law.**

NARAYAN TIMMANNA KARKI, *In re.* 112 I.C. 567=  
30 Bom. L.R. 1050=29 Cr. L.J. 1063=  
11 A.I.Cr.R. 324=A.I.R. 1928 Bom. 390.

—It is purely a point of practice of the Bombay High Court that no Bench of the High Court has power to bind all other Benches in future proceedings as to the practice to be adopted in all cases that may come before them. (*Fawcett and Mirza, JJ.*) EMPEROR v. ISMAIL KHADIRSAB.  
108 I.C. 501=  
52 Bom. 385=30 Bom. L.R. 330=  
10 A.I. Cr. R. 118=29 Cr. L.J. 403=  
A.I.R. 1928 Bom. 130.

**PRESIDENCY TOWNS INSOLVENCY ACT (1909).****—S. 27—Admissibility in evidence—S. 36.****—Record of examination admissible.**

Depositions under S. 36 cannot be admitted in evidence, but the record of insolvent's examination under S. 27 is evidence which can be taken into consideration against him in proceedings under S. 104 of the Act, as criminal proceedings in the Presidency Magistrate's Court are, under S. 103, proceedings under the Act. 12 Cox. Cr. Cases 32 and 174, Rel. on. (*C. C. Ghose and Jack, JJ.*) MOTI LAL v. EMPEROR.  
113 I.C. 851=48 C. L.J. 534=  
32 C.W.N. 1140=30 Cr. L.J. 241=  
A.I.R. 1929 Cal. 80.

**—S. 102—Applicability.**

Section 102 of the Presidency Towns Insolvency Act applies only to an insolvent adjudicated under that Act. (*Suhrawardy, Duval and B. B. Ghose, JJ.*) ASHUTOSH GANGULI v. E. L. WATSON, 98 I.C. 116=  
53 Cal. 929=44 C.L.J. 350=27 Cr.L.J.1268=  
A.I.R. 1927 Cal. 149.

**—S. 102—Credit by false personation.****—Section applies.**

Where credit was obtained by an undischarged insolvent by falsely impersonating another, Obtaining credit by a trick would equally be within the purview of the Section, the fact of the person obtaining it being an undischarged insolvent being undisclosed. (*Godfrey, J.*) NASSE v. EMPEROR.  
85 I.C. 229=26 Cr.L.J. 485=3 Bur. L.J. 329=  
A.I.R. 1925 Rang. 176.

**—S. 103—Commitment.****—S. 104 For offence under S. 103 is illegal.**

Due to S. 104, Presidency Towns Insolvency Act as amended read with S. 254, Cr. P. Code commitment of an accused for trial to the High Court Sessions for an offence under S. 103, Presidency Towns Insolvency Act, is illegal because the case under that section is a warrant case and the maximum punishment for the offence is only two years' imprisonment. 24 Cal. 429; (1906) A.W.N. 28 and 41 All. 454, Ref. (*Buckland, J.*) EMPEROR v. GIRISH CHANDRA KUND. 120 I.C. 813=1929 Gr.C. 521=56 Cal. 785=  
31 Cr.L.J. 184=A.I.R. 1929 Cal. 777.

**—S. 103—Offence under general law.****—Subsists.**

Where the insolvent was entrusted with furniture by the Official Assignee for the purpose of continuing his business and, in breach of the trust, he disposed of it to various persons:

*Held:* that his conviction under general law was proper, even assuming that the facts proved do amount to an offence under S. 103 (b) (2), Presidency Towns Insolvency Act: 6 M. L.W. 283, Foll. (*Waller and Madhavan Nair, JJ.*) WILLIAM PLYTHE PETRETT v. EMPEROR.  
105 I.C. 443=39 M.L.T. 268=  
28 Cr.L.J. 928=A.I.R. 1927 Mad. 1018.

# **PRESS AND REGISTRATION OF BOOKS ACT (1867), S. 13—Burden of proof.**

## **—S. 13—Burden of proof.**

It is for the prosecution to establish that the press was one which required a declaration and in order to do so the prosecution must prove that it was in workable order. (*Mukerji, J.*) **BENOY KUMAR SEN v. EMPEROR.** 57 Cal. 460=34 C.W.N. 142=1929 Cr. C. 401=A.I.R. 1929 Cal. 635.

## **—S. 13—'Press'.**

The press that is referred to in S. 13 is a press for the printing of books and papers, and so in order to sustain a conviction under S. 13 it is necessary to find that the press was in sufficiently fit condition to enable the printing of books or papers thereby. (*Mukerji, J.*) **BENOY KUMAR v. EMPEROR.** 57 Cal. 460=34 C.W.N. 142=1929 Cr. C. 401=A.I.R. 1929 Cal. 635.

## **—S. 16—Interpretation.**

The words "delivered out of the press" are not equivalent to "printed". The work of printing might be completed before any copy were actually delivered out of the press. (*Kendall, J.*) **KISHEN LAL v. EMPEROR.** 99 I.C. 1032=49 All. 315=25 A.L.J. 103=8 L.R.A. Cr. 31=28 Cr.L.J. 232=7 A.I. Cr. R. 208=A.I.R. 1927 All. 237.

# **PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890).**

## **—Applicability.**

The Prevention of Cruelty to Animals Act does not apply to the District of Saran in Bihar and Orissa. Consequently an accused committing an offence within that area, under the Act is not punishable. (*Jwala Prasad, J.*) **SENEHI SINGH, IN THE MATTER OF.** 65 I.C. 439=23 Cr. L. J. 87. (Pat.)

## **—Ss. 3 and 6—Applicability.**

Working a lean pony and using bridles with leather disc studded with nails deserves conviction under S. 3 in preference to S. 6. (*Heald, J.*) **THE KING-EMPEROR v. BEJAI.** 3 Bur. L.J. 153=A.I.R. 1924 Rang. 373.

## **—S. 6—Sentence.**

Offences under S. 6 of the Act are punishable with fine only. (*Heald, J.*) **EMPEROR v. BEJAI.** 3 Bur. L.J. 155=A.I.R. 1924 Rang. 373.

## **PREVIOUS ACQUITTAL.**

See CR. P. CODE, S. 403.

## **PREVIOUS CONVICTION.**

See (1) CR. P. CODE, S. 221.

(2) PENAL CODE, S. 75.

## **PRINCIPAL AND AGENT.**

### **—Principal's liability for agent's acts.**

The master is not criminally responsible for the acts of his servant unless he expressly commands or personally co-operates in them or criminal responsibility is expressly imposed by statute or contract. (*Baker, J. C.*) **FAKIRA SAMBHAJI KUNHI v. EMPEROR.** 87 I.C. 918=26 Cr. L.J. 1030=A.I.R. 1926 Nag. 73.

There can be no criminal liability for the act of an agent. (*Wazir Hasan, A. J. C.*) **BISHAMBHAR** Cr. D. 141

# **PRIVY COUNCIL—Criminal cases—Interference.**

**NATH v. EMPEROR.** 87 I.C. 962=26 Cr. L.J. 1042=A.I.R. 1925 Oudh 676.

# **PRISONS ACT (IX OF 1894).**

## **—S. 3—Under-trial prisoner.**

—Under-trial prisoner is a prisoner—Judicial lock-up is a prison.

An under-trial prisoner is a prisoner. A person committed to custody in pursuance of a warrant or an order of a Court exercising criminal jurisdiction, though not convicted, is a criminal prisoner within sub-S. (2) of S. 3.

A judicial lock-up is a prison within the meaning of that expression used in the Prisons Act. (*Shadi Lal and Lumsden, JJ.*) **EMPEROR v. KHANUN.** 76 I.C. 29=4 Lah. 448=23 Cr. L.J. 93=A.I.R. 1924 Lah. 257.

## **—S. 4—Newspapers.**

—Carrying a bundle of newspapers from a prisoner is an offence.

Carrying a bundle of newspapers from a prisoner inside the jail, to one, outside the jail premises, is an offence under S. 42 read with Art. 485 of the Bombay Jail Manual, 1911. (*Macleod, C.J. and Shah, J.*) **SAIFIN RASUL v. EMPEROR.** 83 I.C. 342=26 Bom. L.R. 267=25 Cr. L.J. 1382=A.I.R. 1924 Bom. 385.

## **PRIVATE DEFENCE.**

See PENAL CODE, Ss. 96 to 106.

## **PRIVILEGE.**

See (1) PENAL CODE, Ss. 499, 500.

(2) TORT DEFAMATION.

## **PRIVILEGED COMMUNICATION.**

See EVIDENCE ACT, S. 125.

## **PRIVILEGED DOCUMENT.**

See EVIDENCE ACT, Ss. 123-129.

## **PRIVY COUNCIL.**

### **—Criminal cases—Interference.**

—Privy Council is not a Court of Criminal Appeal—Mere mistake in exercise of jurisdiction is not enough to sustain appeal but justice must have been set at naught.

The power of the Privy Council to entertain appeals arises not from the relation of the Board to the Court below, as a Court of criminal appeal, but as the Privy Council advising the Sovereign with regard to the exercise of the prerogative. The prerogative is that remnant of the power of the Crown which remains to the Crown to interfere with tribunals of justice. With India's march to self-government, this prerogative has been diminishing. Therefore, unless it can be proved that there was no proper trial at all, that the forms of all judicial procedure were disregarded, not merely according to local ordinances but according to the unvarying character, which is common to all, the Privy Council cannot interfere. If there is anything very very gross, it might come under the same category, but even then, the Crown has to be extraordinarily cautious in asserting, the survivor even of that very restricted prerogative which existed fifty years ago, but which may not exist now. The Privy Council cannot take cognizance of a mere mistake which the Court in India has made in the exercise of its jurisdiction. Where justice has not been set at



**PRIVY COUNCIL—Criminal cases—Interference.** naught, the Privy Council has no jurisdiction. (*Viscount Haldane.*) **HANMANT RAO v. EMPEROR.**

89 I.C. 843 = 26 Cr.L.J. 1419 = 1926 M.W.N. 32 =  
27 Bom.L.R. 704 = 49 Bom. 455 =  
A.I.R. 1925 P.C. 180 (P.C.)

—When there has been evidence before the Court below and the Court below has come to a conclusion upon that evidence, their Lordships of the Privy Council will not disturb that conclusion; they will only interfere, where there has been a gross miscarriage of justice or a gross abuse of the forms of legal process. 12 A. C. 459, Foll. (*Viscount Haldane.*) **BEGU v. EMPEROR.**

88 I.C. 3 = 6 Lah. 226 =  
27 Bom. L.R. 707 = 41 C.L.J. 437 = 2 O.W.N. 447 =  
23 A.L.J. 636 = 7 L.L.J. 324 = 3 Pat. L.R.Gr. 95 =  
52 I.A. 191 = 1925 M.W.N. 418 = 26 Cr.L.J. 1059 =  
26 P.L.R. 284 = 30 C.W.N. 581 =  
A.I.R. 1925 P.C. 130 = 48 M.L.J. 643 (P.C.)

—Privy Council will not interfere save where legal principles are involved.

The responsibility for the administration of criminal justice in India the Privy Council will neither accept nor share, unless there has been some violation of the principles of justice or some disregard of legal principles. (*Lord Buckmaster.*) **TABA SINGH v. EMPEROR.**

84 I.C. 935 = 26 Cr.L.J. 391 =  
22 M.L.W. 57 = 26 P.L.R. 394 = 48 Bom. 815 =  
26 Bom. L.R. 692 = A.I.R. 1925 P.C. 59 (P.C.)

—Wrong interpretation of sections of Acts does not justify interference by Privy Council in criminal cases. (*Lord Dunedin.*) **UMRA v. EMPEROR.**

87 I.C. 844 = 26 Cr.L.J. 1020 = 26 P.L.R. 129 =  
21 M.L.W. 160 = 6 Lah. 45 =  
6 L.R.P.C. Cr. 16 = 52 I.A. 121 = 2 O.W.N. 5 =  
27 Bom. L.R. 701 = 3 Pat. L.R.Gr. 93 =  
A.I.R. 1925 P.C. 52 = 48 M.L.J. 61 (P.C.)

**—Criminal cases—Rule.**

—Their Lordships of the Privy Council do not act in criminal matters as a Court of Criminal Appeal and are not concerned to regulate procedure of Courts in India or to criticise what is mere matter of procedure and in the complete absence of any substantial injustice or in the complete absence of anything that outrages what is due to natural justice in criminal cases Privy Council does not interfere. (*Viscount Sumner.*) **ATTA MOHAMMAD v. EMPEROR.**

122 I.C. 17 = 7 O.W.N. 299 = 1930 Cr.C. 193 =  
31 M.L.W. 306 = 31 P.L.R. 150 = 32 B.L.R. 520 =  
34 C.W.N. 565 = 3 M. Cr. C. 85 = 31 Cr.L.J. 378 =  
11 Lah. 192 = 37 I.A. 71 = 31 C.L.J. 455 =  
A.I.R. 1930 P.C. 87 = 38 M.L.J. 363 (P.C.)

—The Board only recommends His Majesty to exercise his jurisdiction in appeals in criminal cases upon certain very restricted grounds. (*Lord Phillimore.*) **V. M. ABDUL RAHMAN v. KING-EMPEROR.**

100 I.C. 227 = 5 Rang. 53 = 54 I.A. 96 =  
25 A.L.J. 117 = 31 C.W.N. 271 =  
1927 M.W.N. 103 = 38 M.L.T. 64 =  
4 O.W.N. 283 = 8 P.L.T. 155 = 28 Cr.L.J. 259 =  
6 Bur. L.J. 65 = 29 Bom. L.R. 813 =  
45 C.L.J. 441 = 7 A.I. Cr. R. 362 =  
A.I.R. 1927 P.C. 44 = 32 M.L.J. 585 (P.C.)

—Privy Council is not a Court of Criminal Appeal—Review is not permitted except in case of substantial and grave injustice due to disregard of legal forms or principles of natural justice—Refusal by Governor-General to transfer case on the ground of state of public feeling cannot be violation of the principles of natural justice—Inadequacy of direction to the jury cannot amount to disregard of forms of process.

—Dealing with petitions for special leave to appeal against sentences pronounced in the Criminal

**PRIVY COUNCIL—Special leave to appeal—Criminal cases.**

Courts of the various Dominions of the King the Privy Council will not act as Court of Criminal Appeal and will not review or interfere with the course of criminal proceedings, unless it is shown that, by disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise substantial and grave injustice has been done.

Governor-General has the power to order that the trial be held elsewhere if he thinks that in the state of public feeling a fair trial could not be obtained in the place where the offence would ordinarily be tried. To ask the Board to declare that a refusal of the Governor-General, who had all the advantages of being in the country and of judging of the real state of the feeling of the public amounted to a violation of the principles of natural justice, is nothing less than preposterous. The impropriety and uselessness of such a demand cannot be too strongly qualified.

Adequacy or otherwise of the directions to the jury would not amount to a disregard of the forms of process or violation of the principles of natural justice. (*Lord Dunedin.*) **SHAHI AHMAD v. EMPEROR.**

92 I.C. 212 = 28 Bom. L.R. 158 =  
30 C.W.N. 557 = 23 M.L.W. 1 = 43 C.L.J. 67 =  
1926 M.W.N. 62 = 3 O.W.N. 165 =  
A.I.R. 1925 P.C. 305 = 49 M.L.J. 834 (P.C.)

**—Criminal cases—Special leave.**

Points not properly raised at the trial or not points which is ordinary circumstances deserve much consideration as grounds for special leave. (*Lord Sumner.*) **BARENDRA KUMAR v. EMPEROR.**

85 I.C. 47 = 29 C.W.N. 181 = 1925 M.W.N. 26 =  
3 Pat. L.R. Cr. 1 = 6 L.R.P. Cr. 1 =  
27 Bom. L.R. 143 = 6 Pat. L.T. 169 = 52 I.A. 40 =  
52 Cal. 197 = 23 A.L.J. 314 = 41 C.L.J. 240 =  
26 Cr. L.J. 431 = 26 P.L.R. 50 =  
A.I.R. 1925 P.C. 1 = 48 M.L.J. 543 (P.C.)

**—Special Leave to appeal—Criminal Cases.**

—Leave to appeal in criminal cases is granted only when there is grave and substantial injustice due to non-observance of some forms of legal process or violation of principles of natural justice.

It is indisputable that as His Majesty the King is supreme over all persons and Courts within his Dominions, a right of appeal in all cases civil and criminal to the King in Council exists, from the highest Court of each separate colony, province, state or possession, whether it be a Court of record or not, except so far as the prerogative in this behalf has been expressly surrendered. Criminal proceedings, however, are, in practice, reviewed only if it is shown that by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done. The Judicial Committee do not, as a rule, advise His Majesty to grant appeals in criminal cases, except where questions of great and general importance, likely to occur often, are raised, and where the due and orderly administration of the law is shown to be interrupted, or diverted into a new course which might create a precedent for the future, and where there are no other means of preventing these consequences. Such appeals lie either by the right of grant, in pursuance of leave obtained by the appellant from the Court appealed from, or by reason of special leave granted by the Judicial Committee. The latter appeals arise either where the Court below does not possess power to grant leave to appeal or where leave to appeal has been refused by the Court below, or where the leave to appeal was granted on some special

**PRIVY COUNCIL—Value of decisions.**

point and the appellant wishes to raise points not included in the leave to appeal. But whether leave is granted by the Court appealed from or by the Judicial Committee, it is plain that the answer to the question, whether the case is a fit one for appeal, must depend on the same considerations. The grant of the leave to appeal is a step ancillary to the determination of the appeal, and the principles which regulate the ultimate decision of the appeal cannot obviously be ignored when an application for leave is examined. There must be something which, deprives the accused of the substance of fair trial and the protection of the law, or which, in general, tends to divert the due and orderly administration of the law into a new course, which may be drawn into an evil precedent in future. Where there is no provision like Clause 41 of the Letters Patent, 1865, applicable, no Indian Court can grant leave to appeal to His Majesty in Council. In such cases, the remedy is by an application for special leave to His Majesty in Council. Execution of sentence was stayed pending the hearing of appeal to His Majesty in Council, (1908 App. Cas. 448, F.) (*Mookerjee and Chatterjee, JJ.*) BARENDRA KUMAR GHOSE v. EMPEROR. 83 I.C. 580 = 39 C.L.J. 1 = 28 C.W.N. 377 = 26 Cr.L.J. 52 = A.I.R. 1924 Cal. 545.

**—Value of decisions.**

It is not open to the Courts in India to question any principle enunciated by the Privy Council. (*Fawcett and Mirza, JJ.*) EMPEROR v. ISMAIL KHADIRSAIB. 108 I.C. 501 = 30 Bom. L.R. 330 = 29 Cr. L.J. 403 = 52 Bom. 385 = 10 A.I. Cr. R. 118 = A.I.R. 1928 Bom. 130.

**PROBATE AND ADMINISTRATION ACT (V of 1881).****—S. 89—Applicability.**

S. 89 of the Probate and Administration Act has no application to a criminal prosecution. (44 M. 417, Foll.) And therefore criminal prosecution under S. 498, I.P.C., cannot abate merely on account of the death of the injured party, i.e., the husband. 25 P. R. (Cr.) 1919, Ref. (*Broadway and Martineau, JJ.*) EMPEROR v. MAUJ DIN. 71 I.C. 77 = 4 Lah. 4 = 24 Cr. L.J. 29 = A.I.R. 1924 Lah. 72.

**PROCLAMATION.**

See CR. P. CODE, Ss. 87 and 88.

**PRODUCTION OF DOCUMENT.**

See (1) CR. P. CODE, S. 94.

(2) PENAL CODE, S. 175.

**PROFESSIONAL ETIQUETTE, ETHICS AND MISCONDUCT.**

See LEGAL PRACTITIONER.

**PROMISSORY NOTE.****—Assignment.**

—Presumption as to passing of.

The presumption of law contained in the Negotiable Instruments Act that a promissory note was passed for consideration is not applicable to a criminal trial. (*Gokul Prasad, J.*) SAKHAWAT HAIDAR v. EMPEROR. 59 I.C. 198 = 22 Cr. L.J. 54 = 18 A.L.J. 1151.

**PROPERTY DISPUTES.**

See CR. P. CODE, S. 145.

**PUBLIC GAMBLING ACT (1867), S. 1—Instruments of gaming.****PROSTITUTION.**

See PENAL CODE.

**PROVOCATION.**

See PENAL CODE.

**PUBLICATION.**

(2) PENAL CODE, S. 499.

**PUBLIC GAMBLING ACT (III of 1867).**

—Certainty of profits.

—U. P. Act (1920)—Mere expectation of profit sufficient.

In order to bring the case under the Act it is not necessary to prove that profit is certain to result. A mere expectation of profit would suffice. (*Boys, J.*) ISMAIL v. EMPEROR. 101 I.C. 474 = 49 All. 562 = 25 A.L.J. 345 = 8 L. R.A. Cr. 75 = 28 Cr.L.J. 442 = 7 A.I. Cr. R. 437 = A.I.R. 1927 All. 480.

**—Rights of accused.**

—Magistrate issuing warrant—Accused may examine as witness—Magistrate not to try.

An accused under the Act has the right to examine the Magistrate issuing the warrant as a witness to enquire from him what was the information received by him and how the warrant was filled up and therefore he is materially prejudiced by the trial of the case by the very Magistrate who issued the warrant. (*Zafar Ali, J.*) RAJA RAM v. EMPEROR. 73 I.C. 521 = 5 L.L.J. 429 = 24 Cr. L.J. 633 = A.I.R. 1924 Lah. 247.

**—S. 1—Common gaming house.**

—Government Office used for gambling.

A Government Office cannot escape the definition of a common gaming-house when the persons gambling there and receiving profit out of the gambling used the place for such purpose. (*Datal, J.*) BHAGWAN DIN v. EMPEROR. 108 I.C. 568 = 26 A.L.J. 400 = 9 A.I. Cr. R. 270 = 9 L.R.A. Cr. 38 = 29 Cr. L.J. 448 = A.I.R. 1928 All. 215.

**—S. 1—Instruments of gaming.**

—Books of record—Examples.

Books used for the purpose of registering or recording any gaming transaction would fall within the definition of "instruments of gaming". 6 Bom. L. R. 249; 29 Bom. 264 and 40 Bom. 263, Rel. on.

A register or record of transactions in American Futures was held to be an instrument of gaming. 28 Bom. 616, Dist.; so also a book which contained a register or Kacha Khandi transaction and Teji Mandi transactions. A.I.R. 1922 Bom. 408 and 37 Bom. 264, Ref. 24 Bom. 227, Rel. on. *Thacker v. Hardy*, (1878) 4 Q. B. D. 685, Dist. (*Mirza and Baker, JJ.*) EMPEROR v. THAYARMAL RUPCHAND. 116 I.C. 231 = 53 Bom. 367 = 31 Bom. L.R. 158 = 30 Cr. L.J. 595 = 12 A.I. Cr. R. 466 = A.I.R. 1929 Bom. 157.

—Satta papers—Advertisements and accounts of. When the shop owned by the accused was raided, satta papers were found, and when the house was raided, advertisements of the satta gambling were found and accounts of the satta gambling.

Held, that such papers were instruments of gaming. A.I.R. 1924 All. 338, Foll. (*Boys, J.*) ISMAIL v.

**PUBLIC GAMBLING ACT (1837), S. 1—Instruments of gaming.**

EMPEROR. 101 I.C. 474=49 All. 562=25 A.L.J. 346=3 L.R.A. Cr. 79=28 Cr. L.J. 442=7 A.I. Cr. R. 487=A.I.R. 1927 All. 480.

—U. P. Act of 1917—*Cauris*.

*Cauris* will fall within the definition of instruments of gaming. 18 All. 23, Dist. (*Wazir Hasan, A. J. C.*)

RAM CHARAN v. KING-EMPEROR. 90 I.C. 713=

2 O.W.N. 638=12 O.L.J. 646=26 Cr. L.J. 1609=

A.I.R. 1923 Oudh 674.

**—S. 2—Extension to territories.**

—*Gambling on Benares side of mid-stream no offence.*

By a Government Notification the Gambling Act was extended to the north bank of the Ganges. The gambling took place in a boat which was on the Benares side of the mid-stream of the Ganges.

*Held*, that no offence was committed because the gambling took place outside the area to which the Act applies. (*Stuart, J.*) KASHI NATH v. EMPEROR.

88 I.C. 8=23 A.L.J. 457=26 Cr. L.J. 1061=

6 L.R.A. Cr. 144=A.I.R. 1923 All. 518.

**—S. 3—Defective search warrant.**

—*Conviction not vitiated if based on legal evidence.*

A conviction under S. 3 based upon legal evidence is not vitiated merely because of the defects and irregularities in the warrant. 35 All. 1; 28 All. 210 and A. I. R. 1924 All. 214, Foll. A. I. R. 1924 Lah. 247, Expl. (*Tek Chand, J.*) MIRAN BAKHSH v. EMPEROR.

104 I.C. 441=28 Cr. L.J. 825=

A.I.R. 1927 Lah. 692.

—*Place not stated—Warrant illegal.*

Where at the time when the Magistrate signed, the place used as public gaming house is not stated at all in the body of the warrant, the warrant is not for the search of any particular place and therefore is illegal. 35 All. 1 and 11 P.R. 1895 (Cr.) Ref. (*Zafar Ali, J.*) RAJA RAM v. EMPEROR. 73 I.C. 521=5 L.L.J. 429=

24 Cr. L.J. 633=A.I.R. 1924 Lah. 247.

**—S. 3—Dewali gambling.**

—*Raid on—Undesirable.*

To issue warrant to raid houses where gambling goes on at the time of Dewali is highly undesirable as the police are merely encouraged to run in numbers of perfectly innocent persons in order to get a reward. (*Pullan, J.*) LACHHMAN v. EMPEROR.

A.I.R. 1930 Oudh 403.

—*Act not contravened—No offence.*

Gambling in Dewali should not be considered to be an offence; but the law will not countenance gambling even at Dewali if it is in contravention of the Gambling Act.

Where the only evidence that anything was done in contravention of the Gambling Act was that the owner of the house had in front of him a small pot containing As. 15 and there was no reason to suppose that the sum represented his profits or that it was what is known as "na!" and the sums staked were quite trifling,

*Held*, that it was only a case of Dewali gambling in private house and no offence was committed under the Gambling Act. 20 O. C. 4 and A.I.R. 1922 Oudh 224, Rel. on. (*Pullan, J.*) LACHHMAN v. EMPEROR.

A.I.R. 1930 Oudh 403.

**—S. 3—Grounds for conviction.**

—*Accused must be owner, occupier or having use of place.*

For the purpose of conviction it is not sufficient to say that an accused used a house for the purpose of gambling. It should be proved that the accused is the owner or occupier or a person having the use of

**PUBLIC GAMBLING ACT (1867), S. 3—Offence under.**

the place alleged to be kept as a gaming house. (*Raza, J.*) JAMNA PRASAD v. EMPEROR.

116 I.C. 57=6 O.W.N. 45=30 Cr. L.J. 557=

12 A.I. Cr. R. 437=A.I.R. 1929 Oudh 151.

—*Sums set apart for those ministering to comforts—Not advantage to keeper.*

The mere fact that small sums are set aside for remunerating those who minister to the comfort of the persons assembled, does not show that such payments represent any advantage whatsoever to the person occupying or keeping the premises. (*Drake Brockman, J. C.*) NEMICHAND v. EMPEROR.

62 I.C. 322=22 Cr. L.J. 438 (Nag.).

**—S. 3—Interrelation of offences under.**

—*Offences under both sections—Interdependent and complementary—Joint trial—Valid.*

No cast iron rule of law can be laid down on the question as to whether the keeper of a gambling den, if he frequents the said den and gambles there, could not be said to do so in the course of the same transaction within the meaning of S. 239, Cr. P. Code. The words "same transaction" are not defined in the Code. The offences under Ss. 3 and 4, Public Gambling Act, are interdependent and "are the complements of one another." A Court, therefore, is justified in trying two accused persons under Ss. 3 and 4 in the course of the same trial. A.I.R. 1922 Lah. 458; 6 P.R. 1919 (Cr.) and A.I.R. 1923 All. 88, Rel. on.; 5 P.W. R. 1910 and 35 P.R. 1914 (Cr.), not Foll. (*Sen, J.*) RURE MAL v. EMPEROR. 120 I.C. 266=1930 A.L.J. 229=

31 Cr. L.J. 35=13 A.I. Cr. R. 138=

11 L.R.A. Cr. 21=1929 Cr. C. 665=

A.I.R. 1929 All. 937.

—*Offences different.*

The offences under Sections 3 and 4 are different offences. The offence under Section 3 is that the owner or occupier opens or keeps the house as a common gaming house. He may do this without himself taking part in gaming there under Section 4. (*Daniels, J. C.*) CHOTAY LAL v. EMPEROR.

81 I.C. 186=11 O.L.J. 347=25 Cr. L.J. 698=

A.I.R. 1924 Oudh 403.

**—S. 3—Joint trial.**

—*Not illegal.*

The trial of a person under S. 3, along with a number of other persons found in the gaming house under S. 4 is not illegal. 6 P.R. 1919 (Cr.) and A.I. R. 1922 Lah. 458, Foll. (*Tek Chand, J.*) MIRAN BAKHSH v. EMPEROR.

104 I.C. 441=28 Cr. L.J. 825=

A.I.R. 1927 Lah. 699.

**—S. 3—Offence under.**

—*Chance of loss extremely rare—Offence complete.*

Where from the method of business carried on, the chance of loss to a booth-keeper is extremely rare and almost nil, the offence of keeping common gaming house is complete. A.I.R. 1924 All. 335, Foll. (*Mukerji, J.*) NATHU MAL v. EMPEROR. 86 I.C. 808=

23 A.L.J. 185=26 Cr. L.J. 872=47 All. 405=

A.I.R. 1925 All. 309.

—*Manipulation to avert loss—Offence—Proof by prosecution.*

Where by the use of balls of paper the accused so manipulated the conditions of the game that he could not possibly lose, *held*, that the offence of keeping a public gaming house was committed. The words "used for the benefit or gain of the person owning the house" require strict proof by the prosecution who must show that the owner or occupier takes a fixed commission irrespective of the result or so manipulates the conditions that he cannot possibly

**PUBLIC GAMBLING ACT (1887), S. 3—Sentence.**  
*lose. (Mears, C.J., Lindsay and Ryoos, J.J.) ATMA*  
*RAM v. EMPEROR.* 81 I.C. 438=22 A.L.J. 249=  
 5 L.R.A. Cr. 33=46 All. 447=25 Cr. L.J. 902=  
 A.I.R. 1924 All. 338 (F.B.).

—S. 3—Sentence.

—Conviction under both sections—Cumulative sentence improper.

It is not proper to convict the accused person under the two sections and pass a cumulative sentence on one count only. (*Sen, J.*) RURE MAL v. EMPEROR. 120 I.C. 266=31 Cr. L.J. 35=

1930 A.L.J. 229=13 A.I. Cr. R. 138=

11 L.R.A. Cr. 21=1929 Gr. C. 665=

A.I.R. 1929 All. 937.

—S. 4—Essentials for conviction.

—Arrest in gambling house not necessary—Proof of presence sufficient.

In order to sustain a conviction under S. 4 it is not necessary that the person proceeded against should have been actually arrested in the gambling house in question but it is incumbent on the prosecution to prove that he was actually seen in the house. The mere fact that the person proceeded against was seen going from the direction of the gambling house to his own house is insufficient. (*Tek Chand, J.*) ALI HUSSAIN v. EMPEROR. 31 P.L.R. 184=

A.I.R. 1930 Lah. 314.

—S. 4—Presumption.

—Cauris found on search—Presumption as to place and persons found—How rebutted.

Where at the time the accused's house was searched under the provisions of S. 5 of the Public Gambling Act, cauris were found therein.

*Held*, that there is a presumption that the house was used as a common gaming house and further that the persons found therein were there present for the purpose of gambling and that within the presumption is included the ingredient that the accused kept or used the house for profit or gain, and that, that presumption would be rebutted if the object of the persons was merely to indulge in a common friendly amusement with a view to pass time, the idea of making any gain being entirely foreign to the mind of the entire party. 20 O. C. 4, Foll. (*Wazir Hasan, A. J. C.*) RAM CHARAN v. EMPEROR. 90 I.C. 713= 2 O.W.N. 638=12 O.L.J. 646=26 Cr. L.J. 1609= A.I.R. 1925 Oudh 674.

—S. 5—Confiscation of money.

—Money found on person—Seizure illegal.

No part of the money found on the person of a man arrested in a gaming house can be seized as S. 5 authorizes the seizure of money and securities lying about the premises but of no other money. The reason why such money cannot be seized is that a person convicted for gambling is liable to pay fine and power to confiscate money which belongs to the person arrested is unnecessary. A. I. R. 1927 Lah. 338; 26 Bom. 641 and 44 Bom. 686, Rel. on. (*Macnair, Offg. J.C.*) EMPEROR v. PYARELAL. 121 I.C. 657= 31 Cr. L.J. 277=12 N.L.J. 161= 26 N.L.R. 151=A.I.R. 1930 Nag. 49.

—Money and valuables on person—Confiscation improper.

It would be unsafe to direct confiscations of all moneys or valuables, such as gold watches and ornaments found on the person of a man arrested in a gaming house. (*Case-law reviewed.*) (*Broadway, J.*) MISRI LAL v. EMPEROR. 100 I.C. 716= 8 Lah. 320=28 Cr. L.J. 332=7 A.I.Cr.R. 572= 28 P.L.R. 521=A.I.R. 1927 Lah. 338.

—Search limited to instruments of gaming found on person and not money.

The power given to police in the first part of S. 5.

**PUBLIC GAMBLING ACT (1887), S. 5—Search without warrant.**

to seize instruments of gaming and money, etc., found in the house does not extend to the seizure of money recovered on the search of the persons found in the house. The search is limited to the recovery of instruments of gaming found on the person and, therefore, the police has no power to seize money found on the person of the accused. A.I.R. 1924 Patna 42; 26 Bom. 641; 44 Bom. 686; 26 All. 270 and 41 All. 366, Ref. (*Harrison, J.*) KHADIR DIN v. EMPEROR. 96 I.C. 503=27 Cr. L.J. 951=

7 A.I.Cr.R. 41=A.I.R. 1926 Lah. 290.

—S. 5—"Credible information."

—Meaning of—Sworn information unnecessary.

Credible information includes any information which in the judgment of the officer to whom it is given, appears entitled to credit in the particular instance and which he believes and it need not be sworn information. 7 P.R. 1882 Cr. (F.B.), Foll. (*Addison, J.*) DEVI DAYAL v. EMPEROR.

116 I.C. 455=30 Cr. L.J. 625=1923 Gr. C. 312=

13 A.I.Cr.R. 58=A.I.R. 1929 Lah. 720.

—S. 5—Presumption about search.

—Information credible—Presumption as to official acts.

If the warrant on the face of it shows that the issuing officer believed upon information which he considered credible that the house in question was being used as a common gaming house the presumption that the official acts were regularly performed applies and there is no authority in which it has been held that independent evidence of this fact must be produced at the trial. (*Daniels, J.C.*) CHOTAY LAL v. EMPEROR. 81 I.C. 186=11 O.L.J. 347=

26 Cr. L.J. 698=A.I.R. 1924 Oudh 403.

—S. 5—Procedure in search.

—S. 103, Cr.P. Code, does not apply.

Where a warrant has been issued for search under S. 5, Gambling Act, S. 103, Cr.P. Code, is not applicable. A.I.R. 1922 Lah. 458, Foll. (*Sen, J.*) RURE MAL v. EMPEROR. 120 I.C. 266=31 Cr. L.J. 35= 1930 A.L.J. 229=13 A.I.Cr.R. 138= 11 L.R.A. Cr. 21=1929 Gr. C. 665= A.I.R. 1929 All. 937.

—Credible information as to actual gambling, how game is played and how toll is levied—Necessary for search.

To apply S. 6 of the Public Gambling Act, the premises must be entered or searched under the provisions of S. 5 of that Act. The credible information, which the Police Officer must obtain before he can enter a place must show that the gambling is being carried on for the profit of the owner or occupier, and there ought to be evidence to describe either how the game itself was played, or how a toll, if any, was levied. A Police Officer is not at liberty to raid premises merely because a number of persons are collected to gamble there, and a conviction based on such information cannot be sustained. (*Draake Brockman, J.C.*) NEMICHAND v. EMPEROR. 62 I.C. 322=22 Cr. L.J. 428 (Nag.).

—S. 5—Search without warrant.

—Assistant Superintendent of Police not authorised.

An Assistant Superintendent of Police is not authorised under S. 5 of the Public Gambling Act to search a place without a warrant. (*Mukerji, J.*) NANHE LAL v. EMPEROR. 86 I.C. 832= 23 A.L.J. 137=26 Cr. L.J. 896=8 L.R.A. Cr. 84= A.I.R. 1928 R.P. 809.

**PUBLIC GAMBLING ACT (1867), S. 5—Validity of warrant.****—S. 5—Validity of warrant.**

*—Superintendent of Police certifying he had reason to believe—Warrant valid.*

Where the Superintendent of Police issued the warrant and he signed it certifying that he "had reason to believe," etc., the only interpretation to be placed on the warrant is that the Superintendent of Police had reason to believe and therefore he acted upon credible information within S. 5. (*Broadway, J.*) AHMAD HASSAN v. THE CROWN. 96 I.C. 654 = 7 Lah. 310 = 27 P.L.R. 466 = 27 Cr. L.J. 990 = 7 A.I.Cr.R. 14 = A.I.R. 1926 Lah. 489.

**—S. 6—Evidence.**

*—Direct evidence of taking commission not necessary.*

It is not necessary for the police to give direct evidence that the gambling was being carried on for the profit of the keeper of the house. 20 A.L.J. 213, Dist. (*Daniels, J.*) SITARAM v. KING-EMPEROR. 75 I.C. 358 = 45 All. 671 = 24 Cr. L.J. 934 = A.I.R. 1924 All. 186.

**—S. 6—Illegal search.**

*—Illegal search—Presumption does not arise.*

Where it is found that the search was illegal, the presumption under S. 6 of the Gambling Act does not arise.

In such a case, the presence of the dice and the board and the pot by itself does not raise any presumption that the premises were being used as a common gaming house. (*Mukerji, J.*) NANHE LAL v. EMPEROR. 86 I.C. 832 = 23 A.L.J. 137 = 26 Cr. L.J. 896 = 6 L.R.A. Cr. 64 = A.I.R. 1925 All. 301.

**—S. 6—Illegal warrant.**

*—Presumption does not arise.*

The presumption under S. 6 would not arise if it is found that the warrant was an illegal warrant. (*Boys, J.*) PARAS RAM v. EMPEROR. A.I.R. 1930 All. 740.

*—No presumption arises.*

If the search warrant is illegal no presumption under S. 6 arises that the house is a common gaming house or that the persons present in the house are there for the purpose of gaming. (*Iqbal Ahmad, J.*) DARAB v. EMPEROR. 105 I.C. 825 = 50 All. 412 = 26 A.L.J. 78 = 28 Cr. L.J. 1001 = 8 L.R.A. Cr. 145 = 8 A.I.Cr.R. 406 = A.I.R. 1928 All. 20.

*—No presumption arises.*

The effect of a search warrant being illegal is that no presumption such as arises under S. 6 can be made in favour of the prosecution. (*Tek Chand, J.*) MIRAN BAKSH v. EMPEROR. 104 I.C. 441 = 28 Cr. L.J. 825 = A.I.R. 1927 Lah. 699.

*—Warrant vague and indefinite as to place and person—Omission to address to a definite police officer—Warrant illegal—Presumption does not arise.*

The Superintendent of Police received credible information that a common gaming house was maintained by Puttu Lal. He issued a warrant for the search of the house of Puttu Lal but omitted to get the boundaries of that house noted in the warrant or to enter to whom it was addressed. The caste of Puttu Lal was also misdescribed. The Sub-Inspector to whom the warrant in question was handed over waited for a suitable opportunity to make the search. He corrected the caste of Puttu Lal in the warrant with his own hand and went to the house of Puttu Lal and made a search.

It is held that the erroneous description of the caste in the original warrant may not be very material, but

**PUBLIC GAMBLING ACT (1867), S. 13—Interrelation of offences under.**

the omission to address it to a definite police officer and to describe the house by its boundaries or number, renders the warrant vague and indefinite, and it cannot be said that under that warrant the officer making the search was authorised to make it. The warrant in question cannot therefore be regarded as legal and the presumption authorised by S. 6 cannot be raised. (*Kanhaiya Lal, J.*) JAMNA PRASAD v. KING-EMPEROR. 73 I.C. 518 = 21 A.L.J. 602 = 4 L.R.A. Cr. 138 = 24 Cr. L.J. 630 = A.I.R. 1924 All. 128.

**—S. 6—Presumption under.**

*—Instruments of gaming and nal found.*

Where a Magistrate raids a house and finds therein instruments of gaming and a Nal (a wooden box containing some money) the presumption is that the place was a common gambling house. (*Addison, J.*) DEVI DAYAL v. EMPEROR. 116 I.C. 455 = 30 Cr. L.J. 625 = 1929 Cr. C. 312 = 13 A.I.Cr.R. 58 = A.I.R. 1929 Lah. 720.

**—S. 8—Confiscation of money.**

*—Money found on the person—Not forfeited.*

In the ordinary case of money found in the possession of a person who is discovered in a gaming house such money is not capable of being forfeited. Everything found on the premises or on the persons there which is surely tainted with the gaming mark, that is to say, "Reasonably suspected to have been used or intended to be used for the purpose of gaming" is liable to forfeiture and may or may not be returned under the discretion of the Magistrate under the provisions of S. 8 but not otherwise. 28 A. 274 and 41 A. 366, Foll. (*Bucknill, J.*) LACHMI NARAIN MARWARI v. KING-EMPEROR. 77 I.C. 177 = 4 P.L.T. 622 = 1923 P.H.C.C. 220 = 1 Pat. L.R. Cr. 229 = 25 Cr. L.J. 321 = A.I.R. 1924 Pat. 42.

**—S. 10—Illegal arrest.**

*—Person illegally arrested cannot be examined.*

A person arrested during the raid could be rightly examined on oath only in case the premises were entered into under provisions of the Act. Where they were entered into contrary to the provisions of the Act the Magistrate is not authorised to call upon one of the persons arrested to take oath and give evidence in the case. (*Mukerji, J.*) NANHE LAL v. EMPEROR. 86 I.C. 832 = 23 A.L.J. 137 = 26 Cr. L.J. 896 = 6 L.R.A. Cr. 64 = A.I.R. 1925 All. 301.

**—S. 12—Ring game.**

Ring game is not a game of mere skill. 34 All. 96, Foll. (*Dalal, J.*) AZIZ ISMAIL v. EMPEROR. 110 I.C. 674 = 10 A.I. Cr. R. 199 = 9 L.R.A. Cr. 117 = 29 Cr. L.J. 738.

**—S. 13—Effect of amendment by U. P. Act.**

*—Playing game of skill in public places no offence.*

The result of amendment of the U. P. Act of 1917 is that the playing of a game of mere skill in a public place is gaming, but it is not such gaming as falls within the ambit of the Public Gambling Act. The suggestion that the expression "any game of mere skill" means a game in respect of which there is no wagering or betting is untenable. (*Ashworth, J.*) PANNA LAL v. EMPEROR. 91 I.C. 40 = 48 All. 220 = 24 A.L.J. 150 = 6 L.R.A. Cr. 205 = 27 Cr. L.J. 8 = A.I.R. 1926 All. 187.

**—S. 13—Interrelation of offences under.**

*—Offences distinct—Conviction separately under both sections—Not illegal.*



**PUBLIC GAMBLING ACT (1867), S. 13—Public place.**

The two offences under Ss. 3 and 4 may be interdependent but they are distinct offences and one cannot be said to overlap the other. It is not illegal to convict an accused under the two sections separately. (*Sen, J.*) **RURE MAL v. EMPEROR.**

120 I.C. 266 = 31 Cr. L.J. 38 = 1930 A.L.J. 229 =  
13 A.I.Gr.R. 138 = 11 L.R.A.Gr. 21 =  
1929 Cr.C. 665 = A.I.R. 1929 All. 937.

**—S. 13—Public place.****—Meaning of.**

A public place is one which is in full view of the public and one to which the public has access. *White v. Cabitt*, 1 K. B. 443, Ref.; A. I. R. 1922 Oudh 275; 51 I.C. 971 and A. I. R. 1922 Oudh 196, Dist. (*Pullan, J.*) **LALA v. EMPEROR.**

7 O.W.N. 621 = 1930 Cr.C. 905 =

A.I.R. 1930 Oudh 394.

**—Place either open to or used by the public—Private place open to public view—Not public place.**

The word "place" is used in S. 13 in conjunction with street and thoroughfare and could not have been intended to apply to a private place which might be open to a public view. Of course a particular place though private may become a public place on a particular occasion, for instance, when the members of the public are really present there. But unless such is the case, a private place cannot be called a public place merely because if some member of the public were to pass close by he might have an opportunity of seeing what was going on there. It must be a place either open to the public, or actually used by the public, the mere publicity of the situation not being sufficient. 17 All. 166, Rel. on; (1904) A. W. N. 92 and 1 A.L.J. 129, Ref.; A.I.R. 1922 All. 544, Dist. (*Sulaiman, J.*) **BABU RAM v. EMPEROR.**

103 I.C. 202 = 49 All. 913 = 25 A.L.J. 578 =

8 L.R.A.Gr. C. 116 = 28 Cr.L.J. 666 =

8 A.I.Gr.R. 159 = A.I.R. 1927 All. 560.

**—Legal right to resort by the public—Not necessary—Place in view of and accessible to public—Owned by public body—Public place.**

In order to bring a particular spot within S. 13, it is not necessary that the public should have a legal right to go to it. All that is necessary is that the public actually go there, whether as of right or on sufferance of the proprietors. A. I. R. 1922 All. 542 and 14 N. L.R. 137, Ref.; *Reg. v. Wellard*, (1885) 14 Q. B. D. 63; 30 Bom. 348; 17 P. R. 1882 (Cr.) and 11 P. R. 1890 (Cr.) Dist.

A place which is in full view of the public as they pass to and fro, is also freely accessible for all classes of the public and belongs to public body, which has never enclosed it, is a public place within S. 13. (*Tek Chand, J.*) **MAHOMED KHAN v. EMPEROR.**

104 I.C. 230 = 28 P.L.R. 577 = 28 Cr.L.J. 790 =  
A.I.R. 1927 Lah. 672.

**—Public place is place where public go—Serai used as a stand for hackney carriages and resorted to by public is a public place.**

A place which is in any way dedicated to the use of the public is of course a public place, but where it is owned privately and no such dedication has taken place, the question whether it is a public place depends on the character of the place itself and the use actually made of it. A public place is a place where the public go, no matter whether they have a right to go or not. A serai taken by the Municipality on rent and used as a stand for hackney carriages, and which is resorted to by the public, is a public place within the section. *Reg. v. Wellard*, (1884) 14 Q.B.D. 63,

**PUNJAB ALIENATION OF LAND ACT (1900), S. 16—Attachment.**

Approved. (*Shadi Lal, C.J.*) **NURA v. EMPEROR.**

89 I.C. 975 = 26 Cr. L.J. 1455 =

A.I.R. 1926 Lah. 149.

**—Public must have lawful access to.**

If the provisions of S. 13 of the Public Gambling Act must be satisfied as to a place being a public place, the place must be opened to the public, i.e., the public must have lawful access, by right, permission, usage or otherwise. (*Kinkhede, A.J.C.*) **SABIMIYA v. EMPEROR.**

81 I.C. 897 = 25 Cr. L.J. 1073 =

A.I.R. 1925 Nag. 123.

**—No dedication to public—If public place—Nature—Use of place—Test.**

When there is a dedication of a place in any way to the use of the public, doubtless it will become a public place, but where it is under private ownership and there has been no such dedication the question whether or not it is a public place depends on the character of the place and the use to which it is actually put. (*Kinkhede, A.J.C.*) **SABIMIYA v. EMPEROR.**

81 I.C. 897 = 25 Cr. L.J. 1073 =

A.I.R. 1925 Nag. 123.

**—Free access to public—Use to which place is put—Deciding factors.**

The words "in a public place" in S. 13 as amended are capable equally of including in their ordinary reasonable and proper meaning "a place the title to which is vested in the public" "and a place to which however owned the public is allowed in effect unrestricted access." It is not the question of title to the place nor the nature of its metes and bounds which are the decisive factors but the use to which the place is put. A.I.R. 1922 All. 542, Rel. on. (*Boys, J.*) **TULSI DAS v. EMPEROR.**

82 I.C. 426 =

46 All. 787 = 22 A.L.J. 741 = 5 L.R.A. Gr. 139 =

25 Cr. L.J. 1308 = A.I.R. 1924 All. 768.

**—S. 13—Punishment.****—Both fine and imprisonment—Illegal.**

A person who offends against S. 13 can be punished either with imprisonment or with fine, but not with both. Double punishment of fine and imprisonment cannot be legally imposed. 25 P. R. 1880 (Cr.), Foll. (*Tek Chand, J.*) **MAHOMED KHAN v. EMPEROR.**

104 I.C. 230 = 28 P.L.R. 577 = 28 Cr. L.J. 790 =

A.I.R. 1927 Lah. 672.

**—S. 18-A—Effect of amendment by U.P. Act.**

See under PUBLIC GAMBLING ACT, S. 13.

**PUBLIC NUISANCE.**

See (1) CR. P. CODE, Ss. 133-143.

(2) PENAL CODE, Ss. 268, 290, 291.

**PUBLIC PLACE.**

See (1) GAMBLING ACTS.

(2) MUNICIPAL ACTS.

(3) PENAL CODE.

**PUBLIC PROSECUTOR.**

See CR. P. CODE, S. 496.

**PUBLIC SERVANT.**

(1) PENAL CODE, Ss. 21, 161.

(2) TORT.

**PUNISHMENT.**

See (1) CR. P. CODE.

(2) CRIMINAL TRIAL.

(3) PENAL CODE, Ss. 53 TO 75.

**PUNJAB ALIENATION OF LAND ACT (1900),****—S. 16—Attachment.****—Not prohibited.**

Section 16 does not prohibit the attachment of land of a member of an agricultural tribe although it prohibits its sale in execution of a decree. (*Jai Lal, J.*)



**PUNJAB ALIENATION OF LAND ACT (1900), S. 16—Fine in criminal case.**

**EMPEROR v. MUKHA SINGH.** 119 I.C. 227=  
30 Cr. L.J. 1006=1929 Cr. C. 212=  
A.I.R. 1929 Lah. 667.

**—S. 16—Fine in criminal case.**

Fine imposed in a criminal case on an offender is not recoverable as land revenue. (*Jai Lal, J.*)  
**EMPEROR v. MILKHA SINGH.** 119 I.C. 227=  
30 Cr. L.J. 1006=1929 Cr. C. 212=  
A.I.R. 1929 Lah. 667.

**—S. 16—Temporary alienation.****—In execution—Not prohibited.**

The Punjab Land Alienation Act does not prohibit the temporary alienation of land belonging to a member of an agricultural tribe (such as a temporary farm of a mortgage thereof) in execution of a decree. 1 Lah. 192 and A.I.R. 1921 Lah. 44, Foll. (*Jai Lal, J.*)  
**EMPEROR v. MILKHA SINGH.** 119 I.C. 227=  
30 Cr. L.J. 1006=1929 Cr. C. 212=  
A.I.R. 1929 Lah. 667.

**—S. 16—Warrant under Cr. P. Code, S. 386.****—Land of agriculturist—Not saleable in pursuance of warrant.**

The combined effect of S. 386, Cr. P. Code, and S. 16, Punjab Land Alienation Act, is that the land belonging to a member of an agricultural tribe cannot be sold in pursuance of a warrant issued by a Magistrate to the Collector and sent to the nearest Civil Court for execution. (*Jai Lal, J.*)  
**EMPEROR v. MILKHA SINGH.** 119 I.C. 227=30 Cr. L.J. 1006=  
1929 Cr. C. 212=A.I.R. 1929 Lah. 667.

**PUNJAB BORSTAL ACT (XI OF 1926).****—Minor associating with habitual offenders.****—If benefit denied.**

A minor boy cannot be denied the benefit of the provisions of the Punjab Borstal Act simply because he associated with habitual criminals. (*Dalip Singh, J.*)  
**VALINA RAMA v. EMPEROR.** 108 I.C. 169=  
29 Cr. L.J. 350=10 A.I. Cr. R. 16=  
A.I.R. 1928 Lah. 436.

**PUNJAB DISTRICT BOARDS ACT, (XX OF 1883).****—S. 30—Haisiyat tax.****—Rate varying according to income—Governor-General's sanction necessary.**

The haisiyat tax not fixed at a flat rate for particular profession, calling or trade, but varying according to the income of such individual assessee, is in the nature of a tax on income, and can only be imposed with the previous sanction of the Governor-General-in-Council and if this is not done, the assessee is not legally liable to pay it: A.I.R. 1928 Lah. 53, Foll. (*Tek Chand, J.*)  
**DASONDH v. EMPEROR.** 107 I.C. 601=9 Lah. 424=30 P.L.R. 660=  
9 A.I. Cr. R. 488=29 Cr. L.J. 265=  
A.I.R. 1928 Lah. 332.

**—S. 58—Magistrate member of District Board.****—Prosecution directed against District Board Officials—Magistrate debarred from trying.**

Where a Magistrate, as a member of a District Board, presided at a meeting of the Board at which the proposal in the Commissioner's letter to start the prosecutions was adopted, and it was resolved that the police be called in to make an enquiry and to proceed against such of the District Board Officials as the result of the enquiry might warrant:

Held, that the Magistrate is debarred from trying the cases. (*Broadway, J.*)  
**HEM RAJ v. EMPEROR.** 108 I.C. 271=9 L.L.J. 583=29 P.L.R. 282=  
29 Cr. L.J. 371=A.I.R. 1928 Lah. 114.

**S. 58—Action of right to levy toll.**  
**—Toll due from purchaser—Recovery—Civil**

**PUNJAB EXCISE ACT (1914), S. 61—Imported article examined in transit.**

Where a District Board auctions the standing reeds and the right to levy toll the sums due from the purchaser cannot properly be said to be due under the Act. They are due on contracts and should properly form the subject-matter of an ordinary civil suit. (*Shadi Lal, C.J.*)  
**NARAIN SINGH v. DISTRICT BOARD OF LUDEHIANA.** 110 I.C. 811=  
9 L.L.J. 541=29 P.L.R. 252=9 A.I. Cr. R. 405=  
29 Cr. L.J. 779=A.I.R. 1928 Lah. 109.

**PUNJAB EXCISE ACT (1 of 1914).****—S. 24(3)—Effect of provisions in Excise Manual.****—Excise Act not affected by S. 407 Vol. 1 of Manual—Possession of liquor in excess—Punishable.**

S. 407 of Vol. I of the Excise Manual cannot, and does not, override the provisions of the Excise Act and therefore a licensee in possession of liquor in excess of the prescribed quantity and outside the place of license is rightly punishable under S. 61, 16 P.R. Cr. 1917, Foll. (*Broadway and Martineau, JJ.*)  
**EMPEROR v. PURAN SINGH.** 73 I.C. 699=4 Lah. 10=  
5 L.L.J. 412=8 P.L.R. Cr. 1923=24 Cr. L.J. 667=  
—S. 50—"Raid report". A.I.R. 1924 Lah. 73.

**—Accused not entitled to see.**

The accused are not entitled to see the document called the "Raid Report" submitted under S. 50, Punjab Excise Act, since the document is a highly confidential one. (*Skemp, J.*)  
**GHULAM NABI v. EMPEROR.** 117 I.C. 377=30 Cr. L.J. 760=  
A.I.R. 1929 Lah. 429.

**—S. 61—Accused an Arain.****—No point in accused's favour.**

The fact that the accused is an Arain who has nothing to do with liquor, is no ground in accused's favour. (*Harrison and Jai Lal, JJ.*)  
**CROWN v. IBRAHIM.** 99 I.C. 1012=27 P.L.R. 197=  
28 Cr. L.J. 212.

**—S. 61—Burden of proof.****—Possession of illicit liquor—Crown to prove that liquor did not come in the ordinary way.**

The accused was charged with being in possession of illicit liquor. The Chemical Examiner's opinion was that the suspected liquor was not definitely distinguishable from the spirits made at K distillery.

Held, that until and unless the Crown had shown that the liquor could not in the ordinary way of business have come from K distillery, the onus did not shift on to the accused of showing that that was where he got it from. (*Harrison, J.*)  
**KUNDA SINGH v. EMPEROR.** 103 I.C. 197=10 Lah. 431=  
28 Cr. L.J. 661=30 P.L.R. 557=  
A.I.R. 1928 Lah. 191.

**—S. 61—Foreign alcohol.****—Included in "rectified spirit".**

For purposes of S. 61 (1) (a) absolute alcohol of foreign origin is included in the term rectified spirit, all spirit of a strength of more than 43 degrees or more overproof being rectified spirit. (*Harrison and Jai Lal, JJ.*)  
**EMPEROR v. NARAIN DAS.** 98 I.C. 255=7 Lah. 341=27 P.L.R. 502=  
27 Cr. L.J. 1311=8 L.L.J. 613=  
A.I.R. 1926 Lah. 517.

**—S. 61—Imported article examined in transit.****—Custom Officials authorised to examine—Interruption in transit—Does not cease to be importation.**

Cocaine was despatched from Germany in two registered packets, one consigned to Multan and the other to branch post office in the Multan district to fictitious addresses. The packets, which came via Karachi, were opened at that port by the custom

**PUNJAB EXCISE ACT (1914), S. 61—Joint possession of house.**

officials, who on examining them and ascertaining the nature of the contents, sent them on to the post office for delivery to the consignees. On the petitioners calling, at the post office for the packet in question, it was handed over to them after certain enquiries had been made and the petitioners were then arrested and convicted under S. 61 (1) (a).

*Held*, that the act of the Custom officials being authorized by the Customs Act and the regulations made thereunder, the article does not cease to be imported by the consignee merely because it was interrupted in transit by the Custom officials acting under, and in accordance with, their statutory powers. 2 P.R. (Cr.) 1911, Cons. (Fforde, C. J.) RAM TIRAYA v. EMPEROR. 101 I.C. 596 = 8 Lah. 100 = 9 L.L.J. 213 = 28 Cr.L.J. 468 = 28 P.L.R. 495 = A.I.R. 1927 Lah. 191.

**—S. 61—Joint possession of house.**

*Articles found in house—All inmates having access—Presumption of possession—Illicit liquor found in son's room—Presumption of his guilt does not arise.*

Where articles are found in a house in such place or places as several persons living in the house may have access to, there is no presumption as to possession and control of any other person than the house-master, though it is open to the prosecution to prove that the possession was with some other member of the family. 15 All. 129 and A. I. R. 1928 Lah. 272, Foll.

When most of illicit liquor is found in the room occupied for the night by the son and his family for sleeping, it does not necessarily mean that the son was in the exclusive possession of the room. The legal possession still remains with the father, the house-master, and there is obvious possibility that the liquor could have been placed there by the father. The mere fact that the son does not report the matter to proper authorities but uses the room along with his wife and family to sleep in does not make him guilty of the offence of being in possession of that liquor. (*Addison and Dalip Singh, J.J.*) EMPEROR v. BINJHA. 122 I.C. 108 = 31 Cr.L.J. 352 = 11 Lah. 305 = A.I.R. 1930 Lah. 884.

*Shop kept by father and son—Place where liquor was found accessible to public—Father absent from village—Son not a drinker or seller—Guilt not made out.*

Two bottles of illicit liquor were recovered from a sweetmeatshop kept by the accused who were father and son. The portion of the shop from which the bottles were recovered was accessible to the public. At that time the father was absent from the village and returned several days later. The son was not shown to be a drinker or to be selling liquor from the shop.

*Held*, that under these circumstances the possession of the illicit liquor was not brought home to the accused and that they were not guilty. (*Shadi Lal, C.J.*) BAHALI v. EMPEROR. 86 I.C. 160 = 26 Cr. L.J. 720 = 26 P.L.R. 10 = A.I.R. 1925 Lah. 437.

*Members other than managing member—Proof of possession with—Nature of.*

To establish that possession and control of a place are with some member of the family, other than the managing member there must be good and clear evidence of the fact before the Court can arrive at such a conclusion. (*Shadi Lal, C.J.*) TARA v. EMPEROR. 61 I.C. 720 = 22 Cr. L.J. 432 (Lah.)

**PUNJAB EXCISE ACT (1914), S. 61—Visitors sitting near cocaine.**

*Two brothers—Presumption is against the elder.*

Where illicit liquor is found in a house occupied by two brothers, the presumption is that the elder brother was in possession of the liquor. (*Wilberforce, J.*) MEHR SINGH v. EMPEROR. 60 I.C. 672 = 22 Cr. L.J. 272 (Lah.).

**—S. 61—Liquor brought by visitor.**

*Owner not a joint possessor.*

Bringing of liquor by A to B's house does not make B a joint possessor nor can the latter be said to have joined in the sale if he asks A to bring the bottles and hands them or the money to him. (*Scott-Smith J.*) KISHEN SINGH v. EMPEROR. 72 I.C. 381 = 8 P.W.R. Cr. 1923 = 24 Cr. L.J. 381 = A.I.R. 1924 Lah. 233.

**—S. 61—Sentence.**

*Distinction between seller and user.*

There ought to be a distinction between a manufacturer or seller of an excisable article, who not only derives profit from the transaction but also demoralises other people, and a person who possesses it for his own use, in awarding sentence. (*Shadi Lal, C.J.*) KEHR SINGH v. EMPEROR. 112 I.C. 783 = 10 Lah. 524 = 30 P.L.R. 638 = 30 Cr. L.J. 15 = 11 A.I. Cr. R. 553 = A.I.R. 1929 Lah. 29.

*Provision in Criminal Procedure Code as to first offenders—Not applicable.*

Although after the amendment of the Code in 1923, S. 562 is no longer confined to offences under the I.P.C., but extends to all offences, still in an offence under S. 61 of the Punjab Excise Act, S. 562 should not be resorted to, as such an offence is not usually the 'first offence' as contemplated by S. 562; 19 P.R. 1916, Cr., Appr. (*Campbell, J.*). EMPEROR v. FAIZ TALIB. 93 I.C. 702 = 27 Cr.L.J. 478 = A.I.R. 1926 Lah. 317.

**—Must be deterrent.**

In awarding punishment for an offence under the Excise Act the Courts must always bear in mind that illicit distillation implies a good deal of preparation, and results not only in the loss of excise revenue, but also in drunkenness. The offence also often escapes detection and it is necessary to impose a sentence which would have a deterrent effect: 19 P.R. (Cr.) 1916, Foll. (*Shadi Lal, C.J.*). EMPEROR v. PIARA SINGH. 54 I.C. 129 = 7 Lah. 32 = 27 P.L.R. 221 = 27 Cr.L.J. 861 = A.I.R. 1926 Lah. 166.

**—Must be deterrent.**

For the offence of manufacturing liquor and being in possession of it, deterrent sentences are absolutely necessary. (*Wilberforce, J.*). EMPEROR v. BUDHA. 60 I.C. 668 = 22 Cr.L.J. 258 (Lah.).

**—S. 61—Spontaneous growth of hemp.**

*Garden neglected and open to public—Owner negligent in weeding out—Not guilty of cultivation.*

Where there was spontaneous growth of hemp in a neglected garden open to the public and no attempt at secrecy was made,

*Held*, the owner cannot be convicted under S. 61, (2) (b) and his negligence in not recognising these plants and having them weeded out of his garden did not make him guilty of the offence of cultivating them. (*Addison, J.*). HANS RAJ v. EMPEROR. 110 I.C. 325 = 26 Cr.L.J. 683 = 10 A.I.Cr.R. 431 = A.I.R. 1928 Lah. 861.

**—S. 61—Visitors sitting near cocaine.**

*Not liable.*

The accused and three other persons were found sitting round a fair quantity of cocaine in a house,

**PUNJAB LAWS ACT (1872), S. 43—Interpretation.**

The cocaine as well as a pair of scissors and paper was lying on the ground before them. One of the three persons was not an inmate of the house and the remaining had come from some other place. The house had been leased to the accused.

*Held*, that under the circumstances, accused alone should be held to have been in possession of the cocaine. (*Zafar Ali, J.*) **NANWAN v. EMPEROR.**

86 I.C. 217=26 P.L.R. 9=26 Cr. L.J. 729=  
A.I.R. 1925 Lah. 519.

**PUNJAB LAWS ACT (IV of 1872).****—S. 43—Interpretation.**

*—Slaughter of kine.*

The words "slaughter of kine" in S. 43 of the Punjab Laws Act mean slaughter of kine not only for commercial but also for religious purposes. (*Fforde and Campbell, JJ.*) **EMPEROR v. BARKAT.**

96 I.C. 152=7 Lah. 507=27 Cr. L.J. 888=  
27 P.L.R. 791=A.I.R. 1926 Lah. 447.

**—S. 51—Failure to republish.**

*—If invalidates the rules.*

The obligation upon the Local Government to republish the rules under S. 51 is directory and not mandatory, and accordingly a failure on the part of the Local Government to carry out that obligation does not invalidate the statutory rules. Moreover, it is republication which repeals the rules and not the failure to republish. The rules are only required to be republished when they have been amended or altered. S. 51, as it stood originally, has to be read with Ss. 43 and 50 of the original Act. (*Fforde and Campbell, JJ.*) **EMPEROR v. BARKAT.** 96 I.C. 152=7 Lah. 507=27 Cr. L.J. 888=27 P.L.R. 791=A.I.R. 1926 Lah. 447.

**PUNJAB LIMITATION (CUSTOM) ACT (I of 1920).****—Art. 2—Allegations of wrongful possession.**

*—Reversioners in suit for possession, alleging wrongful possession only—Article applicable.*

Where in a suit for possession, the reversioners do not, in the plaint, admit or seek to set aside any alienation made by the deceased Mahomedan widow in favour of the alienee, but simply allege wrongful possession by him. Art. 2 of the Schedule annexed to the Punjab Limitation (Custom) Act (1920) does not govern limitation. The general rule of limitation contained in Limitation Act, Art. 141, applies. (*Bhide, J.*) **LEHNA v. NUR AHMAD.** 11 L.L.J. 465=1930 Cr. C. 95=A.I.R. 1930 Lah. 111.

**PUNJAB MINOR CANALS ACT (3 of 1905.)****—S. 10—Acts beyond authority.**

Section 10 of the Act does not authorise the Collector to enter upon the property of private individuals and to set fire to plants or trees growing thereon in order to facilitate the deposit of soil or silt excavated from the canal bed. (*Tek Chand, J.*) **RANJHABAL v. KING-EMPEROR.** 105 I.C. 817=9 L.L.J. 424=28 Cr. L.J. 993=A.I.R. 1927 Lah. 706.

**—S. 10—Setting fire to reeds.**

*—Authority of Collector.*

Section 10 of the Act does not authorise the Collector to enter upon the property of private individuals and to set fire to plants or trees growing thereon in order to facilitate the deposit of soil or silt excavated from the canal bed. Therefore, an officer doing any of the above acts cannot be said to be acting in the discharge of his duty as a public servant within S. 332, I. P. C. (*Tek Chand, J.*) **RANJHA MAL v. EMPEROR.** 105 I.C. 817=9 L.L.J. 424=28 Cr. L.J. 993=A.I.R. 1927 Lah. 706.

**PUNJAB MUNICIPAL ACT (1911), S. 152—Brothel, what is.****PUNJAB MUNICIPAL (ACT III of 1911.)****—S. 3—Building.**

*—Movable wooden shed.*

A wooden shed of dimensions 10 ft. x 8 ft. x 8 ft. roofed by tin sheeting, and used for sleeping purposes at night was held to be a "building" though mounted on wheels and permitted it to be moved from one part of the site, on which it stood, to another. 29 L.J.C.P. 1 and 49 J.P. 661 Foll. (*Campbell, J.*) **NANDU MAL v. MUNICIPAL COMMITTEE, SIMLA.** 85 I.C. 379=5 Lah. 543=26 Cr. L.J. 539=A.I.R. 1925 Lah. 252.

**—S. 33—Powers under S. 152.**

*—If can be delegated.*

According to S. 33 of the Act the committee cannot delegate its powers under S. 152 of the Municipal Act. Over and above this the second class Committee cannot delegate any of its powers to the President without the previous sanction of the Commissioner, and similarly the first class Committee without the sanction of the Local Government. Where no such sanction is ever obtained for delegating such powers to the President a notice issued by the latter cannot be held as legal. (*Abdul Raoof, J.*) **MR. GULZAR JAN v. THE CROWN.** 74 I.C. 433=4 Lah. 120=5 L.L.J. 522=24 Cr. L.J. 769=A.I.R. 1924 Lah. 80.

**—S. 81—Amount due by farmer.**

*—Procedure for recovery—Applicability of S. 81.*

It is open to a Municipal Committee to farm out the collection of any octroi, toll or terminal tax for a period not exceeding one year. However the amount due by the farmer is not amount due under the Act. It is an amount due under a simple lease or contract and only recoverable by law-suit and not by the procedure laid down in S. 81. (*Campbell, J.*) **MAYA DAS v. MUNICIPAL COMMITTEE, CHINIOT.** 99 I.C. 1030=28 Cr. L.J. 230=A.I.R. 1927 Lah. 161.

99 I.C. 1030=28 Cr. L.J. 230=A.I.R. 1927 Lah. 161.

**—S. 81—Money due under lease.**

*—Procedure for recovery—Applicability of S. 81.*

Money due to the Committee under a lease or a contract cannot be recovered by proceeding under S. 81. Such money should be realized by action in Civil Courts. (*Shadi Lal, C.J.*) **MANA RAM v. EMPEROR.** 96 I.C. 224=7 Lah. 568=27 Cr. L.J. 912=27 P.L.R. 840=A.I.R. 1926 Lah. 518.

27 Cr. L.J. 912=27 P.L.R. 840=A.I.R. 1926 Lah. 518.

**—S. 81—Revision.**

An order made by a Magistrate under S. 81 in a case to which that section has no application can be set aside in revision by High Court. (*Campbell, J.*) **MAYA DAS v. MUNICIPAL COMMITTEE, CHINIOT.** 99 I.C. 1030=28 Cr. L.J. 230=A.I.R. 1927 Lah. 161.

99 I.C. 1030=28 Cr. L.J. 230=A.I.R. 1927 Lah. 161.

**—S. 152—Brothel, what is.**

In order to constitute a brothel the place must be resorted to by persons of both sexes for the purpose of prostitution, who are strangers to the occupancy. (6 S.L.R. 224, Ref.)

The brother of the accused and the brother's wife were living in the accused's house. The brother's wife was practising prostitution in the house. *Held*, that the house did not constitute a brothel within the section and that the accused was not a brothel keeper. (*Martineau, J.*) **MT. RAHTO v. EMPEROR.** 81 I.C. 122=25 Cr. L.J. 634=A.I.R. 1925 Lah. 146.

81 I.C. 122=25 Cr. L.J. 634=A.I.R. 1925 Lah. 146.

**PUNJAB MUNICIPAL ACT (1911), S. 152—Delegation of powers.****—S. 152—Delegation of powers.****—No sanction—Validity.**

According to S. 33 of the Act the Committee cannot delegate its powers under S. 152 of the Municipal Act. Over and above this the Second class Committee cannot delegate any of its powers to the President without the previous sanction of the Commissioner, and similarly the 1st class Committee without the sanction of the Local Government. Where no such sanction is ever obtained for delegating such powers to the President a notice issued by the latter cannot be held as legal. (*Abdul Raoof, J.*) **GULZAR JAN v. EMPEROR.** 74 I.C. 433 = 4 Lah. 120 = 5 L.L.J. 522 = 24 Cr.L.J. 769 = A.I.R. 1924 Lah. 80.

**—S. 152—Service of notice.****—Personal service.**

The notice required by S. 152 (c) prohibiting the residence of the prostitute in a certain quarter ought to be served upon her personally. Where therefore the Municipal Committee promulgated a general notice, it is ineffective to bind a particular person and in such cases regular trial is preferable to summary trial. (*Zafar Ali, J.*) **MT. ALLAH RAKHI v. EMPEROR.** 116 I.C. 191 = 30 Cr.L.J. 574 = 1930 Cr. C. 30 = 12 A.I.Cr. R. 440 = 34 P.L.R. 332 = 11 Lah. 235 = A.I.R. 1930 Lah. 62.

**—S. 153—Brothel.****—Hotel used as brothel—Procedure.**

An order passed under S. 153, Punjab Municipal Act, on an owner of a hotel which was being used as brothel to vacate the premises is bad; the proper order in such a case is to ask the owner to discontinue the using of the hotel as a brothel. (*Broadway, J.*) **BHARUCHA v. MUNICIPAL COMMITTEE, LAHORE.** 107 I.C. 391 = 9 Lah. 384 = 29 Cr. L.J. 250 = 9 A.I. Cr. R. 501 = A.I.R. 1928 Lah. 278.

**—S. 155—Long use.****—Validity of plea.**

The section contemplates only recent and temporary breach of the rules and the person prosecuted thereunder can successfully plead that he had been using the premises for the purpose objected to for a long period. (*Zafar Ali J.*) **ALLAH BAKSH v. EMPEROR.** 77 I.C. 495 = 25 Cr. L.J. 415 = A.I.R. 1924 Lah. 670.

**—S. 172—Private property.****—Building on site declared private by Civil Court—Legality of prosecution.**

Where the applicant has obtained a decree in his favour declaring that the site was his private property but the Municipal authorities prosecuted him for building on that property.

**Held,** the prosecution was wrong. (*Jai Lal, J.*) **IMAM DIN v. EMPEROR.** 84 I.C. 718 = 6 L.L.J. 525 = 26 Cr. L.J. 366 = 26 P.L.R. 47 = A.I.R. 1925 Lah. 238.

**—S. 175—Tender of compensation.****—Absence of tender—Validity of notice.**

The language of S. 175 indicates that the requisition open to the Municipality is subject to the payment of compensation, i.e., the tender of compensation must accompany the notice. (*Le Rossignol, J.*) **GHASITA v. THE CROWN THROUGH MUNICIPAL COMMITTEE, SIALKOT.** 73 I.C. 813 = 4 Lah. 188 = 24 Cr. L.J. 701 = A.I.R. 1924 Lah. 89.

**—S. 198—Notice requiring demolition.****—Remedy of party—Power of Magistrate to prohibit demolition.**

The Municipal Committee has power under S. 195 to require a building to be demolished, and a Magistrate cannot interfere with the exercise of the power

**PUNJAB MUNICIPAL ACT (1911), S. 198—Excavations.**

and is not competent to prohibit the demolition of the building, the remedy of the accused, if he is aggrieved by the notice, being to appeal to the Commissioner under S. 225. (*Martineau and Campbell, J.J.*) **EMPEROR v. JASRAT MAL.** 99 I.C. 80 = 8 L.L.J. 562 = 27 P.L.R. 784 = 7 A. I. Cr. R. 204 = 23 Cr.L.J. 48 = A.I.R. 1927 Lah. 69.

**—Remedy of party—Power of Magistrate to prohibit demolition.**

The Municipal Committee has power under S. 195 to issue a notice requiring the building to be demolished and the Magistrate is not competent to direct that the building should stand, the remedy of the persons aggrieved by the notice being to appeal to the Commissioner under S. 225. (*Martineau and Campbell, J.J.*) **MUNICIPAL COMMITTEE, PASUPOT v. JASRAT MAL.** 99 I.C. 944 = 8 Lah. 103 = 28 Cr.L.J. 208 = 28 P.L.R. 494 = 8 L.L.J. 564 = 27 P.L.R. 786 = A.I.R. 1927 Lah. 58.

**—S. 197—Scope of power.****—Bye-law under old Cl. (d) prohibiting persons from selling vegetables except at particular places—Applicability under the new section.**

Clause (a) of S. 197 does not authorise Municipal Committee to frame any bye-law prohibiting the sale of fresh fruits and vegetables. The bye-law, therefore, framed under the old section before the amendment in 1923 prohibiting a person from selling wholesale or by auction any fruit or vegetables except at vegetable markets cannot be considered to remain in force and goes beyond the scope of Cl. (a) of S. 197. (*Zafar Ali and Bhide, J.J.*) **MULA MAL v. EMPEROR.** 120 I.C. 188 = 11 Lah. 24 = 31 Cr. L. J. 49 = 1929 Cr.C. 164 = A.I.R. 1929 Lah. 607.

**—Old bye-law prohibiting persons from selling vegetables except at particular place—Prosecution for infringement under amended section—Legality.**

Clause (a) of S. 197, as amended by the Municipal Act of 1923, does not authorize a Municipal Committee to frame a bye-law prohibiting the sale by auction of fresh fruits and vegetables at any place other than a particular place. Therefore where a Municipality had framed a bye-law that the sale should take place at a particular place under S. 197 (d) of the Act, which authorized the framing of such a bye-law but which sub-section had since been repealed by Act of 1923,

**Held,** that no person could be prosecuted for the breach of the bye-law under old S. 197 (d) when the alleged offence was committed after passing of the Municipal Act of 1923. (*Shadi Lal, C. J.*) **GHANAYA LAL v. MUNICIPAL COMMITTEE, MONTGOMERY.** 112 I.C. 360 = 29 Cr.L.J. 1032 = 11 A. I. Cr. R. 310 = A.I.R. 1928 Lah. 540.

**—S. 198—Excavations.****—Object of S. 198—Excavation on private estate—Liability.**

The object of S. 198 is to empower the Committee to forbid excavations in order to preserve the soil or to prevent landslips, and it is not intended that a person should be prohibited from making an excavation or a hole or a cavity in his own estate for domestic purposes which cannot cause any landslip or danger to the public.

Where, therefore, an alleged excavation is made on a private estate for making charcoal and the complainant does not produce any evidence to prove the nature or the dimensions of the excavation, nor is there any warrant for the assumption that the pre-

**PUNJAB MUNICIPAL ACT (1911), S. 214—Notice and specifying.**

vention of the excavation is necessary for any of the purposes mentioned in the section the accused cannot be said to have done an act contrary to the provisions of law. (*Shadi Lal, C. J.*) JANGI v. EMPEROR.  
117 I.C. 801=1929 Cr.C. 573=30 Cr.L.J. 836=  
A.I.R. 1929 Lah. 845.

**—S. 214—Notice not specifying time.****—Legality of proceedings.**

Where a Municipal Committee passed a resolution ordering a notice to issue prohibiting a particular area to be used for prostitution without fixing any time within which the order was to be carried out.

*Held*, that as no time was fixed under S. 152 of the Municipal Act as to when the persons affected have to comply with the notice, by virtue of Section 214 of the Act, it was the duty of the Committee to fix a reasonable time within which the persons affected should carry out the resolution. Hence there was a defect in the resolution which invalidated all the proceedings taken on its basis. Section 37 of the Municipal Act could not cure this defect. (*Martineau, J.*) MT. RAHTO v. EMPEROR. 81 I.C. 122=  
25 Cr. L.J. 634=A.I.R. 1925 Lah. 146.

**—S. 228—Authority in writing.**

The authority to prosecute a person under Municipal Act must be in writing and full particulars of the person to be prosecuted should be given with the authority so given to the prosecutor. (*Abdul Raouf, J.*) MT. GULZAR JAN v. THE CROWN.  
74 I.C. 433=4 Lah. 120=5 L.L.J. 522=  
24 Cr. L.J. 769=A.I.R. 1924 Lah. 80.

**—S. 228—General authority.****—Authority.**

A general authority can be given without naming each accused, 22 All. 123, Rel. on; A. I. R. 1924 Lah. 80, Overruled. (*Addison and Skemp, JJ.*) EMPEROR v. MAHOMAD SHAFI. 105 I.C. 826=8 Lah. 613=  
28 P.L.R. 637=28 Cr. L.J. 1002=9 A.I. Cr.R. 178=  
A.I.R. 1928 Lah. 27.

**PUNJAB RESTRICTION OF HABITUAL OFFENDERS ACT (V OF 1918).****—S. 3—Appeal.****—Powers of District Magistrate.**

The Restriction of Habitual Offenders Act only provides for a higher penalty for offenders who are found to be incorrigible.

A District Magistrate in appeal has jurisdiction to substitute an order under S. 110, Cr. P. Code, for that passed by the trial Magistrate restricting a certain person proceeded against under the Restriction of Habitual Offenders Act. (*Tek Chand, J.*) KHUDAYAR v. EMPEROR. 110 I.C. 321=  
10 A.I. Cr. R. 503=29 Cr.L.J. 683=  
A.I.R. 1928 Lah. 851.

**—S. 7—Grounds for restrictions.****—Mere isolated suspicions of offences—If sufficient.**

The mere fact that a person was suspected of offences on one or two isolated occasions is not sufficient to justify a person being restricted under S. 7. (*Bhide, J.*) AHMAN v. EMPEROR.  
118 I.C. 912=1929 Cr. C. 370=30 Cr.L.J. 973=  
A.I.R. 1929 Lah. 803.

**—S. 16—Scope of restrictions.**

The rules under S. 16 do not empower the Magistrate to confine a person to his house between certain specified hours. He can only be restricted to the area of the village or such larger area as the Court

**RAILWAYS ACT (1890), S. 42—Reservation of compartment for particular class.**

may fix. (*Campbell, J.*) MAHOMED v. EMPEROR.

99 I.C. 608=8 Lah. 267=28 P.L.R. 440=  
28 Cr.L.J. 176=A.I.R. 1927 Lah. 124.

**PUNJAB VILLAGE WATCHMEN RULES.****—Rr. 43 & 44—Proof of offence.**

*Circumstances rendering information incumbent and headman's omission to inform.*

To establish an offence under Rr. 25 and 32 against a village headman, it would be necessary to show that when a cognizable offence had been committed the village headman received information of its commission and there were certain circumstances existing which rendered it incumbent upon him to report to the police personally and he omitted to do so. It is not sufficient to support conviction to prove the bare facts that a cognizable offence had been committed and the chowkidars had come to know of such offence and had not reported. 30 P.R. 1883 (Cr.) Foll. (*Addison, J.*) RAHMAN v. EMPEROR.

110 I.C. 685=10 Lah. 219=

11 A.I. Cr. R. 11=29 P.L.R. 537=

29 Cr. L.J. 749=129 Gr. C. 82=

A.I.R. 1929 Lah. 520.

**QUASHING PROCEEDINGS.**

See CR. P. CODE, S. 439.

**RAILWAYS ACT (IX OF 1890).****—S. 3—Railway.****—Does not include Railway.**

Staff quarters or any building of a residential character cannot be deemed to be part of a railway, and the fact that the place happens to be between two lines makes no difference if the lines by themselves are so quite apart that there can be even private lands between the lines. (*Lindsay, J.*) LODAI v. EMPEROR. 103 I.C. 104=25 A.L.J. 710=  
8 A.I. Cr.R. 181=28 Cr. L.J. 648=8 L.R.Acr. 120=  
A.I.R. 1927 All. 646.

**—S. 3 (7)—Railway servant.**

One who is engaged by a Railway to pass sleepers and who is paid by results partly by the Railway and partly by the contractor is a Railway servant. (*Carr, J.*) A. V. JOSEPH v. J. L. LAMMOND. 83 I.C. 894=  
3 Bur. L.J. 147=26 Cr. L.J. 190=  
A.I.R. 1924 Rang. 373.

—A person employed by one authorised by a Railway Company to act on their behalf is a Railway servant. (*Carr, J.*) A. V. JOSEPH v. J. L. LAMMOND.  
83 I.C. 894=3 Bur. L.J. 147=26 Cr.L.J. 190=  
A.I.R. 1924 Rang. 373.

—"Service of a railway" is not limited to the actual running of the trains. (*Carr, J.*) A. V. JOSEPH v. J. L. LAMMOND. 83 I.C. 894=3 Bur. L.J. 147=  
26 Cr. L.J. 190=A.I.R. 1924 Rang. 373.

**—S. 42—Reservation of compartment for particular class.**

*Undue preference—General power of Company to regulate traffic.*

In particular circumstances the reservation of a compartment for a class of passengers or intending passengers without remuneration may amount to undue preference within the meaning of S. 42 (2) of the Railways Act. Traffic includes not only carriage of goods only but of passengers also. The departmental rule enabling the Company to reserve a compartment for a class of ordinary passengers may



**RAILWAYS ACT (1890), S. 68—Fraudulent use of pass.**

be a violation of the term of S. 42 (2) in certain circumstances but the Company has a general power to regulate its traffic and arrange for the accommodation and convenience of its passengers so long as it does not bring itself within that section. A Railway Company has an absolute right to regulate its own traffic in its own way, its own interest being the best security that its strict legal right to do so will not be abused so long as it does not contravene any express provision of the law. A.I.R. 1923 Bom. 1, Foll. (*Suhrawardy and Cuming, JJ.*) BHUPENDRA KUMAR DATTA v. EMPEROR. 81 I.C. 788 = 51 Cal. 168 = 28 C.W.N. 388 = 39 C.L.J. 107 = 25 Cr. L.J. 1012 = A.I.R. 1924 Cal. 687.

**—S. 68—Fraudulent use of pass.**

Where a railway servant applied for and obtained a free pass for his wife and mother and handed over this pass to another woman, who was neither his wife nor his mother, and she used it.

Held: the railway servant was guilty under Penal Code, S. 420 and not Railways Act, S. 68. (*Simpson A. J. C.*) RAM DAYAL v. EMPEROR. 88 I.C. 524 = 2 O.W.N. 510 = 12 O.L.J. 508 = 26 Cr. L.J. 1164 = A.I.R. 1925 Oudh 479.

**—S. 84—Rules under.**

The railway police, if they have completed an investigation before the time mentioned in the proviso to sub-R. 1 to R. 26 under S. 84, Railways Act, are not impliedly prohibited from exercising the ordinary powers which the officer in charge of a police station has of making a report as to the result of his investigation under S. 173, Cr. P. Code. The provisions of the Criminal Procedure Code apply, unless there is anything in any enactment for the time being in force regulating the manner of investigating offences connected with railway accidents to the contrary. There is nothing that clearly frustrates the authority of the police officer mentioned in S. 173, Cr. P. Code who has completed his investigation at the time an enquiry under R. 20 is commenced or ordered. (*Fawcett and Mirza, JJ.*) SHIBBHAT v. EMPEROR. 109 I.C. 487 = 32 Bom. 238 = 30 Bom.L.R. 392 = 29 Cr. L.J. 551 = 10 A.I. Cr. R. 308 = A.I.R. 1928 Bom. 162.

**—S. 101—Essentials for conviction.**

Breach of a rule of the railway company without evidence that it endangered the safety of passengers is not sufficient for conviction. (*Dalal, A. J. C.*) PARBHU DAYAL v. EMPEROR. 81 I.C. 917 = 26 O.C. 363 = 25 Cr. L.J. 1093 = A.I.R. 1924 Oudh 250.

**—S. 101—Omission to set points.**

Under R. 12 of the rules framed under the Railways Act, it was the duty of the accused, who was a station master when he knew that a train was approaching the station to send the passed porter to the facing points with instruction for him to set and lock the points for the line on which the train was to come. The station master neglected to send the porter to the points. The signals were down to allow the train to pass into the station. But under the rules the engine driver should have stopped the train when he found that there was no porter at the points signalling him to pass on. The points were not properly locked and the consequence was that some of the carriages of the train were derailed. No person was hurt but the derailment of part of the train caused danger to persons travelling therein.

Held, that it was not quite clear whether the engine driver could have avoided the derailment by stopping the train in time because the signals were in his favour. But if the station master had complied with

**RAILWAYS ACT (1890), S. 108—Sufficient cause.**

the rules and had sent the passed porter out to the points to properly set and lock them, no accident would have occurred. Hence, the disregard by the accused of R. 12 enhanced the danger to the persons travelling in the train and therefore the accused was liable. (*Scott-Smith, J.*) BISHAN SARUP v. EMPEROR. 86 I.C. 61 = 6 Lah. 324 = 26 Cr. L.J. 685 = 26 P.L.R. 44 = A.I.R. 1925 Lah. 423.

—The duty of a person in control of a railway station is first to give the fundamental orders regulating the arrival of a train and secondly to see that they are accurately carried out. Where such an order was given to set the points to the loop but the slides showed main the failure to act upon a defect in the working of the machinery is an act of grave negligence. Omitting to set the points, which would prevent a train after a clear line signal is given, from running into another train is an act endangering the safety of the persons in either of the two trains. (*Walsh and Ryves, JJ.*) EMPEROR v. SHEO BARAN. 81 I.C. 705 = 22 A.L.J. 20 = 5 L.R.A. Cr. 405 = 25 Cr. L.J. 993 = A.I.R. 1924 All. 438.

**—S. 108—Additional reasons.**

The accused is not deprived of the defence under S. 108 of the Act of sufficient and reasonable cause merely because there was an additional reason for pulling the chain which in the opinion of the Magistrate was not sufficient and reasonable. (*Patkar and Baker, JJ.*) POPATLAL BHAICHAND v. EMPEROR. 32 Bom.L.R. 111 = A.I.R. 1930 Bom. 160.

**—S. 108—Insufficient cause.**

Primarily, S. 108 is intended for the protection of the personal safety of passengers who are travelling by train. The mere fact that the accused left his coat even though it contains valuables is not a reasonable and sufficient cause within the meaning of S. 108. Accordingly if he pulls the communication cord for that purpose he can be convicted under the section. (*Marten and Madgavkar, JJ.*) EMPEROR v. KAIKOBAD SORABJI. 95 I.C. 58 = 28 Bom.L.R. 486 = 27 Cr.L.J. 730 = A.I.R. 1926 Bom. 288.

**—S. 108—Pulling chain.**

—Nature of offence—Obstruction to railway servant in discharge of duties—Pulling chain does not amount to.

Where a person without sufficient and reasonable cause pulls the emergency chain, he renders himself liable for prosecution under S. 108 only, and not under S. 121 for preventing the running of the train and thus obstructing or impeding a railway servant in the discharge of his duty : 43 Bom. 103, Foll. (*Patkar and Baker, JJ.*) POPATLAL BHAICHAND SHAH v. EMPEROR. 32 Bom.L.R. 111 = A.I.R. 1930 Bom. 160.

**—S. 108—Sufficient cause.**

—To remove overcrowding.

Pulling the communication chain of a railway compartment to remove the overcrowding, which it was the duty of the railway administration to prevent under S. 93 is a reasonable and sufficient cause under S. 108 of the Act : A. I. R. 1922 Pat. 8, Bel. (*Patkar and Baker, JJ.*) POPATLAL BHAICHAND v. EMPEROR. 32 Bom.L.R. 111 = A.I.R. 1930 Bom. 160.

**—Books thrown out.**

A who had instituted a civil suit against B was travelling with the latter in the same compartment with his account books. While the train was in motion B seized the account books and threw them through the window. A pulled the alarm chain and stopped the train.

Held, that A had sufficient and reasonable cause for getting alarm signal and could not be convicted under S. 108. (*Harrison, J.*) ARIAN DAS v. THE GOVERNMENT.



**RAILWAYS ACT (1890), S. 108—Test.**

102 I.G. 779=8 Lah. 196=28 Cr.L.J. 603=  
28 P.L.R. 485=A.I.R. 1927 Lah. 476.

**—S. 108—Test.**

The risk of danger, of loss and of discomfort to the other passengers on a train by stopping the train by pulling the communication cord is one element that has to be considered for the purpose of deciding whether there was reasonable and sufficient cause to stop the train by pulling the communication cord. But this must be considered in relation to the risk arising from the circumstances to the person pulling the cord. In other words if the risk to the passenger pulling the cord is incommensurate with the risk and discomfort, etc., to the other passengers, he cannot be said to have had just and reasonable cause. But where the risk to the passenger is very great as compared to the risk to the other passengers, he must be said to have just cause for pulling the cord.

Another element of great importance is whether the necessity or occasion for pulling the cord has arisen from the fault of the railway administration.

The third element to be considered is the importance of the line and train. (*Ashworth, J.*) **ASHRAFI LAL v. EMPEROR.** 105 I.C. 679=8 L.R.A. Cr. 132=8 A.I. Cr.R. 290=25 A.L.J. 975=28 Cr.L.J. 967=A.I.R. 1927 All. 647.

**—S. 108—Passenger.**

The expression "Passenger" in S. 109 includes a class of passengers. (*Suhrawardy and Cumming, JJ.*) **BHUPENDRA KUMAR DATTA v. EMPEROR.**

81 I.C. 788=51 Cal. 168=28 C.W.N. 388=  
39 C.L.J. 107=25 Cr. L.J. 1012=  
A.I.R. 1924 Cal. 687.

**—S. 112—Essentials.**

To constitute an offence under S. 112 (b), it is not necessary that the used ticket should be relevant to the journey which the passenger wished to undertake: 11 C.W.N. 100, Diss. from. (*Wild, J. C. and Aston, A.J.C.*) **DEVKISHINDAS v. EMPEROR.**

112 I.C. 771=23 S.L.R. 39=  
30 Cr. L.J. 3=11 A.I. Cr. R. 538=  
A.I.R. 1928 Sind 191.

**—S. 113—Essentials for arrest.**

To justify an arrest without a warrant! much more than trespass or travelling without ticket would be necessary. In the case of trespass it must be shown that there was reason to believe that the person to be arrested would abscond or that his name and address were unknown and he refused to give his name and address or that there was reason to believe that the name or address given to him was incorrect. In the case of travelling without ticket it must further be shown that there was refusal to pay the sum charged. (*Mukerji, J.*) **S. A. HAMID v. SUDHIR MAHAN.**

33 C.W.N. 751=29 Cr. C. 366=  
A.I.R. 1929 Cal. 730.

**—S. 113—Nature of proceedings.**

An application under S. 113 (4) is not a prosecution for criminal offence and on such application the Magistrate has no power to fine the defaulter or to order a sentence of imprisonment in default of such fine. The Magistrate can only direct him to pay the fare and the excess charge under sub-S. (3) and then proceed to recover it as if it were a fine. (*Maung Ba, J.*) **MA KALAY MA v. EMPEROR.** 113 I.C. 78=6 Rang. 619=30 Cr. L.J. 57=A.I.R. 1929 Rang. 11.

**—S. 113—Revision.**

A person travelled without a ticket but with guard's permission. He was asked to pay extra charge which he refused. Application to a Magistrate under S. 113 (4), Railways Act, was rejected.

**RAILWAYS ACT (1890), S. 122—Essentials for liability.**

*Held*, that High Court could not go into the merits of the order when it had no jurisdiction to revise that order: 5 S.L.R. 54, Dist. (*Percival, J.C., and Haveliwala, A.J.C.*) **SECY. OF STATE v. GOBINDRAM JAICHANDRA.**

1930 Cr. C. 646=  
A.I.R. 1930 Sind 162.

—Order of a Magistrate under S. 113 (4), Railways Act, is merely an administrative or a ministerial order and the proceedings before him are not criminal proceedings in a criminal Court within the scope of the Criminal Procedure Code and is not subject to revision under S. 439: A.I.R. 1926 Sind 57; A.I.R. 1927 Sind 23, Foll.; Other case law referred. (*Percival, J.C. and Haveliwala, A.J.C.*) **SECY. OF STATE v. GOBINDRAM JAICHANDRA.**

1930 Cr. C. 646=A.I.R. 1930 Sind 162.

**—S. 114—Scope.**

S. 114 refers to persons who sell or attempt to sell or part or attempt to part with the possession of any half or a return ticket. S. 114 does not apply to the purchasers or transferees of tickets, the transferrers alone being punishable under that section. (*Wild, J. C. and Aston, A. J. C.*) **DEVKISHINDAS v. EMPEROR.**

112 I.C. 771=23 S.L.R. 39=  
30 Cr.L.J. 3=11 A.I.Cr.R. 538=  
A.I.R. 1928 Sind 191.

**—S. 120—Applicability.****—Railway servants.**

The latter portion of S. 120 has a reference to the forfeiture of fares and of passes or tickets and to the removal of the offender from the railway by any railway servant, and thus shows its inapplicability to railway servants. (*Barlee, J.C. and Aston, A. J. C.*) **MULCHAND v. EMPEROR.**

118 I.C. 197=  
23 S.L.R. 409=1929 Cr. C. 542=  
30 Cr.L.J. 879=A.I.R. 1929 Sind 249.

**—S. 120—Essentials for conviction.****—Using abusive language.**

Conviction for using obscene or abusive language cannot be had where alleged particular expression has not been proved by the witness, since it is possible that witnesses may have considered certain expressions to amount to abuse, which the Court may not. (*Campbell, J.*) **BUDHA SINGH v. EMPEROR.**

85 I.C. 33=6 L.L.J. 469=  
26 Cr.L.J. 417=A.I.R. 1925 Lah. 151.

**—S. 121—Essentials for conviction.**

Before a person can be convicted of wilfully obstructing or impeding a railway servant in the discharge of his duties, it must be shown that the obstruction or resistance was offered to such railway servant in the discharge of his duties as authorized by law; 1 C. W. N. 74, Ref. (*Broadway, J.*) **JOWAND MAL v. CROWN.**

91 I.C. 33=6 Lah. 467=  
7 L.L.J. 622=26 P.L.R. 715=27 Cr.L.J. 1=  
A.I.R. 1925 Lah. 680.

**—S. 121—Pulling chain.**

Where a person without sufficient and reasonable cause pulls the emergency chain, he renders himself liable for prosecution under S. 108 only, and not under S. 121 for preventing the running of the train and thus obstructing or impeding a railway servant in the discharge of his duty: 43 Bom. 103, Foll. (*Patkar and Baker, JJ.*) **POPAT LAL BHAICHAND v. EMPEROR.**

32 Bom.L.R. 111=A.I.R. 1930 Bom. 160.

**—S. 122—Essentials for liability.**

Two things are necessary to bring a man under that section: (1) that the place of entry must be "railway" as defined in S. 3 (4) of the Act, and (2) the entry should have been unlawful in the inception. (*Lingsay, J.*) **LODAI v. EMPEROR.**

103 I.C. 104

**RAILWAYS ACT (1890), S. 122—Unlawful entry.**  
 25 A.L.J. 710=8 A.I. Cr. R. 181=28 Gr. L.J. 648=  
 8 L.R.A. Cr. 126=A.I.R. 1927 All. 646.  
**—S. 122—Unlawful entry.**

The most important words in S. 122 are the words "unlawfully enters", for unless and until a person has made an unlawful entry upon the railway premises he cannot be brought within this penal provision. The word "unlawful" means "contrary to the law laid down in the statute."

If the railway made a general rule under the Act (by virtue of S. 47 (1) of the Act) that nobody should enter upon railway platforms except passengers with tickets, any other persons entering upon the platform might be guilty of unlawful entry. But where no such rule exists, and where the Station Master leaves the platform gate open, those who enter upon the platform can hardly be considered to be other than licensees. A person who enters in this manner may be quite lawfully ordered to leave the railway premises, but as he has not entered unlawfully he can never be brought within the mischief of S. 122 of the Railways Act. (*Foster, J.*) *MEW LAL JHA v. EMPEROR.*  
 88 I.C. 522=6 P. L. T. 437=26 Gr. L. J. 1162=  
 A.I.R. 1925 Pat. 535.

**—S. 127—Obstruction by assembly.**

**—Conviction of a member of the assembly—Legality.**

The term "offence" in S. 149, Penal Code, is confined to offence under the Penal code and so a conviction under S. 128, Railways Act, with reference to S. 149 is illegal and cannot be sustained. A.I.R. 1923 Mad. 187 and A.I.R. 1925 Mad. 239; Foll.

Where a large body of men set out to obstruct a railway line and throw stones at trains they form an unlawful assembly and if in carrying out their common object they commit offences under Ss. 127 and 128, Railways Act, only those of them who are proved themselves to have committed these offences under Ss. 127 and 128 can be convicted under those sections. The rest are not constructively guilty as S. 149 cannot be invoked against them although the offences committed by them are the very offences they set out to commit and committed in prosecution of their common object. (*Waller and Ananthakrishna Ayyar, JJ.*) *VASUDEVA MUDALIAR v. EMPEROR.*

118 I.C. 68=52 Mad. 882=30 M. L. W. 108=  
 1929 M.W.N. 522=2 M. Cr. C. 173=  
 30 Cr. L. J. 869=1929 Gr. C. 624=  
 A.I.R. 1929 Mad. 880=57 M. L. J. 114.

**—S. 130—Jurisdiction.**

In view of provisions of S. 29-B of C. P. Code, a Magistrate other than a District Magistrate has no jurisdiction to try an offence under S. 130 of Railways Act: 43 Bom. 888 Diss. from. (*Dalip Singh, J.*) *EMPEROR v. MT. JANNAT.* 110 I. C. 589=  
 29 P. L. R. 536=10 A. I. Cr. R. 499=  
 29 Gr. L. J. 733=A.I.R. 1928 Lah. 909.

**—S. 145—Representative of railway.**

**—Right to conduct prosecution.**

Sec. 145 (2) only entitles a person authorised by the Agent of a railway to conduct prosecutions on behalf of the railway administration without the permission of the Magistrate, which would, except for the provision, be required under S. 495, Cr. P. Code. *prima facie*. Neither S. 145 (2) of the Railways Act, nor S. 495, Cr. P. Code affects S. 493 of the latter enactment which deals with the right of appearance and precedence of the Public Prosecutor before any Court in which any case of which he has charge, is under trial. Where the Public Prosecutor has charge of prosecution the pleader instructed by a private person, including the agent of a railway

**RECORD OF RIGHTS—Presumption of correctness.**

administration, shall, it is enjoined, act under the directions of the Public Prosecutor. (*Macpherson, J.*) *THE BENGAL NAGPUR RAILWAY COMPANY. LTD. v. SHAIKH MAKUL.* 92 I.C. 697=7 P.L.T. 343=  
 1926 P.H.C.C. 74=27 Gr.L.J.313=  
 A.I.R. 1925 Pat. 755.

**—S. 145—Scope.**

**—Section contemplates private prosecutions.**

Sec. 145 (2) of the Railways Act, contemplates mainly if not exclusively, prosecutions for offences under that enactment, that is to say, private prosecutions undertaken by the railway administration in which the Public Prosecutor does not appear, as distinguished from public prosecutions undertaken or taken over by the State and in particular prosecutions under the Indian Penal Code. (*Macpherson, J.*) *B. N. RY. CO. LTD. v. SHAIKH MAKUL.*

92 I.C. 697=7 P.L.T. 343=27 Gr. L. J. 313=  
 1926 P.H.C.C. 74=A.I.R. 1925 Pat. 755.

**RANGOON CITY MUNICIPAL ACT (VI OF 1922)**

**—S. 214—Continuing offence.**

Although the offence of keeping open a private market without a license is a continuing offence, which is freshly committed every day, still if the offenders committing the same for more than six months to the knowledge of the Municipality, S. 214 (2) is a valid defence. (*Carr, J.*) *EMPEROR v. U THIN OHN.* 117 I.C. 250=7 Rang. 23=  
 30 Gr.L.J. 754=A.I.R. 1929 Rang. 122.

**RANGOON RENT ACT (II OF 1920) As Amended by I of 1922) (Repealed by IX of 1925).**

**—S. 14—Certificate.**

A landlord's remedy for recovery of excess rent received by his tenant from a sub-tenant cannot be exercised unless and until the Controller has granted a certificate certifying the standard rent of the premises leased by the landlord. (*May Oung, J.*) *B. R. BAHADUR v. JADAWJEE MEHTA.* 77 I.C. 882=  
 1 Rang. 687=2 Bur. L.J. 235=25 Gr.L.J. 482=  
 A.I.R. 1924 Rang. 172.

**RAPE.**

See PENAL CODE, Ss. 354, 375 AND 376.

**RASH AND NEGLIGENT ACT.**

See (1) PENAL CODE, S. 304-A.

(2) TORT.

**REASONABLE AND PROBABLE CAUSE.**

See MALICIOUS PROSECUTION.

**REBELLION.**

See PENAL CODE.

**RECORD OF RIGHTS.**

**—Construction.**

**—Right to erect dam.**

Where the right of the residents of a village to erect dam across a river is entered in the record-of-rights but the entry does not specify the period for which the dam was to stand, the entry is not thereby rendered as of no effect but simply means that the dam is to stand for a reasonable period i.e., to say till sufficient water has entered their reservoirs to enable them to irrigate the area specified. (*Jwalaj Prasad and James, JJ.*) *RAGHO PRASAD v. EMPEROR.* 118 I.C. 333=30 Gr.L.J. 896=  
 A.I.R. 1929 Pat. 180.

**—Presumption of correctness.**

**—Old record no evidence of possession.**

The presumption of correctness, which attaches to the finally published Record-of-Rights, relates only to possession at the time when the record is prepared; and, even if such presumption can be made in a

**REFORMATORY SCHOOLS ACT (1897)—Intention of Act.**

criminal trial, it is clear that where there has been an interval of ten or 12 years between the preparation of the record and the occurrence of an offence in respect of dispute arising over possession of land, any presumption arising from the record is obviously of the weakest possible description. Indeed the probative value is practically nil since all sorts of changes may obviously take place in the course of 10 or 12 years. (*Graham and Lort-Williams, J.J.*) NAYAN MANDAL v. EMPEROR. 34 C.W.N. 170=

1930 Gr.C. 134=A.I.R. 1930 Cal. 134.

**REFERENCE TO HIGH COURT.**

See CR. P. CODE, Ss. 374, 376, 432 AND 435 TO 439.

**REFORMATORY SCHOOLS ACT (VIII of 1897).****—Intention of Act.**

The sending of first youthful offenders, whose antecedents are not shown to be bad, to ordinary jails has the effect of making them hardened criminals after they are discharged from such jails. Their association with all classes of offenders has a very unhealthy influence on them. It is the duty of the Magistrate to take into consideration all such matters, when deciding the question of sentence. There are other suitable forms of punishment provided by the law. The provisions of Reformatory Schools Act are intended for cases of youthful offenders. (*Jai Lal, J.*) EMPEROR v. DHARM PRAKASH. 96 I.C. 390=

27 Cr.L.J. 934=A.I.R. 1926 Lah. 641.

**—S. 4—'Youthful offender.'****—Boy of 16.**

The order for detention in a Reformatory School can only be made in the case of a youthful offender, and under S. 4 of the Reformatory Schools Act a boy ceases to be technically a youthful offender at the age of 15, therefore it is illegal to order detention of a boy of 16. (*Heald, J.*) HAMID v. EMPEROR.

75 I.C. 294=2 Bur. L.J. 96=24 Cr. L.J. 918=

A.I.R. 1924 Rang. 16.

**—S. 8—Revision.****—Powers of High Court.**

Section 439, sub-S. (1) gives the High Court the necessary power to pass an order under sub-S. (2), S. 8, Reformatory Schools Act, of detaining a boy accused in Reformatory, not only on appeal but also in revision. *Criminal Reference No. 41 of 1924 held wrongly decided.* (*Fawcett and Mirza, J.J.*) EMPEROR v. LAKSHMAN. 112 I.C. 344=

30 Bom. L.R. 952=29 Cr. L.J. 1016=

11 A.I. Cr. R. 308=A.I.R. 1928 Bom. 348.

**—S. 11—Procedure.**

S. 11 requires that an enquiry as to age should be held before sending a youthful offender to a Reformatory School. There must be a clear finding as to age.

The period of detention in the Reformatory School must also be fixed.

The Court must find that the youthful offender to be sent to the Reformatory School is a fit and proper person to be an inmate of such a School. (*Maung Chit, J.*) EMPEROR v. SEION CHOUNG.

86 I.C. 708=28 Cr. L.J. 852=3 Rang. 218=

A.I.R. 1925 Rang. 302.

**REFUSAL TO ANSWER QUESTIONS.**

See (1) CR. P. CODE.

(2) EVIDENCE ACT.

(3) PENAL CODE.

**REFUSAL TO TAKE OATH.**

See PENAL CODE.

**REGISTRATION ACT (1908), S. 82—Illegal prosecution.****REGISTRATION ACT (III of 1877)****—S. 74—Validity of order under.****—Provisions of section are mandatory.**

The provisions of S. 74 are mandatory and the District Registrar has no jurisdiction to refer the matter to his deputy the Sub-Registrar and if it is so referred any proceedings or order made by the Sub-Registrar ordering the petitioner to be prosecuted is illegal. 24 Cal. 755, Foll. (*Wort, J.*) HIRDAY NARAIN SINGH v. EMPEROR. 119 I.C. 888=

10 P. L. T. 889=30 Cr. L.J. 1101=

1929 Cr. C. 252=A.I.R. 1929 Pat. 500.

**—S. 77—Stay of criminal trial.****—When High Court can interfere.**

There is no invariable rule as regards the staying of criminal proceedings (under S. 82, Registration Act) pending the issue in a civil suit. This is a matter for the discretion of the trial Court and in Criminal Revision, High Court cannot interfere with the order unless the Court has in exercise of its jurisdiction acted in a manner which is unjusticial. A.I.R. 1927 Mad. 798, Foll.; 1 P.L.T. 697, Ref. (*Wort, J.*) HIRDAY NARAIN SINGH v. EMPEROR. 119 I.C. 888=

10 P. L. T. 889=30 Cr. L.J. 1101=

1929 Cr. C. 252=A.I.R. 1929 Pat. 500.

**—S. 82—False thumb impression.**

Putting the thumb impression by an accused as that of another in column (1) of the register Form No. 8 maintained by the Registration Department, in order to facilitate registration of the document, under R. 53 will be an offence under the section. (*Jwala Prasad and Macpherson, J.J.*) BASGIT SINGH v. EMPEROR. 104 I.C. 626=6 Pat. 305=

28 Cr. L.J. 850=A.I.R. 1928 Pat. 129.

**—S. 82—Falsity of recitals.**

Sub-Registrar cannot enquire into truth or falsity of recitals, as false recital is no offence.

The proceeding or enquiry in S. 82 (a) must be a proceeding or enquiry as prescribed by the Act. (*Kulwant Sahay, J.*) MT. GOBINDIA v. KING-EMPEROR. 81 I.C. 124=5 P.L.T. 372=

1924 P.H.C.C. 199=2 Pat. L.R. Cr. 162=

25 Cr. L.J. 636=A.I.R. 1924 Pat. 754.

**—S. 82—Fresh trial.**

—Acquittal under Ss. 419-114, Penal Code—Subsequent trial under S. 82 (c), Registration Act, is not barred.

Where a person executed a mortgage and registered it and was subsequently tried and acquitted under Ss. 419-114, Penal Code.

Held, that his subsequent trial under S. 82 (c), Registration Act, was not barred as he committed two entirely distinct offences: one was cheating by personation when he executed the deed of mortgage; and the other an offence under the Registration Act, when he represented himself at the registration office to be another, and that the offence of personation at the registration office was a totally different and subsequent one to the offence of cheating: A.I.R. 1924 Rang. 213, Ref. (*Darwood, J.*) ME TOK v. KING-EMPEROR. 105 I.C. 236=6 Bur. L.J. 201=

28 Cr. L.J. 908=A.I.R. 1927 Rang. 303.

**—S. 82—Illegal prosecution.**

—Order for prosecution under Ss. 82 and 471, I.P.C.—Former found illegal under S. 74—Order under S. 471, I.P.C. remains.

Where a person is ordered to be prosecuted under S. 82, Registration Act and S. 471, I.P.C., and the prosecution under S. 82 is illegal, having regard to the provisions of S. 74, Registration Act, the illegality or irregularity in no way affects the validity of the

**REGISTRATION ACT (1908), S. 82—Sanction.**

order of prosecution under S. 471, I.P.C. and if the prosecution under S. 82 is set aside the part of the order under S. 471 remains. For Penal Code has no relation to Registration Act and is governed by principles entirely different from those governing prosecution under S. 82. (*Wort, J.*) **HIRDAY NARAIN SINGH v. EMPEROR.** 119 I.C. 888=10 P.L.T. 889=30 Cr. L.J. 1101=1929 Cr. C. 252=A.I.R. 1923 Pat. 500.

**—S. 82—Sanction.**

No sanction is required for a prosecution under S. 82. (*Pratt, J.*) **MAUNG SAING v. EMPEROR.** 76 I.C. 431=1 Rang 299=25 Cr. L.J. 191=A.I.R. 1924 Rang 213.

**—S. 83—Interpretation.**

"May" in S. 83 should be read as "must be"—Prosecution under S. 83 cannot be commenced by private person without permission, under S. 83. 11 Cal. 566 (F.B.); 40 Mad. 880; A. I. R. 1921 Mad. 140; A. I. R. 1924 Pat. 754; A. I. R. 1925 Nag. 344, Diss. from. 37 All. 107 and 38 All. 354 Foll. (*Heald and Chari, J.J.*) **NGA PAN GAING v. KING EMPEROR.** 99 I. C. 401=4 Rang. 437=5 Bur. L.J. 156=28 Cr. L. J. 145=A.I.R. 1927 Rang. 61.

**—S. 83—Sanction.**

Permission under S. 83 of the Registration Act is not a preliminary requisite for the institution by a private person of proceedings for an offence under S. 82 of the Act. 10 Cal. 604 and 37 All. 107 Diss. 39 All. 293 Ref.; 11 Cal. 566 (F. B.) and 40 Mad. 880 Foll. (*Prideaux, A. J. C.*) **MT. INDRANI BAHU v. MT. RANI BADI.** 87 I. C. 913=26 Cr. L. J. 1025=21 N. L. R. 167=A.I.R. 1925 Nag. 344.

For instituting a complaint under S. 82 no permission is necessary under S. 83. 38 All. 354 not Foll.; 11 Cal. 566 (F. B.); 40 Mad. 880 Foll. (*Kulwant Sahay, J.*) **MT. GOBINDIA v. KING-EMPEROR.** 81 I.C. 124=5 P.L.T. 372=1924 P.H.C.G. 189=2 Pat. L.R. Cr. 162=25 Cr. L.J. 638=A.I.R. 1924 Pat. 7.4.

**REPLY, RIGHT OF.**

See CR. P. CODE, S. 292.

**REPUTE.**

See (1) CR. P. CODE, S. 110.

(2) EVIDENCE ACT, S. 122.

**REVIEW.**

CR. P. CODE, Ss. 367 AND 369.

**REVISION.**

CR. P. CODE, Ss. 435 TO 439.

**RIGHT TO MAINTENANCE**

See (1) CR. P. CODE, S. 488.

**SALT ACT (12 of 1882).****—S. 9—Abetment of offence.**

Abetment of offence under Salt Act—Punishment prescribed under S. 9—Punishment under Penal Code, S. 117, is illegal.

The punishment under Penal Code, S. 117, for abetment of an act which is an offence under Salt Act (1882) and not an offence under Penal Code, is illegal for the reason that Salt Act, S. 9, prescribes specific punishment for the abetment of such an offence. It is illegal to proceed under S. 117, I. P. C., which allows a higher punishment for abetment of an offence for the punishment of which a lighter and separate penalty is provided by the provisions of S. 9, Salt Act (1882). (*Wazir Hasan, C. J. and Pullan, J.*) **MOHANLAL SAKSENA v. EMPEROR.**

A.I.R. 1930 Oudh 497.

**SALT ACT (1882)—Miscellaneous.**

—S. 9 prescribes punishments for abetment of all kinds of offences under Salt Act.

Clause (c), S. 9 embraces all abetments whether aggravated or mitigated in their nature. The section does not provide for any execution in respect of such abetments as provided for by Penal Code, S. 117, and the punishment prescribed by the said section is for all abetments of acts which are declared to be offences by the provisions of Salt Act. (*Wazir Hasan, C. J. and Pullan, J.*) **MOHANLAL SAKSENA v. EMPEROR.** A.I.R. 1930 Oudh 497.

**—S. 15—Applicability.**

S. 15 does not apply where salt is unlawfully manufactured at an unauthorised place to which S. 18 applies while S. 15 applies in the case of an authorised place. Non-compliance with the provisions of S. 118 renders the search irregular. (*Sulaiman, J.*) **RAM DIN v. EMPEROR.** 77 I.C. 815=5 L.R.A. Cr. 38=25 Cr. L.J. 463=A.I.R. 1924 All. 437.

**—S. 27—'Importation', meaning of.**

There is nothing in S. 27 to bear out the contention that importation into a part of the territories mentioned in S. 1 is to be taken as meaning only importation from outside those territories, and not importation from one part of the territories into another part. (*Martineau, J.*) **SITA RAM v. EMPEROR.** 69 I.C. 460=A.I.R. 1924 Lah. 160.

**—Miscellaneous.**

Doing anything in contravention of Salt Act (1882) or of any rule made thereunder is not a separate offence under Penal Code nor is it that an abetment of an act in contravention of Salt Act or of any rule made thereunder is a separate offence under the Penal Code: 6 O.C. 153, Ref.; 6 Mad. 249, Dist. (*Wazir Hasan, C. J. and Pullan, J.*) **MOHANLAL SAKSENA v. EMPEROR.** A.I.R. 1930 Oudh 497.

**SAME TRANSACTION, MEANING OF.**

See CR. P. CODE.

**SANCTION.**

See C. R. P. CODE, Ss. 195 to 199 AND 476.

**SANCTION TO PROSECUTE.**

See C. R. P. CODE, Ss. 188, 195, 197 AND 476.

**SEARCH.**

See CR. P. CODE, Ss. 96, 101 TO 103 AND 105.

**SEARCH WARRANT.**

See CR. P. CODE, Ss. 94—99.

**SECURITY BOND.**

See CR. P. CODE, Ss. 106—126.

**SECURITY FOR GOOD BEHAVIOUR, ETC.**

See CR. P. CODE, Ss. 107—126.

**SEDITION.**

See PENAL CODE.

**SEDUCTION.**

See PENAL CODE.

**SELF-DEFENCE.**

See PENAL CODE, Ss. 96—105.

**SENTENCE.**

See (1) CR. P. CODE, Ss. 31—35, 123, 390—402, 423, 426.

(2) CRIMINAL TRIAL.

(3) PENAL CODE, Ss. 53—75.

**SERVANT, CUSTODY OF.**

See PENAL CODE.

**SERVICE OF SUMMONS.**

See CR. P. CODE, Ss. 69—74.

**SERVITUDE.**

See PENAL CODE, S. 56.

**SESSIONS CASE.**

See CR. P. CODE, Ss. 268—307.

**SESSIONS JUDGE.**

See CR. P. CODE.

**SIND COURTS ACT (1886), S. 9—Reference on difference of opinion.**

**SESSIONS TRIAL.**

See CR. P. CODE, CHAP. 23.

**SIND COURTS ACT (Bom. 12 of 1886).**

—S. 9—Reference on difference of opinion.

Per *Wild, A. J. C.*—S. 9 (c) does not restrict the 3rd Judge to giving his opinion on the points or points of difference only, but makes it obligatory on him to give his opinion on the appeal or confirmation as the case may be: 38 Cal. 202, Rel. on. (*Wild, A. J. C., on difference between Percival, J. C. and Rupchand, A. J. C.*) **MOHAMAD YASUF v. EMPEROR.** 1930 Cr. G. 865 = A.I.R. 1930 Sind 225.

—S. 16—Accusations of criminal nature.

—When Court can take disciplinary action, without a conviction by the criminal court.

Per *Rupchand, A. J. C.*—Where the accusations against a pleader are of a criminal nature, it is not in every case that criminal conviction is a *sine qua non* to the exercise of the disciplinary jurisdiction of the High Court. A broad distinction has to be drawn between the acts done by the pleader in his professional capacity or in the presence of the Court, and acts not done in such capacity and not in the presence of the Court. It is only in the latter case when the acts charged are indictable and are fairly denied that the Court will not proceed against the pleader in the exercise of its disciplinary jurisdiction, until he has been convicted and will not compel him to answer on oath to a charge for which he may be indicted: 47 Cal. 1115 and other cases relied on: A.I.R. 1926 Cal. 502 and A.I.R. 1927 Cal. 536, Ref. (*Percival, J. C. and Aston, Rupchand and DeSouza, A. J. C.'s*) L. BAR-AT-LAW. In re. 115 I.C. 318 =

23 S.L.R. 245 = 30 Cr. L.J. 445 = 12 A.I.Cr.R. 274 = A.I.R. 1929 Sind 121 (F.B.)

—S. 16—Failure to keep accounts.

If a pleader or barrister fails to keep fee-book or ledger showing sums deposited by client for expenses and sum expended on his behalf, High Court is justified in taking serious notice of his conduct under its disciplinary jurisdiction: 5 S.L.R. 222 Foll. (*Percival, J. C., Aston, Rupchand and DeSouza, A. J. C.'s*) L. BAR-AT-LAW. In re. 115 I.C. 318 =

23 S.L.R. 245 = 30 Cr. L.J. 445 = 12 A.I.Cr.R. 274 = A.I.R. 1929 Sind 121 (F.B.)

—Is professional misbehaviour because that will be considered disgraceful and dishonourable by pleaders of repute and competency.

Per *Rupchand, A. J. C.*—Professional conduct of a pleader must be judged by the rules and standard of his profession and if a pleader has done something which would be reasonably regarded as disgraceful and dishonourable by pleaders of good reputation and competency he is guilty of professional misconduct. Further a pleader becomes more disgraceful and calls for a more severe punishment, when he is guilty not only of an unwritten rule of professional conduct, but where such rule has been enacted and laid down by the Rules of Association to which he has the honour to belong and where one of the conditions on which he has obtained his license to practice as a pleader is that he shall undertake to submit to such written rules of conduct.

Applying this test the failure by a pleader to keep a fee-book or a ledger containing the account of client's money for a number of years which is a breach of Rr. 35 and 36 of the Rules of the Karachi Bar Association is an act of professional misbehaviour because that would be considered disgraceful and dishonourable by pleaders of good repute and competency: *Ex parte Law Society In re, A Solicitor,*

**SIND COURTS ACT (1886), S. 16—Power to define misbehaviour.**

(1912) K.B. 302 Foll. (*Percival, J. C. and Aston, Rupchand and DeSouza, A. J. C.'s*) L. BAR-AT-LAW In re. 115 I.C. 318 = 23 S.L.R. 245 = 30 Cr. L.J. 445 = 12 A.I.Cr. R. 274 = A.I.R. 1929 Sind 121 (F.B.)

—S. 16—Misbehaviour, scope of.

—“Misbehaviour” is not limited to professional misconduct, but includes general misconduct also.

“Misbehaviour” in S. 16 is not limited to professional misconduct, but can be extended to general misconduct as well.

Per *Rupchand, A. J. C.*—The Judicial Commissioner's Court of Sind has unlimited jurisdiction to deal with every kind of misbehaviour, professional or otherwise of a pleader though such jurisdiction will undoubtedly be exercised for the very object with which it has been conferred, namely, the preservation of the purity of the Courts and the proper and honest administration of the law: 11 S.L.R. 81 (F.B.) Foll.; 37 Bom. 354; 29 Cal. 890 and A.I.R. 1922 P.C. 351, Rel. on. (*Percival, J. C. and Aston, Rupchand and De Souza, A. J. C.'s*) L. BAR-AT-LAW. In re.

115 I.C. 318 = 23 S.L.R. 245 = 30 Cr. L.J. 445 = 12 A.I.Cr.R. 274 = A.I.R. 1929 Sind 121 (F.B.)

—S. 16—Nature of proceedings.

Proceedings under S. 16 though judicial are neither criminal nor civil, but special proceedings resulting from Court's inherent power over its officers—Form of procedure in such proceedings is not of controlling importance so long as fair notice and chance of being heard are present. Per *Rupchand, A. J. C.*—A.I.R. 1922 Cal. 515 (S.B.), Foll.; 36 Bom. 606; 23 C.W.N. 560; 32 M.L.J. 402; 1 P.L.J. 576 and 19 M.L.J. 504, Rel. on. (*Percival, J. C. and Aston, Rupchand and De Souza, A. J. C.'s*) L. BAR-AT-LAW, In re.

115 I.C. 318 = 23 S.L.R. 245 = 30 Cr. L.J. 445 = 12 A.I.Cr.R. 274 = A.I.R. 1929 Sind 121 (F.B.)

—S. 16—Omission to plead privilege.

In disciplinary proceedings against pleader he, being inadvertently put on oath, answering questions without protest—He cannot afterwards urge that answers given by him if found false, should not be used against him in determining whether his conduct was worthy of his profession. Per *Rupchand, A. J. C.*—(*Percival, J. C., Aston, Rupchand, and De Souza A. J. C.'s*) L. BAR-AT-LAW, In re.

115 I.C. 318 = 23 S.L.R. 245 = 30 Cr. L.J. 445 = 12 A.I. Cr. R. 274 = A.I.R. 1929 Sind 121 (F.B.)

—S. 16—Perjury.

Pleader in order to avoid punishment in disciplinary proceedings voluntarily committing perjury—There is no reason why he should not be prosecuted for perjury. Per *Rupchand, A. J. C.* 6 Mad. 252 Ref. (*Percival, J. C. and Aston, Rupchand and De Souza, A. J. C.'s*) L. BAR-AT-LAW, In re. 115 I.C. 318 = 23 S.L.R. 245 = 30 Cr. L.J. 445 = 12 A.I.Cr. 274 =

A.I.R. 1929 Sind 121 (F.B.)

—S. 16—Power to define misbehaviour.

Court has power to define by judicial decision or otherwise what constitutes misbehaviour on pleader's part—Rules framed by Bar Association with Court's approval are such, to which pleaders must conform, but it does not follow that breach of any of them should call for disciplinary action. Per *De Souza A. J. C.* (*Percival, J. C., Aston, Rupchand and De Souza, A. J. C.'s*) L. BAR-AT-LAW, In re.

115 I.C. 318 = 23 S.L.R. 245 = 30 Cr. L.J. 445 = 12 A.I.Cr.R. 274 = A.I.R. 1929 Sind 121 (F.B.)

**SINDH COURTS ACT (1886), S. 16—Proof, of misconduct.**

—S. 16—Proof, of misconduct.

Per *De Souza A. J. C.*—Disciplinary proceedings against a pleader being of a *quasi* criminal character, the misconduct must be made out by the admission of the party concerned or else there must be other strong proof of the misconduct imputed: 17 All. 498: 41 Cal. 113; 11 Bom. L. R. 1150, Foll. (*Percival, J. C. Aston, Rupchand and De Souza, A. J. Cs.*) L. BAR-AT-LAW, *In re*. 115 I.C. 318=

23 S.L.R. 245=30 Cr.L.J. 445=

12 A.I.Cr.R. 274=A.I.R. 1929 Sind 121 (F. B.).

**SIND JUDICIAL COMMISSIONER'S CIRCULARS AND RULES.**

—Affidavit before Bench Magistrate.

An affidavit sworn before a Bench Magistrate in Sind is one sworn before a proper person under S. 539 according to the rules of the Sind Judicial Commissioner's Court. (*Kincaid, J. C. and Barlee, A. J. C.*) EMPEROR v. KUNDAN. 19 I.C. 600= 28 Cr. L.J. 168=7 A.I. Cr. R. 336=

A.I.R. 1:27 Sind 128.

**SLAVERY.**

See PENAL CODE, S. 370.

**SOLITARY CONFINEMENT.**

See PENAL CODE, S. 73.

**SONTHAL PARGANAS JUSTICE REGULATION (Beng. Reg. 5 of 1893).**

—Jurisdiction of Patna High Court.

The Letters Patent must be read subject to the special legislation in the form of Regulation 5 of 1893 which declares that the Courts other than the Sessions Court are not subordinate to the Patna High Court as their High Court. (*Adami and Macpherson, JJ.*) SAILENDRA NATH v. EMPEROR. 108 I.C. 419=7 Pat. 337=9 P.L.T. 468=

29 Cr. L.J. 427=A.I.R. 1928 Pat. 241.

—S. 4 (1)—Jurisdiction of Patna High Court.

—Patna High Court has no jurisdiction to transfer cases of inquires and trials before the Deputy Magistrate in the Sonthal Parganas—Commissioner of Bhagalpur is the High Court. It is only in cases where Government appeals against an acquittal that the Patna High Court can have jurisdiction. The criminal Courts in the Sonthal Parganas, other than the Sessions Courts, are not within the jurisdiction of the Patna High Court. (*Adami and Macpherson, JJ.*) SAILENDRA NATH v. EMPEROR. 108 I.C. 419=7 Pat. 337=9 P.L.T. 468=

29 Cr. L.J. 427=A.I.R. 1928 Pat. 241.

—Under Cl. 1 (ii) (a) of S. 4 the High Court of Patna has only jurisdiction to deal with appeals under S. 417 against an order of acquittal. It has no power to deal with an application under S. 439 for setting aside acquittal for which the proper forum is the Commissioner of Bhagalpur. (*Jwala Prasad and Macpherson, JJ.*) ANWAR ALI v. DEOGHAR MUNICIPALITY. 99 I.C. 112=6 Pat. 83=8 P.L.T. 271=

1926 P.H.C.C. 267=7 A.I. Cr. R. 231=

28 Cr. L.J. 80=A.I.R. 1926 Pat. 449.

**SPECIFIC RELIEF ACT (I of 1877).**

—S. 9—Continuing wrong.

—Criminal trespass.

The continuance in possession of a trespasser is a recurring wrong and constitutes a new entry every time that the true owner goes upon the land or as near to it as he dares to make a claim to it. There is a fresh cause of action each time he is resisted, and the persons entering subsequently with the permission of the first trespassers and resisting the entry of the owner are equally guilty. (*Mullick, Ag. C. J. and Wort, J.*) EMPEROR v. BANDHU SINGH, 106 I.C. 691=

**STAMP ACT (1899), S. 64—Deeds of release.**

6 Pat. 794=29 Cr.L.J. 99=9 A.I. Cr.R. 258= A.I.R. 1928 Pat. 124.

—S. 9—Essentials.

Section 9 requires legal possession and the owner who re-enters without delay has in law never lost possession. (*Mullick, Ag. C. J. and Wort, J.*) EMPEROR v. BANDHU SINGH. 106 I.C. 691=

6 Pat. 794=29 Cr. L.J. 99=9 A.I.Cr. R. 258= A.I.R. 1928 Pat. 124.

**STAMP ACT (II of 1899).**

—S. 43—Essentials for prosecution.

—Intention to evade payment of proper duty.

Under the proviso to S. 43, Stamp Act, there must be a clear proof of an intention to evade payment of the proper duty for the prosecution of the accused after the penalty in respect of the document is paid. (*Jwala Prasad, J.*) RANG LAL SAHU v. EMPEROR. 108 I. C. 427=29 Cr. L. J. 337=10 A.I. Cr. R. 137.

—S. 62—Arbitrators.

—Arbitrators signing on unstamped partition deed—Liability.

Not only persons who execute an instrument of partition but also those who sign it otherwise than as witnesses are liable to prosecution if they append their signatures to the instrument which is not duly stamped.

Where certain arbitrators signed unstamped instrument of partition.

Held, that they were liable to prosecution under S. 62 (b). (*id.*, A. J. C.) EMPEROR v. PUTTOO LAL. 73 I.C. 336=24 Cr. L.J. 592=

A. I. R. 1924 Oudh 240.

—S. 62—Ingredients of offence.

—Intention if material.

The question of intention does not enter into S. 62. The mere execution of a document requiring stamp duty without the same being properly stamped is an offence whatever intention may have been entertained in respect of payment of Stamp duty. 2 Cal. 399 (F.B.); 31 All. 36 and 7 Mad. 537, Foll. (*Sulaiman and Mukerji, JJ.*) EMPEROR v. FANNALAL. 93 I.C. 84=24 A.L.J. 338=7 L.R.A. Cr. 90=

627 Cr. L.J. 470=A.I.R. 1926 All. 389.

—S. 62—No dishonest intention.

—Acquittal.

Where an offence under S. 62 of the Indian Stamp Act was found by the trying Magistrate not to have been committed intentionally, the High Court setting aside the order of conviction ordered the applicants to be acquitted under S. 438, C. P. Code. (*Kendall, J.*) EMPEROR v. ISHWAR DAYAL. 99 I.C. 598=

8 L.R.A. Cr. 31=28 Cr. L.J. 166=25 A.L.J. 401=

7 A.I. Cr. R. 205=A.I.R. 1927 All. 238.

—S. 64—Deeds of release.

—Insufficient stamp—No dishonest intention—Legality of conviction.

R and his two brothers M and L had some dispute amongst themselves and settled the same by executing three deeds of release. In each of the deeds two of the brothers disclaimed all interest in certain properties in favour of their third brother. The deeds were presented for registration, each bearing a stamp of Rs. 5. The Sub-Registrar admitted them to registration, but subsequently he reported the matter being of opinion that higher stamp duty was chargeable because "the effect of the documents was to make the partition among three brothers." The three brothers were prosecuted. Two of them approached the Deputy Commissioner, paid the deficit duty and penalty and the case against them was withdrawn. The case against R proceeded. He was convicted and sentenced to pay a fine of Rs. 1,000.



**STAMP ACT (1899), S. 64—Scope.**

On appeal the order was set aside on the ground that the case was not properly instituted without a complaint. It was suggested that the Collector might give an opportunity to the accused of showing that his intention was not fraudulent. The Collector, however, thought that there was a deliberate attempt to defraud the revenue and sanctioned the prosecution. Accordingly, the District Sub-Registrar lodged a complaint.

*Held*, that as there was no evidence that accused R had the intention of evading the payment of property duty, or he executed the documents with intent to defraud the Government, he would not be convicted under S. 64. (*Jwala Prasad, J.*) RANG LAL SAHU v. EMPEROR. 108 I.C. 427=29 Cr. L.J. 337=

—S. 64—Scope. 10 A.I. Gr. R. 137.

Person in whose favour the document is executed is not hit by S. 64 (a). (*Mukerji, J.*) PANCHANAN ROY. v. EMPEROR. 1929 Cr. C. 359=

A.I.R. 1929 Cal. 723.

## —S. 65—Prosecutions under.

—*Right of private individual.*

It is not within the competence of private individuals to start criminal law in motion in respect of offences under the stamp law. (*Kinkhede, A.J.C.*) RAMJIWAN MARWADI v. LAHIMI. 104 I.C. 108=10 N.L.J. 21=9 A.I. Cr. R. 2=28 Cr. L.J. 789=

A.I.R. 1927 Nag. 202.

## —S. 69—Abetment of offence.

—*Endorsement in sale register by an unlicensed vendor—Sufficiency of evidence.*

Admission of a person, who is not a licensed vendor that he, at the request of licensed vendor, made endorsement on and entries in sale register in respect of, stamps sold by the latter is not sufficient evidence to hold that he abetted the offence of a breach of R. 11, framed under S. 74, within the meaning of S. 107, Penal Code. (*Percival, J.C. and Rupchand, A.J.C.*) NEYAMAL VISHINDAS v. EMPEROR.

118 I.C. 206=1929 Cr.C. 104=30 Cr. L.J. 881=

A.I.R. 1929 Sind 118.

## —S. 70—Sanction.

—*Prosecution under Secs. 30 and 65.*

For a prosecution for an offence under Ss. 30 and 65 of the Stamp Act, the sanction of the Collector is indispensable and subsequent according of sanction cannot validate institution of such proceedings without sanction nor is the defect curable by S. 537. Cr. P. Code.; 9 Bom. 27; 9 Bom. 288; 21 P.R. 1915 Cr.; 37 Cal. 467, Rel. on. (*Kinkhede, A.J.C.*) RAMJIWAN MARWADI v. LAHIMI. 104 I.C. 108=

10 N.L.J. 21=9 A.I. Cr. R. 2=28 Cr.L.J. 780=

A.I.R. 1927 Nag. 202.

## —Art. 53—Stamp not necessary.

Receiving back one's own money which was recovered from the person by the Police and returned by the Magistrate does not require a stamp. (*Stuart, J.*) KANHAI LAL v. EMPEROR. 81 I.C. 720=

46 All. 354=22 A.L.J. 285=5 L.R.A. Cr. 78=

25 Cr.L.J. 1008=A.I.R. 1924 All. 578.

**STATEMENT TO POLICE.**

See CRIMINAL P. C. S. 162.

**STATES INDIAN (PROTECTION AGAINST DISAFFECTION) ACT.**

## —S. 3—Jurisdiction of Maaistraste.

*Magistrate having two jurisdictions, taking cognizance of complaint under one jurisdiction but later on under another jurisdiction may be deemed to have returned the complaint for presentation to proper Court and to have accepted it as represented.*

Inspector-General of Police, Bhopal, with the sanc-

**SUCCESSION ACT (1925), S. 370—Gratuity to particular persons.**

tion of the Governor-General in Council lodged a complaint in the Court of a Magistrate having two jurisdictions, that of a Headquarters Magistrate and that of a Magistrate exercising jurisdiction over railway lands in Bhopal State. The complaint was against the editor, printer and publisher of an Urdu Weekly 'Riyasat' for publishing an article tending to excite disaffection towards the Chief of Bhopal State or his government or administration in Bhopal. The Magistrate was subordinate to different High Courts in two different jurisdictions. The complainant applied for amplification of his complaint by the inclusion of Itarsi as one of the places of publication of the above offending article. The Magistrate passed the following order: "The result of this petition for amplification will be that the case will henceforward cease to be a railway case for State administered areas if it was one and be transferred to my ordinary file of criminal cases of this Court. This be done." After this order the accused objected that the Magistrate had no jurisdiction to hear the case as he had transferred a case from a Court subordinate to one High Court to another Court Subordinate to the other High Court, which the Governor-General in Council could alone do by a notification in the Gazette of India.

*Held*, that the trying Magistrate in his capacity as the Railway Magistrate for Bhopal was incompetent to deal with the complaint of an offence committed at Itarsi but in his capacity as Headquarters Magistrate was competent to do so.

*Held* further, that as the original papers filed by the complainant contained material clearly amounting to an allegation of publication at Itarsi, the Railway Magistrate for Bhopal was no longer bound to dismiss the complaint in its entirety: he was entitled to return the complaint for presentation to the Court that could try the offence committed at Itarsi and this was in effect what he did. (*Jackson, A. J. C.*) DIWAN SINGH v. EMPEROR. A.I.R. 1930 Nag. 231.

## —S. 3—Right of person charged under.

—*Plea in mitigation of penalty.*

Where a person is charged under S. 3 of the Act, he has a right to plead extenuating circumstances such as a worthy motive in mitigation of the penalty to be imposed in the event of conviction and that for the purpose of making good that plea it may be necessary for him to show that the offensive allegations were true. (*Tek Chand and Coldstream, J.J.*) SANTA SINGH v. EMPEROR. 106 I.C. 709=29 Cr.L.J. 117=

A.I.R. 1927 Lah. 710.

**STAY OF CRIMINAL PROCEEDINGS.**

See (1) CRIMINAL TRIAL.

(2) CR. P. CODE, Ss. 526, 528.

**STOLEN PROPERTY.**

See PENAL CODE, Ss. 410-414.

**SUCCESSION ACT (XXXIX of 1925).**

## —S. 370—Gratuity to particular persons.

If succession certificate is to be given in respect of the estate of the deceased person it must be in respect of an estate which goes to the heirs of the deceased person. A succession certificate cannot be granted in case of gratuity which does not form part of the estate of the deceased but is merely a sum paid to particular persons who are not necessarily the heirs of the deceased. A.I.R. 1924 Sind 57, Ref. (*Percival, J.C. and Aston, A.J.C.*) MT. HANIFABAI v. KARACHI PORT TRUST. 117 I.C. 151=

23 S.L.R. 389=1929 Cr. C. 447=

A.I.R. 1929 Sind 177.

**SUDDEN PROVOCATION.**

See PENAL CODE.

**SUMMARY PROCEDURE (CRIMINAL).**

See CR. P. CODE, SS. 260, 265.

**SUMMARY TRIAL.**

See CR. P. CODE, SS. 260, 265.

**SUMMONS CASE.**

See CR. P. CODE, SS. 241-250.

**SUMMONS DISOBEDIENCE OF.**

See PENAL CODE, S. 124.

**SUNNI LAW.**

See MAHOMEDAN LAW.

**TORT.****—Negligence—Collision.**

—In every suit for damages on account of collision on land or at sea the Court in the first place has to determine what was the cause of accident and the cause means the material even from which the accident resulted. (*Page, J.*) "RABENFELS", *In re*.

121 I. C. 312=56 Cal. 763=31 Cr. L. J. 215=  
A. I. R. 1930 Cal. 97.

—Tests for ascertaining cause same at common law and Court of Admiralty. (1884) 9 A. C. 873, Ref. (*Page, J.*) "RABENFELS", *In re*.

121 I. C. 312=56 Cal. 763=31 Cr. L. J. 215=  
A. I. R. 1930 Cal. 97.

**—Admiralty.**

Where the Court is of opinion that the damage was caused by the fault of two or more vessels, the Admiralty Court imposes liability on both parties to make good the loss or damage "in proportion to the decree in which each was in fault." (*Page, J.*) "RABENFELS", *In re*.

121 I. C. 312=  
56 Cal. 763=31 Cr. L. J. 215=  
A. I. R. 1930 Cal. 97.

**—Burden of proof.**

If the cause of damage is the combined operation of more acts than one, such acts need not be synchronous, for in order to establish that the damage was caused by more acts than one it is essential to prove not that the damage was 'the result' of two or more simultaneous acts, but that it was the effect of concurrent operation of those acts which in combination were the cause of it. The *Margaret*. (1881) 6 R. D. 76 and *S. S. Volute's case*, 1 A. C. 129, Rel. on. (*Page, J.*) "RABENFELS", *In re*.

121 I. C. 312=  
56 Cal. 763=31 Cr. L. J. 215=  
A. I. R. 1930 Cal. 97.

**—Negligence—Contributory.****—Last opportunity.**

Where the negligence of the plaintiff or that of the defendant is the sole cause of the accident the matter is free from doubt. But difficulty may arise where accident is caused partly by negligence of the plaintiff and partly by that of the defendant. In such circumstances it becomes duty of the Court to endeavour to ascertain whether the negligent act or omission of the plaintiff, or that of the defendant, was the cause of the accident. If the Court finds itself unable to discover to what extent the negligence of the plaintiff or that of the defendant contributed to bring about the accident, the defendant is entitled to succeed for *in pari delicto potior est conditio defendentis*. On the other hand, though the plaintiff may have been guilty of negligence and although that negligence may in fact have contributed to the accident, yet if the defendant could in the result by the exercise of ordinary care and diligence have avoided the mischief which happened, the plaintiff's negligence will not excuse him. In like manner although there may have been negligence on the part of the plaintiff, yet unless he might, by the exercise of ordinary care, have avoided the consequences of the defendant's negligence he is

**U. P. DISTRICT BOARDS ACT (1922), S. 34—Interpretation.**

entitled to recover; if by ordinary care he might have avoided them, he is the author of his own wrong. A.I.R. 1925 Cal. 893, Foll.; *Radley v. L. & N. W. Ry. Co.*, 1 A.C. 754; *Bridge v. The Grand Junction Ry. Co.*, 3 M. & W. 244, Ref. (*Page, J.*) "RABENFELS", *In re*. 121 I. C. 312=56 Cal. 763=31 Cr. L. J. 215=  
A.I.R. 1930 Cal. 97.

**—Negligence—Meaning of.**

—Negligence means failure to exercise reasonable care and skill in the circumstances; and a party cannot be held guilty of negligence simply because he failed to take the right course or did what was wrong. *Stoomvaart Maatschappij Nederland v. Peninsular and Oriental Steam Navigation Co.*, (1880) 5 A. C. 876; *Jones v. Boyce*, (1816) 1 Starkie 493; *The Bywell case*, (1897) 4 P. D. 219; *The Meannachy*, (1897) A. C. 351 and *S. S. Volute's case*, (1922) 1 A. C. 129. Ref. (*Page, J.*) "RABENFELS", *In re*.

121 I. C. 312=56 Cal. 763=31 Cr. L. J. 215=  
A. I. R. 1930 Cal. 97.

**—Infringement—Remedy.****—Not confined to civil side.**

Although the Criminal Court has a discretion in view of the peculiar circumstances of a particular case, e.g., if there exists a *bona fide* dispute as to the right to use a trade-mark, or where there has been undue delay in commencing criminal proceedings, to stay its own hands and direct the complainant to establish his rights in a Civil Court, it is nowhere laid down by the legislature that an aggrieved person should seek his remedy in a Civil Court and not in a Criminal Court. (*Raza, J.*) *MOHAMMAD RAZA v. EMPEROR*. 7 O. W. N. 598=1930 Cr. C. 765=  
A. I. R. 1930 Oudh 360.

**—Both civil and criminal.**

It is nowhere laid down by the legislature that under no circumstances could a dispute relating to the infringement of a trade-mark be entertained by a Criminal Court and that it should always be adjudicated upon by a Civil Court. The only thing which can be said is that the Criminal Court may, in view of the peculiar circumstances of a particular case, stay its own hands and direct the complainant to establish his right in Civil Court. 32 Cal. 431, Ref. to. (*Shadi Lal, C. J.* and *Agha Haider, J.*) *BANARASI DAS v. EMPEROR*. 108 I. C. 607=9 A. I. Cr. R. 406=  
29 Cr. L. J. 425=9 Lah. 491=  
29 P. L. R. 610=A. I. R. 1928 Lah. 186.

**—Registration.**

—In India there is no method by which a trade-mark may be registered. (*Otter, J.*) *P. A. PAKIR MOHAMED v. EMPEROR*. 1929 Cr. C. 498=  
A. I. R. 1929 Rang. 322.

**TRANSFER OF CRIMINAL CASE.**

See CR. P. CODE, SS. 526 AND 528.

**TRESPASS.**

See (1) ADVERSE POSSESSION.

(2) PENAL CODE, S. 141.

(3) TORT—TRESPASS.

**TRIAL. See CRIMINAL TRIAL.**

—Place of. See CR. P. CODE, SS. 179 AND 181.

**TRIAL BY JURY.** See CR. P. CODE, SS. 297-307.

—S. 3—Applicability.

**U. P. DISTRICT BOARDS ACT (X OF 1922).**

—S. 34—Interpretation.

—"Interest in contract."

**U. P. DISTRICT BOARDS ACT (1922), S. 34—Interpretation.**

The expression "interest in a contract" means a financial interest with profit or hope of profit from the contract as the object of the person interested. This must be inferred from the facts in evidence in each case. (*Young and Sen, JJ.*) **EMPEROR v. NARBADA PRASAD.** 121 I. C. 819=

1930 Cr. C. 54=51 All. 864=31 Cr. L. J. 356=A. I. R. 1930 All. 38.

**U. P. EXCISE ACT (IV OF 1910).****—S. 3—Excise Officer.**

Sub-Inspector of Police invested with powers under S. 10, is an Excise Officer within the Act. (*Mears, C.J. and Piggott, J.*) **EMPEROR v. CHATAR SINGH.** 82 I. C. 705=46 All. 158=21 A. L. J. 922=5 L. R. A. Cr. 40=25 Cr. L. J. 1345=A. I. R. 1924 All. 267.

**—S. 40—Rules under.**

Rules made in accordance with the provisions of Ss. 40 and 41 have the force of law. (*Sen and Niamatullah, JJ.*) **RADHEY SHIVAM v. MEWA LAL.** 116 I. C. 89=51 All. 506=1929 A. L. J. 212=A. I. R. 1929 All. 210.

**—S. 40—Transfer of license.****—Licensee taking partner—Rule 82.**

Where an agreement is entered into between a licensee and a third person in consideration of money contributed by the latter for sharing the profits and losses in the business, the transaction does not amount to a transfer or sub-lease of the liquor contract contravening the provisions of R. 82 or S. 23, Contract Act. 39 All. 107, Foll.; 12 Bom. 422, Ref. (*Sen and Niamatullah, JJ.*) **RADHEY SHIVAM v. MEWA LAL.** 116 I. C. 89=51 All. 506=1929 A. L. J. 212=A. I. R. 1929 All. 210.

**—S. 53—Omission to record reasons.**

Where the officer making the search does not record the grounds of his belief that the house of the accused contained prohibited liquor, as required by S. 53, Excise Act, and does not conduct the search in presence of two or more respectable inhabitants of the locality, the search is irregular. Any officer authorized by law to make a search ought to exercise the very greatest caution in fulfilling the formalities required by law for making a search and providing every possible safeguard so as not to allow any handle for adverse criticism. (*Sen, J.*) **FAQIRA v. EMPEROR.** 120 I. C. 204=31 Cr. L. J. 10=11 L. R. A. Cr. 18=1929 Cr. C. 493=13 A. I. Cr. R. 131=A. I. R. 1929 All. 901.

Though it is the duty of the Police officer before he proceeds to make a search without a search warrant, to record the grounds of his belief that the offender was likely to escape or conceal the evidence of his offence before he made the search, yet his omission to record the grounds of his belief, when he has clearly stated in the diary his intention of making the search, would hardly amount to illegality, although it is certainly an irregularity. (*Stuart, C.J.*) **ALI ABBAS v. KING-EMPEROR.** 1 Luck. 301=29 O. C. 374=28 Cr. L. J. 321=100 I. C. 705=A. I. R. 1927 Oudh 132.

Mere omission to record the reasons for the search by Sub-Inspector who had no intention of any of the types mentioned in S. 448, I.P.C., does not amount to an offence under that section. (*Daniels, J.C.*) **ALI ABBAS alias BANNE SAHEB v. SUBEE SINGH.** 88 I. C. 725=2 O. W. N. 463=26 Cr. L. J. 1205=A. I. R. 1925 Oudh 505.

**—S. 53—Procedure.**

In making a search without a search warrant the officer is not confined to the strict provisions of the Cr.

**U. P. EXCISE ACT (1910), S. 60—House occupied jointly.**

P.Code, relating to searches but only to those provisions, in so far as they are applicable under the U. P. Excise Act. Therefore, entrance in the house searched by the ladder is not an act explicitly forbidden by law. When a man is proved to have been in possession of an article against the law he cannot plead as a defence that the search was irregular. 35 All. 358 and A.I.R. 1924 All. 214, Appl. (*Stuart, C. J.*) **ALI ABBAS v. KING-EMPEROR.** 1 Luck. 301=29 O. C. 374=28 Cr. L. J. 321=6 O. W. N. 1198=100 I. C. 705=A. I. R. 1927 Oudh 132.

**—S. 60—Burden of proof.**

When once the possession of cocaine with the accused is found as a fact the *onus* is upon them to prove that they had sufficient reasons for being in possession of cocaine. (*Young and Sen, JJ.*) **EMPEROR v. KASHI NATH.** 121 I. C. 547=1930 A. L. J. 249=1930 Cr. C. 182=31 Cr. L. J. 286=A. I. R. 1930 All. 161.

**—S. 60—Conviction after—Illegal search.**

Where an Excise Inspector, without obtaining a search warrant and without recording any reasons, as required by S. 53, searched the house of the accused and found therein an ounce of cocaine without license. *Held*, that although the search was illegal, the conviction of the accused under S. 60 (a) was not illegal. (*Kanhaiya Lal, J.*) **ABDUL HAFIZ v. EMPEROR.** 24 A. L. J. 173=6 L. R. A. Cr. 203=27 Cr. L. J. 265=92 I. C. 441=A. I. R. 1926 All. 188.

**—S. 60—Explanation about implements.**

In cases of offences under S. 60 (f) relating to implements the excise officers must explain to the Court what the implement, alleged to be found with the accused, is and for what purpose they suppose it is in the possession of the accused. (*Walsh and Mukerji, JJ.*) **EMPEROR v. MAHADEO.** 88 I. C. 275=47 All. 611=23 A. L. J. 417=26 Cr. L. J. 1107=A. I. R. 1925 All. 388.

**—S. 60—House occupied jointly.**

Where in a small common house occupied by two brothers belonging to a joint Hindu family, and running a common business, there are discovered not only an enormous quantity of cocaine but all the necessary weighing machines and packing material to deal with it, it is idle to suggest that both brothers would not know of the dealings in cocaine. (*Young and Sen, JJ.*) **EMPEROR v. KASHI NATH.** 121 I. C. 547=1930 A. L. J. 249=1930 Cr. C. 182=31 Cr. L. J. 286=A. I. R. 1930 All. 161.

The ownership of the house, under S. 60 (a), is not an essential element, but the nature of the occupation of the house might and often is a circumstance of very great importance in estimating whether the particular accused in any given case possesses the excisable article. Three men, two of whom were brothers and the third their cousin, were in actual occupation of a house in which, on search, the police discovered packets of cocaine. They were carrying on the same business and set up the same defence.

*Held*, that the facts were sufficient to bring each of them within S. 60 (a). 26 A. L. J. 414, Dist. (*Mears, C.J. and Young, J.*) **ISMAIL v. EMPEROR.** 115 I. C. 848=1929 A. L. J. 609=10 L. R. A. Cr. 92=30 Cr. L. J. 523=1929 Cr. C. 289=51 All. 747=12 A. I. Cr. R. 27=A. I. R. 1929 All. 705.

**—Head of the family—Liability of.**

Where fermented liquor and materials for manufacturing liquor were found in the house of a person who was the head of that family was at liberty to stop

**U. P. EXCISE ACT (1910), S. 60—House occupied jointly.**

something being done in his house but was proved not to have done so.

*Held*, that the presumption was that he was an accessory and he may be held to be in possession of the materials, 22 O.C. 256 and 24 O.C. 294, Dist. (*Ashworth, A.J.C.*) MAIKU v. EMPEROR. 86 I.C. 707=

26 Cr.L.J. 851=A.I.R. 1925 Oudh 684.

—The mere fact that bhang was detected in a house in which the accused lived along with several other persons who were his relatives cannot make him guilty where there is no evidence that the accused brought the bhang and kept it in the house, 22 O.C. 256 and 24 O.C. 294, Foll. (*Gokaran Nath, A.J.C.*) BAHADUR DUBE v. KING-EMPEROR. 89 I.C. 145=

12 O. L. J. 388=26 Cr. L. J. 1281=

A. I. R. 1925 Oudh 480.

**—S. 60—Proof of offence.**

—Where the contents of the bottles found in the possession of the accused could have been subsequently changed and from the circumstances of the case it cannot be said that the accused was in possession of illicit liquor, a conviction under S. 60 (a) cannot be sustained. (*Sen, J.*) FAQIRA v. EMPEROR. 120 I.C. 204=

31 Cr.L.J. 10=1929 Cr.C. 493=11 L. B. A. Cr. 18=

13 A. I. Cr. R. 131=A. I. R. 1929 All. 901.

**—S. 60—Sentence.**

—S. 13 of Act (II of 1923) makes offence under S. 60 punishable with imprisonment for one year. (*Dalal, J.C.*) BHIKHA v. EMPEROR. 86 I.C. 432=

28 O.C. 123=26 Cr. L. J. 800=

A. I. R. 1925 Oudh 627.

**—S. 60—Summary trial.**

—Under the U. P. Excise Amendment Act (II of 1923), S. 13, the punishment for an offence under S. 6 in respect of excisable articles other than cocaine is imprisonment for one year. The offence is therefore not triable summarily. (*Ryves, J.*) EMPEROR v. RAM NARAIN. 81 I.C. 342=46 All. 446=5 L.B.A. Cr. 69=

25 Cr. L. J. 806=A.I.R. 1924 All. 675.

**—S. 64—Liability for servants' act.**

—Where accused's servant was found selling toddy after the prescribed hours, not at the shop of the accused but in a palm-grove,

*Held*, that the object of the servant being allowed to stay in the grove was to watch the trees and the juice, and not to sell toddy, and that if servant took it into his head to keep some toddy for himself and to sell it after the prescribed hours, no amount of precaution on the part of the master could prevent this. (*Mukerji, J.*) AZIMUDDIN v. EMPEROR. 86 I.C. 480=

47 All. 287=26 Cr. L. J. 832=23 A. L. J. 136=

6 L. B. A. Cr. 63=A. I. R. 1925 All. 307.

—Two excise licenses, J and T who were partners in a country liquor shop license had been convicted under S. 64 (c) of the U. P. Excise Act (1910) of committing a breach of the conditions of the license by selling liquor out of the prescribed hours and also by selling adulterated liquor. T was present at the shop when these offences were detected. J the other licensee was not present and there was no suggestion that he knew anything about the irregular sales.

*Held*, that J's conviction was right, he being equally guilty as T. (24 B. 423 and 9 A.L. J. 288, Ref.) The real test so far as agency is concerned is not the nature of the act but the nature of the business. The nature of the fact is the test which decides the criminality. The law of partnership is merely a breach of the law of agency just like the law of master and servant, and for this purpose two partners stand to one another in the same relation as master and servant. (*Walsh, J.*)

**U. P. EXCISE ACT (1910), S. 71—Presumption when drawn.**

JWALA PRASAD v. KING-EMPEROR.

82 I. C. 139 = 45 All. 642 = 25 Cr. L. J. 1211 =

A. I. R. 1924 All. 101.

**—S. 64—Short weight.**

—Where a man whose duty it is to sell packets of drugs at a certain weight exposes for sale upwards of sixty packets all of which are short in weight it cannot be held that he is acting by accident or without intention. If he was ill he at least culpably negligent in not making proper arrangements for the weighing of his stock of drugs. (*Pullan, J.*) RAM HARAK v. EMPEROR. 7 O. W. N. 751=128 I. C. 275.

**—S. 69—Applicability.**

—The evidence of a previous conviction can be used under the provisions of S. 69 to afford reason for enhancement of sentence after the accused's guilt has been determined. (*Stuart, C.J.*) RAHIM BAKHSI v. EMPEROR. 10 A. I. Cr. R. 169=29 Cr. L. J. 525=

109 I. C. 349=5 O. W. N. 124=

9 A. I. Cr. R. 416=A.I.R. 1928 Oudh 275.

**—S. 71—Applicability.**

—The proviso as to punishment by fine applies only to that person who is able to show that he is the employer or principal, that he did not personally commit the act complained of, and that he took all due and reasonable precaution to prevent the commission of such act. (*Mears, C. J. and Young, J.*) ISMAIL v. EMPEROR.

115 I. C. 648=1929 A. L. J. 609=

10 L. B. A. Cr. 92=30 Cr. L. J. 523=

1929 Cr. C. 289=51 All. 747=12 A. I. Cr. R. 27=

A. I. R. 1929 All. 705.

**—S. 71—Effect on S. 60.**

—Proviso in S. 71 that no person other than the actual offender shall be punished with imprisonment except in default of payment of fine does not in any way modify the effect of S. 60 (a), which provides that a person in possession of cocaine may be punished with imprisonment which may extend to two years. (*Mears, C. J. and Young, J.*) ISMAIL v. EMPEROR.

115 I. C. 648=1929 A. L. J. 609=

10 L. B. A. Cr. 92=30 Cr. L. J. 523=

1929 Cr. C. 289=51 All. 747=

12 A. I. Cr. R. 27=A. I. R. 1929 All. 705.

**—S. 71—Liability for son's act.**

—Where a licence-holder was convicted on the ground that his son, in his absence, sold adulterated liquor

*Held*, that the conviction was proper in absence of proof that he took all due and reasonable precaution to prevent the commission of the offence. (*Walsh and Sulaiman, J.J.*) EMPEROR v. SITAL PRASAD.

86 I. C. 217=23 A. L. J. 62=26 Cr. L. J. 729=

A. I. R. 1925 All. 313.

**—S. 71—Possession.**

—Transfer of key of a locked box to a friendly co-occupant does not divest the owner of his possession. (*Walsh and Ryves, J.J.*) EMPEROR v. BANARSI.

77 I. C. 829=46 All. 254=22 A. L. J. 144=

5 L. B. A. Cr. 73=25 Cr. L. J. 477=

A. I. R. 1924 All. 381.

**—S. 71—Presumption when drawn.**

—A presumption under S. 71 is drawn as to the commission of an offence when a person is proved to be the owner of the house in which cocaine is found. In every prosecution under S. 60 it shall be presumed, until the contrary is proved, that the accused person has committed an offence punishable under that section in respect of any excisable article for the possession of which he is unable to account satisfactorily. In such a case however the offender cannot be punished with

**U. P. EXCISE ACT (1910), S. 71—Presumption when drawn.**

imprisonment but only with fine as laid down in the proviso to S. 71. (*Rankin and Chotzner, J.J.*) **ABDUL KAHMAN v. EMPEROR.** 109 I. C. 211=

9 A. I. Cr. R. 437=29 Cr. L. J. 483=

9 L. R. A. Cr. 66=26 A. L. J. 414.

**U. P. GOVERNMENT RULES.****—R. 22—Applicability.**

—R. 22 applies only to a person licensed to drive in another province and not licensed in the United Provinces. (*Ashworth, J.*) **EMPEROR v. SITA RAM.**

101 I. C. 668=25 A. L. J. 574=

8 L. R. A. Cr. 69=7 A. I. Cr. R. 443=

28 Cr. L. J. 492=49 All. 754=

A. I. R. 1927 All. 478.

**U. P. LAND REVENUE ACT (III OF 1901).****—S. 40—Prior order under Cr. P. Code, Ss. 145 and 146.**

—The order either under S. 145 or under S. 146 does not interfere with the subsequent order under S. 40 of the Land Revenue Act, by which possession has been made over to the party in whose favour mutation has been effected. (*Dalal, J.C.*) **EMPEROR v. NISAR ALI KHAN.** 90 I. C. 399=26 Cr. L. J. 1551=

A. I. R. 1926 Oudh 179.

**—S. 46—Omission to inform.**

—Where a zamindar collecting more than the recorded rent from the tenants has not been asked the information by Qanungo or the Patwari, his failure to inform the officials concerned the fact of such collection does not amount to an offence under S. 176, Penal Code. (*Banerji, J.*) **BUDH SINGH v. KING-EMPEROR.**

98 I. C. 487=7 L. R. A. Cr. 195=

27 Cr. L. J. 1367=A. I. R. 1927 All. 111.

**—S. 48—Offences during mutation proceedings.**

—Proceedings in mutation are proceedings within the meaning of S. 476 and the Court concerned with the proceedings is a revenue Court within the meaning of S. 48, Land Revenue Act of 1901. A revenue Court has therefore jurisdiction under S. 472 when the offence is committed before it in any proceedings even non-judicial. Moreover mutation proceedings are judicial proceedings within the meaning of the Cr. P. Code though ordinarily they may not be so and there is no bar, therefore, to a revenue Court from proceeding under S. 478 with regard to an offence committed in mutation proceedings before it. A.I.R. 1926 P. C. 100, Ref. (*Stuart, C. J.*) **LACHMAN PRASADI JOSHI v. EMPEROR.** 124 I. C. 364=31 Cr. L. J. 679=

6 O. W. N. 953=1930 Cr. C. 154=

5 Luck. 435=A. I. R. 1930 Oudh 58

**—S. 147—'Citation'.**

—*Pullan, J.*—The word "citation" employed in the Land Revenue Act means a direction of some kind to appear in Court. The word "citation" itself means a notice or a summons and it is probable that the draftsman of the Land Revenue Act was using it, not in a technical sense such as that employed in the Succession Act but merely as a variant for a notice.

*Stuart, C. J.*—A citation is not necessarily an order to appear. It is a notice or an order to do something. A.I.R. 1927 All. 122. Dist. (*Stuart, C. J. and Pullan, J.*) **CHANDRIKA SINGH v. EMPEROR.** 4 O. W. N. 1211=

29 Cr. L. J. 94=106 I. C. 686=9 A. I. Cr. R. 336=

A. I. R. 1928 Oudh 122.

**—S. 147—Non-compliance with citation.**

—Per *Boys and Young, J.J.*—A citation issued to a person who is in arrear of Government revenue under S. 147 is not a summons within the meaning of S. 174, Penal Code, and the person so served is not bound to appear in obedience to it and by his failure to attend he is not guilty under S. 174, Penal Code, (*Sen, J.*, con-

**U. P. MUNICIPALITIES ACT (1916)—Assertion of title what is.**

tra.) (Cases considered.) (*Boys, Young and Sen, J.J.*)

**EMPEROR v. HIMANCHAL SINGH.** 123 I. C. 673=

52 All. 568=1930 A. L. J. 354=

31 Cr. L. J. 546=1930 Cr. C. 433=

A. I. R. 1930 All. 265 (F.B.).

—A citation under S. 147 though issued on 25th February was not served till 10th March 1927 at 5 p.m. and called on the accused to be present at noon on 11th March "in case the entire arrears . . . are not paid very soon." The accused did not appear on the day fixed.

*Held*, that no conviction under Penal Code, S. 174 could possibly stand. (*Sulaiman, Ag. C. J., Boys, Banerji, Kendall and Weir, J.J.*) **EMPEROR v. TIKA-RAM.** 9 L. R. A. Cr. 130=26 A. L. J. 1201=

10 A. I. Cr. R. 390=111 I. C. 670=

29 Cr. L. J. 910=A. I. R. 1928 All. 680 (F.B.).

—*Ibid.* 99 I. C. 60=24 A. L. J. 1001=

28 Cr. L. J. 28=8 L. R. A. Cr. 41=49 All. 205=

7 A. I. Cr. R. 175=7 A. I. Cr. R. 270=

A. I. R. 1927 All. 122.

—Dissented from by. (*Stuart, C. J. and Pullan, J.*) **CHANDRIKA SINGH v. EMPEROR.**

106 I. C. 686=4 O. W. N. 1211=29 Cr. L. J. 94=

9 A. I. Cr. R. 336=A. I. R. 1928 Oudh 122.

—*Ibid.* 99 I. C. 409=

49 All. 215=25 A. L. J. 38=7 L. R. A. Cr. 177=

28 Cr. L. J. 153=A. I. R. 1927 All. 49.

**U. P. MOTOR VEHICLES RULES. See MOTOR VEHICLES ACT.****—R. 11.**

—*Motor Vehicles Act (VIII of 1914), S. 16—R. 11 does not apply to cars registered outside the U. P.*

There is nothing in the wording of these rules to show that R. 11 applies to cars registered outside the U. P. It is clear from the definition of "registering authority" in R. 3, and this expression as used in R. 11 means the authority who had registered the car under the rules in force in the U. P., and hence R. 11 does not apply to cars not registered in the U. P. (*Sen, J.*) **EMPEROR v. P. C. CHAUDHRI.** 120 I. C. 272=

31 Cr. L. J. 40=1930 A. L. J. 527=

52 All. 212=1930 Cr. C. 50=

A. I. R. 1930 All. 34.

**U. P. MUNICIPAL ACCOUNT CODE.****—S. 132 (14) (16)—Exemption from octroi duty.**

—The machine of a motor car and the component parts of such a machine (e.g., a cylinder-head) being included in 'machinery' will be exempted from the payment of octroi under sub-S. 14, and the specific mention of motor car in sub-S. 16 will not prevent such exemption being claimed under sub-S. 14, because persons subject to taxation are entitled to exemption under any head under which such exemption may be claimed. (*Dalal, J.*) **SURJAN LAI v. EMPEROR.**

115 I. C. 452=1929 A. L. J. 395=

10 L. R. A. Cr. 71=11 A. I. Cr. R. 492=

30 Cr. L. J. 468=A. I. R. 1929 All. 278.

**U. P. MUNICIPALITIES ACT (II OF 1916).****—Assertion of title what is.**

—The fact that a Municipal Board has on several occasions demolished a chabutra constructed by a party on the disputed land and realised the cost does not amount even to an assertion of title on the part of the Municipal Board and is absolutely inconclusive. (*Sen, J.*) **GAURI SHANKAR v. EMPEROR.**

120 I. C. 547=1930 A. L. J. 244=

1930 Cr. C. 42=31 Cr. L. J. 133=

A. I. R. 1930 All. 26

## U. P. MUNICIPALITIES ACT (1916).

## —S. 23—Appeal.

—An election commissioner independently of any special legislation about an election petition, is not amenable to the jurisdiction of High Court. Prohibition against an appeal or revision indicates that it was the intention of S. 23 to confine the High Court's power merely to advising and answering questions of law referred specially to it. All matters which arise in the course of an election petition which the commissioner has disposed of one way or another, are matters which are within his jurisdiction. (*Walsh and Ryves, J.J.*)

B. RAM NATH v. EMPEROR. 83 I.C. 654 =  
46 All. 611 = 22 A. L. J. 497 = 5 L. R. A. Cr. 109 =  
26 Cr. L. J. 94 = A. I. R. 1924 All. 684.

## —S. 50—Prosecutions.

—Under Prevention of Adulteration Act—Power to sanction.

In view of S. 50 (e) it makes no difference to the legality of the sanction that the Board expressed itself against prosecution. In such a case, the Chairman is the Board and his act binds the Board. The policy of the Municipalities Act is to enable certain functions of the Board to be exercised by the Chairman so as to avoid the delay necessitated by reference of the matter to the Board. S. 12, Prevention of Adulteration Act (U.P. Act VI of 1912), which is general provision as to sanctions of prosecution for adulteration, cannot control S. 50 (e), Municipalities Act, for two reasons. One is that a general enactment cannot affect a special one; and the other reason is that the latter Act was passed later than the former one. (*Ashworth, J.*)

KISHAN LAL v. EMPEROR. 26 A.L.J. 239 =  
9 A. I. Cr. R. 184 = 9 L. R. A. Cr. 25 =  
108 I. C. 148 = 29 Cr. L. J. 340 =  
A. I. R. 1928 All. 254.

## —S. 82—Interest doubtful.

—A member of the Board acquiring share or interest in any contract must obtain permission in writing of the Commissioner. Where there is doubt as regards the interest, the Commissioner should be applied to for permission. (*Boys, J.*) BHAIRO PRASAD v. EMPEROR.

128 I. C. 894 = 1930 A.L.J. 1465 =  
1930 Cr. C. 995 = A. I. R. 1930 All. 739.

## —S. 85—Strike by sweepers.

—On 10th April, ten sweepers sent a notice to the Municipal Board demanding an increase of pay. Having received no reply to this, they on 20th April sent a further notice threatening to strike on 1st May unless their demands were granted. On 1st May they abandoned their work in accordance with the notice. The Magistrate examined the Health Officer in the case of one of these and the latter stated that there was the danger of cholera epidemic.

Held, that they were rightly convicted under S. 85 (1). (*Daniels, J.*) AUGNOO v. THE CROWN.

81 I. C. 143 = 46 All. 41 = 21 A.L.J. 808 =  
4 L. R. A. Cr. 202 = 25 Cr. L. J. 655 =  
A.I.R. 1924 All. 188.

## —S. 116—Scavenging.

—Where by an arrangement with the Municipality the customary sweepers undertake to transport and deposit at the given place night soil at a given rate, the Municipality must be deemed to have undertaken house scavenging with the consent of the customary sweepers, and therefore the rubbish and soil collected from houses is collected by the Board within the meaning of section 116 and the arrangement is not a sale to the Board. (*Walsh, J.*) HARI LAL v. EMPEROR.

76 I. C. 971 = 45 All. 281 = 21 A. L. J. 149 =  
25 Cr. L. J. 299 = 4 L. R. A. Cr. 62 =  
A. I. R. 1923 All. 480.

U. P. MUNICIPALITIES ACT (1916), S. 185—  
Legality of order.

## —S. 128—Motor vehicles.

—Short stay within municipality.

Motor cars brought by chance visitors within the Municipality and not used in such Municipality for more than short periods are not vehicles "kept" within the Municipality under S. 128. Before it can be found that such a vehicle is kept within the Municipality it must be established that it is retained within the Municipality for more than short periods. Such visitors are not liable to be convicted under S. 299. (*Stuart, C. J.*) LACHMI NATH v. LUCKNOW MUNICIPAL BOARD.

109 I. C. 367 = 3 Luck. 608 = 29 Cr. L. J. 543 =  
10 A. I. Cr. R. 239 = 5 O. W. N. 441 =  
A. I. R. 1928 Oudh 306.

## —S. 178—Adjacent.

—If there is a wall separating a house from the public road, the building cannot be called adjacent to the road. "Adjacent" must mean "joining at some point," and the meaning of the word is made clearer by the words "abutting on." (*Dalal, J.*) BHAIU DEB v. EMPEROR.

112 I. C. 588 = 51 All. 463 =  
11 A. I. Cr. R. 213 = 29 Cr. L. J. 1084 =  
1929 A. L. J. 90 = 10 L. R. A. Cr. 27 =  
A. I. R. 1928 All. 696.

## —S. 178—Alteration in building.

—The expression "an alteration in a building" in S. 178, sub-section (3), must include a part of such building. The definition in S. 214 of a part of a building lays down what is to be read into this expression when it is used. But it is not inconsistent with a wall supplementary to or accessory to a verandah or balcony or house or other larger building, being in itself a building within the meaning of S. 178. (*Walsh, J.*) NIHAL MUHAMMAD v. KING-EMPEROR.

85 I. C. 41 =  
21 A. L. J. 774 = 4 L. R. A. Cr. 226 =  
26 Cr. L. J. 425 = A. I. R. 1924 All. 200.

## —S. 178—Prosecution.

—Where the accused applied and obtained sanction to build a *chabutra* in front of his house, he cannot be prosecuted for having built the *chabutra* resting on stone brackets, especially when there is nothing in the sanction to forbid the use of stone brackets as supports for the *chabutra*. (*Kanhaiya Lal, J.*) RAM SARUP v. KING-EMPEROR.

48 All. 230 = 7 L. R. A. Cr. 3 =  
24 A. L. J. 163 = 27 Cr. L. J. 250 = 92 I. C. 426 =  
A. I. R. 1926 All. 122.

## —S. 185—Alteration not material.

—The raising of the plinth and the alterations made by the accused in the size, position or number of the doors or windows cannot be treated as material alterations in the original plan so as to affect the Municipal Board if the area built on does not exceed that entered in the sanctioned plan. (*Kanhaiya Lal, A. J. C.*) EMPEROR v. BABU RAM.

67 I. C. 828 = 25 O. C. 1 =  
23 Cr. L. J. 476 = A. I. R. 1923 Oudh 35.

## —S. 185—Applicability.

—The whole object of S. 49 of the Town Improvement Act is to invest the Trust with the powers possessed by the Municipal Board with relation to the offences mentioned in S. 49. It is immaterial whether the Act which constitutes the offence was committed before the scheme came into force or after it. (*Wazir Hasan, A. J. C.*) KUNDAN LAL v. LUCKNOW IMPROVEMENT TRUST.

81 I. C. 719 = 11 O. L. J. 201 =  
25 Cr. L. J. 1007 = A. I. R. 1924 Oudh 399.

## —S. 185—Legality of order.

—An order convicting the accused under Ss. 185 and 307 of the U. P. Municipalities Act concluded with the words "Failure to comply with the order will as from



**U. P. MUNICIPALITIES ACT (1916), S. 185—**  
**Legality of order.**

December 1st involve a continuing fine of Rs. 2 per diem."

*Held*, that if this was to be treated as an order imposing such a fine it was illegal and if it was to be treated as a warning it was unnecessary and undesirable to specify the amount which could only be decided when a second prosecution had been successful. (*Stuart, J.*) **RAMZAN v. THE MUNICIPAL BOARD OF BENARES.**

6 L. R. A. Cr. 112=26 Cr. L. J. 1135=  
88 I. C. 367=A. I. R. 1926 All. 204.

**—S. 193—Obstruction.**

—If a person obstructed in constructing a drain over the land of another does not take action under S. 193 of the Act and no notice is issued to the person obstructing, a contract given by the Municipality to construct a drain is contrary to the terms of the Act. (*Dalal, J.*) **CHHITRIA v. MUNICIPAL BOARD, BINDRABAN.**

116 I. C. 798=1929 A. L. J. 99=  
10 L. R. A. Cr. 37=11 A. I. Cr. B. 254=  
30 Cr. L. J. 691=A. I. R. 1929 All. 16.

**—S. 247—Enquiry under.**

—The provisions of S. 350, Cr. P. Code, apply to an enquiry, under S. 247 of the U.P. Municipalities Act. (*Daniels, J.*) **BASANTI v. EMPEROR.**

81 I. C. 139=25 Cr. L. J. 651=A. I. R. 1925 All. 245.

**—S. 265—Burden of proof.**

—The *onus* of proving that the site in dispute is a public street or part of a public street lies upon the Crown. (*Sen, J.*) **GAURI SHANKAR v. EMPEROR.**

120 I. C. 547=1930 A. L. J. 244=1930 Cr. C. 42=  
31 Cr. L. J. 133=A. I. R. 1930 All. 26.

**—S. 265—Dispute about property.**

—Where there is a clash between Municipal Board on one side and a private individual on the other with reference to some property the matter has got to be adjudicated by the civil Court which is the only forum for determining the title. The straightforward course in such a case is the institution of a suit in the civil Court. The remedy provided by S. 265 may be cheap, swift and within a certain range effective. S. 265, however, is not intended to arm a Municipal Board with powers to disturb the possession of any person who asserts a lawful title to the property in controversy. (*Sen, J.*) **GAURI SHANKAR v. EMPEROR.**

120 I. C. 547=1930 A. L. J. 244=1930 Cr. C. 42=  
31 Cr. L. J. 133=A. I. R. 1930 All. 26.

**—S. 265—Obstruction, what is.**

—If a man puts a bench on the payment in front of his shop in a municipal street, without the permission of the municipality, obstruction of the public road must be presumed. (*Dalal, J.*) **TUFAIL AHMAD v. EMPEROR.**

109 I. C. 809=9 A. I. Cr. R. 1=  
8 L. R. A. Cr. 168=29 Cr. L. J. 617=  
A. I. R. 1928 All. 60.

**—S. 295—Contract given arbitrarily.**

—The words "under this Act" in S. 295 have the significance that the Municipal Board must have acted according to directions given in the Act. No contract arbitrarily given by the Municipality in contravention of the provisions of the Act can render obstruction thereof liable to penalty. (*Dalal, J.*) **CHHITARIA v. MUNICIPAL BOARD, BINDRABAN.**

116 I. C. 798=  
1929 A. L. J. 99=10 L. R. A. Cr. 37=  
11 A. I. Cr. R. 254=30 Cr. L. J. 691=  
A. I. R. 1929 All. 16.

**—S. 295—Obstruction.**

—Advising a person who is being asked by a Municipal peon not to pay a certain charge due from him under the Municipal bye-laws is not "obstruction" within the meaning of S. 295. (*Stuart, J.*) **BALDEO**

**U. P. MUNICIPALITIES ACT (1916), S. 307—**  
**Notice when necessary.**

**PANDEY v. EMPEROR.** 64 I. C. 130=19 A. L. J. 914=  
22 Cr. L. J. 738=A. I. R. 1921 All. 168

**—S. 307—Continuing fine.**

—An order convicting the accused under Ss. 185 and 307 of the U. P. Municipalities Act concluded with the words: "Failure to comply with the order will as from December 1st involve a continuing fine of Rs. 2 per diem."

*Held*, that if this was to be treated as an order imposing such a fine it was illegal and if it was to be treated as a warning it was unnecessary and undesirable to specify the amount which could only be decided when a second prosecution had been successful. (*Stuart, J.*) **RAMZAN v. MUNICIPAL BOARD OF BENARES.**

88 I. C. 367=6 L. R. A. Cr. 112=  
26 Cr. L. J. 1135=A. I. R. 1926 All. 204.

—Order respecting future offence passed at first conviction is illegal.

A Magistrate cannot at the time of original conviction pass an order in respect of a future offence. There must be a separate prosecution and a separate conviction after the accused has failed to comply with the order and has rendered himself liable to a continuing fine. 40 All. 569 and A.I.R. 1921 All. 267, Foll. (*Daniels, J.*) **MATHURA PRASAD v. MUNICIPAL BOARD, ETAWAH.**

94 I. C. 136=7 L. R. A. Cr. 113=  
27 Cr. L. J. 568.

—Under S. 307 (b) of the Municipalities Act, it is illegal for a Magistrate to sentence the accused to a further daily fine at the same time that he sentences him to a fine for disobedience of the notice. (*Boys, J.*) **RAM LAL v. MUNICIPAL BOARD, BUDAUN.**

84 I. C. 439=26 Cr. L. J. 295=  
6 L. R. A. Cr. 22=A. I. R. 1925 All. 251.

**—S. 307—Essentials for conviction.**

—Notice irregular.

If a notice is not issued according to the provisions of the Municipalities Act, or under a rule or a bye-law, the person to whom the notice is issued may disobey it and yet not be liable to punishment; and to sustain a conviction under S. 307, it is necessary to prove that the notice was issued under the provisions of the Act or under a rule or a bye-law. A.I.R. 1925 Oudh 546, Foll. (*Banerji, J.*) **NARAYAN DAS v. MUNICIPAL BOARD, JHANSI.**

98 I. C. 492=7 L. R. A. Cr. 199=  
7 A. I. Cr. R. 1=27 Cr. L. J. 1372.

—Notice irregular.

If a notice is not issued according to the provisions of the Act or under a rule or a bye-law, the person to whom the notice is issued may disobey it and yet not be liable to punishment. Hence, to sustain a conviction under S. 307, it is necessary to prove that the notice was issued under the provisions of the Act or under a rule or a bye-law. Where an accused admits the issue of the notice and his disobedience thereof, it does not necessarily follow that he is guilty. It is open to him to plead that the notice was issued without authority and without reason. (*Dalal, J.C.*) **RAMCHARAN v. IMPROVEMENT TRUST, LUCKNOW.**

85 I. C. 243=26 Cr. L. J. 499=  
A. I. R. 1925 Oudh 546.

**—S. 307—Notice when necessary.**

—Lease—Termination of—Notice to lessee—T. P. Act, S. 111 (h).

Applicant was allotted under a lease of one the plots given to stall-holders along the side of a public road in a municipality. The municipality later on passed a resolution that this roadside should not be let out in future to stall-holders and that the present stall-holders should be told to quit. The executive officer of the

# U. P. MUNICIPALITIES ACT (1916), S. 307— Notice when necessary.

Municipality issued a notice under S. 211 to the lessees to remove, treating the lessees as trespassers making an encroachment on a public road. The petitioner was convicted for failure to comply with the notice.

*Held*, that it was the duty of the executive officer to give proper notice under S. 111 (h), T. P. Act, and that the conviction was illegal and accusation vexatious. (*Dalal, J.*) *AMINULLAH v. EMPEROR*.

107 I. C. 690 = 26 Cr. L. J. 274 =  
9 A. I. Cr. E. 197 = 26 A. L. J. 328 =  
9 L. R. A. Cr. 28 = A. I. R. 1928 All. 95.

## —S. 307—Reasonableness of order of Board.

—There is no appeal under the Act against a notice issued by the sanitary authority under S. 267. The Magistrate who has to deal with a question of breach is not entitled to consider the reasonableness of the order. "Question" in section 321 means "called in question as regards its reasonableness or practicability." It cannot mean in the context in which it is used, "challenging its legality". The scheme of the Act is clear that, except as provided in the case of specified orders which may be appealed to the District Magistrate, no order or direction or requirement made by a municipality, or a committee of a notified area can be questioned on the merits, provided that it is a requirement or an order or a direction made within the powers conferred upon the authority, but its legality can undoubtedly be questioned in any Court in which penal proceedings are brought for breach of the order, if it can be shown that it is an order, requirement or direction which the Board could not make, *i.e.*, an order made outside its jurisdiction. 33 All. 147, Dist. (*Walsh, J.*) *KASHMIRI LAL v. EMPEROR*. 63 I. C. 410 =

19 A. L. J. 541 = 43 All. 644 = 22 Cr. L. J. 650 =  
A. I. R. 1921 All. 267.

## —S. 314—Complaint by authorized person.

—Although S. 314 provides that no Court is to take cognizance of certain offences except with the permission of the Board, yet where the prosecution has been started on the report or on complaint of some person authorized by the Board by general or special order on this behalf either with reference to all offences or certain specified offences, the complaint must be taken to have been properly instituted and the Court is bound to take cognizance of it and to act upon it. (*Sen, J.*) *MOHAMMAD YUSUF v. EMPEROR*. 120 I. C. 207 =

31 Cr. L. J. 13 = 1930 A. L. J. 202 =  
1929 Cr. C. 493 = A. I. R. 1929 All. 901.

## —Secretary.

Where a complaint is made by the Secretary under the authority of the President after an order is passed by the Board to that effect, the provisions of law are satisfied. (*Dalal, J.*) *BHAU DEB v. EMPEROR*.

112 I. C. 588 = 29 Cr. L. J. 1084 = 1929 A. L. J. 90 =  
51 All. 463 = 11 A. I. Cr. R. 213 =  
10 L. R. A. Cr. 27 = A. I. R. 1928 All. 696.

## —S. 314—Prosecution under.

—Under this Act the prosecution is not one instituted upon complaint since the Magistrate takes cognizance from information received. Consequently S. 247 of the Cr. P. Code does not apply. Non-appearance of the complainant, therefore, does not justify dismissal of the complaint. (*Stuart, J.*) *MT. BASANTI v. MAQUSUD ALI*. 83 I. C. 730 = 5 L. R. A. Cr. 63 =  
26 Cr. L. J. 170 = A. I. R. 1924 All. 528.

## —S. 314—Sufficient authority.

—Upon receiving information from the President of the Municipal Board of their resolution that the accused should be prosecuted for disobedience of a notice

# U. P. TOWN IMPROVEMENT ACT (1919), S. 49 —Offence before scheme.

a prosecution can be started by a Magistrate under S. 314. (*Banerji, J.*) *HUSAIN v. NOTIFIED AREA, MAHOBA DIST., HAMIRPUR*. 49 All. 245 =

25 A. L. J. 93 = 7 L. R. A. Cr. 182 =  
27 Cr. L. J. 1120 = 97 I. C. 432 =  
A. I. R. 1927 All. 131.

## —S. 333—Scope.

—Sanctioning a prosecution is neither for the purpose of making preliminary arrangements for the holding of first elections, nor is it any step towards expediting the assumption by the Board of its duties when established. (*Sulaiman, J.*) *JUGGAN v. EMPEROR*.

65 I. C. 447 = 19 A. L. J. 942 = 23 Cr. L. J. 95 =  
A. I. R. 1921 All. 162.

# U. P. PREVENTION OF ADULTERATION ACT (VI OF 1912).

## —S. 4—Possession of adulterated article.

—Possession of adulterated food or drug is not made a crime under the Act. (*Dalal, J.*) *BANARSI DAS v. EMPEROR*. 125 I. C. 503 =

31 Cr. L. J. 866 = 1930 Cr. C. 817 =  
1930 A. L. J. 911 = A. I. R. 1930 All. 595.

## —S. 5—Adulteration.

—"Adulterated" with respect to ghee implies mixture of substance not derived from milk. (*Banerji, J.*) *RAM DAYAL GUPTA v. EMPEROR*.

7 A. I. Cr. E. 40 = 8 L. R. A. Cr. 8 = 28 Cr. L. J. 39 =  
99 I. C. 71 = A. I. R. 1927 All. 730.

## —S. 12—Sanctioning prosecution.

—In view of S. 50 (e) it makes no difference to the legality of the sanction that the Board expressed itself against prosecution. In such a case the Chairman is the Board and his act binds the Board. The policy of the Municipalities Act, is to enable certain functions of the Board to be exercised by the Chairman so as to avoid the delay necessitated by reference of the matter to the Board. S. 12, Prevention of Adulteration Act (U. P. Act VI of 1912), which is a general provision as to sanctions of the prosecution for adulteration, cannot control S. 50 (e), Municipalities Act, for two reasons. One is that a general enactment cannot affect a special one; and the other reason is that the latter Act was passed later than the former one. (*Sulaiman and Ashworth, JJ.*) *NAJAF ALI KHAN v. MUHAMMAD FAZAL*. 108 I. C. 148 =

29 Cr. L. J. 340 = 9 L. R. A. Cr. 25 =  
9 A. I. Cr. R. 184 = 26 A. L. J. 239 =  
A. I. R. 1928 All. 254.

## —S. 15—Applicability.

—If a person accused under S. 4 appears and stands his trial in spite of the fact that the summons was not issued to him within one month from consent obtained under S. 12, S. 15 does not deprive Court of jurisdiction to try him. (*Dalal, J.*) *RAMCHAND v. EMPEROR*. 114 I. C. 870 =

50 All. 853 = 10 L. R. A. Cr. 135 =  
12 A. I. Cr. R. 247 = 30 Cr. L. J. 869 =  
A. I. R. 1929 All. 157.

# U. P. PUBLIC GAMBLING ACT. See PUBLIC GAMBLING ACT (IMP. III OF 1867).

# U. P. TOWN IMPROVEMENT ACT (VIII OF 1919).

## —S. 49—Offence before scheme.

—The whole object of S. 49 of the Town Improvement Act is to invest the Trust with the powers possessed by the Municipal Board with relation to the offences mentioned in S. 49. It is immaterial whether the Act which constitutes the offence was committed before the scheme came into force, or after

# U.P. TOWN IMPROVEMENT ACT (1919), S. 49

## —Offence before scheme.

it. (*Wazir Hasan, A. J. C.*) KUNDAN LAL *v.* LUCKNOW IMPROVEMENT TRUST. 81 I. C. 719 = 11 O. L. J. 201 = 25 Cr. L. J. 1007 = A. I. R. 1924 Oudh 399.

# U. P. VILLAGE PANCHAYAT ACT (VI OF 1920).

## —Village panchayat.

### —A Court.

A village panchayat constituted and held under Local Act (VI of 1920) is a "Court," and when it is dealing with a case in regard to an "offence" it is a criminal Court. (*Obiter.*) (*Boys and Banerji, J.J.*) KAMLAPATI PANTH *v.* EMPEROR. 43 All. 23 = 23 A. L. J. 897 = 6 L. R. A. Cr. 179 = 27 Cr. L. J. 19 = 91 I. C. 51 = A. I. R. 1926 All. 27.

## —S. 31—Applicability.

—S. 32 applies only to suits. The provision applicable to criminal cases is to be found in S. 31. (*Daniels, J.*) MT. MASALA *v.* EMPEROR. 27 Cr. L. J. 358 = 7 L. R. A. Cr. 75 = 92 I. C. 870 = A. I. R. 1926 All. 368.

## —S. 71—Finality of order.

—There is no provision in the Act declaring that the Collector's order under S. 71 in criminal proceedings should be final. (*Boys and Banerji, J.J.*) KAMLAPATI PANTH *v.* EMPEROR. 91 I. C. 51 = 48 All. 23 = 23 A. L. J. 897 = 6 L. R. A. Cr. 179 = 27 Cr. L. J. 19 = A. I. R. 1927 All. 27.

## —S. 72—Public nuisances.

### —Local enquiry.

A Magistrate has no power under S. 72 to make a local enquiry into cases relating to public nuisances. He should in such cases follow the procedure laid down by Ss. 133 to 143 of the Code. (*Kanhaiya Lal, J.*) KADHORI *v.* KING-EMPEROR. 24 A. L. J. 162 = 6 L. R. A. Cr. 216 = 27 Cr. L. J. 276 = 92 I. C. 452 = A. I. R. 1926 All. 193.

# UNLAWFUL ASSEMBLY. See PENAL CODE, SS. 141-148.

# UNNATURAL OFFENCE. See PENAL CODE, S. 377.

# UNSOUNDNESS OF MIND.

See (1) CR. P. CODE, SS. 464-475.  
(2) PENAL CODE, SS. 84-85.

# VERDICT OF JURY. See CR. P. CODE, SS. 297-307.

# WAGING WAR AGAINST THE KING. See PENAL CODE, SS. 121, 122 AND 124.

# WARRANT CASE. See CR. P. CODE, SS. 251-259.

# WEIGHTS AND MEASURES See PENAL CODE, SS. 265-266.

# WHIPPING. See CR. P. CODE, SS. 390, 394 AND 395.

# WHIPPING ACT (IV OF 1909).

# —AS AMENDED BY BURMA ACT (VIII OF 1927).

## —Legality of sentence.

### —Substitution of stripes for imprisonment.

Substitution of a sentence of 30 stripes for a sentence of one year's rigorous imprisonment or more or a substitution of a sentence of 25 stripes for a sentence of nine months' rigorous imprisonment or more or a substitution of a sentence of 20 stripes for a sentence of six months' imprisonment or more is not ordinarily an enhancement of sentence within the meaning of S. 423 (1) (b) of Cr. P. Code and in the case of a person under 16 years of age the substitution of a sentence of 15 stripes for a sentence of imprisonment for six months or more

# WHIPPING ACT (1909), S. 4—When inflicted.

or a substitution of a sentence of 10 stripes for a sentence of imprisonment for three months or more is not ordinarily an enhancement of sentence. But the substitution of a sentence of 30 stripes for a sentence of three months' rigorous imprisonment is an enhancement and therefore an illegal sentence under S. 423 (1) (b) of the Code. 2 Weir. 487; 6 B.L.R. Ap. 95, Not Foll.; Rat. Un. Cr. C. 131; 17 All. 67; 23 Bom. 439; 27 Cal. 175; 30 Mad. 103 (F.B.); 36 All. 485, Ref. (*Rutledge, C. J. Maung Ba and Hsald, J.J.*) EMPEROR *v.* CHIT PON. 119 I. C. 209 = 7 Rang. 319 = 30 Cr. L. J. 986 = 1929 Cr. C. 169 = A.I.R. 1929 Rang. 177 (F.B.).

## —S. 3—Additional sentence

—The word "punishment" in S. 3 of the Whipping Act refers to the total of punishment awardable. In lieu of punishing the offender by imprisoning him or fining him the Court may punish him with whipping. But a fine in addition to whipping is illegal. 16 Bom. 357, Foll. (*Venkata Subba Rao, J.*) S. B. VARADARAJULU *v.* EMPEROR. 82 I. C. 49 = 20 M.L.W. 881 = 25 Cr. L.J. 1185 = A.I.R. 1925 Mad. 183.

## —S. 3—Outraging woman's modesty.

—The offence of outraging a woman's modesty not being punishable with whipping, house-breaking in order to commit that offence cannot be so punished. (*Sulaiman, J.*) DARBARI LAL *v.* EMPEROR. 89 I. C. 146 = 23 A.L.J. 894 = 6 L.R.A. Cr. 135 = 26 Cr. L. J. 1282 = A.I.R. 1925 All. 591.

## —S. 4—Additional sentence.

—A sentence of imprisonment can be inflicted in the case of a juvenile in addition to whipping and the High Court has power to inflict a sentence of imprisonment, even when the sentence of whipping passed by the lower Court has already been carried out. 7 Bom. H. C.R. Chl. 70, Dist. (*Boys and Banerji, J.J.*) EMPEROR *v.* MOTHA. 119 I. C. 572 = 1929 A.L.J. 224 = 10 L.R.A. Cr. 60 = 11 A. I. Cr. R. 424 = 30 Cr. L.J. 1087 = A.I.R. 1929 All. 322.

—An additional punishment of whipping cannot be passed on a person who has received an adequate substantive sentence for an offence under S. 436, Penal Code. (*Stuart, C.J.*) JAGANNATH *v.* EMPEROR. 1 L.C. 668 = 29 Cr. L. J. 666 = 110 I. C. 218 = A.I.R. 1928 Oudh 111.

—Before a sentence of whipping, in addition to imprisonment can be passed on a person found guilty under S. 394, I.P. Code, there must be also a finding that he himself caused hurt while committing the robbery. (*Carr, J.*) PO THAUNG *v.* KING-EMPEROR. 10 A.I. Cr. R. 276 = 109 I. C. 810 = 29 Cr. L.J. 618 = 6 Rang. 48 = A. I. R. 1928 Rang. 112.

—A sentence of imprisonment is an essential sentence under S. 392 of the I. P. Code. To this sentence a fine may be added. And under S. 4 of the Whipping Act a sentence of whipping may be imposed where, in the commission of a robbery, hurt is caused. (*Mears, C.J. and Banerji, J.*) BADRI PRASAD *v.* EMPEROR. 66 I. C. 418 = 23 Cr. L. J. 274 = 44 All. 538 = 20 A.L.J. 388 = A. I. R. 1922 All. 245.

## —S. 4—When inflicted.

—When a person inflicts pain upon another and when the offence is one which permits of the penalty of whipping, it is a good thing to inflict that penalty. There are, of course, circumstances in which the actual hurt caused is very slight and that is a circumstance to which attention has to be paid. (*Mears, C.J. and Banerji, J.*) BADRI PRASAD *v.* EMPEROR. 66 I. C. 418 = 44 All. 538 = 20 A.L.J. 388 = 23 Cr. L.J. 274 = A.I.R. 1922 All. 245.

**WHIPPING ACT (1909).****—S. 5—Institution.**

—If the sentence of whipping is passed, no other sentence can be passed, for, the whipping is considered to be in lieu of either a single punishment or a combined punishment. 16 Bom. 357, Appr. (*Stuart, J.*) **KISHNU SINGH v. EMPEROR.** 81 I. C. 260=46 All. 174=

21 A. L. J. 916=5 L. R. A. Cr. 54=  
25 Cr. L. J. 772=A. I. R. 1924 All. 455.

**—S. 5—Interpretation.**

—The word "Court" does not exclude the Appellate Court. (*Boys and Banerji, J.J.*) **EMPEROR v. MOTH.**

119 I. C. 572=1929 A. L. J. 224=  
10 L.R. A. Cr. 60=11 A. I. Cr. R. 424=  
30 Cr. L. J. 1087=A. I. R. 1929 All. 322.

**WILD ANIMALS.—See ANIMALS.****WILD BIRDS AND ANIMALS PROTECTION ACT (VIII OF 1912).****—Essentials for conviction.**

—To convict a person under the Act, it is necessary to prove that he had either killed or attempted to kill one of the animals or birds mentioned in the Schedule. (*Shadi Lal, C. J.*) **BATAN SINGH v. EMPEROR.**

107 I. C. 288=9 A. I. Cr. R. 485=29 Cr. L. J. 238.

**WITHDRAWAL OF COMPLAINT.** See CR. P. CODE, S. 248.

**WITHDRAWAL OF PROSECUTION.** See CR. P. CODE, S. 494.

**WORDS AND PHRASES.****—Accident.****—"Accident."**

Rule 27 (c) under Motor Vehicles Act (1914), S. 11, which provides that the driver of the motor vehicle shall promptly report all occurrences of accidents to the nearest police station is intended to apply only to accidents happening to the car which one is driving and which results in some injury, annoyance or danger to the public or of danger or injury to public property or obstruction to traffic and so understood it is not *ultra vires*. The petitioner was driving his car when on the way the car went out of control and jumped over a culvert, the parapet of which was only nine inches high, and fell into a channel. As a result of the accident, the front axle of the car was bent and some chunam was knocked off on the eastern side of the culvert. Those who were in the car received slight injuries; but they were able to return to their homes in the same car.

*Held*, that the incident is not an accident within the meaning of the rule.

*Reilly, J.*—An accident which makes the control of the vehicle impossible in the usual way or more difficult than usual, may be a source of danger to other users of the road and a rule requiring the driver to report such an accident would be within the rule making power under the Act. (*Madhavan Nair, J.*) **NAGARAJA MOOPPANAR v. EMPEROR.** 108 I. C. 909=

27 M.L.W. 425=9 A.I. Cr. R. 419=  
29 Cr. L. J. 461=51 Mad. 504=

1 Mad. Cr. C. 119=A. I. R. 1928 Mad. 364=  
55 M.L.J. 320.

**—Adhjar.**

—An *adhjar* may be a mere labourer or he may be a tenant; and the question whether he is a mere labourer or a tenant must depend upon the facts of each case. (*Sanderson, C. J.* and *Chotner, J.*) **EMPEROR v. ASIMULLA MONDAB.** 85 I. C. 939=

26 Cr. L. J. 651=A. I. R. 1925 Cal. 1068.

**—Carriage.**

—*Calcutta Municipal Act* (1899), S. 559, Cl. 18, *Bye-law No. 10* framed under.

The term "carriage" includes a motor car. (*Mookerjee, A.C.J.* and *Fletcher, J.*) **MANAGER, INDIAN**

**WORDS AND PHRASES—Labelled or Sealed.**

**MOTOR TAXI CAB CO. v. CORPORATION OF CALCUTTA.** 61 I. C. 641=25 C. W. N. 21=

33 C. L. J. 19=22 Cr. L. J. 401=  
A. I. R. 1921 Cal. 107.

**—Continuing offence.**

—"Continuing offence" and "continuing contravention."

The expressions "continuing offence" and "continuing contravention" must mean the same thing since in each case the offence consists of contravention of certain rules. (*Mirza and Broomfield, J.J.*) **BECHAR-DAS NAKOTAMDAS v. EMPEROR.** 127 I. C. 181=

31 Cr. L. J. 1159=1930 Cr. C. 772=  
32 Bom. L. R. 768=A. I. R. 1930 Bom. 340.

**—Conviction.**

—Conviction may mean the verdict of the jury or the sentence of the Court. What the term as used in S. 439 (6) of the Cr. P. Code means in a particular case, depends on the particular facts of the case. (*Buckland, J.* on difference between *Mukerji and Graham, J.J.*) **SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS v. JNANDRA NATH GHOSE.** 49 C.L.J. 432=

33 C. W. N. 599=56 Cal. 1145=  
30 Cr. L. J. 1038=119 I. C. 301=  
1929 Cr. C. 395=A. I. R. 1929 Cal. 747.

**—'Dakhal sadharan.'**

—The expression does not include the right of fishery. (*Chotner and Gregory, J.J.*) **SREENIBASH MAHATA v. EMPEROR.** 29 Cr. L. J. 501=

10 A. I. Cr. R. 209=109 I. C. 229.

**—Decision.**

—The word 'decision,' unless otherwise qualified by the context, may possibly embrace matters both of civil and criminal law. (*Lord Chancellor.*) **CHUNG CHUCK v. REX.** 123 I. C. 731 (P. C.)=

1930 Cr. C. 1171=A. I. R. 1930 P. C. 291 (P.C.).

**—Emergency.**

—Per *Bhide, J.*—An "emergency" may result from an unforeseen combination of circumstances. This combination may not take place all at once but gradually. An immediate action may be rendered necessary when the culminating point is reached. (*Broadway and Bhide, J.J.*) **DES RAI v. EMPEROR.** 126 I. C. 177=

31 Cr. L. J. 987=31 P. L. R. 677=  
1930 Cr. C. 897=A. I. R. 1930 Lah. 781.

**—Includes.**

—"Includes" adds a species to the general clause.

*DeSouza, A. J. C.*—It is a well-known rule of interpretation that the word "includes" is used as a word of enlargement and ordinarily implies that something else has been given beyond the general language which precedes it, to add to the general clause a species which does not naturally belong to it. *State v. Montello Salt Co.*, 98 Pac. 549, Rel. on.

Per *Aston, A. J. C.*—The phrase "shall include" must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. *Dilworth v. Commissioner of Stamps*, (1899) A. C. 99, Foll. (*Percival, J. C.*, *Aston, Rupchand Bilaram and DeSouza, A. J. C.*) **EMPEROR v. JIAND.** 111 I. C. 865=

22 S. L. R. 349=29 Cr. L. J. 945=  
A. I. R. 1928 Sind 149 (F.R.).

**—Labelled or Sealed.**

—*Bihar and Orissa Food Adulteration Act* (II of 1919), S. 14.

Neither the word "labelled" nor the word

**WORDS AND PHRASES—Labelled or Sealed.**

“sealed” necessarily means that it should contain the name of manufacturer. (*Jwala Prasad and Ross, J.J.*)  
**EMPEROR v. SHIB DAS MARWARI.**

106 I. C. 587 = 29 Cr. L. J. 75 = 9 P. L. T. 434 =  
 9 A. I. Cr. R. 352 = A. I. R. 1928 Pat. 213.

**—Law**

“Law” —Rule framed under section of Act is not ‘Law’ unless Act itself says so. (*Coutts and Das, J.J.*) **EMPEROR v. ABDUL HAMID.** 68 I. C. 945 = 3 P. L. T. 585 = 1922 P. H. C. 274 = 2 Pat. 134 = 23 Cr. L. J. 625 = 1 Pat. L. R. Cr. 199 = A. I. R. 1923 Pat. 1 (S. B.).

**—Market.**

“The word “market” is incapable of definition in the true sense of that word, that is, by the characteristic or crucial mark common to all the instances. It is a thing which can only be described.” (*Patkar and Murphy, J.J.*) **BOMBAY MUNICIPALITY v. YENKANNA.** 113 I. C. 506 = 30 Bom. L. R. 1128 = 52 Bom. 780 = 12 A. I. Cr. R. 30 = 30 Cr. L. J. 168 = A. I. R. 1928 Bom. 413.

**—Nal.**

“Nal means a closed wooden box into which the small amounts meant for the gaming house-keeper are put by the gamblers.” (*Addison, J.*) **DEVI DAYAL v. EMPEROR.** 116 I. C. 455 = 30 Cr. L. J. 625 = 1929 Cr. C. 312 = 13 A. I. Cr. R. 58 = A. I. R. 1929 Lah. 720.

**—Plying for hire.**

—*Madras Local Boards Act (XIV of 1920), S. 166 (1).*

The act of plying for hire can only be done at the place and time that the hiring is effected. Therefore, a person who lets out his car for hire in M, a town within District T, and which is a municipality, need not obtain a license from the T District Board, if the car travels beyond the municipal limits and traverses any of the T District Board roads. (*Madhavan Nair and Curgenven, J.J.*) **LOCAL FUND OVERSEER, MAYAVARAM v. PAK-KIRISAMI THEVAN.** 106 I. C. 446 = 27 M. L. W. 66 = 29 Cr. L. J. 30 = 9 A. I. Cr. R. 289 = 51 Mad. 527 = 1 M. Cr. C. 24 = A. I. R. 1928 Mad. 166 = 55 M. L. J. 213.

**—Public place.**

“A public place is one which is in full view of the public and one to which the public have access.” (*Philan, J.*) **LALA v. EMPEROR.** 126 I. C. 702 = 31 Cr. L. J. 1118 = 7 O. W. N. 621 = 1930 Cr. C. 905 = A. I. R. 1930 Oudh 394.

**—‘Sewa’.**

“The word “Sewa” may mean “in addition to” or “apart from”. Its meaning depends upon the context. (*Dawson-Miller, C. J. and Foster, J.*) **MAHARAJADHIRAJ DHAREHANGA v. COMMISSIONER OF INCOME-TAX.** 92 I. C. 338 = 2 Pat. L. R. Cr. 242 = 6 P. L. T. 355 = 1925 P. H. C. 49 = A. I. R. 1925 Pat. 313.

**—Sheets of tin.**

—*Calcutta Municipal Act (3 B. C. of 1899), S. 341.*

Sheets of tin, attached by their side to the shop by hinges and supported at the other end by props thus forming a verandah over the street and when the props are taken away the sheets hang down straight, cannot be considered as fixtures and therefore notice under S. 341 is not necessary. (*Chatterjee and Cumming, J.J.*) **NARAYAN KISSEN SEN v. CORPORATION OF CALCUTTA.** 63 I. C. 185 = 48 Cal. 602 =

**WORKMEN'S BREACH OF CONTRACT ACT (1859), S. 1—Joint contract.**

33 C.L.J. 377 = 22 Cr. L. J. 619 = A. I. R. 1921 Cal. 385.

**—‘Signing’.**

“Signing” a judgment does not mean initialling but means the writing of the full name of the Magistrate or the judge. (*Sundaram Chetty, J.*) **ABRAHMAH v. EMPEROR.** 1930 M. W. N. 787 = 32 M. L. W. 280 = 1930 Cr. C. 1123 = A. I. R. 1930 Mad. 867 = 59 M. L. J. 674.

**—Tahzirat-i-Hind.**

“The words “Tahzirat-i-Hind” means Indian Penal Code. (*Currie, J.*) **MALIK AMIR ALAM v. EMPEROR.** 1930 Cr. C. 981 = A. I. R. 1930 Lah. 885.

**WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859 AS AMENDED BY ACT XII OF 1920).****—Refusal to work.**

“In a prosecution under the Act, if it is proved that the workman has refused to work and that there is a finding that he is physically fit for the same he must be held to have refused “wilfully and without lawful or reasonable excuse.” (*MacGregor, J.*) **HEETH LAL KADRIA v. MOOKSUDALLY.** 1 Bur. L. J. 109 = A. I. R. 1923 Rang. 79.

**—S. 1—Compositor.**

“A compositor is an artificer, if not a workman within the meaning of Act XIII of 1859. 41 Mad. 182, Dist. (*Oldfield and Hughes, J.J.*) **SOMANNA v. CHELLAPATHI RAO.** 60 I. C. 52 = 44 Mad. 53 = 22 Cr. L. J. 196 = A. I. R. 1921 Mad. 618.

**—S. 1—Elephant driver.**

“A mahout or elephant driver is a workman or labourer and comes within the meaning of those words in S. 1 of the Act. 8 C.L.R. 254, Diss. (*Fawcett and Madgavkar, J.J.*) **EMPEROR v. KUTTA.** 27 Bom. L. R. 1415 = 27 Cr. L. J. 160 = 91 I. C. 896 = A. I. R. 1926 Bom. 80.

**—S. 1—Enquiry under.****—Nature of.**

The enquiry directed by S. 1 of the Workmen's Breach of Contract Act cannot be held to be one under Chapter XX of the Cr. P. Code, and if a Magistrate passes an order of acquittal in accordance with S. 247, Cr. P. Code, his order of acquittal is not one passed under that Chapter of the Code but merely a dismissal of the complaint, and therefore there is nothing to prevent him from reviewing that order if he sees cause to do so. 43 M. 443, Foll.; 46 C. 867, Dist. (*Ayling and Odgers, J.J.*) **RAMAMMA v. GURUNATHAN.** 72 I. C. 881 = 46 Mad. 723 = 18 M. L. W. 111 = 32 M. L. T. 347 = 1923 M. W. N. 402 = 24 Cr. L. J. 465 = A. I. R. 1923 Mad. 719 = 45 M. L. J. 36.

**—S. 1—Joint contract.****—Amendment Act of 1920, S. 5.**

When the employer relied on a contract made with two artificers, jointly, held, there is nothing in section 1 to exclude joint contracts. Joint contracts, which are not expressly excluded by the wording of S. 1 may be contemplated in it, for S. 5 of the Amending Act, XII of 1920, provides that the “contract” in the Original Act shall extend to all contracts within the meaning of the Contract Act. What the Court has to do in dealing with cases under the Act is to see whether as a matter of evidence and as matter of fact, the artificer or any of the artificers before it, has received an advance of money. 2 Bom. L. R. 545, Dist. (*Oldfield and Devadoss, J.J.*) **KANDASAMI MUDALI v. GURU**

# WORKMEN'S BREACH OF CONTRACT ACT (1859), S. 1—Musician.

SWAMI PILLAI.

71 I. C. 61 = 16 M. L. W. 883 =  
31 M. L. T. 475 = 24 Cr. L. J. 13 =  
A. I. R. 1923 Mad. 184 = 44 M. L. J. 53.

## —S. 1—Musician.

—A person who plays a musical instrument in a band is not an artificer, workman or labourer within the meaning of those words as used in the Workmen's Breach of Contract Act. The Workmen's Breach of Contract Act, S. 2, as amended by Act XII of 1920, gives a Magistrate complete discretion to order either the repayment of the advance or the performance of the work. (*Saunders, J. C.*) *NGA THA GYAN v. NGA BA E.* 64 I. C. 370 = 23 Cr. L. J. 2 = 4 U. B. R. 7 = A. I. R. 1922 U. B. 9.

## —S. 1—Validity of contract.

—A contract entered into under the Workmen's Breach of Contract Act at a place where that Act is not in force cannot be enforced, and the contracting workman is not liable for any breach of the contract. A contract under the same Act for a period exceeding one year by a person under the age of 18 years, is void. (*Gokul Prasad, J.*) *MAZHAR HUSAIN v. EMPEROR.* 59 I. C. 194 = 22 Cr. L. J. 50.

## —S. 1—Withdrawn Complaint.

—A complaint under S. 1 of the Act which is withdrawn before any order is made by the Magistrate under S. 2 of the Act either for a refund of the advance paid or for specific performance of the contract, is not a criminal proceeding within S. 211, I. P. Code. 28 M. 37, Ref. (*Ayling and Coutts-Trotter, J.J.*) *HUSSAINA BEARI v. EMPEROR.* 22 Cr. L. J. 13 = 59 I. C. 45 = 43 Mad. 443.

## —S. 2—Advance.

### —Meaning.

Under the Act, an advance, for marriage expenses of the workman, is a loan but not advance, which, under the Act, must be repaid, in the form of work which the workman has contracted to perform, and not in the form of money instalments. (*Scott-Smith and Leslie Jones, J.J.*) *BHOLANATH v. MUNSHI.* 22 Cr. L. J. 288 = 60 I. C. 688 = 3 U.P.L.R. 28 (Lah.).

## —S. 2—Applicability.

—The agreement was for a sum of Rs. 160 due by the accused, father and son, to the complainant and they agreed to work for a period of one year and subsequently to repay any money that may be found still due by them to him at the end of the year. They were to be paid Rs. 6 per month out of which Rs. 2 a month were to be taken towards this debt, Rs. 4 being paid to them in cash. There was no obligation under the agreement to work in the tope after the period of one year and the bond then converted itself into a simple money debt bond. The Magistrate merely directed the two accused to work for the period of six months, the balance of the period of one year after deducting the period for which they had already worked. The order did not say that they should work in the tope any longer than they agreed to; the recovery of the balance that may be found due at the end of the year was to be by a suit. *Held*, there was nothing unfair in the arrangement and S. 2 of the Act did not apply. (*Krishnan, J.*) *ELLAN, In re.* 76 I. C. 641 = 1924 M.W.N. 41 = 25 Cr. L. J. 209 = A. I. R. 1924 Mad. 351 = 45 M.L.J. 842.

## —S. 2—Calculation of time.

—An agreement that the accused should work every day should not be transformed by the Court into an agreement to work for 365 days at odd intervals, if the complainant so chose, when the accused should fail to

# WORKMEN'S BREACH OF CONTRACT ACT (1859), S. 2—Summary trial.

work one day after the other. (*Ryves, J.*) *ASGAR ALI v. EMPEROR.* 76 I. C. 1040 = 25 Cr. L. J. 320 = A. I. R. 1923 All. 609.

## —S. 2—Carrier.

—A person who agrees to carry stones on his camels does not come under S. 2. (*Shadi Lal, C. J.*) *JAFAR v. EMPEROR.* 77 I. C. 233 = 3 Lah. 371 = 25 Cr. L. J. 345 = A. I. R. 1922 Lah. 443.

## —S. 2—Jurisdiction.

—An offence under S. 2 of the Workmen's Breach of Contract Act is triable by a second class Magistrate. (*Boys, J.*) *KHALBAL v. MUHAMMAD YUSUF.* 82 I. C. 366 = 5 L.R.A.Cr. 158 = 25 Cr. L. J. 1294 = A. I. R. 1924 All. 616.

## —S. 2—Limitation.

### —Complaint.

Complaint should be brought within 3 months from the neglect to perform contract. (*Boys, J.*) *KHALBAL v. MUHAMMAD YUSUF.* 82 I. C. 366 = 5 L.R.A.Cr. 158 = 25 Cr. L. J. 1294 = A. I. R. 1924 All. 616.

## —S. 2—Non-compliance with order.

—Under S. 2 (1) a Magistrate cannot order the accused to work for more than one year and the accused cannot therefore be punished for not complying with an order directing to work for more than one year. (*Wallace, J.*) *PARAYYA v. VENKATIGADU.* 38 M. L. T. 321 = 102 I. C. 497 = 28 Cr. L. J. 561 = 26 M.L.W. 137 = 8 A.I.Cr.R. 213 = A. I. R. 1927 Mad. 603 = 52 M.L.J. 563.

## —S. 2—Period of grace.

—On conviction for an offence under S. 2 of the old Act of 1859 some period of grace—the length of the period being determined by the Magistrate in his discretion—should be allowed to the accused for the repayment. (*Boys, J.*) *KHALBAL v. MUHAMMAD YUSUF.* 82 I. C. 366 = 5 L.R.A.Cr. 158 = A.I.R. 1924 All. 616.

## —S. 2—Procedure.

—The Magistrate cannot order the workman to be imprisoned by the same order by which he directs him to make a payment. The order about imprisonment should be a separate order passed after the workman has failed to comply with the order about repayment. (*Harrison, J.*) *KUR SINGH v. EMPEROR.* 28 Cr. L. J. 23 = 99 I. C. 55 = 7 A.I.Cr.R. 196 = A.I.R. 1927 Lah. 62.

—Where the Magistrate omitted, before ordering the complainant to pay compensation under S. 2 (b) of the Act, to call on him to show cause, *Held*, that his order was illegal. (*Daniels, J.*) *ABDUS SAMAD KHAN v. EMPEROR.* 82 I. C. 134 = 45 All. 616 = 25 Cr. L. J. 1206 = A.I.R. 1923 All. 599.

## —S. 2—Scope of.

—Proviso (a) to clause (1) of S. 2 of the Workmen's Breach of Contract Act merely provides that an order directing repayment of the advance or performance of the contract shall not be made unless the employer moves the Court within three months of the breach of the contract. The proviso has no application to a case where a complainant has already obtained an order under S. 2, sub-section (1) and is applying for an order of imprisonment under clause (2) for failure to obey the order under clause (1). (*Robinson, J.*) *JESMUDIN v. ISADALLY.* 10 L.B.E. 240 = 59 I. C. 853 = 22 Cr. L. J. 149.

## —S. 2—Summary trial.

—An offence under S. 2 of the Workmen's Breach of Contract Act is triable summarily under S. 260 of the Cr. P. Code. 4 Mad. 234, Dist. 11, All. 262, Foll. Other cases Ref. to, (*Piggott and Walsh, J.J.*)



# WORKMEN'S BREACH OF CONTRACT ACT (1859), S. 3—Relation of debtor and creditor.

ABDUS SAMAT v. YUSUF. 59 I. C. 917 =  
22 Cr.L.J. 165 = 19 A.L.J. 22 = 43 All. 281 =  
A.I.R. 1921 All. 285.

## —S. 3—Relation of debtor and creditor.

—A provision by which the advance to the workman is to be repaid by periodical deductions from the amount of his wages and should in any case be worked out by him does not simply create a relation of debtor and creditor but creates a relation of master and servant. 13 Bom. L.R. 548 and 1 Wei. 681, Dist. (*Oldfield and Hughes, J.J.*) SOMANNA v. CHELAPATHI RAO. 60 I.C. 52 = 44 Mad. 53 = 22 Cr.L.J. 196 = 29 M.L.T. 48 = A.I.R. 1921 Mad. 618 = 39 M.L.J. 710.

## —S. 4—Applicability.

### —Contract of service.

Where in a case the service is not restricted to agricultural work, but embraces any kind of service including domestic service and the loan also is not a loan advanced for any particular work to be performed but it is merely a general loan on condition of the accused entering into a contract of service.

*Held*, that it is doubtful whether the case comes under the Act at all. 23 Mad. 203, Appl. (*Wallace, J.*) PARAYYA v. VENKATIGADU. 38 M.L.T. 321 = 102 I.C. 497 = 28 Cr.L.J. 561 = 26 M.L.W. 137 = 8 A.I.Cr.R. 213 = A.I.R. 1927 Mad. 603 = 52 M.L.J. 563.

## —S. 4—New contract.

—Accused obtained an advance of Rs. 300 for doing certain work. He worked for a few months after the execution of the agreement but failed to complete the engagement. He was arrested and on being charged with a breach of contract executed another agreement in lieu of the former advance to work for another period of one year. Thereupon the complaint originally filed against him was withdrawn. After the execution of the second agreement he worked again for a little while and then broke off the engagement. The complainant thereupon proceeded against him to enforce his agreement and obtained an order.

*Held*, that the order was right. Although no advance in cash was made at the time of the second agreement the new contract entered into under the circumstances abovementioned merely superseded the old contract, and its validity is recognised by S. 4 of the Act. (*Kanhaiya Lal, J.*) ABDUL RASHID v. HAJI NISAR. 77 I. C. 448 = 45 All. 691 = 21 A.L.J. 622 = 4 L. R. A. Cr. 137 = 25 Cr. L. J. 400 = A. I. R. 1924 All. 143.

# WORKMEN'S COMPENSATION ACT (VIII OF 1923).

## —Applicability.

### —Apprentices—Contract of service necessary.

The Workmen's Compensation Act may or may not apply to apprentices, the nature of the contract being the deciding factor. Contract of service is necessary to bring apprentices under the category of "Workmen." The student of the B class of the MacLagan College is neither an apprentice nor a workman. (*Johnstone, J.*) INDAR SINGH v. SECRETARY OF STATE.

119 I. C. 722 = A. I. R. 1929 Lah. 573.

## —Framing of issues.

—Rules framed under the Act do not preclude the Commissioner from framing issues which legitimately arise in the case even if the written statement of a party to the proceeding does not specifically raise the issues. (*Kulwant Sahay and Macpherson, J.J.*) URMILA DAS v. TATA IRON AND STEEL CO., LTD.

8 Pat. 24 = 9 P. L. T. 511 = 112 I. C. 328 = A. I. R. 1928 Pat. 508.

# WORKMEN'S COMPENSATION ACT (1923), S. 3—'In the course of employment.'

## —S. 2 (m)—'Wages.'

—The term "wages" involves the notion of a contract of service or employment and that the manual labour which a person does must be solely for the benefit of his employer. In the case of students of B class in the MacLagan Engineering College the labour done in workshops is primarily, if not entirely, directed to the imparting of instruction for the benefit of the students and the word "wages" does not import a contract of service, as ordinarily understood, between the students and the College. (*Johnstone, J.*) INDAR SINGH v. SECRETARY OF STATE.

119 I. C. 722 = A. I. R. 1929 Lah. 573.

## —S. 3—Exemption of liability.

### —Reckless act of workmen.

A reckless or a rash act is not an act which exempts the employer from liability to compensation. What is necessary is a wilful disobedience of a rule expressly framed. An employee of the defendant company was killed by being run over by an engine on a railway track. It was found that the speed of the engine was faster than that prescribed by the rules and workmen used to cross the track in the ordinary course at that spot without any objection or prohibition.

*Held*, that there was no wilful disobedience of any rule on the part of the deceased employee and therefore he was entitled to compensation. *Johnson v. Marshall Sons & Co., Ltd.*, (1906) A.C. 409; *Radley v. L. and N. W. Railway Co.*, (1876) 1 A.C. 754 and *Daves v. Mann*, 10 M. and W. 546, Rel. on. (*Kulwant Sahay and Macpherson, J.J.*) URMILA DAS v. TATA IRON AND STEEL CO., LTD.

112 I. C. 328 =  
8 Pat. 24 = 9 P. L. T. 511 =  
A. I. R. 1928 Pat. 508.

## —S. 3—'In the course of employment.'

### —Accident while travelling in train.

The deceased was a workman in the employ of the defendant company. He was sent on a message by one of the company's officers from Kalyan to Bombay. In Bombay he was directed by another of the company's officers to return to Kalyan. On his way back he was travelling in an electric train. While he was standing at the door of the carriage which was left open, supporting himself on the vertical iron bar, the train while going on a bridge received a jerk, and as a result of that he fell down on the lines and died consequently. Notice of the accident was given within a week. The workman's father proceeded to recover compensation from the defendant company.

*Held*, (1) that the notice was given as soon as practicable after the happening of the accident;

(2) that warning notices in connexion with these electric trains, which state, amongst other things, "Don't stand near the door," were framed for the purpose of securing the safety of passengers in general, and not for that of workmen and that the defendant company are not protected by proviso (b) (ii) to S. 3;

(3) that the accident was in the course of and arose out of the employment of the deceased workman and he did not take any greater risk than an ordinary traveller would do while travelling on one of these electric trains. (*Marten, C. J. and Crump, J.*) G. I. P. RAILWAY v. KASHINATH.

106 I. C. 465 =  
52 Bom. 45 = 29 Bom. L. R. 1544 =  
A. I. R. 1928 Bom. 1.

—Where a temporary hessian cloth cover was spread out under the roof to protect the cloth under manufacture from dust because of certain repairs of the roof of the weaving shed of a mill, a jobber in the weaving department, while trying to cut a portion of

# WORKMEN'S COMPENSATION ACT (1923), S. 3—'In the course of employment.'

the cover to admit more light, got entangled in the belt and was killed.

*Held*, that the act of the deceased workman in removing the hessian cloth was incidental to his work and was done in the performance of his duty, and arose out of and in the course of his employment within S. 3. (*Patkar and Baker, J.J.*) AHMEDABAD COTTON, ETC., CO. v. BAI BUDHIAN. 101 I. C. 552 = 29 Bom. L.R. 349 = A. I. R. 1927 Bom. 223.

## —S. 3 (b) (ii)—"Wilfully."

A man does a thing wilfully when he does it intentionally because he expects some benefit to himself, either some convenience or an easy way of doing a piece of work and so forth. (*B. B. Ghose and S. K. Ghose, J.J.*) TIKU KAHAR v. EQUITABLE COAL CO., LTD. 124 I. C. 496 = 1930 Cr. C. 10 = A. I. R. 1930 Cal. 58.

## —S. 3 (2).

*Kulwant Sahay, J.*—The word "wilful" imports that the misconduct is deliberate and not merely a thoughtless act on the spur of the moment. *Macpherson, J.* dissenting *Johnson v. Marshall Sons & Co., Ltd.*, (1906) A. C. 409, Foll. (*Kulwant Sahay and Macpherson, J.J.*) URMILA DASI v. TATA IRON AND STEEL CO., LTD. 112 I. C. 328 = 8 Pat. 24 = 9 P. L. T. 511 = A. I. R. 1928 Pat. 508.

## —S. 4—Interpretation and scope.

The words "result from" in S. 4 are wider than "solely and directly attributable" and the requirement of the law is satisfied even if the injury can be traced to the accident as the unnatural cause thereof. The true test is not whether the disablement is the direct or even probable result of the injury or the injury the natural cause thereof, but whether the disablement can be traced to the injury even as an unusual, but not unconnected result thereof. *Dunham v. Clare*, (1902) 2 K. B. 292 and *Ystradowen Colliery Co., Ltd. v. Griffiths*, (1909) 2 K. B. 533, Ref. (*Sukrawardy and Cammiade, J.J.*) ASHUTOSH SEAL v. GOURIPORE CO., LTD. 100 I. C. 441 = 31 C. W. N. 286 = 45 C. L. J. 244 = A. I. R. 1927 Cal. 286.

## —S. 5—Burden of proof.

### —Continuous service.

An applicant, a relative of the deceased workman, in a suit for compensation against a Dubashe firm contended that there was no continuous service of the deceased workman. He alleged in the plaint that the deceased was a casual labourer employed by the Dubashes' firm for the purposes of their trade. But the firm asserted that the case fell under S. 5 (a).

*Held*, that it was the firm to show that the service was continuous and that there was no break therein of more than 14 days, so as to bring the case under S. 5 (a). *Jones v. Ocean Coal Co.*, (1899) 2 Q. B. 124 and *Gardiner v. Vickers, Ltd.*, (1928) 44 T. L. R. 563, Dist. (*Percival, J. C. and Aston, A. J. C.*) COWASJI & SONS v. ALOO JOOTHA. 120 I. C. 510 = 24 S. L. R. 199 = 1930 Cr. C. 65 = A. I. R. 1930 Sind 49.

## —S. 8—Mode of payment.

The Act does not forbid compensation being paid otherwise than through the Commissioner. The whole scheme of S. 8 under sub-S. (1) whereof compensation "shall" be paid to the Commissioner, seems to be designed for the protection of the employer against claims in respect of accidents where his liability is admitted or established. (*Held, Offg. C. J., Chari and Ormiston, J.J.*) GUDDAI MUTAYALU, *In the matter of*. 123 I. C. 133 = 7 Rang. 660 = 1930 Cr. C. 91 = A. I. R. 1930 Rang. 1 (S.B.).

# WORKMEN'S COMPENSATION ACT (1923), S. 30—Question of fact.

## —S. 8—Re-deposit of compensation.

Subject to the observance of the provisions of R. 8, the Commissioner has power to order the re-deposit of the compensation. (*Held, Offg. C. J., Chari and Ormiston, J.J.*) GUDDAI MUTAYALU, *In the matter of*. 123 I. C. 133 = 7 Rang. 660 = 1930 Cr. C. 91 = A. I. R. 1930 Rang. 1 (S.B.).

## —S. 8—Right to compensation.

Section 8 makes it quite clear that compensation is payable only to the dependents of the deceased. It follows, therefore, that if no near relation who is mentioned in S. 2 (d) exists, the money cannot be paid to a more distant relation even though he be his next of kin. The amount is to be refunded to the employer. (*Sulaiman and Pullan, J.J.*) KALKA PRASAD, *In the matter of*. 118 I. C. 719 = 10 L. R. A. Cr. 144 = 12 A. I. Cr. E. 381 = 1929 Cr. C. 291 = A. I. R. 1929 All. 707.

## —S. 12—Contractor, who is.

*Tindal supervising coolies working for Dubashes is not contractor.*

A tindal was employed by the Dubashes to supervise the workmen, one of whom was the deceased workman. The workman received injuries during the course of, and arising out of the employment which resulted in his death.

*Held*, that the tindal was not contractor. (*Percival, J. C. and Aston, A. J. C.*) COWASJI & SONS v. ALOO JOOTHA. 24 S. L. R. 199 = 120 I. C. 510 = 1930 Cr. C. 65 = A. I. R. 1930 Sind 49.

## —S. 19—Setting aside previous order.

Commissioner has no power to set aside a previous order for compensation made by him under a mistake. (*Shadi Lal, C. J. and Abdul Qadir, J.*) *In the matter of* COMPENSATION FOR THE LIFE OF KARIM DAD, PLANER, LOCO SHOPS, MOGHALPURA. 125 I. C. 637 = 1930 Cr. C. 801 = A. I. R. 1930 Lah. 657.

## —S. 23—Inherent powers.

Under Workmen's Compensation Act the Commissioner exercises power of a Court only under certain provisions of the Code and S. 151, C. P. Code, not being one of them, Commissioner does not possess any inherent power contemplated by the aforesaid section. (*Shadi Lal, C. J. and Abdul Qadir, J.*) *In the matter of* COMPENSATION FOR THE LIFE OF KARIM DAD, PLANER, LOCO SHOPS, MOGHALPURA.

125 I. C. 637 = 1930 Cr. C. 801 = A. I. R. 1930 Lah. 657.

## —S. 30—Finding based on no evidence.

Where the finding is based upon no evidence, a substantial question of law arises and an appeal lies. (*B. B. Ghose and S. K. Ghose, J.J.*) BHUSAN CHANDRA GHOSE v. GEORGE HENDERSON.

123 I. C. 745 = 1929 Cr. C. 518 = A. I. R. 1929 Cal. 774.

## —S. 30—Question of fact.

A finding as to 'wilful disobedience' is a finding of fact which might be arrived at on evidence and hence it cannot be interfered with in appeal by the High Court. (*B. B. Ghose and S. K. Ghose, J.J.*) TIKU KAHAR v. EQUITABLE COAL CO., LTD.

124 I. C. 496 = 1930 Cr. C. 10 = A. I. R. 1930 Cal. 58.

There is no question of law in the finding by the Commissioner that the deceased workman worked for a certain number of days only. (*Percival, J. C. and Aston, A. J. C.*) COWASJI & SONS v. ALOO JOOTHA.

24 S. L. R. 199 = 120 I. C. 510 = 1930 Cr. C. 65 = A. I. R. 1930 Sind 49.

**WORKMEN'S COMPENSATION ACT (1923).****—S. 30—Scope.**

Section 30 allows appeals to the High Court from certain orders, in particular, from an order disallowing a claim of a person alleging himself to be a dependant. Except, however, as provided by this section no appeal lies from his orders and there is no authority conferred, by the Act, or by rules framed thereunder on, the Financial Commissioner or any other officer of Government to direct the Commissioner to reverse any decision at which he may have arrived and if a Financial Commissioner purports to direct the Commissioner to reopen the proceedings, his action is *ultra vires*. (*Heald, Offg. C. J., Chari and Ormiston, J.J.*) GUDDAI MUTAYALU, *In the matter of*.

123 I. C. 133=7 Rang. 660=1930 Cr. C. 91=  
A. I. R. 1930 Rang. 1 (S. B.).

**—Sch. 2 (5)—“Loading.”**

Protection under the Act is meant for the workmen who are actually engaged in the process of handling the bales, so as to transfer them from the wharf to the hold of a ship which is actually being loaded. But where a workman is injured while stacking certain bales in a shed alongside the wharf, the workman at the time when he met with the accident is not engaged for the purpose of loading a ship. (*Kemp, Ag. C. J. and Murphy, J.*) PARSU DHONDI v. TRUSTEES OF THE PORT, BOMBAY.

123 I. C. 495=54 Bom. 114=  
1930 Cr. C. 85=31 Bom. L. R. 1304=  
A. I. R. 1930 Bom. 44.

**YOUTHFUL OFFENDER.****WORKS OF DEFENCE ACT (VII OF 1903).****—Acquiescence.**

Where the cantonment authorities had acquiesced in the existence of a platform within cantonment area for 30 years,

*Held*, that they were not entitled to demolish it, having acquiesced in its existence for such a long period. Where its existence in the Defence Zone could not be considered a danger to the defence of the town, Act VII of 1903 would not apply. (*Stuart, J.*) RAM RATAN v. EMPEROR. 65 I. C. 855=20 A. L. J. 169=  
23 Cr. L. J. 199=A. I. R. 1922 All. 86.

**—S. 36—Essentials for continuing fine.**

There must be a conviction for persistence in the offence before a continuing fine can be imposed under S. 36. Negligence in supervision would not affect the question of conviction where a man is prosecuted for a breach of a statutory rule. (*Dalal, J.*) TIKA RAM v. EMPEROR. 110 I. C. 675=10 A. I. Cr. R. 332=  
9 L. R. A. Cr. 123=29 Cr. L. J. 739=  
26 A. L. J. 1377=A. I. R. 1928 All. 687.

**WRONGFUL CONFINEMENT.** *See* PENAL CODE, SS. 340-342.

**WRONGFUL CONVERSION.** *See* PENAL CODE.

**WRONGFUL LOSS.** *See* PENAL CODE.

**WRONGFUL RESTRAINT.** *See* PENAL CODE, S. 341.

**YOUTHFUL OFFENDER.** *See* REFORMATORY SCHOOLS ACT.